



**SHEPWAY DISTRICT COUNCIL**

**STRATEGIC LAND & PROPERTY CAPACITY**

**BRIEF TO CONSULTANTS**

Prepared by:  
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**February 2014**

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## SECTION 1 SUPPORTING GROWTH ACROSS THE DISTRICT

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Shepway District Council's new Corporate Plan covering 2013-2018 is going to full Council on 13<sup>th</sup> February 2014. The vision is: **Prosperous and ambitious**: working for more jobs and homes in an attractive district. A version is available <http://www.tinyurl.com/ntlwf3>.

It has five Strategic Objectives:

- Boost the local economy and increase job opportunities;
- Provide more homes;
- Listening to local people;
- Supporting an attractive and vibrant place to live; and
- Deliver value for money.

To deliver the Corporate Plan, the Corporate Management Team has identified a number of priorities to provide focus in the short-term and the successful consultant will undertake a variety of activities to support delivery in the following priority areas:

1. Unlocking significant development sites: in SDC's ownership, and of those owned by others;
2. Increasing the supply of homes; and
3. Building council houses.

In addition an affordable housing programme, of some 300 homes, is well underway funded by the Council's Housing Revenue Account.

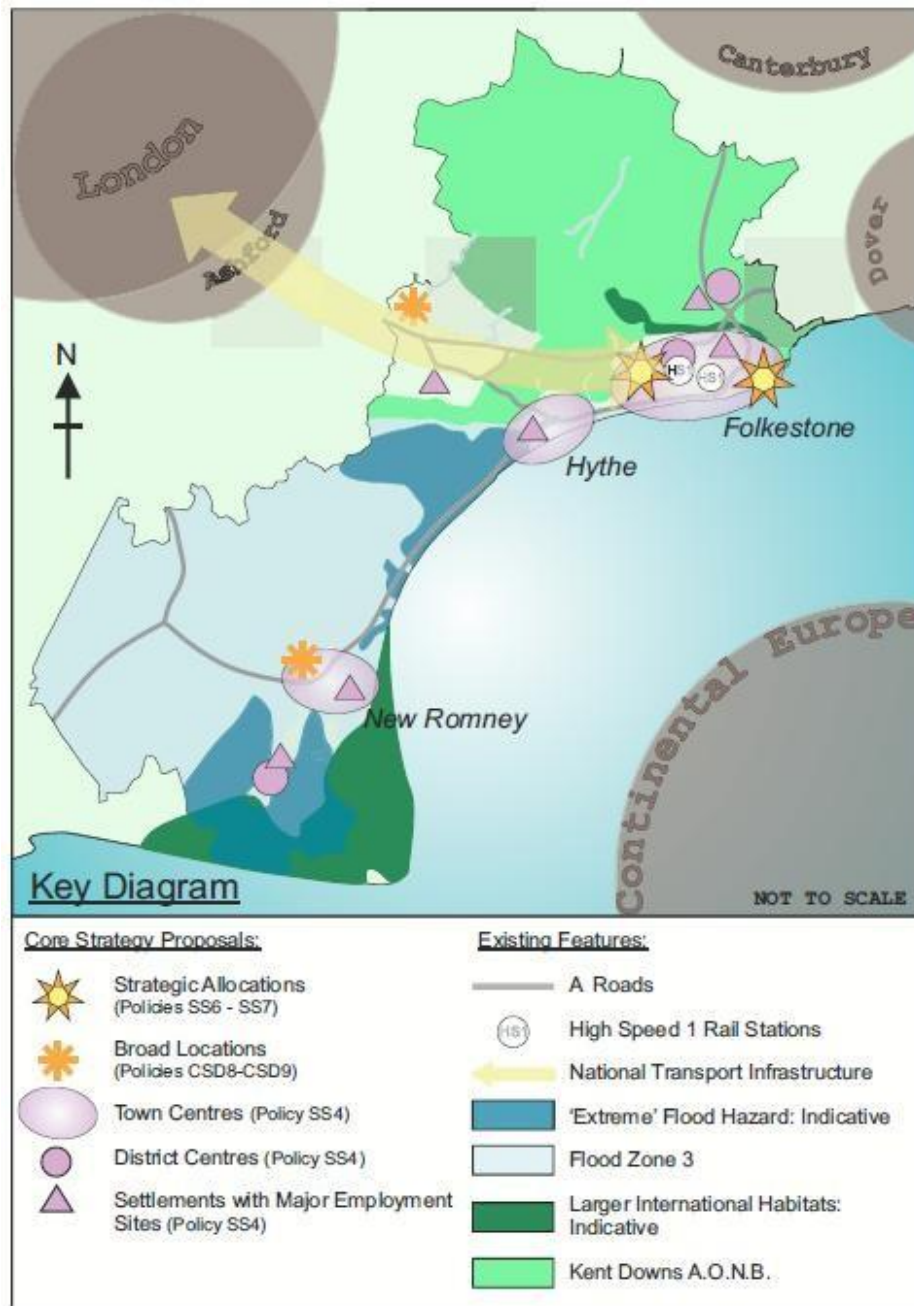
As a consequence of this ambition and support for growth, flexible capacity over a two year period is required that can contribute to:

- Providing strategic leadership, advice and support to the Council teams to better understand the development industry across various land and property matters, drawing out associated risks, and reviewing the implications arising;
- Supporting the corporate team in developing and embedding property and development related strategies for delivering agreed outcomes at pace, within budget and influencing key stakeholders;
- Contributing to strategic performance reviews and challenge across SDC's portfolio of individual asset categories of real estate holdings, potentially managing the consequences of agreed actions relating to acquisition, development, or disposal activities;
- Providing residential and commercial estates/development advice in the context of other public and private sector players such as the Homes & Communities Agency, Housing Associations, KCC etc, while being aware of national policy changes, and positioning SDC appropriately;
- Acting as Client representative, for Central and other Local Government Departments, Public Sector Agencies and Private Sector;
- Providing support to the Director of Policy and Strategic Initiatives and the Council's Property and Engineering team through specialist input to a range of mixed use developments; procuring, overseeing and delivering a variety of land and property projects delivered directly, or in partnership;
- Assisting in marketing, formulating business plan strategy / project budgets and liaison with public and private sector developer partners to secure suitable projects; and
- Working closely with the soon to be appointed Project Manager & Architect.

