

1 Instructions to Tenderers

1.1 General Instructions

- 1.1.1 If you intend to tender for the provision of Town Centre Property Advice to the Council, please read the following instructions carefully and prepare your tender accordingly.
- 1.1.2 The Council will not be responsible for any costs or expenses you incur in preparing or delivering or in the evaluation neither of the tender, nor with any costs or expenses incurred with the formation of a contract should you be successful.
- 1.1.3 You are deemed to have obtained at your own expense, all information necessary for the preparation of your tender.
- 1.1.4 Prior to the date for return of tenders, the Council may clarify, amend or add to the documentation. A copy of each such instruction will be issued by the Council to every contractor and shall form part of the tender documentation. No amendment shall be made to the tender documentation unless it is the subject of such an instruction. You should promptly acknowledge receipt of such instructions.
- 1.1.5 Clarifications of the invitation to tender documents must be made **in writing** by either email or letter to the following:
- 1.1.6 Please make all clarification requests in writing as no telephone requests will be met. As soon as practical after receipt of any request for clarification, the Council will respond in writing to all tenderers except where the clarification has been identified by the tenderer, and subsequently agreed by the Council, as being commercially sensitive. The Council will not be bound to respond to any request for clarification of the Invitation to Tender which is received later than
- 1.1.7 Only clarifications made in writing by the Council will form part of the Invitation to Tender documents.
- 1.1.8 All information contained in the invitation to tender shall be treated as confidential except insofar as is necessary to be disclosed for the purposes of obtaining quotations essential for the preparation of your tender.

1.2 Tender Response

1.2.1 Your tender must contain the information called for in each section below:

- Firm prices in sterling for the Services must be entered on the Price Schedule (Schedule 3)
- The Form of Tender statement (Schedule 5) completed signed and dated.
- Conditions of Contract Compliance Statement (Schedule 6)
- The completed Schedule of Reserved Information at (Schedule 8)
- Specification (Schedule 2)
- Specification Compliance Statement (Schedule 7)
- Specific questions (Schedule 4)

1.2.2 Respond to all sections in the Specific questions. You should complete your responses in blue ink into this document. **All sections must be responded to even if simply “Understood” or “Agreed”.**

1.2.3 The Council has indicated a maximum number of words against some questions. The number indicated includes words in any charts, appendices and diagrams which are incorporated into the tenderer's response unless otherwise clearly indicated. In the event that the number of words is exceeded, the Council will only consider the first part of the tenderer's response up to the maximum allowed.

1.2.4 No external reference material will be considered as part of your response unless requested e.g. CV's. Where any external reference material, such as brochures, specifications and system descriptions, is supplied for information purposes, any statements within the reference material which may allow change to obligations or reduce liability, such as "specifications subject to change without notice", or other disclaimers will be regarded as void and shall not form part of the contract in the event that the tender is accepted.

1.2.5 All pricing should be stated exclusive of VAT.

1.2.6 Tenders shall remain open for an initial acceptance for a minimum of 120 calendar days, although the Council may ask you to extend of the period of validity.

1.3 Submission of Tenders

1.3.1 Please submit 4 hard copies of your tender, plus one electronic copy on CD/DVD. Most business file types are acceptable; however any file containing code, password protection or seemingly inappropriate images will be rejected. We are unable to accept quotations on USB stick.

Town Centre Regeneration Property Advice

- 1.3.2 The original, signed, tender must be returned by no later than
- 1.3.3 Please address to:

- 1.3.4 If submitting hard copies, the envelope must not indicate the name of the sender; envelopes that do may be rejected unopened. Similarly, tenders received after the tender submission date/time will be rejected.

1.4 Tender Decline

- 1.4.1 If you decide not to respond to this ITT, please let the contact in Section 1.1.5 know in writing as soon as possible, giving a brief reason.

1.5 Evaluation of Tenders

- 1.5.1 The Council may seek confirmation that suppliers meet the Council's minimum levels of economic and financial standing or technical or professional ability, originally stated in the contract notice, at any time. Suppliers must be financially sound. **We use an external credit reference agency and, in addition, require copies of your latest set of annual report/ accounts which must be supplied with your tender. Failure to supply such information, or in the event that the financial standing of the tenderer is considered by the Council to be inadequate to successfully complete the Contract, will result in disqualification.**
- 1.5.2 The contract will be awarded on the basis of the most economically advantageous offer having regard to:

The Total Cost of the services will comprise 40% of the total score. Tenderers should note that the hourly/ per diem Price quoted in respect of the Lead Consultant for the 3-year Term shall be the rates marked for the cost element of tender evaluation.
- 1.5.3 The **Quality** of the solution in terms of functionality and infrastructure (60% of the total score) takes into account issues such as; quality, price, technical merit, aesthetic and functional characteristics, environmental characteristics, cost effectiveness, after sales service, technical assistance, delivery date and delivery period and period of completion.
- 1.5.4 The Total Cost score is out of 100 marks and will be awarded based on a mathematical formula taking into account the overall weighting allocated to this particular section. In this instance, it is calculated by taking the lowest Total Cost divided by the next lowest Total Cost and multiplied by 100. As a result, the lowest Total Cost (subject to the provisions of regulation 30(6) of the Public Contracts Regulations 2006) will be awarded a score of 100 for price alone, with tenderers thereafter being allocated a relative score. This will be combined with quality, to give an overall score for each tenderer.

Town Centre Regeneration Property Advice

1.5.5 The Council's evaluation team will interview short-listed tenderers and the information gained will be used to review the initial scoring based on further understanding gained.

