



European Union
European Structural
and Investment Funds



DATED

18TH NOVEMBER 2022

CONSULTANCY AGREEMENT

FOR

FOLCA 2 INITIAL WORKS COMMISSION CONSULTANCY

between

THE DISTRICT COUNCIL OF FOLKESTONE AND HYTHE

and

PELLINGS LLP

CONTENTS

CLAUSE

1.	Interpretation	1
2.	Term of engagement.....	3
3.	Duties and obligations	3
4.	Fees	6
5.	Expenses.....	7
6.	Other activities	7
7.	Confidential information	7
8.	Data protection	8
9.	Intellectual property	9
10.	Insurance and liability	10
11.	Termination	10
12.	Obligations on termination	11
13.	freedom of information.....	12
14.	Status	12
15.	Compliance with anti-slavery and human trafficking laws	13
16.	Notices.....	14
17.	Entire agreement.....	14
18.	Variation.....	15
19.	Counterparts	15
20.	Third party rights.....	15
21.	Governing law	15
22.	Jurisdiction	15

SCHEDULE

SCHEDULE 1:	SPECIFICATION.....	16
SCHEDULE 2:	CONSULTANT'S QUOTATION	1
SCHEDULE 3:	PAYMENT SCHEDULE	2

THIS AGREEMENT is dated 18th November 2022

BETWEEN

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Council**");
- (2) **PELLINGS LLP** (Company Registration No OC326178) of Spring Lodge 172 Chester Road, Helsby, Frodsham, England, WA6 0AR (the "**Consultant**")

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

WHEREAS the Council requires professional services to be rendered for the provision of Folca 2 Initial Works Commission Consultancy 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: 7th November 2022

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 **8 months**, to the **30th June 2023**; or
 - (b) until either party giving to the other not less than 4 weeks' prior written notice.

3. DUTIES AND OBLIGATIONS

- 3.1 During the Engagement the Consultant shall:
- (a) provide the Services with all due care, skill and ability and use their best endeavours to promote the interests of the Council; and
 - (b) promptly give to the Council all such information and reports as it may reasonably require in connection with matters relating to the provision of the Services.

- 3.2 If the Consultant is unable to provide the Services due to illness or injury, they shall advise the Council of that fact as soon as reasonably practicable. For the avoidance of doubt, no fee shall be payable in accordance with clause 4 in respect of any period during which the Services are not provided.
- 3.3 The Consultant may, with the prior written approval of the Council and subject to the following proviso, appoint a suitably qualified and skilled Sub-consultant to perform the Services on his behalf, provided that the Sub-consultant shall be required to enter into direct undertakings with the Council, including with regard to confidentiality. If the Council accepts the Sub-consultant, the Consultant shall continue to invoice the Council in accordance with clause 4 and shall be responsible for the remuneration of the Sub-consultant. For the avoidance of doubt, the Consultant will continue to be subject to all duties and obligations under this Agreement for the duration of the appointment of the Sub-consultant.
- 3.4 The Consultant undertakes that the terms and conditions of any sub-contract it enters into with a Sub-consultant shall (where applicable) comply with section 113 of the Public Contracts Regulations 2015 and result in payments being made not later than thirty (30) days from the date of receipt of a relevant invoice from the Sub-Consultant.
- 3.5 The Consultant shall use reasonable endeavours to ensure that they are available at all times on reasonable notice to provide such assistance or information as the Council may require.
- 3.6 Unless they have been specifically authorised to do so by the Council in writing, the Consultant shall not:
- (a) have any authority to incur any expenditure in the name of or for the account of the Council; or
 - (b) hold themselves out as having authority to bind the Council.
- 3.7 The Consultant shall comply with all reasonable standards of safety and comply with all reasonable standards of safety and comply with the Council's health and safety procedures from time to time in force at the premises where the Services are provided and report to the Council any unsafe working conditions or practices.
- 3.8 The Consultant undertakes to the Council that during the Engagement they shall take all reasonable steps to offer (or cause to be offered) to the Council any business opportunities as soon as practicable after the same shall have come to their knowledge and in any event before the same shall have been offered by the Consultant (or caused by the Consultant to be offered) to any other party.

