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Dated

day of

2021

**AGREEMENT FOR THE SUPPLY OF CONSULTANCY SERVICES –
DEVELOPMENT OF GOSPORT ROUND 2 APPLICATION TO ‘LEVELLING UP’ FUND**

PARTIES

GOSPORT BOROUGH COUNCIL (1)

AND

Contractor (2)

Borough Solicitor

Gosport Borough Council

THIS AGREEMENT dated _____ is made by and between:

- (1) Gosport Borough Council, Town Hall, High Street, Gosport PO12 1ED (the 'Council'); and
- (2) Contractor and whose registered office is at XXXXXXXXXXXXXXXX (the 'Contractor')

RECITALS

(A) The Council has undertaken a quotation exercise for the award of this contract in order to achieve best value. The Contractor has successfully tendered for the award of this contract and the Council wishes the Contractor to proceed with their Tender.

(B) The Contractor is experienced in performing the services and has/or is capable of meeting the performance criteria

(C) The Contractor is willing to perform the services in relation to Specification, and the Council wishes the Contractor to perform these tasks all in accordance with the provisions of this Agreement.

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NOW IT IS AGREED as follows:

1. Interpretation

1.1 In these Conditions:

“Approved” or “Approval”

means approved in writing by the Council or the Supervising Officer;

"Conditions"

means these conditions of contract;

"Contract"

means the contract for the supply of the Services;

"Contractor"

means the entity who is responsible for providing the Services as stated in the Contract;

“ Contract Documents”

means the documents in Schedule 1 namely: this Contract and its schedules, the Invitation to Tender and Tender specification selected by the Council, Schedules (such as service levels, site plans, contracts list) and pricing model (as completed by the Contractor);

“Contract Period”

means the period of 1 year from the date that this contract commences;

“Proposal”

means the proposal submitted by the Contractor with the Tender, which the Council has selected and wishes the Contractor to proceed with.

“Invitation to Tender”

means the invitation to tender for a Contract to supply **Consultancy Services for the Development of a Gosport Round 2 Application to ‘Levelling Up’ Fund**

"Price"

means the price payable by the Council to the Contractor for the Services stated in the Price Schedule

“Price Schedule”

means the price schedule submitted by the Contractor which shall be fixed for the Contract Period;

“Purpose”

means for the purpose given in the Specification;

“Tender”

means the quotation submitted by the Contractor to the above

"Services"

means the provision of the services (including any part of them) described in the Specification;

"Specification"

means the specification to be provided by the Contractor as set out by the Council in Section B of the Invitation to Tender and delivered by the Contractor in accordance with the method statement submitted with the Tender ;

"Supervising Officer"

Means the Economic Development & Regeneration Manager or such other person as the Council may nominate to act in his place from time to time.

- 1.2 Any reference in these Conditions to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, re-enacted or extended at the relevant time.
- 1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. Provision of Services

- 2.1 The Contractor shall during the Contract Period supply the Services to the Council in accordance with the provisions of this Contract, the Invitation to Tender and Tender.

3. Specification

- 3.1 The quantity, quality and description of the Services shall, subject as provided in these Conditions, be as specified in the Specification.
- 3.2 The Contractor shall comply with all applicable regulations and/or other legal requirements concerning the performance of the Services.

4. Price and Payment

- 4.1 Payments shall be made to the Contractor by the Council in accordance with the following provisions:-
 - 4.1.1 in consideration of the performance by the Contractor of the Services in accordance with the Contract the Council shall pay to the Contractor the Price which shall be payable from the Commencement Date in the following manner.
 - 4.1.1.1 Upon submission of an invoice the Council will within 14 days of the Commencement Date, arrange payment for 35% of the Price to the Contractor for project management services
 - 4.1.1.2 Upon completing the preliminary consultation exercise and submitting to the Council a Draft outline Application will submit an invoice and the Council will arrange payment of a further 35% of the Price.
 - 4.1.1.3 Upon completion of the provision of Services, the Council will make arrangement for the payment of the outstanding 30% of the

Price upon receipt of an invoice from the Contractor.