1.5.6 The headline quality evaluation criteria are as follows:-

Criteria	Marks	Applicable Document(s) & Section(s)
Q1: Details of team structure, roles and responsibilities.	10	Specific Questions Schedule 4
Q2: Details of other town centre regeneration schemes worked on and specific reference contacts.	30	Specific Questions Schedule 4
Q3: CV of lead consultant	20	Specific Questions Schedule 4
Q4: 5 key challenges facing town centre regeneration schemes	10	Specific Questions Schedule 4
Q5: What are the council's key factors when doing land transfers	10	Specific Questions Schedule 4
Q6: Achieving best value and strengths and weaknesses	10	Specific Questions Schedule 4
Q7: Enablers and barriers in bringing forward housing	10	Specific Questions Schedule 4
Total	100	

1.5.7 The evaluation spreadsheet which details any sub-criteria and formulae used is attached as Appendix A of this Instructions to Tenderers document.

1.5.8 The Council shall be under no obligation to award a contract for all or any part of the requirement set out in the Invitation to Tender, to any tenderer or at all.

1.5.9 You may be required to answer any Council queries on your proposal and to attend formal meetings with the Council during the tender evaluation period.

1.5.10 Tenderers failing to satisfy the 2 minimum criteria set out in the Council's South East Business Portal advertisement will be Disqualified.

1.6 Canvassing

Any contractor who directly or indirectly canvasses any member or official of the Council concerning the award of the contract for the provision of the Goods/Services, or who directly or indirectly obtains or attempts to obtain information from any such member or official concerning any other tender for the Goods/Service will be disqualified. If discovery occurs after the award of the contract, the Council shall then be entitled to summarily terminate the contract.

1.7 Whistle blowing policy

Your attention is drawn to the Council's whistle blowing policy which can be found on the Procurement website at: www.bracknell-forest.gov.uk/procurement

1.8 Project Schedule

Publish advert on South East Business Portal			
Issue Invitation to Tender			
Last Questions from Suppliers	Noon	Friday	
Issue Question & Answer Summary			
Last date for requesting documents	Noon		
Receive Response from Suppliers	Noon	Monday	
Supplier Presentations		Week Beginning	
Issue Contract			
Contract Commencement			

NB Tenderers please note that the above dates are approximate and may be

subject to change

Specification

Introduction

1. The Council is seeking tenders from organisations to provide Property Advice on the Bracknell Town Centre Regeneration.
2. Suitably qualified and experienced organisations are required to provide property advice and represent the Council from October 2012 for 3 years extendable by 2 further periods of 1 year.

Background

3. Creating a town fit for the 21st century is a key ambition for the Council. The Council is working in partnership with Bracknell Regeneration Partnership (BRP), the developers for the Town Centre, to deliver the vision outlined in the Town Centre Masterplan and subsequently adopted as supplementary planning guidance

Outline of Bracknell Town Centre Regeneration

4. The town centre will deliver new leisure and retail facilities, new homes, cafes and restaurants, and community facilities. Overall the vitality and viability of the town centre will be enhanced through the promotion of a mixed use, sustainable development that will result in the provision of new homes, an improved retail offer, improved and updated civic facilities, improved public realm and public transport provision and investment and jobs.

Progress Made to Date on the Town Centre Regeneration

5. Outline planning permission for the Town Centre development was issued by the Council on December 21 2006, further to an application submitted by BRP, the lead developers for the regeneration.
6. At the end of March 2007, the three month challenge period for the outline planning permission ended. No High Court challenges were made to the planning permission during this time. Since this application, the planning permission has been extended and a further S73 application to vary the scheme has been submitted by BRP to the Local Planning Authority which is currently being determined.
7. In April 2007, the Council signed a Development Agreement with BRP. Both partners are now working through the conditions precedent before the agreement becomes unconditional. In addition, the Development Agreement is being varied to enable the regeneration to come forward on a phased basis.
8. The Compulsory Purchase Order and land assembly process is well underway. The Council and BRP are rising to the challenge of the global economic crisis and continuing to push on with the regeneration. The first phase, a Waitrose Food Store, has been delivered and trading since November 2011. The Council is now considering renegotiating some elements of the development deal to help bring forward the regeneration during the current economic climate.

Key dates

- 2000 Council found out what local people wanted from a new town centre
- 2002 Council drafted a Masterplan of how the town centre could be redeveloped
- 2002 Bracknell Regeneration Partnership formed by the two major landowners in Bracknell to develop town centre regeneration plans
- 2006 BRP Outline Planning Application (OPA) drafted in line with the Council's Masterplan and submitted to Council
- 2006 OPA provisionally accepted by Council
- 2006 Government Office for the South East gives go-ahead to plans
- 2006 Outline Planning Permission issued
- 2007 Variations made to OPA and the Development Agreement exchanged
- 2008 Secretary of State approves CPO process
- 2008 Work commences on planning strategies and pre-commencement conditions
- 2008 Work continues on 3rd party site developments
- 2009 Revised approach agreed to bring forward the regeneration in phases
- 2010 Planning permission extended
- 2010 Bracknell station forecourt works completed

Town Centre Regeneration Property Advice

- 2011 Drafting of s106 and Development Agreement variation commenced (to allow phased approach)
- 2011 CPO implemented with over 400 property interests being served
- 2011 First phase of regeneration, Waitrose foodstore, delivered and opened
- 2011 Market Square acquired and demolished
- 2011 Project manager and design team for scheme appointed by BRLP
- 2012 Building works commence on Old Manor Car Park for replacement accommodation for displaced business in NRQ West and 14 new residential units
- 2012 s73 planning variation submitted to bring forward development in phases



Overview of requirements

9. The selected Consultant shall act as client advisor on behalf of the Council, primarily supporting the Council in its role as development partner. They shall be expected to provide advice and represent the Council on all property matters to help assist with:

Town Centre Regeneration Property Advice

- Implementing the comprehensive town centre regeneration in a phased and realistic manner
- Protect the Council's property interests and ensure value for money
- Ensuring that the interests of the Council and the broader community are delivered
- Maintaining a clear yet and healthy working relationship with the Council's development partners

In addition, the Council shall wish to seek advice under this Contract on other strategic land issues and valuations within the Borough.