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

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

3.10 The Consultant shall:

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

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

3.12 The Consultant shall:

- (a) not engage in any activity, practice or conduct which would constitute either:
 - (i) a UK tax evasion facilitation offence under section 45(1) of the Criminal Finances Act 2017; or
 - (ii) a foreign tax evasion facilitation offence under section 46(1) of the Criminal Finances Act 2017;
- (b) promptly report to the Council any request or demand from a third party to facilitate the evasion of tax within the meaning of Part 3 of the Criminal Finances Act 2017 or any suspected tax evasion offences or facilitation of

tax evasion offences, whether under UK law or under the law of any foreign country, in connection with the performance of this Agreement;

- (c) ensure that all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Agreement comply with this clause 3.13; and
- (d) annually certify to the Council in writing compliance with this Clause 3.13 by the Consultant and all persons associated with the Consultant or other persons who are performing services or providing goods in connection with this Agreement. The Consultant shall provide such supporting evidence of compliance as the Council may reasonably request.

3.13 Failure to comply with Clause 3.13 may result in the immediate termination of this Agreement.

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

4. FEES

4.1 In consideration of the Services to be rendered by the Consultant in accordance with this Agreement the Council shall make Payments to the Consultant for the provision of the Services as follows:

- (a) payments in respect of the Services as set out in the Payment Schedule as contained in Schedule 3 and in accordance with clause 4.2
- (b) such additional Consultancy Fees (if any) as shall from time to time be determined by the Council having regard to the Services rendered by the Consultant.

4.2 The Council shall pay each invoice submitted by the Consultant for Services successfully rendered in accordance with this Agreement within 30 days of receipt thereof.

4.3 The Council shall accept and process for payment an electronic invoice submitted for payment by the Consultant where the invoice is undisputed and where it complies with the standard on electronic invoicing.

4.4 For the purposes of clause 4.3 an electronic invoice complies with the standard on electronic invoicing where it complies with the European standard and any of the syntaxes published in Commission Implementing Decision (EU) 2017/1870.

4.5 The Council shall be entitled to deduct from the fees (and any other sums) due to the Consultant any sums that the Consultant may owe to the Council at any time.

4.6 Payment in full or in part of the fees claimed under clause 4 or any expenses claimed under clause 5 shall be without prejudice to any claims or rights of the Council against the Consultant in respect of the provision of the Services.

5. EXPENSES

5.1 The Consultant shall bear his own expenses incurred in the course of the Engagement.

5.2 If the Consultant is required to travel abroad in the course of the Engagement he shall be responsible for any necessary insurances, inoculations and immigration requirements.

6. OTHER ACTIVITIES

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

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

7. CONFIDENTIAL INFORMATION

7.1 The Consultant acknowledges that in the course of the Engagement they may have access to Confidential Information. The Consultant has therefore agreed to accept the restrictions in this clause 7.

7.2 The Consultant shall not (except in the proper course of their duties), either during the Engagement or at any time after the Termination Date, use or disclose to any third party (and shall use their best endeavours to prevent the publication or disclosure of) any Confidential Information. This restriction does not apply to:

- (a) any use or disclosure authorised by the Council or required by law; or

- (b) any information which is already in, or comes into, the public domain otherwise than through the Consultant's unauthorised disclosure.

7.3 At any stage during the Engagement, the Consultant will promptly on request return all and any Council Property in his possession to the Council.

7.4 Nothing in this clause 7 shall prevent the Consultant or the Council (or any of its officers, employees, workers or agents) from:

- (a) reporting a suspected criminal offence to the police or any law enforcement agency or co-operating with the police or any law enforcement agency regarding a criminal investigation or prosecution; or
- (b) doing or saying anything that is required by HMRC or a regulator, ombudsman or supervisory authority; or
- (c) whether required to or not, making a disclosure to, or co-operating with any investigation by, HMRC or a regulator, ombudsman or supervisory authority regarding any misconduct, wrongdoing or serious breach of regulatory requirements (including giving evidence at a hearing); or
- (d) complying with an order from a court or tribunal to disclose or give evidence; or
- (e) making any other disclosure as required by law.

