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Contract for Services

between

Transport for London

and

Costain Ltd.

for

**Contractor Pre-Feasibility Input – Westway
Flyover**

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SERVICES FORM OF AGREEMENT

THIS FORM OF AGREEMENT is made the 27th day of MAY 2015

BETWEEN

- (1) **TRANSPORT FOR LONDON** a statutory corporation established under the Greater London Authority Act 1999 of **Windsor House, 42-50 Victoria Street, London, SW1H 0TL** (hereinafter called "the *Employer*" which expression shall include its successors in title and permitted assignees); and
- (2) **COSTAIN LTD.**, a company incorporated in and in accordance with the laws of England and Wales having as its registered number **610201** and its registered office at **Costain House, Vanwall Business Park, Maidenhead, Berkshire, SL6 4UB** (hereinafter called "the *Contractor*").

RECITALS

- (A) This Agreement is made pursuant to a framework agreement between Transport for London and the *Contractor* dated **9 April 2013** ("the Framework Agreement").
- (B) The *Employer* wishes to have provided early contractor civil engineering construction planning services associated with the A40 Westway Flyover Project ("the *services*").
- (C) The *Employer* has accepted a proposal by the *Contractor* for the *services* and correction of Defects therein in accordance with the *conditions of contract*.

OPERATIVE PROVISIONS

1. In this Form of Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the NEC Professional Services Contract (Third edition June 2005 with amendments June 2006 and September 2011) together with and as amended by Main Option E, Dispute Resolution Option W2, and Secondary Option Clauses as specified in the Contract Data Part One, Y(UK)2 and Z (being the amendments set out in Schedule 2A to the Framework Agreement).

3. This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract:
 - 3.1 the *conditions of contract* (including, for the avoidance of doubt, the Option Z clauses set out in Schedule 2A to the Framework Agreement);
 - 3.2 the Contract Data Part One;
 - 3.3 the Contract Data Part Two;
 - 3.4 the Scope; (inclusive of document Ref; STIP/ SMT130/WWW/S1/PR referenced therein)
 - 3.5 Schedule 14 of the Framework Agreement;
4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in Clause 3 of this Form of Agreement.
5. The *Contractor* Provides the Services in accordance with this contract.
6. The *Employer* pays the *Contractor* for complying with his obligations to Provide the Services the amount due in accordance with this contract.
7. Notwithstanding the manner of execution of this contract it is agreed that:
 - 7.1 the limitation period within which any claim may be brought by the *Employer* for breach of this contract by the *Contractor* is 12 years from the date of breach; and
 - 7.2 the *Contractor* agrees not to raise in defence of any such claim a shorter limitation period whether pursuant to the Limitation Act 1980 (as the same may be amended or re-enacted from time to time) or otherwise.

This Form of Agreement has been executed as a deed and delivered on the date stated at the start of this Form of Agreement.

**Executed as a Deed by the
Contractor
acting by a Director and its Company
Secretary or two Directors:**

Director

Director

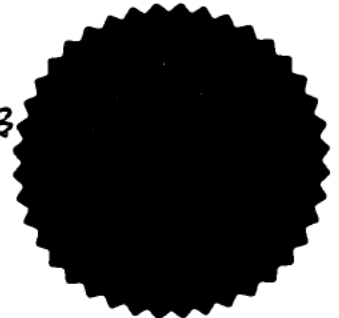
**The Common Seal/Corporate Seal of TFL
Company was affixed to this Deed in the
pres**

**Name and description of authorised
signatory**

TRANSPORT
FOR LONDON

AW *12*

4933



SCHEDULE 1

CONTRACT DATA PART ONE - DATA PROVIDED BY THE *EMPLOYER*

Statements given in all contracts

- 1 General
- The *conditions of contract* are the NEC3 Professional Services Contract (June 2005 with amendments June 2006 and September 2011) together with and as amended by the core clauses and the clauses for main Option **E**, Dispute Resolution Option **W2** and secondary Options **X10**, **X18**, **Y(UK)2** and **Z** (being the amendments set out in Schedule 2A to the Framework Agreement)