Key Tasks

10. Key tasks shall include representing and advising the Council on any town centre property issues including:

- I Valuations
- ii Land transfer issues
- iii Other strategic property advice as required
- iv Review of developer appraisals

This list is not exhaustive. The Council has a separate joint appointment with its development partner for CPO advice however there may be occasions when further CPO may be sought under this contract.

The successful organisation shall be expected to:

Town Centre Regeneration Property Advice

- travel to Bracknell to attend Town Centre meetings when required with officers
- present to senior officers, elected members and our development partners
- produce reports, contracts and other documentation as instructed
- liaise with the developers legal team and other consultants as required

Management

- 11 The Contract will be managed by the Principal Regeneration Officer or as otherwise delegated. The selected organisation shall be expected to report to a range of officers as required including the Assistant Chief Executive and Chief Officer: Property.

Instructions

- 12 The Council will request estimates from the selected organisation for pieces of work as required. The estimates shall need to include the number of hours to be allocated to the piece of work, the personnel delivering the work, the timetable for delivery and final inclusive costs. All estimates shall be in accordance with the pricing submitted as part of this tender. The Council's nominated officers (Principal Regeneration and Enterprise Officer, Regeneration Officer and the Regeneration Support Officer) will confirm in writing acceptance of the estimate. No work must commence until confirmation in writing has been issued.

Lead Advisor's Staff

- 13 Tenderers shall be required to nominate a Partner to act as Lead Consultant for the project, and shall be required to demonstrate that its proposed team of

Town Centre Regeneration Property Advice

advisors are of senior status in the firm, suitably qualified for the task and have a thorough and demonstrable knowledge of the processes involved in the tasks. Tenderers must nominate and allow the Council to interview the Lead Consultant who shall have personal responsibility for the contract throughout, including key assigned staff.

- 14 The Consultants shall outline any conflicts of interest with either BRLP or other developers operating in Bracknell. Organisations will be expected to outline how such conflicts will be mitigated as part of their tender response.

Basis of Pricing

- 15 The scope of the tasks is unknown but is estimated not to exceed 150 man hours per year. Tenderers are required to price on an hourly/ per diem basis, but are invited to propose a sliding scale if appropriate (e.g. the more hours worked, the greater the reduction in fee).
- 16 Tenderers are required to show the pricing for the Lead Consultant and other proposed team members and which tasks/areas of expertise they will advise on. Fixed hourly/ per diem prices shall be fully inclusive of the expenses and other items detailed at clause 17 hereof. It should be noted that the Council will expect most of the work, if not all, to be undertaken by the Lead Consultant and tenderers should note the hourly/ per diem rate tendered for the Lead Consultant shall be the rate marked for the purposes of the cost element of tender evaluation..
- 17 The tendered Price shall make provision for all costs associated with:-

Town Centre Regeneration Property Advice

- office stationery, typing services, telephone bills and other general office expenses, and;
- Any reports, contracts or other documentation produced further to the work requested
- Travelling costs to, from and within the Borough when required

18 The Council proposes to make payment of the agreed price to the Consultants on a monthly basis in arrears in respect of work satisfactorily completed.

19 Tenders shall be submitted on the basis that work will commence immediately on appointment.

Specific Questions – Method Statement

Tenderers should note that their answers to these questions will be marked and will form the basis of qualitative tender evaluation.

1. Please provide details of the Team structure, roles and responsibilities of the staff who will be working on this contract.
As a minimum, please include names, positions and a structure chart.

Response (Max 500 words)

2. Please provide precise details of other Town Centre retail regeneration schemes which your organisation has experience of working on with a minimum development value of £350million. Particularly include their experience in respect of:
 - Valuation services
 - Review of developer appraisals
 - Land transfer issues

Out-of-town or mixed use schemes will not be considered. The role of the proposed Lead Consultant should be highlighted.

The Council may wish to seek references from such previous examples. Please therefore include full contact details of key individuals who may be approached in this context.

Response (Max 500 words)

3. Please provide a structure chart of your proposed team and the CV of the Lead Consultant. Please note that only this CV will be evaluated in terms of the skills and experience of the individual and their relevance to the Town Centre Regeneration project. This must be attached to your tender response.
4. In your opinion, what do you consider to be the 5 key challenges facing town centre regeneration schemes in the current economic climate and why?

Response (Max 500 words)

5. What do you think should be the Council's key factors to consider before transferring its land to a developer and why?

Response (Max 500 words)

Town Centre Regeneration Property Advice

6. What mechanisms should the Council consider for achieving best value for its land and what are the strengths and weaknesses of each approach?

Response (Max 500 words)

7. Please give an outline as to what, in your opinion, are the current enablers and barriers to bringing forward housing as part of a mixed use town centre regeneration scheme?

Response (Max 500 words)



BRACKNELL FOREST BOROUGH COUNCIL

TOWN CENTRE PROPERTY ADVICE

CONSULTANCY CONDITIONS

ISSUE DATED: AUGUST 2012

CONSULTANCY CONDITIONS

CONTENTS

1. Definitions
2. Term
3. The Services
4. Payment Provisions
5. Liability of The Council
6. Notices
7. Variations
8. Professional Expertise
9. Assignment
10. Termination
11. Bribery and Corruption
12. Data Protection
13. No Waiver
14. Insurance
15. Tax Liabilities
16. Records
17. Health and Safety
18. Termination upon Notice
19. Intellectual Property
20. Confidentiality
21. Default
22. Rights of Third Parties
23. Human Rights
24. Survival of Rights on Termination
25. Jurisdiction
26. Freedom of Information
27. Equal Opportunities

Attachment 1 – Exempted Information

Attachment 2 – Consultants ICT Policy

THIS CONTRACT is made the _____ day of _____ 2012
BETWEEN BRACKNELL FOREST BOROUGH COUNCIL of Easthampstead
House Town Square Bracknell Berkshire (hereinafter referred to as “the Council”) of
the one part and [_____] whose registered office is
situate at [_____] (hereinafter referred to as “the
Consultants”) of the other part