## SECTION 2 OUTLINE BRIEF

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- 2.1 The council is seeking to appoint an experienced land and property expert to provide consultancy services over a period of up to 2 years on a call-off contract for an estimated 8-12 days per month. The capacity will provide additional senior level capacity to assist in the delivery of corporate priorities working across the Council's Development Projects Board. The capacity will be instrumental in helping to deliver the council's commitment to growth in Shepway.
- 2.2 Capitalising on the future housing and job opportunities features in several of the council's corporate priorities, and forms the basis of the district's new planning policies. Accordingly, there is now a need to update the Council's strategic property approach across its own portfolio of assets, and to explore acquiring and developing additional land capacity, to support our growth ambitions.
- 2.3 Shepway's NPPF compliant Core Strategy Local Plan has now been adopted and preparatory work on the additional Local Plan is underway to identify new site allocations / generic development policies. Working across the Council with other senior members of staff, and supporting economic development and property portfolio holding Members, will be a critical part of the role.
- 2.4 Primary provisions are set out in the key diagram of the Shepway Core Strategy Local Plan, below:



2.5 The Development Projects Board meets fortnightly and the post-holder will work to that Board in delivering a number of projects that have been identified as corporate priorities. The Board is chaired by Susan Priest Corporate Director, Economic Regeneration, with input from senior colleagues drawn from property, housing, finance, and planning teams.

### SECTION 3 SPECIFICATION FOR CONSULTANTS

#### 3.1 The Client

Shepway District Council's Development Projects Board will oversee this contract and act as the client team. In terms of supporting the project, the client shall provide for the organisation of any meetings as set out at an inception meeting and reviewed through the period of the contract.

The client wishes to secure a fixed price proposal from the consultant in order to give secure financial planning to the council.

The consultant may be required to attend Cabinet and/or Council meetings which may include attendance at evening meetings.

Following submission of quotations the consultants will be expected to attend an interview with members of the client team, for no less than one hour, to discuss the quotation in more detail.

The successful consultant(s) will be expected to fully address the capacity outlined in this brief and adopt a flexible approach to both remote working and regular meetings with the client team and Council officers.

The consultant is expected to provide fortnightly updates and present progress reports to the client team as required.

### **3.2 The Submission**

The submission shall include the following-

- Completion of the quotation schedule as set out in Appendix 1 of this brief (excluding VAT).
- The consultant is requested to provide a day rate (based on a minimum of 7.5 hours) and adhoc hourly rate quotations. Please note no extra rate will be paid for evening or weekend meetings within these hours. Consultants will revert to the day rate once the aggregate of the hourly rate exceeds the former.
- Evidence of similar work undertaken.
- Display knowledge of the factors influencing the success of commercial and residential development in the district.
- Three reference companies and their full contact details (email and telephone numbers please). A standard pro-forma for take-up of references is shown in Appendix 4.
- Details of the personnel to be deployed including experience and skills and the anticipated roles individuals will play.

The quality:price award, with a split of 60%/40% respectively, shall be based entirely upon the information provided (and in the case of "quality" will include the interview).

No more than five submissions will progress to interview.

### **3.3 Payment**

Monthly invoices will be submitted by the consultancy to the council for payment.

The council will make the payment to the consultancy within 30 days of receipt of a correct invoice.

Payments will be made at dates to be agreed with the successful consultant at the inception meeting.

Incidental fees and expenses (travel and subsistence) will be included within the agreed day/hourly rate. Additional expenses will only be approved if agreed in advance and only where they are in line with Council policies.

### **3.4 Timescale**

- Date of tender: Tuesday 4<sup>th</sup> February 2014
- Submission deadline: 5pm, Tuesday 18<sup>th</sup> February 2014
- Interview date: Friday 28<sup>th</sup> February 2014
- Date of commencement: Early to mid March

Interim milestones to provide the necessary decision-making will also be provided at the inception meeting to the successful contractor.

### **3.5 Instructions**

The consultants shall upload their tender submission to the Kent Business Portal ([www.kentbusinessportal.org.uk/](http://www.kentbusinessportal.org.uk/)) fully priced and completed together with all required supporting documentation. The documentation must be signed by the consultants and submitted with the Quotation Schedule which shall be fully priced and totalled. The documents MUST be uploaded to arrive no later than 17:00 on Tuesday 18<sup>th</sup> February 2014.

Should you wish to raise any questions regarding the tender you must do so via the discussion area of the business portal no later than five days before the latest date for the return of the tenders. We will respond as soon as possible to any questions raised and if appropriate, replies will be made in the form of addenda and issued to all bidders.

All interested parties will be informed via the business portal if their tender has or has not been successful.

The applicant is required to submit a quotation that conforms to the requirements of this brief.

If successful, the consultant will be expected to enter into the Consultancy Agreement (Appendix 1) to provide the services as outlined in this brief.

Shepway District Council does not bind itself to accept the lowest or any quotation, or to appoint the applicant to carry out all the activities specified in the brief.

No payment will be made by Shepway District Council in respect of any costs associated with the preparation of the quotation.

The following Activity Schedule shall be completed by the Consultant, setting out fees according to charge out rates per day/hour per member of staff: The quotation shall cover all of the aspects stated in the brief.