- The *Employer* is

Name **Transport for London**

Address **42-50 Victoria Street, London, SW1H 0TL**

- The *Adjudicator* is

**an independent person appointed in
accordance with clause W2.2**

- The *services* are

**for Early Contractor Involvement relating to
Programme, Risk and Cost in regard to the elevated
sections of A40 Westway**

- The *Scope* is in

Schedule 2 – Scope (Westway Flyover, Stage 1)

- The *language of this contract* is **English**
- The *period for reply* is **2** weeks
- The *Adjudicator nominating body* is **the President or Vice President or other duly authorised officer of the London Court of International Arbitration**
- The *tribunal* is **The courts of England and Wales**

- The following matters will be included in the Risk Register

Nil

2 The Parties main responsibilities

- The *Employer* provides access to the following persons, places and things

access to

access date

Nil

Nil

3 Time

- The *starting date* is **1st December 2014**

4 Quality

- The *defects date* is **4** weeks after Completion of the whole of the *services*.

5 Payment

- The *assessment interval* is **4** weeks (not more than five)

- The *currency of this contract* is the **Pound Sterling**
- The *interest rate* is **2%** per annum (not less than 2) above the **base** rate of the **HSBC plc** bank
- The amounts of insurance and the periods for which the *Consultant* maintains insurance are

8 Indemnity,
insurance and liability

| Event | cover | Period following Completion of the whole of the services or earlier termination |
|--|---|---|
| Liability of the <i>Consultant</i> for claims made against him arising out of his failure to use the degree of reasonable skill, care and diligence normally used by competent professionals experienced in providing services similar to the <i>services</i> in connection with works of a similar size, scope and complexity to the Works (professional indemnity insurance) | The amount stated in Schedule 14 to the Framework Agreement for each and every claim | 12 (twelve) years |
| Liability for death of | The amount | |

| | | |
|---|---|-----------------------------------|
| or bodily injury to a person (not an employee of the <i>Consultant</i>) or loss of or damage to property resulting from an action or failure to take action by the <i>Consultant</i> | stated in Schedule 14 to the Framework Agreement in respect of each claim, without limit to the number of claims [with financial loss extension cover] | Duration of the call-off contract |
| Liability for death of or bodily injury to employees of the <i>Consultant</i> arising out of and in the course of their employment in connection with this contract. | The amount stated in Schedule 14 to the Framework Agreement in respect of each claim, without limit to the number of claims | Duration of the call-off contract |

- The *Employer* provides the following insurances

.....**Nil**.....
.....
.....
.....

- The *Consultant's* total liability to the *Employer* for all matters arising under or in connection with this contract, other than the excluded matters, is limited to **three times the value of this contract for services**

Optional statements

- The *completion date* for the whole of the services is **31 March 2015**

- They *key dates and conditions* to be met are

condition to be met

key date

1 **Nil**

Nil

2

3

- The period for payment is **28 days**

- The *Employer's Agent* is

Name **Misba Ahmed**

Address **Transport for London**

Faith Lawson House

Dacre Street

London

- The authority of the *Employer's Agent* is

**to make all decisions related to this Call Off
Contract as set out in option X10**

If Option Z is used

- The *additional conditions of contract* are those set out in Schedule 2A to the Framework Agreement

SCHEDULE 2 – SCOPE (WESTWAY FLYOVER, PHASE 1)

ECI Services Requirement for Bridges over Thames (STIP 2 – Work Package 1)

Introduction

This ECI services requirement document must be read in conjunction with:

“STRUCTURES & TUNNELS INVESTMENT PORTFOLIO
A40 WESTWAY STRUCTURES REFURBISHMENT
Document Reference; STIP/SMT13013/WW/S1/PR
Project Requirements
Stage 1 – Outcome Definition”

Requirements/ Objectives

Within the overall Pathway Stage 1 requirements detailed in the above documents, Costain is required to undertake the following.

1. Collaborate with other parties to help achieve deliverables;
2. Take overall responsibility for delivery of the project;
3. Facilitate other parties' deliverables.

The Design Consultant is Ramboll UK Ltd (RUK).