WHEREAS:-

- (1) The Consultants have agreed to provide property advice services to the Council as detailed in this Contract

NOW IT IS AGREED AS FOLLOWS:-

1. Definitions

1.1 In this Contract the following words shall have the following meanings assigned to them:-

“Commencement Date” means the date of commencement of this Contract which shall be

“Confidential Information” means the Council’s secrets or confidential information and extends to all knowledge and information relating to the Council’s business organisation finances processes specifications clients services and technology

“the Consultants Response” means the Consultants Response to the Invitation to Tender dated [_____]

“Contract” means the agreement between The Council and the Consultants, for the supply of the Services, comprising the Specification and the terms of this Contract and any other written requirements or particulars of the Council

“the Employee” means the Lead Consultant and the following employees of the Consultant [_____]

“Exempted Information” means any information or category of information, document, report, contract or other material containing information relevant to this Contract that has been designated by the mutual agreement of the Parties as potentially falling within an FOIA Exemption and listed from time to time as such in Attachment 1

Town Centre Regeneration Property Advice

“FOIA”	means the Freedom of Information Act 2000
“FOIA Exemption”	means any applicable exemption to the FOIA including, but not limited to, confidentiality (section 41 FOIA), trade secrets (section 43 FOIA) and prejudice to commercial interests (section 43 FOIA)
“Invitation to Tender”	means the Invitation to Tender of the Council dated
“IP”	means all intellectual property rights of whatsoever nature including (without limiting the generality of the foregoing) copyright (and rights in the nature of copyright), design rights, database rights, trade marks, patents and patentable inventions (and the right to apply for any of the foregoing)
“Prohibited Act”	<p>means the following which constitute Prohibited Acts:</p> <ul style="list-style-type: none">(a) to directly or indirectly offer, promise or give any person working for or engaged by the Council a financial or other advantage to:<ul style="list-style-type: none">(i) induce that person to perform improperly a relevant function or activity; or (ii) reward that person for improper performance of a relevant function or activity;(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Contract;(c) committing any offence:<ul style="list-style-type: none">(i) under the Bribery Act 2010;(ii) under legislation creating offences concerning fraudulent acts;(iii) at common law concerning fraudulent acts relating to this Contract or any other contract with the Council;or(iv) defrauding, attempting to defraud or conspiring to defraud the Council.
“the Payment”	means the consideration for the Services which is detailed in clause 4.1 hereto

Town Centre Regeneration Property Advice

“the Services”	means the services to be provided by the Consultants to the Council in accordance with the Specification and the terms of this Contract
“the Specification”	means the specification attached as Schedule 2 hereto
“Term” commencing on terminating upon	means the term of this Contract the Commencement Date and [TBD] unless extended in accordance with the provisions of this Contract
“VAT”	means value added tax payable under the Value Added Tax Act 1994

1.2 A reference to any Act Statute or statutory provision shall include a reference to that Act Statute or statutory provision as amended re-enacted or replaced from time to time whether before or after the date hereof and any former Act Statute or statutory provision replaced (with or without modification) by the Act Statute or statutory provision referred to and any subordinate legislation made thereunder respectively

1.3 References to the singular shall include the plural and vice versa, references to one gender shall include all genders. References to a “person” shall be construed so as to include any individual, firm, company or other body corporate, government, state or agency of the state, joint venture, association or partnership (wherever and however incorporated or established and whether or not being of separate legal personality)

1.4 References to a Clause, Sub-clause or Schedule are references to that Clause or Sub-clause of or Schedule to this Contract. Clause and Schedule headings are for convenience only and shall not affect the construction of this Contract

2. Term

2.1 This Contract shall commence on the Commencement Date and shall continue for 3 years subject to the terms and conditions of this Contract

2.2 This Contract may be extended by the Council giving no less than 2 months written notice to the Consultants before then end of the expiry of the initial Term. Such period of extension shall be at the discretion of the Council but shall in any event be for a period of no more than 2 further periods of one year from the date of the expiry of the initial Term

3. The Services

3.1 The Services shall be provided by the Consultants to the Council in accordance with the Specification for the Term.

Town Centre Regeneration Property Advice

- 3.2 It is intended that the Services shall be provided by the Consultants in close consultation with the Council and accordingly the Council and the Consultants shall agree during the Term the manner and timing of the provision of the Services. The Consultants shall use their reasonable endeavours to provide the Services in the manner so directed
- 3.3 It is a condition of the Contract that the Services shall be provided in the manner indicated in the Consultants Response by the Employee and that any proposed replacement employee shall be subject to prior approval in writing by the Council and the Council shall reserve the right to interview, review or reject any Employee proposed by the Consultants.
- 3.4 The Consultants shall undertake not to remove or replace any Employee without the prior written consent of the Council (which shall not be unreasonably withheld).

4. Payment Provisions and Default Interest

- 4.1 In consideration of the provision of the Services the Council agrees to pay the Consultants at the prices set out in the Price Schedule at Schedule 3 for the provision of the Services during the Term by the Employee outlined in the Consultants Response excluding VAT (“the Payment”). The exact scope of work must be agreed in advance in writing by the Council in accordance with the specification by the Chief Officer: Property or the Principal Regeneration and Enterprise officer. Only expenses approved in advance by the Council will be paid to the Consultants.
- 4.2 The Payments shall be paid monthly in arrears.
The Consultants shall render invoices in accordance with the payment profile detailed in this clause. Each invoice shall contain the following information relating to the Services to which the invoice relates:-
- 4.2.1 The details of the Service completed in accordance with the Specification
- 4.2.2 Signed time sheets relating to the Services supplied during the period to which the invoice relates
- 4.2.3 Details of Employees who have provided that part of the Service invoiced and details of the number of hours spent by all Employees thereon
- 4.3 In the event that the Contract is extended beyond the Term of 3 years in accordance with clause 2.2 hereof, the Payment agreed during the extension period shall be subject to negotiation by the parties, however any increase agreed shall not in any event exceed any rise in the Consumer Prices Index, All Items, published by the Office for National Statistics, over the one year period preceding the extension year. The Payment agreed shall remain fixed during the year in question.

