

DATED 16th November 2021

- (1) THE CORNWALL COUNCIL

- (2) LISKEARD TOWN COUNCIL



**ACCESS AGREEMENT
TO
THE CORNWALL COUNCIL'S CONSULTANTS FRAMEWORK**

THIS AGREEMENT is dated 16th November 2021

Between:

- (1) The Cornwall Council of New County Hall, Treyew Road, Truro, Cornwall TR1 3AY (the "**Council**" which expression shall include its successors in title and permitted assigns); and
- (2) Liskeard Town Council of 3-5 West Street, Liskeard, PL14 6BW (the "**Organisation**").

Each a "Party" and together the "Parties".

BACKGROUND:

- (A) Following a procurement exercise the Council entered into a Framework Agreement dated 6th February 2019 for the provision of services.
- (B) The Framework Agreement allows the Organisation to procure services under its terms subject to entering into this Access Agreement.
- (C) The Council requires that anyone who wishes to procure services through the Framework Agreement enters into an Access Agreement with the Council to regulate its relationship with the Council and the call off of Projects under the Framework Agreement.

IT IS HEREBY AGREED as follows:

1. Interpretations

- 1.1. Capitalised terms and expressions used in this Agreement are defined at **Schedule 1** to this Agreement or, where not so defined, shall have the same meanings ascribed in clause 1 of the Framework Agreement.
- 1.2. In this Agreement, unless the context otherwise requires:
 - 1.2.1. the headings are included for convenience only and shall not affect the interpretation of this Agreement;
 - 1.2.2. the singular includes the plural and vice versa;
 - 1.2.3. a gender includes any other gender;
 - 1.2.4. a reference to a "person" includes any individual, firm, partnership (including limited liability partnership), company and any other body corporate;
 - 1.2.5. references to clauses, schedules and annexes are to the clauses, schedules and annexes of this agreement; references to paragraphs are to paragraphs of the relevant schedule.
 - 1.2.6. a reference to a statute, statutory instrument or other subordinate legislation ("legislation") is to such legislation as amended and in force from time to time, including any legislation which re-enacts or consolidates it, with or without modification; and
 - 1.2.7. a reference to specific standards, codes of practice, guideline, rules and/or schemes shall be construed as including all amendments, modifications, supplements, re-drafts and/or substitutes thereto.

2. Scope of this Agreement

- 2.1. Subject to clause 2.2, the Organisation is entitled (but not required) at any time during the term of the Agreement to procure services from a Consultant in accordance with the Framework Agreement and the arrangements referred to in clause 3.
- 2.2. Notwithstanding any other term in this Agreement (or the Framework Agreement), the Council shall be entitled at any time to suspend the Organisation's entitlement to procure services under this Agreement, if the Council considers (in its sole discretion) that the successful implementation of its own Projects may be jeopardised by the Consultant being engaged on a separate Project (or Projects) by the Organisation. The Council's right of suspension under this clause 2.2 shall not apply to any Project which has been the subject of an executed Memorandum of Agreement or Task Order before the suspension is issued, which the Organisation and the Consultant shall continue to perform notwithstanding any subsequent suspension under this clause 2.2.

3. Ordering Procedures

- 3.1. Subject to clause 2.2 and the subsequent provisions of this clause 3, the Organisation shall be entitled at any time during the Framework Term to procure services in connection with Projects from the Consultant in accordance with the Ordering Procedures.
- 3.2. The Organisation agrees to indemnify the Council in respect of any losses it may suffer as result of the Organisation failing to comply with the Ordering Procedures.
- 3.3. The Organisation acknowledges and agrees that no services may be procured by it in connection with a Project under the terms of the Framework Agreement unless and until:
 - 3.3.1. it has completed a corresponding Project Notification Form and submitted the same to the Framework Manager for approval; and
 - 3.3.2. the Framework Manager has approved the Project Notification Form and issued the same to the Consultant.

Save where otherwise expressly agreed in writing by the Council, the Organisation shall not be entitled to make direct contact with any Consultant in relation to a Project unless and until the Project Notification Form has been issued to the Consultant by the Framework Manager in accordance with this clause 3.3.