8. DATA PROTECTION

8.1 The Consultant and the Council will comply with the Data Protection Legislation.

8.2 The Consultant shall, in relation to any personal data processed in connection with the Engagement:

- (a) process that personal data only on written instructions of the Council;
- (b) keep the personal data confidential;
- (c) comply with the Council's privacy standard **OR** data protection policy, data retention policy
- (d) comply with the Council's reasonable instructions with respect to processing personal data;
- (e) not transfer any personal data outside of the UK;
- (f) assist the Council in responding to any data subject access request and to ensure compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, privacy impact assessments and consultations with supervisory authorities or regulators;
- (g) notify the Council without undue delay on becoming aware of a personal data breach or communication which relates to the Council's or Consultant's compliance with the Data Protection Legislation;

- (h) at the written request of the Council, delete or return personal data (and any copies of the same) to the Council on termination of the Engagement unless required by the Data Protection Legislation to store the personal data; and
- (i) maintain complete and accurate records and information to demonstrate compliance with this clause 8.4.

8.3 The Consultant shall ensure that they have in place appropriate technical or organisational measures, reviewed and approved by the Council, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures. Such measures may include, where appropriate:

- (a) pseudonymising and encrypting personal data;
- (b) ensuring confidentiality, integrity, availability and resilience of its systems and services;
- (c) ensuring that availability of and access to personal data can be restored in a timely manner after an incident; and
- (d) regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it.

8.4 The Council does not agree to the Consultant appointing any third-party processor of personal data under this Agreement.

8.5 The Consultant shall have personal liability for and shall indemnify the Council for any loss, liability, costs (including legal costs), damages, or expenses resulting from any breach by the Consultant or a sub-contractor engaged by the Consultant of the Data Protection Legislation, and shall maintain in force full and comprehensive Insurance Policies.

8.6 Each Party 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.

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 9 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 them an employee, worker, agent or partner of the Council and the Consultant shall not hold themselves out as such, an employee of the consultant will not be an employee of the council.

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 the 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;

- (c) include in contracts with its direct suppliers provisions which are at least as onerous as those set out in this Clause 15.

- (d) 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.

- (e) 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 permit the Council and its third party representatives to inspect the Consultant's premises, records, and to meet the Consultant's personnel to audit the Consultant's compliance with its obligations under this Clause 15.

15.2 The Consultant represents and warrants that it has not been convicted of any offence involving slavery and human trafficking; nor has it been the subject of any investigation, inquiry or enforcement proceedings regarding any offence or alleged offence of or in connection with slavery and human trafficking.

15.3 The Council may terminate the agreement with immediate effect by giving written notice to the Consultant if the Consultant commits a breach of this Clause 15.

16. NOTICES

16.1 Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at the address given in this Agreement or as otherwise notified in writing to the other party.

16.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the address given in this Agreement;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting.

16.3 If deemed receipt under clause 16.2 would occur outside business hours in the place of receipt, it shall be deferred until business hours resume. In this clause 16.3 business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.