<b>Activities</b>	<b>Name(s) of member of staff</b>	<b>No. of days/hours</b>	<b>Fixed price (£)</b>
<b>Incidental fees &amp; expenses (travel &amp; subsistence)</b>	<b>N/a</b>	<b>N/a</b>	<b>N/a</b>
<b>Total</b>	<b>N/a</b>		

In addition to the above, the consultant shall provide any information against each activity to further describe the requirements.

### **3.6 Inception Meeting**

An inception meeting will be held with the successful consultancy to discuss the aforementioned work programme in more detail.

If you have any questions regarding this brief or require further clarification, please contact:

Dr. Susan Priest, Corporate Director, Economic Regeneration  
 Shepway District Council  
 Civic Centre, Castle Hill Avenue,  
 Folkestone,  
 Kent CT20 2QY  
 Tele: 01303 853315  
 Email: susan.priest@folkestone-hythe.gov.uk



**APPENDIX 1**  
**CONSULTANCY AGREEMENT**

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**DATED**

**2014**

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**THE DISTRICT COUNCIL OF SHEPWAY**

and

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**CONSULTANCY AGREEMENT**

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Shepway District Council  
Civic Centre  
Castle Hill Avenue  
Folkestone  
Kent            CT20 2QY



- 1.6 "Council Representative" : shall mean the Council's Project Lead Officer who shall act as the single point of contact between the Council and the Consultant and whose role it shall be to oversee and manage this Agreement on behalf of the Council or such other person as the Council Representative may from time to time nominate.
- 1.7 "District" : shall mean the area administered by The District Council of Shepway.
- 1.8 "Expiry Date" : refers to the date upon which it is expected this Agreement shall come to an end.
- 1.9 "Notice" : refers to a notice which is served in compliance with the terms of clause 19.
- 1.10 "Payments" : collectively equalling the total of those amounts set out in the Pricing Schedule.
- 1.11 "Pricing Schedule" : means the completed Pricing Schedule as attached in 4.6 of this document
- 1.12 "Services" : shall mean the whole of the Services and duties to be performed and provided by the Consultant as detailed in the Brief in accordance with the terms and conditions of this Agreement.
- 1.13 "Specification" : shall mean all specifications schedules and descriptions of the Services and the management in the Agreement and any modifications thereof or additions thereto as may from time to time be approved in writing by the Council Representative in accordance with this Agreement.
- 1.14 "the Proposal" : shall mean the Consultant's financial proposal the proposed operational strategy and method statements and other policies or statements required to be submitted in accordance with the Instructions to Quotation.
- 1.15 "Term" : the period from the Commencement Date until the expiry date.
- 1.16 "Variation" : shall mean a variation in the provisions of this Agreement made by notice given by the Council under clause 10.

## 2. Interpretation

In this Agreement, unless the contrary intention appears:

- 2.1 words importing one gender include all other genders; words importing the singular include the plural and vice versa.
- 2.2 references to paragraphs and schedules are references to the paragraphs and schedules of these terms and conditions unless otherwise stated.

- 2.3 references to any European Directive Act of Parliament and to any orders rules or regulations made pursuant to that Directive or Act shall include reference to any modification re-enactment or replacement thereof.
- 2.4 references to “staff” shall be construed as including all employees engaged by the Consultant and all references to the Consultant in this Agreement also include those personnel deployed by the Consultant.
- 2.5 the headings to any part of these terms and conditions or the Agreement shall not be construed as part of the Agreement and shall not affect the interpretation thereof.
- 2.6 unless otherwise expressly provided for in this Agreement no omission from, addition to, or variation of this Agreement shall be valid unless it is agreed in writing and signed by the Council Representative personally or such other officer as the Council Representative may appoint in writing and also by a duly authorised representative of the Consultant.
- 2.7 save for an omission, addition or variation agreed pursuant to the terms and conditions of this Agreement, any other provision inconsistent with these said terms and conditions contained in any other document or oral agreement are hereby agreed to be void and of no effect.

### 3. The Consultant's Obligations

- 3.1 The Consultant shall provide the Services to the Council in such a manner, at such times and locations as the Council may reasonably request and the Services shall consist of those activities more particularly detailed within the Brief.
- 3.2 The Consultant shall perform the Services (and any modifications authorised by or under this Agreement) from the Commencement Date and throughout the Term in an efficient effective courteous and professional manner in accordance with the terms and conditions of this Agreement recognising legitimate practices, changes in the delivery of the required consultancy services, techniques and relevant practice and except in emergencies the Consultant shall not deviate from the provisions of this Agreement or Brief without the prior written consent of the Council Representative.
- 3.3 In addition to any more specific obligations imposed by the terms and conditions of this Agreement it shall be the duty of the Consultant to provide the Services to a standard that is in all respects to the reasonable satisfaction of the Council Representative.
- 3.4 The Consultant shall throughout the Term provide all labour materials and transport to and from and in and about the District and everything whether of a permanent or temporary nature required in and for the performance of the Services.
- 3.5 The Council Representative shall have full power and authority to issue instructions and directions on any matter in connection with the proper and adequate performance of the Services and the Consultant shall be bound to carry out the same.