Town Centre Regeneration Property Advice

- 4.4 All correct invoices will be paid by the Council within 30 days of receipt
- 4.5 If the Council fails to pay any amount payable by it under this Contract, the Consultants shall be entitled but not obliged to charge the Council interest on the overdue amount from the due date up to the date of actual payment at the rate of two percent above the base rate for the time being of Lloyds TSB Bank plc.
- 4.6 The Council reserves the right to withhold all or part of any payment due hereunder if the Council is not for any reason satisfied with the Services to which the payment relates

5. Liability of The Council

- 5.1 Nothing in this Contract shall exclude or restrict a Party's liability for death or personal injury caused by its negligence
- 5.2 The Council shall not be liable for any economic loss including loss of profit suffered by the Consultants and arising from any breach of the obligations of the Council in the Contract
- 5.3 The Council shall not be liable to the Consultants for any indirect consequential special or punitive losses or damages including without limitation damages for loss of profits opportunity data or use
- 5.4 All property of the Consultants shall be at the sole risk of the Consultants while on premises of the Council and the Council shall not be liable for any loss or damage to such property unless this results from the wilful act or default of the Council.
- 5.5 The Consultants shall indemnify the Council on demand against all actions, claims, demands, costs, charges and expenses arising from or incurred by reason of any infringement arising from provision of the Services by the Consultants of any third party's IP.

6. Notices

- 6.1 No notice served on the Council pursuant to this Contract shall be valid and effective unless it is sent by recorded delivery to the Council at the address above and marked for the attention of
- 6.2 No notice served on the Consultants shall be valid and effective unless it is sent by recorded delivery to the Consultants at the registered address detailed above
- 6.3 Any notice to be served shall be deemed to have been properly serviced upon proof of posting. A correctly addressed notice shall be deemed to have been served 48 hours after it was dispatched

7. Variations

- 7.1 Any variations to this Contract must be made in writing and signed by the duly authorised representatives of both parties.

8. Professional Expertise

- 8.1 It is a condition of this Contract that the Services to be provided shall be provided by a person of sufficient expertise and in accordance with the good working practices of the relevant profession

9. Assignment

- 9.1 The Consultants are prohibited from transferring or assigning directly or indirectly to any person or persons whatsoever this Contract in whole or part and are prohibited from sub-letting this Contract without the prior written consent of the Council
- 9.2 The Council may assign this Contract in whole or part to a statutory or public body or any successor authority or authorities of the Council

10. Termination

- 10.1 The Council may terminate this Contract forthwith by notice in writing if the Consultants:-
- 10.1.1 shall become bankrupt or have a receiving order made against them or shall present their petition in bankruptcy or shall make an arrangement with or assignment in favour of their creditors or shall agree to carry out this Contract under the committee of inspection of their creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Consultants without the consent in writing of the Council first obtained or shall have an execution levied on their goods; or
 - 10.1.2 have failed to comply with any terms of this Contract; or
 - 10.1.3 are the subject of or cause the Council to be the subject of a penalty or reprimand imposed by any regulatory authority by which the Council is governed or to which its activities are subject; or
 - 10.1.4 are in breach of any of the terms of this Contract unless in the case of a breach capable of remedy the breach is remedied by the Consultants within 21 days of receipt by the Consultants of a notice from the Council specifying the breach and requiring its remedy; or
 - 10.1.5 are incompetent or guilty of any serious or persistent breach of its obligations hereunder; or

Town Centre Regeneration Property Advice

- 10.1.6 fail or refuse after written warning to carry out the Services reasonably and properly required of them hereunder
- 10.2 Without limitation the Council may by notice in writing immediately terminate this Contract if the Consultants or the Employee (or any other person whom the Council agree shall perform the Services on behalf of the Consultants) shall:-
- 10.2.1 in the Council's reasonable opinion be incompetent or guilty of gross misconduct or any serious or persistent negligence in respect of the performance of the Services; or
- 10.2.2 become bankrupt or is the subject of a receiving order or enters into any composition or deed of arrangement with his creditors
- 10.3 Following termination of this Contract the Consultants shall not hold themselves out and shall procure that the Employee (or any other person whom the Council agrees shall perform the Services on behalf of the Consultants) shall not hold himself out as being in any way connected with the Council or its business
- 10.4 The Consultants may (but not unreasonably or vexatiously) give 28 days notice to terminate this Contract if:-
- 10.4.1 the Council have failed to make any due payment in accordance with this Contract; or
- 10.4.2 the Council or any person for whom the Council is responsible intentionally or knowingly with or obstructs the progress of the Services
- 10.5 The notice of termination shall be withdrawn if the Council within the 28 days notice:-
- 10.5.1 makes any due payment; or
- 10.5.2 to the reasonable satisfaction of the Consultants the Council or any person for whom the Council is responsible ceases to interfere with or obstruct the progress of the Services

11. Bribery and Corruption

The Council shall be entitled to terminate this Contract forthwith and to recover from the Consultants the amount of any loss resulting from such termination if:-

- 11.1 The Consultants:
- (a) shall not, and shall procure that any person employed by it or who acts as an agent of the Consultants shall not in connection with this Contract commit a Prohibited Act;

Town Centre Regeneration Property Advice

(b) warrant, represent and undertake that it is not aware of any financial or other advantage being given to any person working for or engaged by the Council, or that an agreement has been reached to that effect, in connection with the execution of this Contract, excluding any arrangement of which full details have been disclosed in writing to the Council before execution of this Contract.

