

Date:

Dear Sirs

**Letter of intent: Littlehampton Town Centre Public Realm Scheme (the Project).**

We write to appoint you to perform the following Specified Works, subject to the following conditions:

**1. Definitions and interpretation**

The following definitions and rules of interpretation apply in this letter.

- 1.1 Building Contract: The NEC4 (option A) Building Contract incorporating the Council's ITT and Tender Specification, and your Tender Response

Maximum Amount: **£TBC plus VAT**

Project / Property: as defined in the heading of this letter.

Specified Works: Placing an order for the delivery of **Granite with Hardscape and taking delivery of the Granite at your depot, and paying for the Granite on delivery**.

- 1.2 Terms defined in the Building Contract have the same meaning in this letter as in the Building Contract unless the meaning given in the Building Contract is different from, or conflicts with, the meaning given in this letter, in which case the meaning given in this letter prevails.

**2. Duration and effect of this letter**

- 2.1 Our mutual obligations under this letter start the date that the Council receives a signed copy of this letter from you and shall continue until:-

(a) The execution and completion of the Building Contract; or

(b) The date the Specified Works have completed or

(c) Until this letter is terminated in accordance with paragraph 10

- 2.2 Before execution and completion of the Building Contract, our mutual rights and obligations in relation to the Specified Works are governed by this letter, supplemented

by the Building Contract. If there is any conflict or difference between this letter and the Building Contract, this letter prevails.

- 2.3 On the execution and completion of the Building Contract, our mutual rights and obligations in respect of all matters with which this letter is concerned (including any payment made, any design performed or any work carried out or order placed under this letter as a part of the Specified Works or otherwise) shall be subsumed into and be subject to the Building Contract.

### 3. **The tender, the Works and the Building Contract**

- 3.1 We refer to your tender and confirm that at the time of this letter of intent, we intend to (but we are not obliged to) appoint you to carry out the Works under the Building Contract.
- 3.2 The Council has yet to complete its governance arrangements as required by its Constitution and prepare the engrossment Building Contract, but it is recognised between the parties there is some urgency to carry out the Specified Work so as to avoid potential delay to programmed management. We therefore instruct you under this letter to carry out the Specified Works in accordance with this letter.
- 3.3 Although neither you nor we have yet formally entered into the Building Contract, subject to paragraph 2.2, the terms of the Building Contract apply and you shall carry out the Specified Works in accordance with and subject to the Building Contract.

### 4. **Payment**

- 4.1 Subject to paragraph 5.1, on signature of this Letter of Intent we will transfer to you the Maximum Amount in readiness for you to pay for **the [Granite on delivery and for your performance of the Specified Works.]** In the event that the cost of materials is less than that paid to you by the council, these funds will be returned to the Council.

You will hold the **[Granite]** on Trust for the Council, and you will note the Council's interest in the **[Granite]** with your insurers and confirm that you have done so, on or before delivery of the **[Granite.]**

You will be responsible for **[the Granite]** and the Specified Works as if this were performed as part of the Works under the Building Contract. In the event the Building Contract does not complete for any reason caused by you, you will transfer the **[Granite]** at the Council's request without any right to withhold or offset the delivery or any part of it against any payment you claim from the Council, and will deliver at your own expense to a new storage place but if the reason the contract does not complete is due to the Council, the same shall apply except the Council will be responsible for the transfer costs.

4.1 Our obligation to pay you is limited to our payment for the Specified Works. This letter does not authorise you to carry out further or other works or services and we are not obliged as result of entering into this letter, to:

- (a) Pay you for any further or other works, goods, materials or services; or
- (b) Enter into the Building Contract or any other contract with you,

## 5. **Our limit of liability**

5.1 Our total liability to you under or in connection with this letter shall be limited to the Maximum Amount, plus any Value Added Tax on that sum, provided that this paragraph 5.1 shall not exclude or limit our liability for:

- (a) Death or personal injury caused by our negligence; or
- (b) Fraud or fraudulent misrepresentation.

5.2 You shall notify us as soon as practicable if you become aware that:

- (a) Your performance of the Specified Works; or
- (b) Any act, omission, request or instruction from us or our agents;

would mean that, but for paragraph 5.1, you would be entitled to be paid a sum greater than the Maximum Amount. You shall not commit to expenditure above the Maximum Amount without our approval of an increase in the Maximum Amount under paragraph 9.

5.3 Without affecting paragraph 5.1, you acknowledge and agree that you shall have no claim against us under or in connection with the Project, the Works or this letter for:

- (a) loss of profit, loss of contract, loss of business, loss of chance or other similar loss;  
or
- (b) any indirect or consequential loss.