- 3.6 The Consultant shall give adequate written notice to the Council Representative of any further specifications or instructions that he may require for the execution of the Services otherwise than contained in this Agreement.
- 3.7 The Consultant in providing the Services shall comply with the Consultant's own policies, rules and procedures as submitted to and approved by the Council and as amended from time to time with the approval of the Council Representative and also the Council's policies, rules and guidelines.
- 3.8 The Consultant shall not operate any other activity to the detriment of the Services.
- 3.9 The Consultant Representative shall hold regular meetings with the Council at intervals to be agreed with the Council Representative in order to review the Agreement and to ascertain whether there are any specific problems and to take any necessary remedial action to resolve such problems.
- 3.10 If the Consultant at any time becomes aware of any act or omission or proposed act or omission, which may prevent or hinder the Consultant from providing the Services in accordance with the terms and conditions of this Agreement, the Consultant Representative or his deputy shall forthwith inform the Council Representative. The provision of such information under this clause shall not release or excuse the Consultant from any of the Consultant's obligations under this Agreement.
- 3.11 In delivering the Services, the Consultant is required to provide sufficiently qualified, experienced and competent staff for all tasks specified with adequate reserve staff in place to ensure proper and continuous performance and supervision of the Services at all times during the Term. In addition to this requirement the Consultant further undertakes that all such staff are either employees of the Consultant or that they provide services to the Consultant through a limited company which is registered for Value Added Tax ("VAT").
- 3.12 The Consultant shall in the performance of the Services
- 3.12.1 meet with employees or representatives of the Council at such places as the Council may reasonably specify;
- 3.12.2 attend such other meetings, provide such reports and general assistance to the Council as the Council may reasonably request.
- 3.13 The Consultant shall comply with all applicable laws, treaties, regulations and codes of practice including the laws of England and Wales (whether explicitly stated within this Agreement or not), and shall provide to the Council in a timely manner any information necessary for the Council to fulfil any obligations of disclosure under any such applicable laws.
- 3.14 The Consultant shall continue to ensure throughout the Term that its staff comply with all reasonable standards of safety and with the Council's health and safety procedures (if any exist) from time to time in force at the specific premises / locations where the Services are to be provided and undertakes to immediately report to the Council any unsafe working conditions or practices.
- 3.15 In so far as is permitted by law, the Council Representative shall be entitled to recommend (and in cases of gross misconduct require) the Consultant by notice

in writing to remove from the performance of the Services any employee of the Consultant specified in such notice. The Council shall not in any circumstances be liable to the Consultant or the employee in respect of any damage, loss or liability occasioned by such removal or disciplinary action and the Consultant shall fully indemnify the Council against any such claim made by its staff in accordance with the provisions of clause 7.3.3 below.

3.16 The Consultant shall use their best endeavours to ensure that members of the Consultant's staff give all reasonable assistance to the Council in the investigation of complaints, disciplinary matters involving Council staff, claims for damages and similar matters.

3.17 To comply with the terms of any Notice specifying a breach of the provisions of this Agreement and requiring the breach to be remedied so far as it may be but nothing in this clause is intended to require the Council to serve notice of any breach before taking action in respect of it.

#### 4. Payments

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:

4.1.1 payments in respect of the Services as set out in the Pricing Schedule with such Consultancy Fees payable within thirty (30) days of receipt of an itemised invoice.

4.1.2 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 Consultant's invoice will give details of the Services provided by the Consultant for each Activity and the VAT inclusive fee payable.

4.3 In circumstances where the Consultant is required to;

4.3.1 travel to or from the Council's premises; or

4.3.2 stay overnight in accommodation;

any such expenses incurred by the Consultant shall be at the Consultant's own expense and not be rechargeable to the Council.

#### 4.4 *Receipt of Monies*

The receipt of money by either of the parties shall not prevent either of them from questioning the correctness of any statement in respect of such money.

#### 5. Confidential Information

5.1 For the purposes of this Agreement, "Confidential Information" shall mean all and any information not in the public domain concerning the business and/or finances of

the Consultants, or any of its or their customers including, without prejudice to the generality of the foregoing, reports, interpretations, forecasts, records, corporate and business plans, financial projections, financial details and accounts, services, planned services, marketing and advertising plans, budgets, fee levels, customer/Council lists, pricing policies and all information about research of whatever kind.

- 5.2 The Consultant shall not and shall procure that none of its staff shall at any time during this Agreement (except so far as is required for the proper performance of his obligations under this Agreement or as authorised by the Council) nor at any time after termination or expiry of this Agreement, communicate or divulge to any person or make use of any Confidential Information relating to the Council or any of their respective Councils or customers, save for information that is in the public domain or comes into the public domain in either case otherwise than as a result of a breach of this Agreement.
- 5.3 In the event that the Consultant's staff 'work from home' they will be responsible for ensuring the security of Confidential Information in their home. In particular, the Consultant undertakes to ensure that staff:
- 5.3.1 encrypt and/or protect by password any Confidential Information held on their home computer;
  - 5.3.2 lock their computer terminal whenever it is left unattended;
  - 5.3.3 keep all papers containing Confidential Information in filing cabinets that are locked when not in use;

## 6. Intellectual Property

- 6.1 For the purposes of this Agreement, "Intellectual Property Rights" shall mean;
- 6.1.1 copyright, patents, database rights and rights in trade marks, designs, know-how and confidential information (whether registered or unregistered);
  - 6.1.2 applications for registration, and the right to apply for registration, for any of these rights; and
  - 6.1.3 all other intellectual property rights and equivalent or similar forms of protection existing anywhere in the world
- 6.2 All Intellectual Property Rights in any deliverables and otherwise arising in the course of providing Services shall be disclosed to the Council and shall vest in the Council unconditionally and immediately on creation, development, writing, preparation or discovery of the same.
- 6.3 The Consultant shall procure that its subcontractors (if any) have assigned to it in writing any Intellectual Property Rights which they have or may have in the future in relation to works forming part of the Services and the Consultant shall assign such rights to the Council in order to fulfil the parties' intent in clause 6.1 above.