During all aspects of the ECI services Costain is required to work collaboratively with TfL and RUK (the other parties) as part of the project and help them achieve their deliverables.

Each of the tasks described below will require input and agreement with the other parties, however the delivery is the responsibility of Costain. Equally, Costain will input / facilitate other parties' deliverables although they will not be responsible for them.

For clarity, Costain's deliverables from the above documents relate to:

- Programme
- Cost estimates
- Risk evaluation

Programme

Pathway Stage Delivery Programme

Costain is required to provide a programme for the delivery of Pathway Stage 1.

The programme shall identify milestones and deliverables required from other parties to the project, to enable delivery of Pathway Stage 1.

The Stage Programme shall identify when the various elements of Costain's deliverables will be delivered.

Project Programme

Costain shall develop an overall programme for the whole of the project through to Pathway Stage 6.

The durations and activities for subsequent stages shall be agreed with the other members of the project team.

Costs

Pathway Stage 1 Fee Forecast

Costain is required to provide and agree with TfL an agreed fee forecast for the delivery of Pathway Stage 1.

Project Costs

For each of the subsequent stages of the project Costain shall estimate the cost of that stage including each other party's costs inclusive of sub let works and attendances.

The estimate shall form part of a pricing report detailing working methodologies and solutions to the various constraints.

Significant costs are anticipated in the investigative, development and construction stages (Pathway Stages 2-5) of the project. The scope, scale and timing of these subsequent stages shall be agreed within the project team and be allowed for in the pricing report.

The main element of overall cost will be the construction cost; Costain shall estimate the works identified by RUK allowing for likely constraints such as access and traffic management.

Where costs can not be reasonably estimated for specific work items (for any of the work elements within any stage) then Costain are to advise such, and in place, provide an allowance for the work element together with assumptions.

Risks

Pricing and Programme Risks

During the Pricing and Programming elements various specific risks may be identified that require assessments and assumptions to be made to enable delivery of that scope; Costain shall ensure that these specific risks are to be listed and allowed for within that work element.

Project Risk

Costain shall develop and agree a Project Level Risk Register that includes all Pathway Stages with input from each party. Risks may be subjective (such as reputational) and require specialist input.

The Risk Register shall be quantified and priced.

SCHEDULE 3 – CONTRACTOR'S PROPOSAL

CONTRACT DATA PART TWO

For the purposes of this contract for services, the *Consultant* is the *Contractor* named in the Form of Agreement.

**Statements given in
all contracts**

- The *Consultant* is

Name Costain Limited

Address Costain House, Vanwall Business Park,
Maidenhead, Berkshire, SL6 4U

- The *key persons* are

(1)