- 3.4. Following issue of the Project Notification Form to the Consultant in accordance with clause 3.3, the Organisation shall be entitled to continue the management of the Project without prior recourse to the Framework Manager, provided that:
 - 3.4.1. the Organisation shall at all times comply with the Ordering Procedures, the provisions of this Access Agreement and all relevant provisions of the Framework Agreement;
 - 3.4.2. the Organisation shall at all times keep the Council fully informed as to the progress of the relevant Project and shall provide such information, data and documents as may be required by the Council from time to time in connection with the same; and
 - 3.4.3. without prejudice to the generality of clause 3.4.2, the Organisation shall promptly send to the Council copies of any Form of Enquiry, Consultant's Call Off Proposal, Memorandum of Agreement, Task Order Notification Form, Task Order Response, Task Order Rejection, Task Order and/or Gateway Approval Form issued to or received from the Consultant in connection with any Project.

4. Sums Payable to Consultant

- 4.1. The Charges due and payable to a Consultant for the performance of any services carried out by the Consultant for the Organisation shall be paid directly to the Consultant by the Organisation. Such sums shall be paid by the Organisation in accordance with the provisions of documents forming the Memorandum of Agreement or Task Order (as applicable) and, more particularly, the Call-Off Contract.

5. Assistance

- 5.1. The Council shall provide the following services (in addition to granting access to the Framework Agreement) to the Organisation:
- 5.1.1. reasonable advice and assistance for the Organisation in the operation of the Framework Agreement; and
 - 5.1.2. those additional services to be provided by the Framework Manager listed at **Schedule 5** to this Agreement.

6. Provision of Information

- 6.1. The Organisation shall provide management information reports ("**Management Reports**") to the Council at no charge on a quarterly basis (the first quarter beginning three calendar months after the first Project Notification Form is issued on the Organisation's behalf pursuant to the Framework Agreement), unless agreed otherwise, covering the period since the date of the previous Management Report, which shall include, without limitation, the following details:
- 6.1.1. a record of any Memorandum of Agreements or Task Orders (incorporating Call-Off Contracts) issued to or entered into with the Consultant;
 - 6.1.2. a record of services received by the Organisation;
 - 6.1.3. a record of the Charges paid by the Organisation; and
 - 6.1.4. a record of any defaults by any Consultant to provide services accordance with the relevant Memorandum of Agreement or Task Order;
- 6.2. If required by the Council, the Organisation shall complete Appraisal Forms with regard to each Project. Appraisal Forms shall be provided by the Council to the Organisation who shall complete an Appraisal Form for each Project. All completed forms shall be returned to the Council as part of the Management Report.
- 6.3. The Organisation shall upon reasonable request provide information required by the Council for the purposes of measuring performance of the Consultant against the Performance Indicators detailed in **Schedule 2 (Performance Indicators)** of the Framework Agreement ("**KPI Reports**") to the Council at no charge, unless agreed otherwise, covering the period since the date of the previous KPI Report.
- 6.4. Information supplied to the Organisation by the Council or contained in the Council's publications is for general guidance only and the Organisation must satisfy itself by its own investigations as to the accuracy of any such information.

7. Warranties and Representations

- 7.1. Each Party warrants and represents to the other that it has full capacity and authority and all necessary consents to enter into and to perform this Agreement and that this Agreement is executed by the duly authorised representatives of the Organisation and the Council.

- 7.2. The Organisation warrants and represents that it has received and reviewed the Framework Agreement and has done all necessary due diligence upon the information contained within it (including its Schedules) and it is content that the Framework Agreement complies with its requirements and all laws and regulations relating to the procurement of the Consultant under the Framework Agreement.
- 7.3. The Organisation warrants and represents that it will not cause (either by act or omission) the Council to be in breach of the Framework Agreement and in particular (without limitation), it will comply with the Ordering Procedures.
- 7.4. Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to fitness for purpose) are hereby excluded to the extent permitted by law.

