

DATED 27 September 2022

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**CONSULTANCY AGREEMENT**

for Low Carbon Consultancy services

between

**THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE**

and

**ENVIRONMENTAL EFFICIENCY LIMITED**

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

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THIS AGREEMENT is dated 27 September 2022 between

- (1) **THE DISTRICT COUNCIL OF FOLKESTONE AND HYPHE** of the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY (the "**Council**");
- (2) **ENVIRONMENTAL EFFICIENCY LIMITED** (company number 05075635) of BURY LODGE, BURY ROAD, STOWMARKET IP14 1JA (the "**Consultant**")

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

**WHEREAS** the Council requires professional services to be rendered for the implementation of low carbon consultancy services 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:** 3 October 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.

**Consultancy Fee:** £600 per day (exclusive of VAT) as per the Consultant's quotation as referred to in Schedule 2.



**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.

**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:** 2 October 2023 unless the Parties have mutually agreed in writing to extend the contract by one further year from 3 October 2023 to 2 October 2024.

**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 until the Termination Date.

## **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 shall comply with the Council's policies on social media, use of information and communication systems, anti-harassment and bullying, no smoking, dress code and substance misuse.

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;
- 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;
- 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) The Council shall pay the Consultancy Fee upon completion of the Service 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 unless otherwise agreed prior to incurring the expense

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 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 express instructions of the Council;
- b) keep the personal data confidential;
- c) comply with the Council's Data Retention Policy and Data Security Incident Policy;
- d) comply with the Council's reasonable instructions with respect to processing personal data;
- e) not knowingly transfer any personal data outside of the UK;
- f) assist the Council at the Council's cost 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.

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 The Consultant hereby assigns to the Council all existing and future Intellectual Property Rights in the Works and the Inventions and all materials embodying these rights to the fullest extent permitted by law. Insofar as they do not vest automatically by operation of law or under this Agreement, the Consultant holds legal title in these rights and inventions on trust for the Council.

9.2 The Consultant undertakes:

- a) to notify to the Council in writing full details of any Inventions promptly on their creation;
- b) to keep details of all Inventions confidential;
- c) whenever requested to do so by the Council and in any event on the termination of the Engagement, promptly to deliver to the Council all correspondence, documents, papers and records on all media (and all copies

or abstracts of them), recording or relating to any part of the Works and the process of their creation which are in their possession, custody or power;

- d) not to register nor attempt to register any of the Intellectual Property Rights in the Works, nor any of the Inventions, unless requested to do so by the Council; and
- e) to do all acts necessary to confirm that absolute title in all Intellectual Property Rights in the Works and the Inventions has passed, or will pass, to the Council.

9.3 The Consultant warrants to the Council that:

- a) They have not given and will not give permission to any third party to use any of the Works or the Inventions, nor any of the Intellectual Property Rights in the Works;
- b) They are unaware of any use by any third party of any of the Works or Intellectual Property Rights in the Works; and
- c) the use of the Works or the Intellectual Property Rights in the Works by the Council will not infringe the rights of any third party.

9.4 The Consultant agrees to indemnify the Council and keep it indemnified at all times against all or any costs, claims, damages or expenses incurred by the Council, or for which the Council may become liable, with respect to any intellectual property infringement claim or other claim relating to the Works or Inventions supplied by the Consultant to the Council during the course of providing the Services. The Consultant shall maintain adequate liability insurance coverage and shall supply a copy of the policy to the Council on request. The Council may at its option satisfy this indemnity (in whole or in part) by way of deduction from any payments due to the Consultant.

9.5 The Consultant waives any moral rights in the Works to which they are now or may at any future time be entitled under Chapter IV of the Copyright Designs and Patents Act 1988 or any similar provisions of law in any jurisdiction, including (but without limitation) the right to be identified, the right of integrity and the right against false attribution, and agrees not to institute, support, maintain or permit any action or claim to the effect that any treatment, exploitation or use of such Works or other materials infringes the Consultant's moral rights.

9.6 The Consultant acknowledges that, except as provided by law, no further fees or compensation other than those provided for in this Agreement are due or may become due to the Consultant in respect of the performance of his obligations under this clause 9.