Name

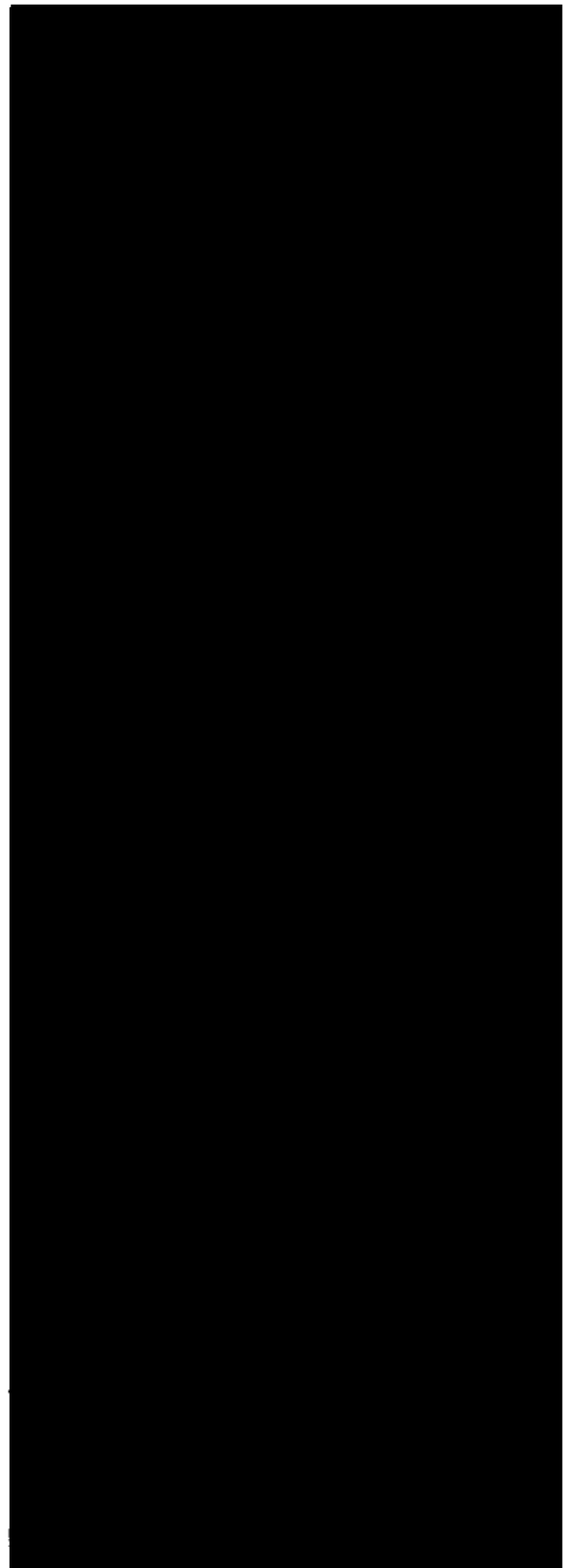
Job Framework Director

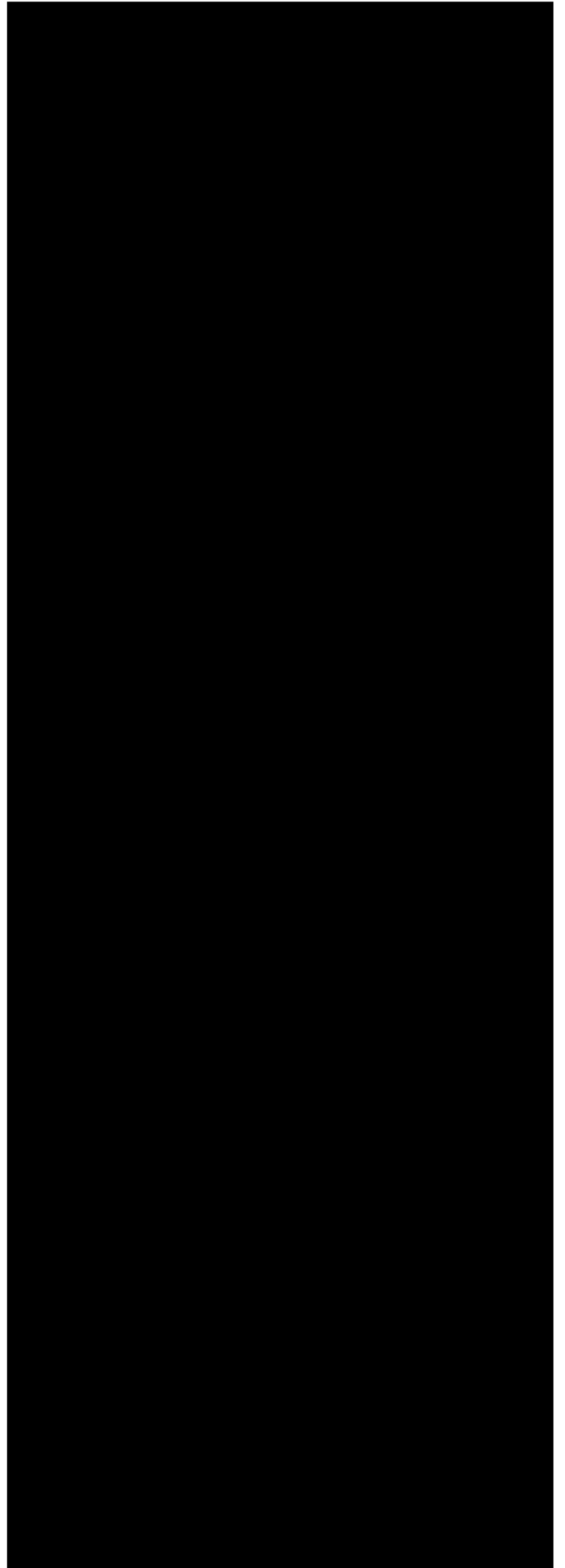
Responsibilities