8. Limitation of Liability

- 8.1. Neither party excludes or limits liability to the other party for death or personal injury, or any other liability which cannot be limited or excluded by law.
- 8.2. Subject always to clause 8.1, the Council shall not be liable to the Organisation for any loss or claims arising from the use of the Framework Agreement by the Organisation.
- 8.3. Subject always to clause 8.1 and 8.4, in no event shall either party be liable to the other for:
- 8.3.1. loss of profits, business, revenue, goodwill or anticipated savings; or
- 8.3.2. indirect or consequential loss or damage.
- 8.4. Nothing in this Agreement shall limit the right of the Council to be fully indemnified by the Organisation for all costs, expenses incurred directly or indirectly, additional operational and administrative costs and expenses and/or expenditure or charges rendered unnecessary as a result of any Default by the Organisation. The Organisation agrees to hold the Council harmless in respect of any claims, loss, damage, costs or expenses arising as a result of the actions or omissions of the Organisation in connection with the Organisation's use (or purported use) of the Framework Agreement.
- 8.5. The Organisation acknowledges that the Council shall not have any liability, either under this Agreement or otherwise, in respect of the provision of services by any Consultant to the Organisation. The suitability of the terms of the Framework Agreement, and the Consultant to perform the services, shall be entirely the responsibility of the Organisation.
- 8.6. The Organisation expressly acknowledges that it has entered into this Agreement freely and with full knowledge of its terms and in particular the provisions of this clause 8.
- 8.7. The parties expressly agree that should any limitation or provision contained in this clause 8 be held to be invalid under any applicable statute or rule of law it shall to that extent be deemed omitted but if any party thereby becomes liable for loss or damage which would otherwise have been excluded such liability shall be subject to the other limitations and provisions set out herein.
- 8.8. The Parties shall take all reasonable steps to mitigate any loss for which the relevant party is entitled to bring a claim against the other party pursuant to this Agreement and to take all reasonable steps to minimise and mitigate any effects or circumstances and/or events adversely affecting the performance of their obligations under this Agreement which would otherwise entitle that party to relief or to claim compensation hereunder.

9. Confidentiality and Freedom of Information Act

- 9.1. In respect of any Confidential Information it may receive from the other party or a Consultant ("the Discloser") and subject always to the remainder of this Clause 9, each party ("the Recipient") undertakes to keep secret and strictly confidential and shall not disclose any such Confidential Information to any third party, without the Discloser's prior written consent provided that the Recipient shall not be prevented from using any general knowledge, experience or skills which were in its possession prior to the commencement of this Agreement.
- 9.2. The duty of confidentiality in this Clause 9 shall not apply to any Confidential Information which:
 - 9.2.1. is in or enters the public domain other than by breach of this Agreement or other act or omissions of the Recipient;
 - 9.2.2. is obtained by a third party who is lawfully authorised to disclose such information;
 - 9.2.3. is authorised for release by the prior written consent of the Discloser; or
 - 9.2.4. the disclosure of which is required to ensure the compliance of the Council or Organisation with the FOIA.
- 9.3. Nothing in this Clause 9 shall prevent the Recipient from disclosing Confidential Information where it is required to do so by judicial, administrative, governmental or regulatory process in connection with any action, suit, proceedings or claim or otherwise by applicable law.
- 9.4. Each Party acknowledges that the other is or may be subject to the FOIA. Each notes and acknowledges the FOIA and both the respective Codes of Practice on the Discharge of Public Authorities' Functions and on the Management of Records (which are issued under section 45 and 46 of the FOIA respectively) and the Environmental Information Regulations 2004 as may be amended, updated or replaced from time to time. Each will act in accordance with the FOIA, these Codes of Practice and these Regulations (and any other applicable codes of practice or guidance from time to time issued) to the extent that they apply to either Party's performance under this Agreement.
- 9.5. Each Party agrees that where it considers that any information should not be available for disclosure, it will:
 - 9.5.1. identify it specifically; and
 - 9.5.2. explain the grounds for exemption from disclosure under the FOIA and the time period applicable to that sensitivity.
- 9.6. All decisions regarding disclosure of information following a Request For Information (as defined under section 8 of the FOIA) will be made at the sole discretion of either the Council or the Organisation as the case may be. Each Party acknowledges that, even where the Consultant, the Organisation or the Council has indicated that information is commercially sensitive, the Council or the Organisation (as may be) may be required to disclose it under the FOIA, with or without consulting the Consultant and although the Council or the Organisation (as the case may be) will use reasonable endeavours to consult with the other or the Consultant prior to any disclosure, neither the Council nor any Organisation shall be under any obligation to consult the other or a Consultant prior to disclosure.
- 9.7. Where the Council or an Organisation is managing a Request for Information the other party shall co-operate with the Council or the Organisation and shall respond together with copies of any documentation so requested within five (5) Working Days of any request by it for assistance.
- 9.8. The Organisation is referred to clause 20 and clause 43 of the Framework Agreement which set out the Consultant's obligations under the Framework Agreement, with regard to confidentiality and FOIA and those clauses are specifically and directly enforceable by the Organisation against the Consultant under the Framework Agreement.

10. Term

- 10.1. This Agreement shall commence on the date of execution hereof and shall expire at the end of the Framework Term, unless terminated earlier in accordance with clause 11 of this Agreement.
- 10.2. Expiry, or earlier termination of this Access Agreement will not in any way affect any Projects that have been the subject of an executed Memorandum of Agreement or executed Task Order before the expiry or termination date, which the Organisation and the Consultant will continue to perform notwithstanding such expiry or termination.