- 4.2 The Council shall be entitled to set-off against any invoice, any amount due from the Contractor under this Contract or under any other contractual arrangement.
- 4.3 Value Added Tax, where applicable, shall be shown separately on all invoices as a strictly extra charge. All invoices containing Value Added Tax must conform to the requirements of HM Revenue and Customs.

5. Performance

- 5.1 If the Services are not delivered and/or performed on the due date or are not performed to the reasonable satisfaction of the Supervising Officer then, without prejudice to any other remedy, the Council shall be entitled to deduct from the Price or, if the Council has already paid the Price, to claim from the Contractor an amount equal to the additional costs incurred by the Council as a result of the delay, or having to procure the Services from another supplier.

6. Quality Assurance

- 6.1 The Contractor shall ensure that all staff performing the Services operate a self-regulatory system of quality assurance and quality measures relating to and in accordance with the requirements of the Contract.

7. Warranties and Liability

- 7.1 The Contractor warrants to the Council that the Services will be performed by appropriately trained and qualified personnel, with due care and diligence, and to the standards which would reasonably be expected from a skilled and experienced Contractor engaged in the provision of services similar to the Services under the same or similar circumstances.

8. Indemnity and Insurances

- 8.1 Without thereby limiting its responsibilities under this Condition, the Contractor shall insure with a reputable insurance company against all loss of and damage arising out of or in consequence of the Contractor's obligations under the Contract and against all actions, claims, demands, proceedings, damages, costs, charges and expenses in respect thereof.
- 8.2 For Public Liability and Professional Indemnity claims, the amount of insurance cover shall be in the minimum sum of £1,000,000.
- 8.3 The Contractor shall supply to the Council immediately upon request copies of all insurance policies, cover notes, premium receipts and other documents necessary to comply with Conditions 9.1 and 9.2.

9. Health & Safety

- 9.1 The Contractor shall at all times comply with the requirements of the Health & Safety at Work etc. Act 1974 and of any other Acts, Regulations or Orders pertaining to the health and safety of employees or any other persons in particular relating to scaffolding, ladders, signing, coning, traffic and pedestrian management.

- 9.2 The Contractor shall have regard to the Council's health and safety policy when preparing its own statement, a copy of which shall be supplied to the Council prior to the Commencement Date.

10. Termination

- 10.1 Without prejudice to and other right or remedy available to the Council, the Council shall be entitled to terminate the Contract without liability to the Contractor by giving notice to the Contractor at any time if:-
- 10.1.1 The Contractor makes any voluntary arrangement with its creditors (within the meaning of the Insolvency Act 1986) or (being an individual or firm) becomes bankrupt or (being a company) becomes subject to an administration order or goes into liquidation (otherwise than for the purpose of amalgamation or reconstruction); or
 - 10.1.2 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Contractor; or
 - 10.1.3 The Contractor ceases, or threatens to cease to carry on business; or
 - 10.1.4 The Contractor does anything improper to influence the Council to give the Contractor any contract or commits an offence under the Bribery Act 2010, Prevention of Corruption Acts 1889 to 1916 or Section 117(2) Local Government Act 1975;
 - 10.1.5 The Council reasonably believes that any of the events mentioned above is about to occur in relation to Contractor and notifies the Contractor immediately;
 - 10.1.6 If any of the Services are not supplied or performed in accordance with the Contract, and the Council has: -
 - 10.1.6.1 Required the Contractor to supply replacement Services in compliance with the Contract within 7 days and the Contractor has failed to do so.
- 10.2 For the avoidance of doubt, where the Council terminates the Contract in accordance with any of the provisions of Condition 10, the Contractor shall compensate the Council for any losses suffered as a result of this.
- ## **11. General**
- 11.1 The Contractor shall be prohibited from transferring, assigning or sub-letting, directly or indirectly, to any person or persons whatever, the whole or any portion of this Contract without the written permission of the Council.
- 11.1.1 The Contractor is permitted to use other persons to provide some or all of the Services and shall be responsible for the work of a sub-contractor whose work shall be undertaken to the same standard as stated in this Contract.
- 11.2 Any notice required or permitted to be given by either party to the other party under these Conditions shall be in writing addressed to that other party.