- 11.2 The Consultants shall:
- (a) if requested, provide the Council with any reasonable assistance, at the Council's reasonable cost, to enable the Council to perform any activity required by any relevant government or agency in any relevant jurisdiction for the purpose of compliance with the Bribery Act;
 - (b) The Consultants shall provide such supporting evidence of compliance as the Council may reasonably request.
- 11.3 The Consultants shall have an anti-bribery policy (which shall be disclosed to the Council) to prevent any Consultants or Consultants Personnel from committing a Prohibited Act and shall enforce it where appropriate.
- 11.4 If any breach of Condition 11.1 is suspected or known, the Consultants must notify the Council immediately.
- 11.5 If the Consultants notify the Council that it suspects or knows that there may be a breach of Condition 11.1, the Consultants must respond promptly to the Council's enquiries, co-operate with any investigation, and allow the Council to audit books, records and any other relevant documentation. This obligation shall continue for six years following the expiry or termination of this Contract.
- 11.6 The Council may terminate this Contract by written notice with immediate effect if the Consultants or any person acting on its behalf (in all cases whether or not acting with the Consultants knowledge) breaches Condition 11.1
- 11.7 Any notice of termination under Condition 11.6 must specify:
- (a) the nature of the Prohibited Act;
 - (b) the identity of the party whom the Council believes has committed the Prohibited Act; and
 - (c) the date on which this Contract will terminate.
- 11.8 Any dispute relating to:
- (a) the interpretation of condition 11.1; or
 - (b) the amount or value of any gift, consideration or commission,
- shall be determined by the Council and its decision shall be final and conclusive.
- 11.9 Any termination under condition 11.6 will be without prejudice to any right or remedy which has already accrued or subsequently accrues to the Council.

12. Data Protection

12.1 The Consultants shall (and shall procure that any of the Consultants Personnel involved in the provision of the agreement shall) comply with any notification requirements under the Data Protection Act 1998 and shall duly observe all obligations under that Act, which arise in connection with the Contract.

12.2 Notwithstanding the general obligation in condition 12.1, where the Consultants are processing Personal Data as a Data Processor for the Council, the Consultants shall ensure that they have in place appropriate technical and contractual measures to ensure the security of Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Seventh Data Protection Principle in Schedule 1 to the Act; and

(a) provide the Council with such information as the Council may reasonably require to satisfy itself that the Consultants are complying with their obligations under the Act;

(b) promptly notify the Council of any breach of the security measures required to be put in place pursuant to condition 12.2; and

(c) ensure it does not knowingly or negligently do or omit to do anything which places the Council in breach of the Council's obligations under the Act.

12.3 The provisions of this condition shall apply during the continuance of the Contract and indefinitely after its expiry or termination.

12.4 The Consultants agree to comply with the Consultants ICT Security Policy attached as Schedule 3 hereto

13. No Waiver

13.1 No delay neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Contract shall either be or be deemed to be a waiver or in any way prejudice any right of that party under this Contract

14. Insurance

14.1 The Consultants agree to indemnify on demand and hold harmless the Council from and against each and every loss liability or cost (including without limitation damages and costs reasonably incurred as a result of defending or settling a claim or action or awarded or agreed to be paid in connection therewith) arising or incurred by the Council whether direct or consequential (including but without limitation any economic loss or other loss of turnover profits business or goodwill) as a result of any act or omission of the Consultants or the Employee (or any other person whom the Council agrees shall perform the Services on behalf of the Consultants) relating to or in connection with the provision of the Services pursuant to this Contract

- 14.2 The Consultants undertake to the Council and agree to take out and maintain for the duration of this Contract adequate public liability insurance cover (in a sum of not less than £5,000,000 for any one occurrence or series of occurrences arising out of any one event) in relation to the provision of the Services pursuant to this Contract with a reputable insurance company and to produce upon the Council's request a copy of the insurance policy or policies and each renewal or replacement thereof for inspection by the Council
- 14.3 The insurance cover may be reasonably increased from time to time at the reasonable request of the Borough Treasurer
- 14.4 The Consultants shall maintain in force professional indemnity insurance in the sum of £10,000,000 throughout the Term and shall continue to maintain the same in force for a period of 6 years following the termination hereof. This provision and Clause 14 hereof shall survive the termination of this Contract and remain in full force and effect for 6 years following the termination hereof
- 14.5 The Consultants' insurance in respect of claims for personal injury to or the death of any person under a contract of service or apprenticeship with the Consultants and arising out of and in the course of such person's employment shall comply with the Employer's Liability (Compulsory Insurance) Act 1969 and any Statutory Orders made thereunder or any amendment or re-enactment thereof
- 14.6 The Consultants shall immediately notify the Council and the Consultants' Insurers of any happening or event which may give rise to a claim demand proceeding damage costs or charge whatsoever arising out of this Contract and the Consultants shall indemnify the Council against any loss or damages whatsoever which may be suffered or incurred by the Council by the Consultants' failure to give such notification

15. Tax Liabilities

- 15.1 The Consultants shall be responsible for paying remuneration or where applicable fees and for the deduction and payment of all income tax liabilities and national insurance contributions or other similar contributions in respect of the Employee (and any other person whom the Council agree shall perform the Services on behalf of the Consultants) as required by law
- 15.2 The Consultants hereby agree to indemnify on demand and hold harmless the Council from and against each and every claim liability or demand made by the Inland Revenue, Contributions Agency or such other relevant authority against the Council in respect of income tax or national insurance contributions or other contributions relating to the engagement of the Consultants to provide the Services and the performance of the Services by the Consultants or the Employee (or any other person whom the Council agrees shall perform the Services on behalf of the Consultants) pursuant to this Contract

16. Records

16.1 At any time upon the request of the Council the Consultants shall produce all records maintained by the Consultants in relation to the Services. All such records shall be transferred to the Council forthwith upon the termination of this Contract.