11. Termination

Rights of termination

- 11.1. Either Party may at any time by notice in writing to the other terminate this Agreement immediately if the other Party is in Default of any obligation under the terms of this Agreement, the Framework Agreement, Memorandum of Agreement or Task Order and if:
- 11.1.1. the Default is capable of remedy and the defaulting Party shall have failed to remedy the Default within thirty (30) days of a written notice by the non-defaulting Party to the defaulting Party specifying the Default and requiring its remedy; or
- 11.1.2. the Default is not capable of remedy.
- 11.2. Notwithstanding that neither Party shall be in Default, this Agreement may be terminated by either Party by giving three months written notice and upon the expiry of that 3 month period this Agreement shall terminate.

Following Termination

- 11.3. Termination of this Agreement shall be without prejudice to any Memorandum of Agreements or Task Orders (incorporating Call-Off Contracts) executed prior to termination which shall continue in full force and effect in accordance with their terms, notwithstanding termination of this Agreement.
- 11.4. Where (following termination or the expiry of the Agreement) a Project Notification Form, a Task Order Notification Form and/or Form of Enquiry have been issued but a Memorandum of Agreement or Task Order (incorporating a Call-Off Contract) has not been executed, a corresponding Memorandum of Agreement or Task Order may only be issued for execution with the express consent of the Council (such consent not be unreasonably withheld or delayed).
- 11.5. Termination in accordance with this clause 11 shall not prejudice or affect any right of action or remedy which shall have accrued or shall thereafter accrue to either party.
- 11.6. The provisions of Clauses 1, 6, 7, 8, 9, 11, 12, 16, 17, 18, 19 and 20 and the provisions of Schedule 1 of this Agreement shall survive the termination of this Agreement.

12. Corrupt Gifts and Payments of Commission

- 12.1. Neither Party shall:
- 12.1.1. offer or give or agree to give any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any act in relation to the obtaining or performance of this Agreement or any other agreement with the other or for showing or forbearing to show favour or disfavour to any person in relation to this Agreement; nor

12.1.2. enter into this Agreement if in connection with it commission has been paid or agreed to be paid to any person by either Party or on behalf of either Party or to the knowledge of either Party, unless before this Agreement is made particulars of any such commission and of the terms and conditions of any agreement for the payment thereof have been disclosed in writing to the Council.

12.2. In the event of any breach of this clause 12 by either Party or by anyone employed by either Party or acting on either Party's behalf (whether with or without the knowledge of either Party) or the commission of any offence by either Party or by anyone employed by either Party or acting on behalf of either Party under the Prevention of Corruption Acts, 1889 to 1916 or Bribery Act 2010 in relation to this Agreement, the non-breaching Party may terminate this Agreement by immediate notice in writing to the other Party. Such termination shall not prejudice or affect any right of action or remedy which shall have accrued or shall accrue thereafter to either Party and provided always that either Party may recover from the other Party the amount or value of any such gift, consideration or commission.

13. Force Majeure

13.1. Neither Party shall be relieved from any liability under this Agreement save to the extent that by reason of an event of Force Majeure it is not able to perform its obligations under this Agreement.

13.2. Neither Party shall be entitled to any compensation or other payment by reason of the occurrence of an event of Force Majeure.

14. Transfer and Sub-contracting

14.1. This Agreement is personal to the Parties. The Parties shall not assign, novate, sub-contract or otherwise dispose of this Agreement or any part thereof without the prior consent in writing of the other Party.

15. Amendments to this Agreement

15.1. This Agreement shall not be varied or amended unless such variation or amendment is agreed in writing by the Framework Manager and by a duly authorised representative of the Organisation on behalf of the Organisation.

16. Communications

16.1. Except as otherwise expressly provided no communication from one Party to the other shall have any validity under this Agreement unless made in writing by or on behalf of the Council or as the case may be by or on behalf of the Organisation.

16.2. Any notice or other communication whatsoever which either Party hereto is required or authorised by this Agreement to give or make to the other shall be given or made either by post in a prepaid letter, or by telex or by facsimile transmission, sent to the other party at the address specified in **Schedule 3** of this Agreement, or as notified by the Organisation to the Council (in the case of the Organisation) and if that letter is not returned as being undelivered that notice or communication shall be deemed for the purposes of this Agreement to have been given or made after two days, for a letter, or four hours, for a telex or facsimile transmission.