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

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

17. ENTIRE AGREEMENT

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

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

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

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

18. VARIATION

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

19. COUNTERPARTS

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

20. THIRD PARTY RIGHTS

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

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

21. GOVERNING LAW

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

22. JURISDICTION

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

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 Officer

FOR AND ON BEHALF OF PELLINGS LLP

Director		

SCHEDULE 1: SPECIFICATION



FOLKESTONE & HYTHE DISTRICT COUNCIL

FOLCA 2 Initial Works Commission

SPECIFICATION

August 2022

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

1. INTRODUCTION

- 1.1 Folkestone & Hythe District Council (F&HDC) is seeking to appoint lead consultants to conduct works for a Council owned asset (a former department store) in Folkestone Town Centre in two distinct phases:
 - 1.1.1 Advise on requirements in terms of building surveys and the internal design.
 - 1.1.2 Procure building surveys and investigations that will inform the specification of works.
 - 1.1.3 Review outcomes and provide explanation of the technical data and use professional judgement to advise on the most suitable sequencing/priority of works to bring the building back up to a usable standard including the separation of the Edwardian and later Art Deco extension.
 - 1.1.4 Advise on the optimal use of budget available following survey recommendations and write specification suitable for contractors to price, with estimated costs and a menu of cost options.
 - 1.1.5 Acting as client representative, aid with procurement and selection of suitable experienced contractor to complete works.
- 1.2 The second phase of works will require the consultant to:
 - 1.2.1 Oversee working phase ensuring completion of the works to a high standard, with regular Clerk of Works inspections.
 - 1.2.2 Certify and recommend payment of invoices based upon stage or invoice certification.
- 1.3 This work is to be jointly funded by Folkestone & Hythe District Council and from ERDF funding available through the Folkestone Community Works CLLD programme.
- 1.4 The second phase forms part of this commission, but delivery and completion of activity is subject to the council being successful in its bid to the Levelling Up Fund.

22.1 2. BACKGROUND AND CONTEXT

- 2.1 In May 2020, F&HDC purchased 48-66 Sandgate Road, Folkestone, CT20 1DN the former Debenhams store, which was vacated in January 2020. The building has most recently been used as a Covid-19 vaccination centre.
- 2.2 Since then the building has been subject to minimal maintenance with the last refurbishment performed in 1998.
- 2.3 The property comprises two main parts - the original red bricked Edwardian element which fronts Bouverie Place and around to part of

Sandgate Road, (Folca 1) and the later, much larger art deco extension with frontage directly onto Sandgate Road (Folca 2).

- 2.4 The Folca 1 footprint is subject to a separate development bringing forward a state-of-the-art medical provision. However, it is recognised that surveys and investigations undertaken as part of this commission will need to consider the impact of site separation and development of Folca 1, independent of Folca 2.
- 2.5 Strategically the building is of prominence and significance to the ongoing regeneration of Folkestone Town Centre, acting as the gateway to the pedestrianised part of the town centre. It was identified as a priority project in the Place Plan which was developed in 2021.
- 2.6 Post purchase, the following reports have been developed specific to the site which have informed the services required for phase one of this commission:
 1. Condition Survey Report¹
 2. Asbestos Report²
- 2.7 In early August 2022, the Council submitted a bid to the Levelling Up Fund to bring forward a series of interventions in support of the ongoing regeneration of Folkestone Town Centre. This includes costs relating to the separation of Folca 1 and Folca 2 and the refurbishment of Folca 2 to enable occupancy.

22.2 3. PURPOSE

- 3.1 To understand the level of works required to enable separation of Folca 1 and Folca 2.
- 3.2 To understand the level of works required for Folca 2 to be refurbished including identification of what can be repurposed, and brought up to a standard that enables the building to be brought back into use and full occupation.
- 3.3 Advise on the options open to the client on how best to use the funding to optimise market appeal if successful with their Levelling Up Fund bid.
- 3.4 Review to consider likely future building use and where possible recommend an approach to minimise the level of abortive works prior to the confirmation of end user occupation requirements.
- 3.5 Identify a design and associated schedule of works and act as Clerk of Works for the duration and completion of the refurbishment.

¹ [Condition Survey\Colliers Building Condition Survey Report - 48-66 Sandgate Road-August 2021.pdf](#)

² [48-66 Sandgate Road, Folkestone Asbestos Re Inspection Report November 2020.pdf](#)

22.3 **4. SPECIFIC REQUIREMENTS / SCOPE**

Phase one

4.1 Lead a multi-disciplined team to conduct surveys and investigation works for Folca 2 (unless stated otherwise) including:

Survey/Investigations required	Comments
CCTV drainage survey	To include a review of drainage of entire site footprint (Folca 1 and Folca 2) to identify the current function and issues with drainage systems, identifying remedial works works required. This should include both grey water drainage, fowl water and sump pump inspections. Output to consider separation of footprint for Folca 1 and Folca 2.
Firestopping Survey	A building wide check of footprint to locate all fire stopping deficiencies.
Structural Survey	Initial visual inspection of the building followed by a more intrusive building and roof survey and assessment in areas that require further investigation. For example, the cracking seen within the premises and the corroding steelwork within the basement, the external fire escape stairs and rear elevation. Consider impact and works required to enable separation of Folca 1 and Folca 2.
Specialist damp survey	Known water ingress within the lower ground floor. Specialist damp survey required to include a strategy for remediation.
M&E Services assessment	Undertake full validation and testing of the following: <ul style="list-style-type: none"> - VRF comfort heating/cooling systems - Domestic hot/cold water systems - Electrical distribution system - Fire alarm system - Lighting - Drainage - Possibility to relocate rooftop air conditioning plant with the intention of creating usable space
Legionella Assessment	Risk Ensure there are no issues associated with the current usage of the site, with routine outlet testing undertaken to ensure the safety of the building occupants.

- 4.2 Review outcomes and write specification for the refurbishments works that is suitable for contractors to price, with estimated costs and a menu of cost options.
- 4.3 Ensure documentation is prepared and the required evidence is submitted to enable the Council to meet any funding criteria needs to reclaim funds.
- 4.4 Assistance with procurement and selection of suitable experienced contractor as client representative.

Phase two (subject to a successful bid to the Levelling Up Fund)

- 4.5 Assist and advise the client with the formation, drafting and subsequent negotiation of the works contract once contractor selection has taken place. As well as assisting on satisfying any prestart conditions or Building Regulation matters necessary prior to the contractor taking site possession.
- 4.6 Oversee the physical works phase as Client Representative ensuring that the specification and requirements of the contract are delivered to a high quality standard under RIBA Stage 5 by undertaking regular quality/Clerk of Works inspections on site. Initial works to focus on the separation of Folca 1 and Folca 2 must be prioritised and delivered in the first quarter.
- 4.7 Certify and recommend payment of contractor interim invoices based upon stage or monthly arrangements throughout RIBA Stage 5 and until completion of the works and RIBA Stage 6, handover.

5 OUTPUTS

- 5.1 Provide the client with 2 options of proposed works.
 - 5.1.1 Provide a report on the findings of the surveys. Include explanation of the technical data and use professional judgement to advise on the most suitable sequencing/priority of works (minimum cost option to bring the building back up to a usable standard) with associated cost estimated including the separation of Folca 1 and Folca 2.
 - 5.1.2 Advise client on the optimal use of the £2.2M budget based on the survey recommendations to bring back to a usable standard and advise the client on where best to focus the residual budget to maximise market appeal. Provide an elemental budget cost of all items. Assist the client in reviewing the works item and costs against budget prior to agreeing a Schedule of Works.
- 5.2 Create a Schedule of Works based on the priorities of the client which will depend on the emerging progress of the commercial lettings in the building.

- 5.3 Create a full Tender pack of documents to enable contractors to price the Schedule of Works in sequence
- 5.4 Review the tender returns, clarify, discrepancies, provide a detailed tender report to the client with clear recommendations
- 5.5 Ensure that the proposed refurbishment works meet the requisite standards and comply with all standards including building regulations
- 5.6 Provide evidence, when required, to enable Council to seek required approvals and to meet relevant funding criteria.

Phase two (subject to a successful bid to the Levelling Up Fund)

- 5.7 Assist with the contractor selection process and contract type and its negotiation
- 5.8 Provide regular evidence of works inspection and certification of contractor stage payments throughout the works phase
- 5.9 Provide evidence, when required, to enable Council to seek required approvals and to meet relevant funding criteria
- 5.10 Management, co-ordination and discharge of all preoccupation requirements upon completion and handover of the completed project at RIBA Stage 6
- 5.11 Review the impact of the works and the building's performance whilst in occupation for the first year under RIBA Stage 7. Provide the client a brief quarterly update on your findings.

6 GOVERNANCE

- 6.1 The Council's Chief Officer for Place is the Lead for this work and the main point of contact for this process. Day-to-day activities will be facilitated by Economic Development Senior Specialist.
- 6.2 The Council will implement project management tools during the project lifecycle to ensure the project is delivered on time and budget. Regular project reporting will be in place to monitor progress and ensure key stakeholders are kept informed of progress with regular project team meetings which should be factored into the response.
- 6.3 During key project milestones it is expected the consultant will meet with key stakeholders (senior officers and elected members) to provide updates on progress. be identified during the inception meeting which should be factored into the response.