In this clause the term “records” means all records in any medium (whether written, computer readable or otherwise) including accounts, data, documents, drawings and private notes about the Council and all copies and extracts of them made or required by the Consultants in the course of this Contract.

17. Health & Safety

17.1 The Consultants shall ensure that the Services comply with the requirements of the Health and Safety at Work (etc) Act 1974 the Management of Health and Safety Regulations 1992 Control of Substances Hazardous to Health (COSHH) Regulations 1988 and 1994 and the Road Traffic Act 1988 and any other Acts Regulations Order or European Directive pertaining to the health and safety of employed persons together with the Council’s own health and safety policies from time to time in force as these may be updated and amended from time to time.

18. Termination upon Notice

18.1 The Council may terminate this Contract upon giving to the Consultants no less than 1 months notice of termination at any time during the Term.

19. Intellectual Property

19.1 The Consultants confirm and acknowledge that all IP including trade marks copyright and any other rights in the Council’s products together with any goodwill are and shall remain the exclusive property of the Council and that the Consultants shall not acquire any rights or interests in the Council’s products including any developments or variations at any time.

19.2 Subject to any pre-existing rights of third parties or to any pre-existing rights of the Consultants, the Consultants hereby assign to the Council all present and future IP relating to and/or connected with the Services for the full period of such rights and any extensions or renewals of them.

19.3 The Consultants agree to execute any document or do any thing required by the Council to confirm that all IP including copyright and any other rights in the product of its Services under this Contract belong to the Council.

20. Confidentiality

20.1 The Consultants agree that they will treat as secret and confidential and not at any time for any reason to disclose or permit to be disclosed to any person or otherwise make use of or permit to be made use of any information relating to

the Council's technology, technical processes, business affairs, client lists or finances or any such information relating to or being the property of any client customer supplier or other party dealing with the Council where knowledge or details of the information was received during the period of this Contract but this restriction shall cease to apply to information or public knowledge which has come into the public domain other than by reach of this clause and the Consultants shall procure that the Employee (and any other person the Council agrees shall perform the Services on behalf of the Consultants) enters into an agreement with the Council placing him under similar obligations

- 20.2 Upon termination or expiry of this Contract for whatever reason or at any time upon request of the Council the Consultants will deliver up to the Council all working papers notes or other material and copies provided to the Consultants or the Employee (or any other person whom the Council agrees shall perform the Services on behalf of the Consultants) pursuant to this Contract or prepared in pursuance of this Contract
- 20.3 The Consultant acknowledges that, except for any information which is exempt from disclosure in accordance with the provisions of the Freedom of Information Act ("the Act") the text of this Contract, and any Schedules to this Contract, is not Confidential Information. The Council shall be responsible for determining in its absolute discretion whether any part of the Contract or its Schedules is exempt from disclosure in accordance with the provisions of the Act.
- 20.4 Notwithstanding any other term of this Contract the Consultant hereby gives its consent for the Council to publish this Contract and its Schedules in its entirety, including from time to time agreed changes to the Contract, to the general public in whatever form the Council decides.
- 20.5 No public or press announcements shall be made with regard to the subject matter of this Contract unless the text of such announcement is first approved and initialled by the Council. The Consultant shall not make or authorise the making of any press release or other public statement or disclosure concerning this Contract or any transaction contemplated by it without the prior written consent of the Council.

21. Default

- 21.1 Should the Consultants fail to deliver the Services or any proportion thereof within the time specified in this Contract the Council shall be at liberty without prejudice to any other remedy for breach of contract to determine this Contract either wholly or to the extent of such default and to purchase services of the same or of similar description to make good

21.1.1 such default or

21.1.2 in the event of the Contract being wholly determined the Services remaining be delivered

The cost of purchasing such Services, so far as they exceed the amount which would have been payable to the Consultants for them if they had been delivered in accordance with the Contract shall be recoverable from the Consultants

22. Rights of Third Parties

22.1 The parties hereby declare that no term of this Contract is intended by the parties to confer benefit on any third party (as defined by the Contracts Rights of Third Parties Act 1999) nor is intended to be enforceable by any third party. The provisions of the said Act are excluded.

23. Human Rights

23.1 The Consultants confirm that they will perform their obligations pursuant to this Contract in all respects in conformance with the Human Rights Act 1998. The Consultants hereby indemnify the Council from and against all losses costs expenses liabilities damages and claims arising from the failure of the Consultants or the Employee to duly perform their obligations pursuant to this clause and arising further from any act or omission of the Consultants or the Employee in respect of the non performance of the said obligations.

24. Survival of Rights on Termination

24.1 Termination of this Contract shall not affect the rights of the parties accrued up to the date of termination.

25. Jurisdiction

25.1 This Contract shall be subject to the laws of England and to the jurisdiction of the Supreme Court of England and Wales

26. Freedom of Information

26.1 The Consultants recognise that the Council is subject to legal duties which may require the release of information under FOIA or the Environmental Information Regulations 1992 or any other applicable legislation or codes governing access to information and that the Council may be under an obligation to provide information on request. Such information may include matters relating to, arising out of or under this Contract in any way.

26.2 Notwithstanding anything in this Contract to the contrary including, but without limitation, the general obligation of confidentiality imposed on the Parties pursuant to Clause 20 (Confidentiality), in the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, the Council shall be entitled to disclose all information and documentation (in whatever form) as necessary to respond to that request in accordance with the FOIA or other applicable

Town Centre Regeneration Property Advice

legislation governing access to information, save that in relation to any such information that is Exempted Information, the Council shall not:-

26.2.1 confirm or deny that the information in question is held by the Council; or

26.2.2 disclose the information requested

to the extent that in the Council's opinion (having taken into account the views of the Consultants) that exemption is or may be applicable in accordance with the relevant section of the FOIA in the circumstances.