17. Severability

17.1. If any provision of this Agreement is held invalid, illegal or unenforceable for any

reason by any court of competent jurisdiction, such provision shall be severed and the remainder of the provisions hereof shall continue in full force and effect as if this Agreement had been executed with the invalid, illegal or unenforceable provision eliminated. In the event of a holding of invalidity so fundamental as to prevent the accomplishment of the purpose of this Agreement, the Council and the Organisation shall immediately commence good faith negotiations to remedy such invalidity.

18. Waiver

- 18.1. The failure of either Party to insist upon strict performance of any provision of this Agreement, or the failure of either Party to exercise any right or remedy to which it is entitled hereunder, shall not constitute a waiver thereof and shall not cause a diminution of the obligations established by this Agreement.
- 18.2. A waiver of any Default shall not constitute a waiver of any subsequent Default.
- 18.3. No waiver of any of the provisions of this Agreement shall be effective unless it is expressly stated to be a waiver and communicated to the other party in writing in accordance with the provisions of this clause 18.

19. Law and Jurisdiction

- 19.1. This Agreement shall be considered as a contract made in England and according to English Law and subject to the exclusive jurisdiction of the English Courts to which both parties hereby submit.
- 19.2. This Agreement is binding on the Council and its successors and assignees and the Organisation and the Organisation's successors and permitted assignees.

20. Entire Agreement

- 20.1. This Agreement constitutes the entire understanding between the parties relating to the subject matter of this Agreement and, save as may be expressly referred to or referenced herein, supersedes all prior representations, writings, negotiations or understandings with respect hereto, except in respect of any fraudulent misrepresentation made by either party.

IN WITNESS WHEREOF the Parties have executed this Agreement as a deed the day and year first above mentioned

Executed as a deed by

062865

THE CORNWALL COUNCIL

Whose Common Seal was hereunto
Affixed in the presence of


Authorised Signatory



Print Name

BEN CURROW

**EXECUTED as a DEED by
LISKEARD TOWN COUNCIL**


Whose Common Seal was hereunto
Affixed in the presence of

Authorised Signatory

 - TOWN CLERK

Print Name

STEPHEN VINSON


S. D. CASSIDY



SCHEDULE 1

DEFINITIONS

The expressions set out below shall have the meanings ascribed thereto:

"Agreement" means this agreement, comprised of the clauses, the Schedules hereto and any Appendix hereto.

"Appraisal Form" means the form provided by the Council to the Organisation for assessing the performance of a Consultant.

"Charges" means the sums payable by the Organisation for the performance of services by a Consultant for any Projects.

"Confidential Information" means all information designated as such by either party in writing together with all other information which relates to the business, affairs, developments, trade secrets, know-how, personnel, customers and suppliers of either party or information which may reasonably be regarded as the confidential information of the disclosing party.

"Consultant " means a Consultant who has entered into a Framework Agreement with the Council as set out in **Schedule 4** to this Agreement or as notified by the Council to the Organisation from time to time.

"Default" means any material breach of the obligations of either Party (including but not limited to fundamental breach or breach of a fundamental term) or any material default, act, omission, negligent statement of either Party, its employees, agents or sub-contractors in connection with or in relation to the subject matter of this Agreement, the Framework Agreement, a Memorandum of Agreement or Task Order and in respect of which such Party is liable to the other.

"Management Reports" has the meaning given in clause 6.1.

"Ordering Procedures" means the ordering procedures as specified in **Schedule 2** to be followed by the Organisation.

SCHEDULE 2
ORDERING PROCEDURES

An Organisation may procure services under the Framework Agreement **only** in accordance with the terms of the Framework Agreement and clause 3 of this Agreement.

SCHEDULE 3
ADDRESSES FOR SERVICE OF NOTICES

For the Council:

Notices to be marked "Urgent" and sent to Ms Angela Stevens at
The Cornwall Council
New County Hall
Truro
Cornwall
TR1 3AY

For Organisation:

Steve Vinson
Town Clerk
Liskeard Town Council
3-5 West Street
Liskeard
PL14 6BW

SCHEDULE 4

Consultant

MWJV

Compass House
Truro Business Park
Threemilestone
Truro
TR4 9LD

Tel: 07791 040642

Email: JeremyDunn@mwjv.net

Contact: Jeremy Dunn

**SCHEDULE 5
FRAMEWORK SERVICES**

The Framework Manager shall provide the following services:

- Provide reasonable advice, guidance and direction on the use of the Framework Agreement; and
- Subject always to clause 2.2, issue any Project Notification Form to the Consultant (as prepared by, or on behalf of, the Organisation).