7 Team Skills

- 7.1 In Summary, the Council is looking to appoint a consultant team with a range of skill sets. The team proposed by the Consultant for this

commission is expected to have a demonstrable track record and deliver services under the following headings:

- *Quantity Surveyor*
- *Project Manager/ Employer's Agent*
- *Clerk of Works*

8 TIMELINE

8.1 The Council requires this work to be completed in line with the table below from the date of commission and the consultant will be expected to meet the following milestone timings:

Phase one	
<i>Inception Meeting</i>	<i>Within first 10 days</i>
<i>Instruct and receive surveys</i>	<i>By 25th November</i>
<i>Create report on findings of surveys with sequencing/priority with costings</i>	<i>By 25th November</i>
<i>Agreed schedule of works based on the priorities for refurbishment and optimal use of £2.2M budget</i>	<i>By 30th November</i>
<i>Full tender documentation finalised</i>	<i>By 9th December</i>
Phase two	
<i>Appoint refurbishment contractors</i>	<i>By 6th January 2023</i>
<i>Separation of Folca 1 and Folca 2</i>	<i>January to March 2023</i>
<i>Schedule of works completed</i>	<i>By 30th June 2023</i>

SCHEDULE 2: CONSULTANT'S QUOTATION

Price Schedule

Project: Consultancy for FOLCA 2 Initial Works Commission

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

Prices submitted must be **exclusive** of Value Added Tax.

Activity Schedule					
Detail and cost all activities in this stage.					
ACTIVITY <small>please list the activities required to meet this commission</small>	RESOURCE <small>please add the name of the person carrying out the activity</small>	GRADE / JOB TITLE	DAILY RATE (£)	DAYS TO COMPLETE	SUBTOTAL (£)
Phase 1:					
Procure Surveys	Ryan Lightfoot	Building Surveyor	£ 465.00	4	£
Instruct and receive surveys	Ryan Lightfoot	Building Surveyor	£ 465.00	8	£
Review options and report	John Grabowski	Partner	£ 712.00	8	£
Schedule of Works	Ryan Lightfoot	Building Surveyor	£ 465.00	10	£
Tender Documents	Lauren Mahoney	Senior Building Surveyor	£ 540.00	5	£
Client Liaison	John Grabowski	Partner	£ 712.00	2	£
			£ -		£ -
Total			£ -		£ -
Phase 2:					
Tender and appointment	Lauren Mahoney	Senior Building Surveyor	£ 540.00	8	£
Contract Administration	Ryan Lightfoot	Building Surveyor	£ 465.00	21	£
Quality Assurance (Clerk of Works)	Luke Philpott	Clerk of Works	£ 420.00	12	£
Client Liaison	Ryan Lightfoot	Building Surveyor	£ 465.00	6	£
			£ -		£ -
Total			£ -		£ -

As advised we have not included for surveys to be procured and paid through Pellings directly. Should this be required we will apply a surcharge of 15%.

TOTAL	£ 41,965.00
--------------	--------------------

SCHEDULE 3: PAYMENT SCHEDULE

as per Clause 4.1 of the Consultancy Agreement.
This table is for information only and will not be evaluated.

PROJECT STAGE / ACTIVITY	ANTICIPATED DATE	% of TOTAL FEE	AMOUNT PAYABLE
Phase one			
Commencement Date	Late October '22	20%	£
Surveys and investigations completed	By 25th November '22	15%	£
Final report on findings of surveys with sequencing/priority with costings	By 25th November '22	15%	£
Agreed schedule of works	By 30th November '22	20%	£
Full tender documentation finalised	By 9th December '22	30%	£
Phase two (subject to successful LuF bid)			
Appoint refurbishment suppliers	By 6th January '23	15%	£
CoW certification Month 3	End of March '23	15%	£
Successful separation of Folca 1 and Folca 2 (building regs sign-off achieved)	End of March '23	25%	£
CoW certification Month 4	End of April '23	20%	£
Schedule of works completed	End of June '23	25%	£