- 26.3. In the event that the Council is required by the Information Commissioner to release Exempted Information (following non disclosure pursuant to clause 26.2) the Council shall be entitled to disclose the information requested.
- 26.4. In the event that the Council incurs any costs, including but not limited to external legal costs, in seeking to maintain the withholding of the information, including but not limited to responding to information notices or lodging appeals against a decision of the Information Commissioner in relation to disclosure, the Consultants shall indemnify the Council.
- 26.5. In any event the Council shall not be liable for any loss, damage, harm or other detriment however caused arising from the disclosure of any Exempted Information or other information relating to this Contract under FOIA or other applicable legislation governing access to information.
- 26.6. The Consultants will assist the Council to enable the Council to comply with its obligations under FOIA or other applicable legislation governing access to information. In particular it acknowledges that the Council is entitled to any and all information relating to the performance of this Contract or arising in the course of performing this Contract. In the event that the Council receives a request for information under the FOIA or any other applicable legislation governing access to information, and requires the Consultants' assistance in obtaining the information that is the subject of such request or otherwise, the Consultants will respond to any such request for assistance from the Council at its own cost and promptly and in any event within 10 days of receiving the Council's request.
- 26.7. The provisions of this clause shall not be deemed to fetter the discretion of the Council as a public body.

27. Equal Opportunities

27.1 The Contractor shall ensure that its Terms and Conditions of Employment and its policies and procedures relating to employment comply with all current legislation other legal requirements and codes of practice published by all relevant recognised bodies including but not limited to:-

ACAS

The Equalities and Human Rights Commission

The Department of Communities and Local Government

The Department for Business, Enterprise and Regulatory Reform

and shall upon request furnish the Council with such evidence of compliance with the same as the Council shall specify and require

27.2 The Contractor shall not discriminate or permit any employee or agent of the Contractor to discriminate in any way against any person on the basis of race gender disability age religion belief or sexual orientation or in any other way prohibited by law and shall comply at all times at its own expense with any requirements made by the Council to be observed by contractors in its policies to promote equality and diversity.

27.3 The Contractor shall comply with the Council's policies made pursuant to the Equality Act 2010 and for the promotion of equality and diversity published from time to time and shall if required to do so produce evidence satisfactory to the Council that the performance of the contract is consistent with and in accordance with those policies

27.4 The Contractor shall be able to demonstrate that where appropriate (bearing in mind the nature of the Goods or Services to be provided) that those Goods or Services are accessible and delivered in a way that is appropriate to meet the needs of those people that the Goods or Services are intended to benefit

27.5 If required by the Council the Contractor shall prepare and monitor a plan to deliver fair and equal access to the Goods or Services to ensure delivery of the Goods or Services in accordance with condition 27.4 above and shall make this plan available to the Council upon request. The Contractor shall make such reasonable changes to his plan as may reasonably be required by the Council to ensure compliance with condition 27.4 above. Where relevant to the contract and as agreed between the contractor and the Council, the Contractor shall also be expected to monitor the representation within its workforce and provide the Council with a breakdown of job applicants and workforce on the basis of race gender disability age religion or belief

27.6 The Contractor shall ensure that its staff are properly trained in respect of the matters detailed in this clause to ensure compliance with the Contractor's duties relating to equality and diversity and fair access in the Contract

Attachment 1

“Exempted Information”

In clause 26 of the Contract the term “Exempted Information” means:-

- (1) Information (including the provisions of the Contract) detailing the price or prices to be paid by the Council to the Consultants pursuant to the Contract
- (2) CVs of individuals provided as part of the procurement process
- (3) Information relating to the Consultants’ performance of the Contract
- (4) Information referred to in paragraphs (1) to (3) of this Schedule shall cease to be Exempt Information 3 years from the date of termination of this Contract

Attachment 2
Consultants ICT Security Policy

1. All access to ICT systems will be managed on a “need to access” basis and data made available on “need to know” principles.
2. Where systems are being used which contain data of a business sensitive or personal sensitive nature, the Desktop PC/Laptop password screensaver facility should be activated with an elapse time appropriate to the sensitivity of the data.
3. Passwords are the prime means by which a user’s access to ICT systems is validated, and all users should adhere to the following principles:-
 - (i) passwords are strictly allocated on an individual basis to achieve accountability. They should be chosen to be obscure and a minimum of seven characters in length.
 - (ii) all passwords must be kept confidential and not disclosed to another person or written down where they may be easily visible to others.
 - (iii) passwords should be changed regularly and immediately, if you suspect it has been advertently disclosed to others.

4. **Security of Data**

Consultants who are issued with portable equipment such as Laptops or mobile phones must take sensible precautions to prevent loss or misuse.

General

- (i) ensure access is password protected
- (ii) ensure the latest version of anti-virus software is installed on home based PC’s and Laptops
- (iii) ensure you report a theft or misuse immediately

While in the Office:

- (i) ensure that equipment is securely stored when left unattended
- (ii) close down your Laptop when left unattended for a significant time
- (iii) be mindful of security in areas where external people are present

Outside the Office & Whilst Training

- (i) do not leave equipment unattended in public places. If in a hotel use their secure areas if available

Town Centre Regeneration Property Advice

- (ii) when travelling try to make equipment inconspicuous and do not leave unattended. If travelling by air Laptops should be carried as hand luggage to avoid damage or loss
 - (iii) during car journeys lock equipment in the boot
 - (iv) do not hold secure/sensitive data on the hard disc of a laptop due to the vulnerability to theft
5. Consultants, in the course of their work for the Council, may have access to personal information relating to individuals. You are reminded that all personal information must be treated in a discreet and confidential manner and should not under any circumstances be disclosed to anyone outside the Council
6. Consultants note that information about ICT security can also be found in the ICT Best Practice Policy on BFNet

Signed
by
the duly authorised officer of
**BRACKNELL FOREST BOROUGH
COUNCIL**

Signed
by
on behalf of