- 6.4 The Consultant shall, and it shall procure that its employees and subcontractors shall sign all such documents and perform all such acts as may be required fully to vest all such rights in the Council (or its nominee).
- 6.5 The Consultant hereby waives and it shall procure that its employees and/or subcontractors waive all Moral Rights (as defined in Chapter IV of Part I of the Copyright, Designs and Patents Act 1988) in any works produced during the period of this Agreement in which copyright is vested in the Council whether by virtue of this clause 6 or otherwise.
- 6.6 The Consultant acknowledges that the extent, if any, of the protection sought in relation to the matters referred to in clause 6.1 shall be decided by the Council in its sole and absolute discretion and that accordingly the Consultant shall not (whether during or after the termination of this Agreement) apply or join in applying for any patent, registered design, trade mark or other equivalent protection without the prior written approval of the Council.

## 7. Employment and Taxation Liabilities

- 7.1 This Agreement provides for the provision of Services by the Consultant and nothing in this Agreement shall render it (or any of its staff) an employee, worker, agent or partner of the Council.
- 7.2 Consequently, the Consultant is responsible for payment of all remuneration and expenses to its staff and in relation to the operation of PAYE and National Insurance on remuneration paid or deemed to be paid.
- 7.3 The Consultant is fully responsible for and shall indemnify the Council, for and in respect of:
- 7.3.1 all remuneration and expenses paid to its staff; and
- 7.3.2 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 services. 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 arises due to the Councils' default).
- 7.3.3 any liability for any employment related claim or any claim based on worker status (including reasonable costs and expense) brought by any member of staff (or any substitute) of the Consultant against the Council arising out of or in connection with the provision of the Services.

## 8. Insurance and General Liability

- 8.1 The Consultant shall be liable for any loss, liability or costs (including reasonable legal costs) incurred by the Council in connection with the provision of the Services and shall accordingly maintain in force during the duration of this Agreement full and comprehensive insurance policies in respect of the provision of Services.



- 8.2 The Consultant shall ensure that insurance policies are taken out with reputable insurers accepted by the Council and that the level of cover and other terms of insurance are acceptable to and agreed by the Council.
- 8.3 The Consultant shall, on request, supply to the Council copies of such insurance policies and evidence that the relevant premiums have been paid.
- 8.4 The Consultant shall notify the insurers of the Councils' interest and shall cause such interest to be noted on the insurance policies.
- 8.5 The Consultant shall comply (and shall procure that its employees comply) with all terms and conditions of the insurance policies at all times. If cover under the insurance policies lapses or is not renewed or is changed in any material way, the Consultant must notify the Council immediately upon becoming advised / made aware of any such change.
- 8.6 To indemnify and keep indemnified the Council from and against any and all loss damage or liability (whether criminal or civil) suffered and legal fees and costs incurred by the Council resulting from a breach of this Agreement by the Consultant including:
- 8.6.1 any act neglect or default of the Consultant's employees or agents;
- 8.6.2 breaches in respect of any matter arising from the supply of the Services resulting in any successful claim by any third party.
- 8.7 The Consultant shall not be liable to the Council for the death of or injury to the Council's employees or loss or damage to the Council's property unless due to the negligence or other failure of the Consultant to perform its obligations under this Agreement or under the general law.

## 9. Data Protection

9.1 The Consultant shall comply in all respects with the provisions of the Data Protection Act 1998 ("the DPA") or any statutory modification or re-enactment thereof and will indemnify the Council against all actions costs expenses claims proceedings and demands which may be made or brought against the Council for breach of any statutory duty under the DPA which arises from the use disclosure or transfer of 'Personal Data' and or 'Sensitive Personal Data' as defined in the DPA by the Consultant.

9.2 The Consultant shall procure that its staff consent to the Council holding and processing data relating to them (if appropriate) for legal, personnel, administrative and management purposes and in particular to the processing of any Sensitive Personal Data (as defined in the DPA).

## 10. Variations

10.1 The Council may at any time require changes to the Services and the Specification by giving notice of the variation in accordance with this clause.

10.2 Following agreement with the Consultant, the parties shall be bound by any such variations, which may include but not be limited to additions, alterations, deletions, omissions, and substitutions, changes in quality, form, character, kind, timing and

method. In particular, parts of the Specification may be deleted and the frequency or amount of the Services required may be altered.

- 10.3 A variation may amount to the deletion of any part of the Services as may be necessary for economic or budgetary reasons or for reasons of general policy. It is agreed that the Council without further consultation may make this type of variation; however the Council undertakes not to vary the Services only for the purpose of placing the work with another consultant.
- 10.4 No variation shall be made by the Consultant without an order given in writing by the Council's Representative.
- 10.5 Notwithstanding clause 10.4 above; if for any reason the Council Representative, acting reasonably, shall find it necessary to give such an order orally in the first instance the Consultant shall comply with the oral order and the Council Representative, as soon as it is reasonably possible in the circumstances, shall confirm their oral order in writing.
- 10.6 No variation ordered in accordance with this clause shall in any way vitiate or invalidate this Agreement but the value (if any) of all such variations shall be taken into account in ascertaining the value of amount of the Consultancy Fees.
- 10.7 Any variations shall result in a pro-rata adjustment to the Consultancy Fee.
- 10.8 The Contractor shall supply free of charge estimates of the effects of any variations in service that may be reasonably required by the Council Representative.