## 6. **Sub-contracts**

6.1 You may only enter into a sub-contract or place a supply contract in connection with the Works or the Specified Works with our consent (such consent not to be unreasonably withheld or delayed).

6.2 Any sub-contract or supply contract you enter into shall permit you to assign the benefit of that contract to us or our nominee. On termination of this letter (or termination of your appointment under this letter) for any reason, if instructed by us you shall without charge assign the benefit of any or all of those contracts to us or our nominee, as we may specify.

**7. Insurance**

7.1 Within five Business Days of the date of this letter, and on our reasonable request from time-to-time, you shall provide written evidence to us that you maintain:

- (a) professional indemnity insurance;
- (b) Employers' liability insurance; and
- (c) public liability insurance,

as required by the Building Contract and this letter.

7.2 Before you carry out any Specified Works at the Property, you shall ensure that you maintain (and you shall provide written evidence to us that you maintain) the required insurances as specified above and by the relevant Insurance Option specified in the Preliminaries within the Council's ITT and supporting documentation where relevant and on our reasonable request from time-to-time, you shall provide written evidence to us that you continue to maintain such insurance.

**8. Copyright**

You hereby grant us an irrevocable copyright that if this letter (or your appointment under this letter) terminates for any reason, you shall provide a complete copy of all documents relating to the order, purchase and delivery of **the [Granite or]** other documents arising from the Specified Works as we may specify.

**9. Extending this letter**

We may (but we are not obliged to):

- (a) extend the scope of the Specified Works; or
- (b) increase the Maximum Amount; or
- (c) postpone the date on which your appointment under this letter will terminate under paragraph 10.3

but such an extension postponement or increase shall take effect only if notified by us to you in writing.

**10. Termination and consequences of termination**

10.1 We may terminate your appointment under this letter at any time by giving you notice to that effect.

10.2 If we are Insolvent, you may terminate your appointment under this letter by giving notice to us to that effect.

10.3 The instruction to carry out the Specified Works under this letter shall automatically terminate and your appointment under this letter shall automatically terminate when the Specified Works are completed for up to the Maximum Sum.

10.4 If this letter (or your appointment under this letter) is terminated earlier than specified at 10.3 then:

- (a) subject to paragraph 5, we shall pay you any sums due under paragraph 4, and that payment shall be your sole compensation for termination;
- (b) we shall both co-operate to bring the Specified Works to an orderly conclusion and to allow us both to comply with our remaining obligations under this letter (including your obligations under paragraph 6.2 and paragraph 8); and
- (c) you shall stop work under this letter and, if you have entered onto the property, you shall vacate the property, leaving it in a clean, tidy and safe condition.

## 11. **Assignment**

We may assign the benefit of this letter by way of security to a Funder, including any reassignment on redemption of security. You may not assign the benefit of this letter.

## 12. **Confidentiality**

12.1 Both we and you undertake not to at any time and for a period of five years after termination of this letter, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other except as permitted by paragraph 12.2.

12.2 We or you may disclose the other party's confidential information:

- (a) to our respective employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the party's obligations under this letter. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this paragraph 12; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

12.3 Neither we nor you shall use each other's confidential information for any purpose other than to perform our respective obligations under this letter.

## 13. **Disputes**

Notwithstanding any other provision of this letter either we or you may refer a dispute arising under this letter to adjudication at any time under Part I of the Scheme for

Construction Contracts (England and Wales) Regulations 1998, which Part shall take effect as if it was incorporated into this paragraph.

**14. Third Party Rights**

No one other than a party to this letter, shall have any right to enforce any of its terms.

**15. Entire agreement**

15.1 This letter constitutes the entire agreement between you and us and supersedes and extinguishes all previous drafts, agreements, arrangements and understandings between you and us, whether written or oral, relating to its subject matter.

15.2 Neither we nor you shall have remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this letter other than any CDM Document Risk and Method Statement Produced by you to carry out the Specified Works.

**16. Notices**

Any notice served or required to be served under this letter shall be in writing and served in accordance with the Building Contract.

**17. Governing law**

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

**18. Jurisdiction**

You and we irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this letter or its subject matter or formation (including non-contractual disputes or claims).

**By placing their signatures below the parties agree to the above terms and conditions.**

**Signed on behalf of Arun District Council**

Karl Roberts .....

**Signed on behalf of Edburton Contractors Ltd by two Directors, or one Director and a Witness**

Signed by.....Dated.....

Director 1 - Print Name

Signed by .....Dated.....

Director 2 – Print Name

OR

Witnessed by

Name

Address

Occupation

Date .....