- 11.3 No waiver by the Council of any breach of the Contract by the Contractor shall be considered as a waiver of any subsequent breach of the same or any other provision.
- 11.4 If any provision of these Conditions is held to be invalid or unenforceable in whole or in part, the validity of the other provisions of these Conditions and the remainder of the provision in question shall not be affected.
- 11.5 The Contractor shall use all reasonable efforts to assist the Council to comply with such obligations as are imposed on the Council by the Freedom of Information Act 2000 ("the 2000 Act") and the Environmental Information Regulations 2004 ("the 2004 Regulations") including providing the Council with reasonable assistance in complying with any request for information in connection with the Services served on the Council under the 2000 Act or the 2004 Regulations and processing information provided by the Council in accordance with a record management system which complies with the Lord Chancellor's records management recommendations and code of conduct under section 46 of the 2000 Act.
- 11.6 The Contractor shall not issue any press release or make any public statement concerning the Council, its employees, agents, councillors, the Services without the prior written consent of the Council.
- 11.7 The Contractor shall, and shall use reasonable endeavours to ensure that its employees, agents and subcontractors shall, at all times, act in a way which is compatible with the Convention Rights within the meaning of Section 1 of the Human Rights Act 1998.
- 11.8 The Contractor shall:-
- 11.8.1 not discriminate against any person or victimise or harass any person within the meaning and scope of any law, enactment, order, or regulation relating to discrimination, victimisation and harassment and, accordingly, shall not treat one group of people less favourably than others whether by reason of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation, whether in decisions to recruit, train or promote its employees and/or in the delivery of the Services;
- 11.8.2 comply with the provisions of the Equality Act 2010 or other relevant or equivalent legislation, or any statutory modification or re-enactment thereof as if the Contractor were a body within the meaning of Schedule 19 of the 2010 Act (or any European equivalent which shall be deemed to include without limitation an obligation to have due regard to the need to eliminate unlawful racial discrimination, to promote equality of opportunity and good relations between persons of different racial groups and to promote disability equality for the public sector).
- 11.9 This Contract constitutes the entire understanding between the parties relating to the subject matter of the Contract and, save as may be expressly referred to or referenced herein, supersede all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.
- 11.10 No variation to the Contract shall be binding unless agreed in writing between the authorised representatives of the parties.

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- 11.11 Save for the Parties, no person shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any of the terms of this Contract and these Conditions.
 - 11.12 The Parties agree to submit to the jurisdiction of the English courts and agree that the Contract is to be governed and construed according to English law.
 - 11.13 The Contractor acknowledges that the Council is committed to the Government's transparency agenda requiring the Council to publish on-line items of spend over £500 (five hundred pounds), including actual payments made to the Contractor, the Price, the Contract and the terms of this Contract.
 - 11.14 The Contractor shall (and shall procure that any of its employees involved in the provision of the Services) comply with its obligations under the Data Protection Act 1998 ("DPA") (including where appropriate obtaining registration hereunder) and the Computer Misuse Act 1990 insofar as the performance of the terms of this Contract gives rise to obligations under the DPA.
 - 11.15 Notwithstanding the general obligation in Condition 12.15, where the Contractor is processing personal data (as defined by the DPA) as a data processor for the Council (as defined by the DPA) the Contractor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of the personal data (including encryption of any laptop computer on which personal data is held) (and to guard against unauthorised or unlawful processing of the personal data and against accidental loss or destruction of, or damage to, the personal data), as required under the Seventh Data Protection Principle in Schedule 1 to the DPA and provide the Council with such information (including access to the information for audit purposes) as the Council may reasonably require to satisfy itself that the Contractor is complying with its obligations under the DPA.

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AS WITNESS

EXECUTED AS A DEED

by affixing the
Common Seal of GOSPORT BOROUGH
COUNCIL in the presence of:

Authorised Signatory

by the Contractor

Authorised Signatory

Schedule 1

The documents of forming the Contract Documents pertaining to this Contract in order of precedence are:

- this Contract and its Schedules,
- the Invitation to Tender, **Consultancy Services – Development of Gosport Round 2 Application to ‘Levelling Up’ Fund** and
- Tender specification selected by the Council,