## 11 Termination

- 11.1 The following obligations are conditions of this Agreement and any breach of them shall be deemed a fundamental breach which shall determine this Agreement immediately and the rights and liabilities of the parties shall then be determined in accordance with this clause 11:

11.1.1 failure on the part of the Council to make punctual payment of all sums due to the Consultant under the terms of this Agreement;

11.1.2 failure on the part of the Consultant to observe any obligation under this Agreement not requiring Notice to be served and in the case of obligations requiring Notice to be served, failure to comply with the terms of any Notice;

### 11.2 *Bankruptcy / Liquidation*

11.2.1 If the Consultant shall become bankrupt or have a receiving order made against him or shall present his petition in bankruptcy or shall make an arrangement or assignment in favour of his creditors or shall agree to perform the Services under a committee of inspection of his creditors or (being a corporation) shall go into liquidation (other than a voluntary liquidation for the purposes of amalgamation or reconstruction) or if the Consultant shall assign or sub-contract the whole of the Agreement or any part thereof without the consent in writing of the Council being first obtained or shall have an execution levied on his goods or if the Council

Representative shall certify in writing to the Council that in their opinion the Consultant:

- a. has abandoned the Agreement; or
- b. without reasonable excuse has failed to commence the Services in accordance with the Agreement or has suspended the performance of the Services for seven (7) days after receiving from the Council Representative notice to proceed; or
- c. despite previous warning by the Council Representative in writing is failing to proceed with the Services with due diligence or is otherwise persistently failing to perform his obligations under the Agreement.

### 11.3 *Inducements*

11.3.1 The Council shall be entitled to terminate this Agreement immediately and to recover from the Consultant the amount of any loss resulting from such termination if;

- a. the Consultant shall have offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or forbearing to do or having done or forborne to do any action in relation to the obtaining of this Agreement or any other agreement with the Council, or
- b. for showing or forbearing to show favour or disfavour to any person in relation to this Agreement or any other agreement with the Council or any other Council, or
- c. if the like acts shall have by done by any person employed by the Consultant or acting on the Consultant's behalf (whether with or without the knowledge of the Consultant) or
- d. if in relation to this Agreement or any agreement with the Council any person employed by the Consultant or acting on the Consultant's behalf shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Council the receipt of which is an offence under section 117 (2) of the Local Government Act 1972.

11.3.2 For the purpose of this clause, the expression "loss" shall include the reasonable cost to the Council of the time spent by its officers in terminating this Agreement and in making alternative arrangements for the provision of the Services.

11.3.3 The Consultant shall not whether by themselves or by any person employed by them perform the Services solicit any gratuity or tip or any other form of money taking or reward, collection or charge for any of the Services.

## 12 Consequences of Termination

12.1 In the event of this Agreement being determined whether by the effluxion of time, Notice, breach or otherwise then:

12.1.1 as soon as practicable after any such determination the Council Representative shall fix and determine an amount (ex parte or by or after

discussions with the Consultant or after having made such investigation or enquiries as they may think fit to make or institute), and certify such amount (if any) as at the time of determination had been reasonably earned by or would reasonably accrue to the Consultant in respect of Services actually undertaken by them under the Agreement;

12.1.2 the Consultant shall only be entitled to receive such sum or sums (if any) as the Council Representative may certify would have been due to him upon due completion.

12.2 If following determination of this Agreement by either party it is found that the Consultant is required to repay any sum(s) already paid to them for Services not yet rendered, then the Consultant shall upon demand repay to the Council the certified amount of such overpayment and it shall be deemed a debt due by the Consultant to the Council which shall be recoverable accordingly.

12.3 Either party shall be entitled to exercise any one or more of the rights and remedies given to it under the terms of this Agreement and the determination of this Agreement shall not affect or prejudice such rights and remedies and each party shall be and remain liable to perform all outstanding liabilities under this Agreement notwithstanding that the other may have exercised one or more of the rights and remedies against it.

12.4 Any right or remedy to which either party is or may become entitled under this Agreement or in consequence of the other party's conduct may be enforced from time to time separately or concurrently with any right or remedy given by this Agreement or now or afterwards provided for and arising by operation of law so that such rights and remedies are not exclusive of the other or others but are cumulative.

### 13 Force Majeure

13.1 Either party to the Agreement shall not be considered in breach of Agreement or under any liability whatsoever to the other party for the non performance, part performance or delay in performance of the Agreement which is caused as a result of force majeure, provided that the relevant factor or factors was not reasonably foreseeable at the time of Tender.

13.2 Force Majeure shall be any event beyond the control of the party or parties and shall include:

13.2.1 acts of God (such as hurricane landslides lightning earthquakes floods drought or other similar occurrences); or

13.2.2 any act of Government or the Queen's Enemies armed conflict or the consequences or the effect of armed conflict extortion sabotage terrorism; or

13.2.3 civil commotion public demonstration local combination or workmen, subcontractors/agency staff strikes or lock outs or other uncontrollable circumstances affecting any of the trade or suppliers employed by reason of provision of the Services; or

13.2.4 government pre-emption of materials or services in connection with a public emergency; or

### 13.2.5 explosion

13.3 Either party to the Agreement shall immediately notify the other of any actual or potential events or circumstances of force majeure, the likely length of time the Agreement will be disrupted, and the measures being taken to mitigate the adverse effects of force majeure on the Agreement.

13.4 In the event of circumstances for force majeure for any of the reasons stated in this clause the Consultant shall use their best endeavours to provide the best possible substituted Services as agreed with the Council until such time as normal Services can be resumed and the Council Representative shall agree payment for such substituted Services.

## 14 Dispute Resolution and Arbitration

14.1 Any dispute, difference or question between the parties to this Agreement with respect to any matter arising out of or relating to this Agreement which cannot be resolved by negotiation within a reasonable time (being no more than 28 days) and except insofar as may be otherwise provided in this Agreement, shall be referred to mediation or other alternative dispute resolution procedure agreed between the parties, each acting in good faith, or where the parties cannot agree such procedure or any aspect of it, assistance will be sought from the Centre for Dispute Resolution. In any such mediation the parties will each bear their own costs in relation to any reference to mediation and, unless otherwise agreed or directed by the mediator, the parties will share equally the costs of mediation. Use of mediation shall be without prejudice to the rights of the parties in all respects if the mediation does not achieve an agreed resolution of the dispute.