9.7 The Consultant undertakes, at the expense of the Council, at any time either during or after the Engagement, to execute all documents, make all applications, give all assistance and do all acts and things as may, in the opinion of the Council, be necessary or desirable to vest the Intellectual Property Rights in, and to register them in, the name of the Council and to



defend the Council against claims that works embodying Intellectual Property Rights or Inventions infringe third party rights, and otherwise to protect and maintain the Intellectual Property Rights in the Works and the Inventions.

9.8 The Consultant irrevocably appoints the Council to be its attorney in its name and on its behalf to execute documents, use the Consultant's name and do all things which are necessary or desirable for the Council to obtain for itself or its nominee the full benefit of this clause. A certificate in writing, signed by any director or the secretary of the Council, that any instrument or act falls within the authority conferred by this Agreement shall be conclusive evidence that such is the case so far as any third party is concerned.

## **10. INSURANCE AND LIABILITY**

10.1 The Consultant shall have personal 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 30 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 accepts 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.

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 12.
- (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 12.

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 as a Deed on the day and year first above written



**THE COMMON SEAL of THE  
DISTRICT COUNCIL OF  
FOLKESTONE AND HYTHE**  
was hereunto affixed in the  
presence of:



9642

**For and on behalf of  
ENVIRONMENTAL EFFICIENCY LIMITED**

Signature: .....  .....26<sup>th</sup> September 2022

## **SCHEDULE 1: SPECIFICATION – LOW CARBON CONSULTANCY SERVICES**

Folkestone & Hythe District Council has declared a climate and ecological emergency and is committed to achieving net zero carbon emissions by 2030. The Council has developed an Action Plan and needs expert assistance to take forward the various projects, which include but are not limited to –

- a) Delivery of social housing decarbonisation phase 1 projects
- b) Bidding for social housing decarbonisation phase 2 funding and subsequently delivering on bids
- c) Bidding for public sector decarbonisation funding and subsequently delivering on bids
- d) Delivery of ECO4 project to support vulnerable private sector tenants
- e) Identify and apply for funding from multiple sources at scale for sustainability, decarbonising, and energy infrastructure programmes
- f) Advice and guidance on co-exploring and co-design of sustainability programmes
- g) Technical collaboration and expert guidance on renewable generation, district heating systems and energy efficiency retrofitting in homes

There is also likely to be additional project work to support the Director of Corporate Services and the Director of Housing & Operations with various low carbon initiatives.


The Council have used the HMRC assessment tool to confirm that this contract is outside the scope of IR35.

Please provide a day rate for the consultancy work set out above and brief CVs of the consultants who will be conducting the work.

**SCHEDULE 2: CONSULTANT'S QUOTATION**

Sent by email



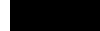
13<sup>th</sup> September, 2022

  
Interim Assistant Director of Corporate Services,  
Folkestone & Hythe District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone

Dear 

**Proposal to provide low carbon consultancy services to Folkestone and Hythe District Council**

Thank-you for giving us the opportunity to respond to your request to provide project administrative and low carbon consultancy services to the council and to the Director of Housing and Operations, the Director of Corporate Services and The Strategy, Policy and Economic Development Officer.

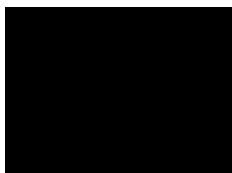
We have discussed with each party the immediate requirements of the service, aligned the requirements with our skills sets and accordingly our proposal is that  the Managing Director will provide the project administrative duties and low carbon and sustainability consultancy service supported as required by other Associates including   the Managing Associate.

You have confirmed that the provision of the services will fall outside of IR35 and we are pleased to offer a rate of £600 per day excluding VAT for both the named consultants, with an estimated annual equivalent of £132,000 (ex VAT) for an initial term of 12-months.

The invoices will be submitted at the end of each month and supported by a timesheet in an agreed format to facilitate allocation to your various internal budgets.

I trust that the proposal meets with your approval, and we look forward to working with you.

Yours sincerely,



Director

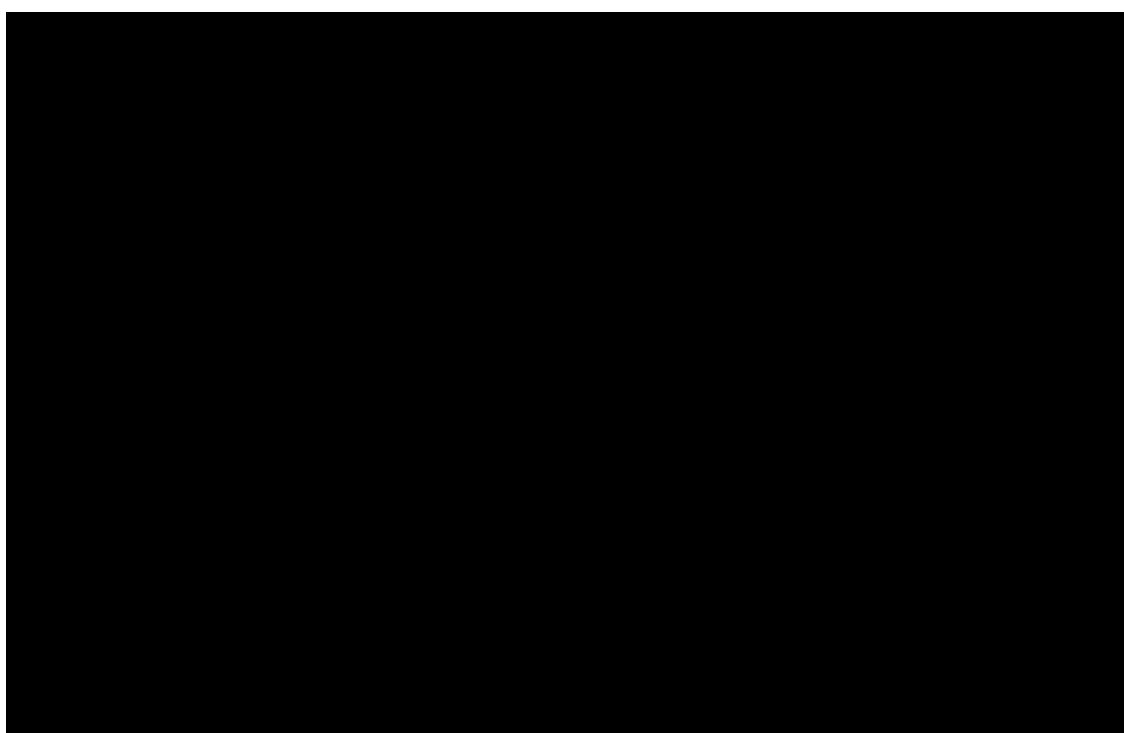
## Competency Appendix

### Outline of initial services

Our initial discussions highlighted that immediate support and consultancy may be required in the following fields:

- Knowledge transfer of low carbon expertise to council staff.
- Project direction and management of selected low carbon projects using Prince2 and Agile methodologies.
- Advice and guidance on co-exploring and co-design of sustainability programmes.
- A horizon scan to identify and apply for funding from multiple sources at scale for sustainability, decarbonising, and energy infrastructure programmes.
- Specialist support provided to various programmes to drive the development of the green recovery plan for the district.
- Technical collaboration and expert guidance on renewable generation, district heating systems and energy efficiency retrofitting in homes.

### Key Biographies



### Additional technical competencies

Our Associates and collaborators have recognised expertise in fields including:

- District-wide, viable renewable energy systems and heat networks including battery and thermal storage, fuel cells and hydrogen.
- Creating and delivering decarbonisation and climate adaptation programmes in the built environment for both public and private portfolios.
- Financing and governance of green infrastructure projects.
- Creating net-zero strategies for public bodies and private organisations; and
- Monitoring biodiversity net gain and climate adapted planting design.

The consultants quotation on company headed paper is attached below as a pdf.



Proposal Letter for  
FHDCv2.pdf