14.2 Where the parties fail to reach agreement by mediation then the dispute may be referred to arbitration under the provisions of the Arbitration Act 1996 (or any statutory re-enactment thereof) by a single arbitrator to be appointed by agreement between the parties or in default of agreement by the President for the time being of the Chartered Institute of Arbitrators ('the President')

14.3 The appointed arbitrator shall be entitled to make such decision or awards as the arbitrator thinks just and equitable having regard to the circumstances then existing, the cost of such arbitration to follow the event or in the event of neither party succeeding to be apportioned between the parties by the arbitrator in such proportion as he in his absolute discretion thinks fit.

14.4 The award of such arbitrator shall be final and binding upon the parties to this Agreement.

14.5 Unless this Agreement shall have already been determined or abandoned the Consultant shall in every case continue to proceed with the Services with all due diligence and the Consultant and the Council shall both give immediate effect to every such decision of the Council Representative unless and until the same shall be revised by agreement at mediation or by an arbitrator.

14.6 In any case where the President is not able to exercise the functions conferred on him by this clause the said functions may be exercised on his behalf by a Vice President for the time being of the said Institute.

## 15 Audit

- 15.1 The Consultant shall install, implement and operate throughout the Agreement Period such business systems and processes to the satisfaction of the Council to ensure that the Council is charged for and pays for only such amounts as it is obliged to do under the terms of the Agreement.
- 15.2 The Consultant shall permit the Council to have reasonable access at all times to the premises, facilities and relevant records of the Consultant.

## 16. Unlawful Discrimination and Human Rights

- 16.1 In pursuance of the Council obligations under the following Acts ("the Acts");

- the Human Rights Act 1998; and
- the Equality Act 2010

16.1.1 the Consultant and any sub-contractor employed by the Consultant shall adopt at no additional cost to the Council a written policy in order to better comply with the provisions of the Acts;

16.1.2 the Consultant shall upon the Council's reasonable request provide the Council with details relating to the Consultant's compliance with the Acts;

16.1.3 the Consultant shall ensure that neither it nor anyone acting on the Consultant's behalf discriminates directly or indirectly against any person because of their colour, race, sex, religion, nationality or national ethnic origin or does or permits any act or omission which results in or is likely to result in a breach of human rights in relation to recruitment, training, promotion, disciplining or dismissal of staff in the United Kingdom and in the provision of goods, facilities or services to the public in the United Kingdom in terms of the quality of, the methods of or by refusing or deliberately omitting to provide such goods facilities and services;

16.1.4 the Consultant must monitor and record details of any incident relating to unlawful discrimination which shall be available for inspection by the Supervising Officer who has given reasonable notice of such a request

- 16.2 In the event of any allegation or finding of unlawful discrimination or breach of human rights which relates to the conduct of the Consultant (or its agents employees or sub-contractors) in connection with this Agreement, the Consultant shall inform the Council of this finding and shall take appropriate steps to eliminate or prevent repetition of any unlawful discrimination or breach of Human Rights and comply with any order or finding forthwith.

## 17. Prevention of Bribery and Corruption

- 17.1 The Consultant warrants and undertakes to the Council that:

17.1.1 it will comply with applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act

201 and will not give any fee or rewards the receipt of which is an offence under sub-section (2) of section 117 of the local Government Act 1972;

17.1.2 it will procure that any person who performs or has performed services for or on its behalf ("Associated Person") in connection with the provisions of the Services complies with this clause 17.1.1.

17.1.3 it will not enter into any agreement with any Associate Person in connection with this Agreement, unless such agreement contains undertakings on the same terms as contained in this clause 17.1.

17.1.4 it has and will maintain in place effective accounting procedures and internal controls necessary to record all expenditure in connection with the Agreement;

17.1.5 from time to time, at the reasonable request of the Council it will confirm in writing that it has complied with the undertakings under this clause 17.1 and will provide any information reasonable requested by the Council in support of such compliance;

17.1.6 it shall notify the Council as soon as practicable of any breach of any of the undertakings contained within this clause of which it becomes aware.

## 18 Entire Agreement

This Agreement between the Consultant and the Council is the entire agreement relating to the provision of the Services by the Consultant to the Council and it supersedes and cancels all prior agreements whether formal or informal relation thereto.

## 19 Sufficiency of Rates

The Consultant shall be deemed to have been satisfied before submitting their tender as to the correctness and sufficiency of his rates and prices which shall (except in so far as it is otherwise provided for in the Agreement) cover all his obligations under the Agreement.

## 20 Notices

20.1 Where any provision of this Agreement requires a party to give notice to the other then it shall be deemed to have been properly served if:

20.1.1 In the case of the Council the notice is sent by first class post to its office at Civic Centre, Castle Hill Avenue, Folkestone, Kent, CT20 2QY or handed to the receptionist at that address and in all cases marked for the attention of the Council Representative or their nominated deputy;

20.1.2 In the case of the Consultant the notice is sent by first class post to their registered office or if different, to the address shown in this Agreement or is handed in at such address;

20.1.3 Notices shall be deemed served three (3) days after they have been posted in the case of service by post or at the time of delivery in the case of personal service.

20.2 For the avoidance of doubt service of a notice by e-mail or facsimile will not be accepted by the Council as valid service.

## 21 Costs

Each of the parties shall pay all costs and expenses incurred by it in connection with all activities / processes associated with bidding for and preparing to enter into this Agreement with the other party.

## 22. Assignment

The Consultant may not assign or purport to assign the benefit of this Agreement or subcontract this Agreement in part or whole without the prior written consent of the Council.

## 23. Change of Contact Details

Each of the parties shall give notice to the other of the change or acquisition of any postal address, e-mail address or telephone or similar number at the earliest possible opportunity but in any event within 48 hours of such change or acquisition taking place.

## 24. Rights Cumulative

All rights granted to either of the parties shall be cumulative and no exercise by either of the parties of any right under this Agreement shall restrict or prejudice the exercise of any other right granted by this Agreement or otherwise available to either party.

## 25. Warranty

Each of the parties warrants its power to enter into this Agreement and that they have obtained all necessary approvals to do so.

## 26. Waiver

26.1 The granting by either party of any time or indulgence in respect of any term of this Agreement by the other shall not be deemed a waiver of such breach.

26.2 The waiver by either party of any breach or term of this Agreement by the other shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any subsequent breach.

## 27. Severability



If any provision of this Agreement is held to be invalid or unenforceable, such a provision shall (so far as invalid or unenforceable) be given no effect and shall be deemed to be excluded from this Agreement, but without invalidating any of the remaining provisions of this Agreement. The Parties shall use all reasonable endeavors to replace the invalid or unenforceable provision with a valid provision, the effect of which is as close as possible to the intended effect of the provision so excluded.

#### 28. Supersedes Prior Agreements

This Agreement supersedes any prior agreement between the parties whether written or oral and any such prior agreements are cancelled as at the Commencement Date but without prejudice to any rights which have already accrued to either of the parties.

#### 29. Survival of Terms

No term shall survive expiry or termination of this Agreement unless expressly provided for within this Agreement.

#### 30. Rights and Duties Reserved

All rights and duties which the Council has as a Local Authority or which the Council's Officers have as Local Authority Officers are expressly reserved.

#### 31. Governing Law

This Agreement shall be governed by and construed in accordance with the law of England and the parties agree to submit to the exclusive jurisdiction of the English Courts.

#### 32. Third Party Rights

Save in relation to any successors and permitted assignees the Parties hereby agree a person or entity who is not a party to this Agreement may not enforce its terms under the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS** whereof the parties have executed this Deed the day and year first before written

**THE COMMON SEAL of THE DISTRICT COUNCIL OF SHEPWAY**  
was hereunto affixed in the presence of:



Authorised Signatory

**EXECUTED** as a **DEED** for and on behalf of **(NAME OF CONSULTANT)** by:



\_\_\_\_\_  
Director/ Secretary

\_\_\_\_\_

Director

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

**APPENDIX 2**

**AWARD CRITERIA**

<b>QUALITY SCORES,</b> <b>CONSULTANT.....</b>		
Quality criteria	Criteria weight	Score
Methodology (including Shepway site outline proposal)	20	
Experience of similar consultancy work	30	
Personnel	10	
References	10	
Interview (including presentation of Shepway site case study)	30	
<b>Total</b>	<b>100</b>	
Comments:		

Signed.....

Name.....

Position.....

Date.....

**APPENDIX 3****Indicative Timetable**

Study stage	Target
Activity 1	<b>April 2014</b>
Activity 2	<b>July 2014</b>
Activity 3	<b>October 2014</b>

**APPENDIX 4**

**Reference proforma**

**REFERENCE 1: DETAILS**

Name / Job Title: \_\_\_\_\_

Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REFERENCE 2: DETAILS**

Name / Job Title: \_\_\_\_\_

Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

**REFERENCE 3: DETAILS**

Name / Job Title: \_\_\_\_\_

Organisation: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

E-mail: \_\_\_\_\_

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## REFERENCES

### REFERENCES

The Council will take up references from no less than (2) two of the companies the Consultant has listed.

The Consultant should ensure that the companies listed are willing to provide a reference for and also that the listed companies are willing to discuss the Consultant's past / current performance with the Council.

The Council reserves the right to contact any or all of these companies for a reference.







**TECHNICAL REFERENCE FOR SHEPWAY DISTRICT COUNCIL**

Please complete this reference questionnaire regarding the services provided to you by;  
**[NAME OF CONTRACTOR]** ("the Contractor")

The information provided within this reference questionnaire will, so far as the law allows, be held confidential and will not be passed onto third parties.

**REFEREE DETAILS**

Name / Job

Title:

Organisation:

Address:

Telephone:

E-mail:

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Scoring Methodology	Average	Good	Excellent
Marks for each category	3	4	5

In terms of quality and the contractor's performance how do you rate the following?  
*(Please shade or bold the appropriate score)*

**CONTRACT MANAGEMENT**

How good was the Contractor's general management of the contract, works or provision of service?

3	4	5
---	---	---

How well did they understand your objectives and requirements?

3	4	5
---	---	---

How good was their ability to identify, anticipate and resolve problems?

3	4	5
---	---	---

How flexible was the Contractor in dealing with variations?

3	4	5
---	---	---

3	4	5
---	---	---

How successful was the Contractor at working within the limitation of your organisation's identified budget?

3	4	5
---	---	---

How efficient were their invoicing systems?

3	4	5
---	---	---

How enthusiastic is / has the Contractor been towards suggesting efficiencies / opportunities which might generate financial savings?

3	4	5
---	---	---

**PERFORMANCE**

How would you score the service that you are receiving / have received from the Contractor?

3	4	5
---	---	---

How successful is / was the Contractor in their ability to make and keep appointments?

3	4	5
---	---	---

How successful is / was the Contractor in keeping clients informed during the contract, works or provision of services?

3	4	5
---	---	---

How happy are you with the Contractor's general attitude towards clients and or members of the public?

3	4	5
---	---	---

How successful is / has the Contractor been in meeting deadlines / performance targets and keeping you informed?

3	4	5
---	---	---

How successful is / has the Contractor been at ensuring an adequate level of staffing is / was maintained throughout the Contract?

3	4	5
---	---	---

How co-operative has the Contractor been with you?

3	4	5
---	---	---