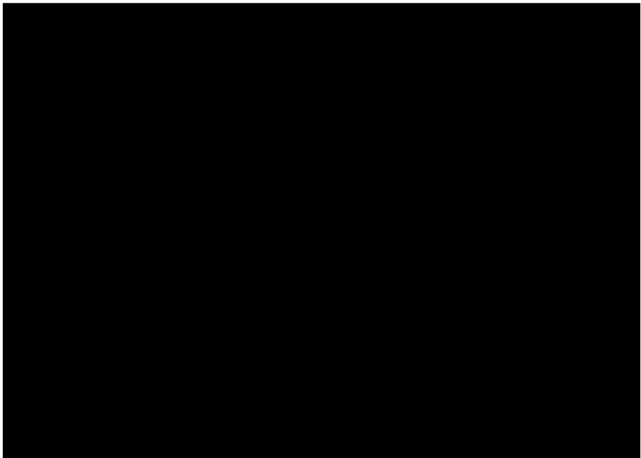
Qualifications



Experience





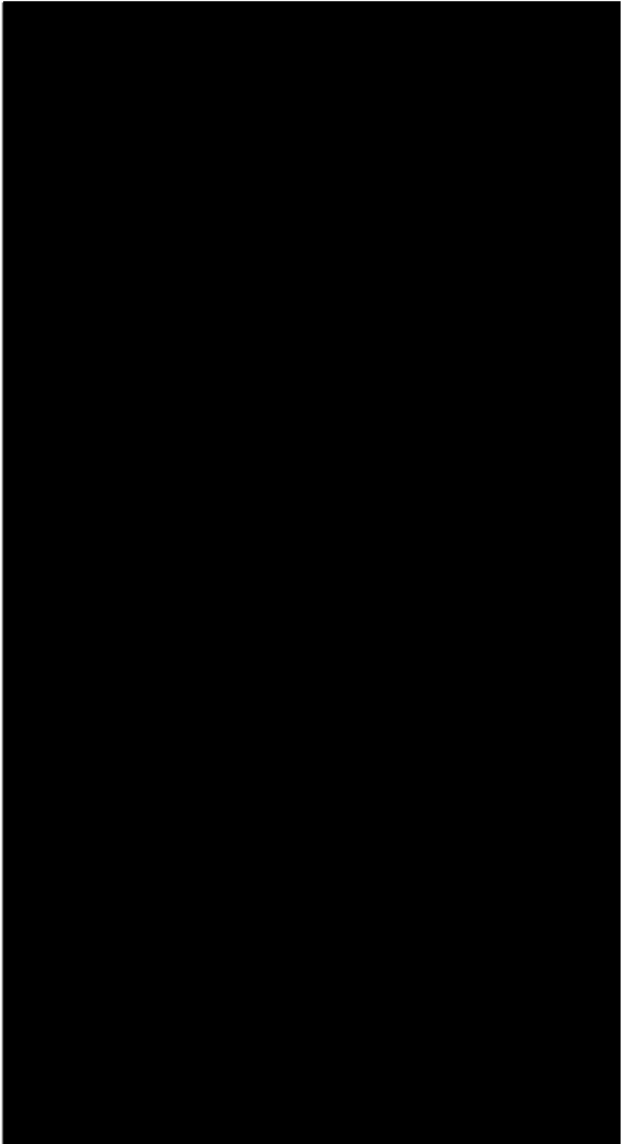


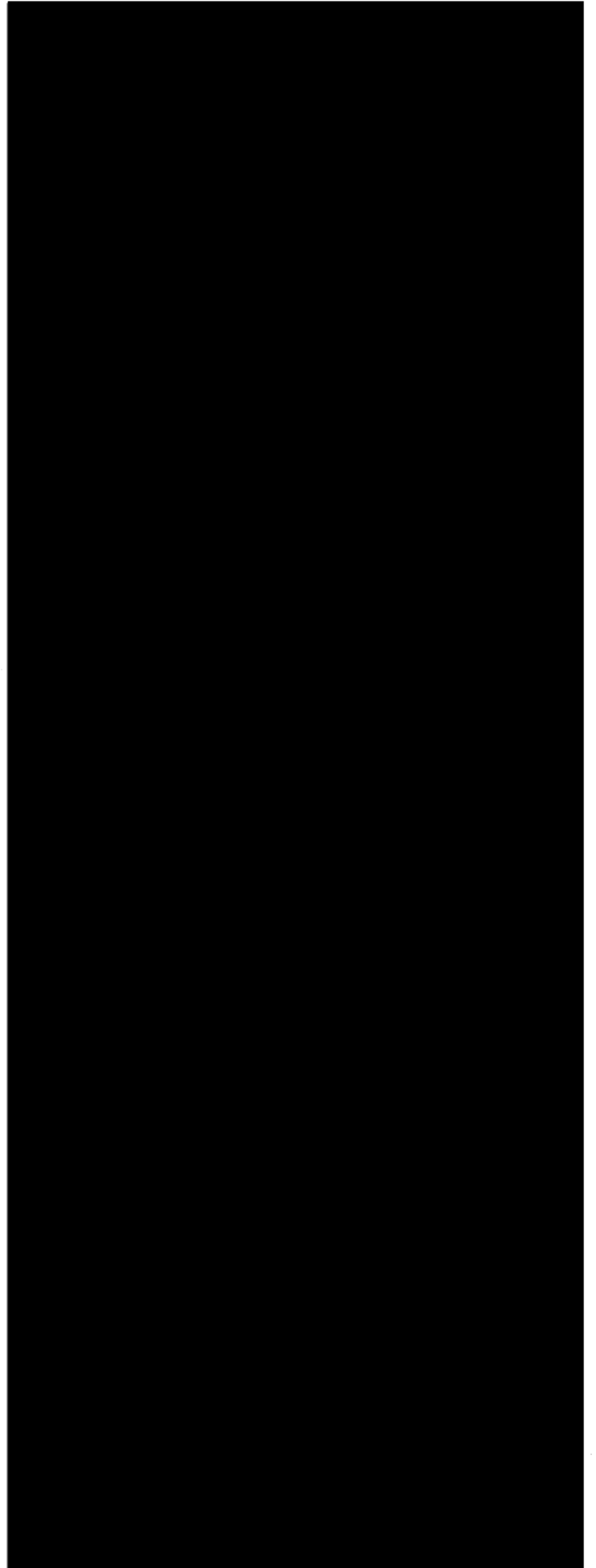
(2)
Name



Job Project Manager

Responsibilities

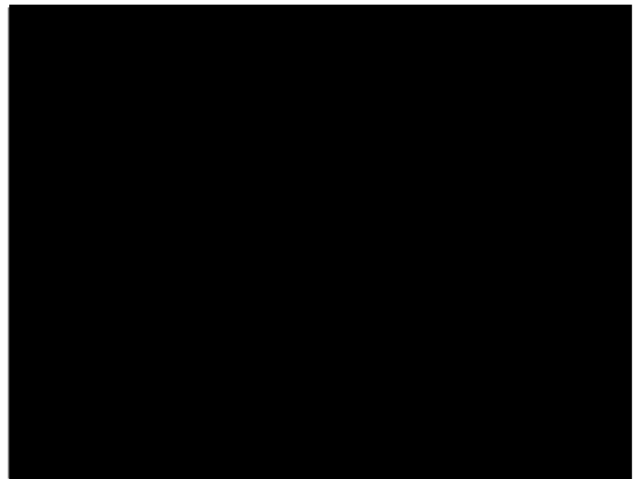




Qualificatio

Experience



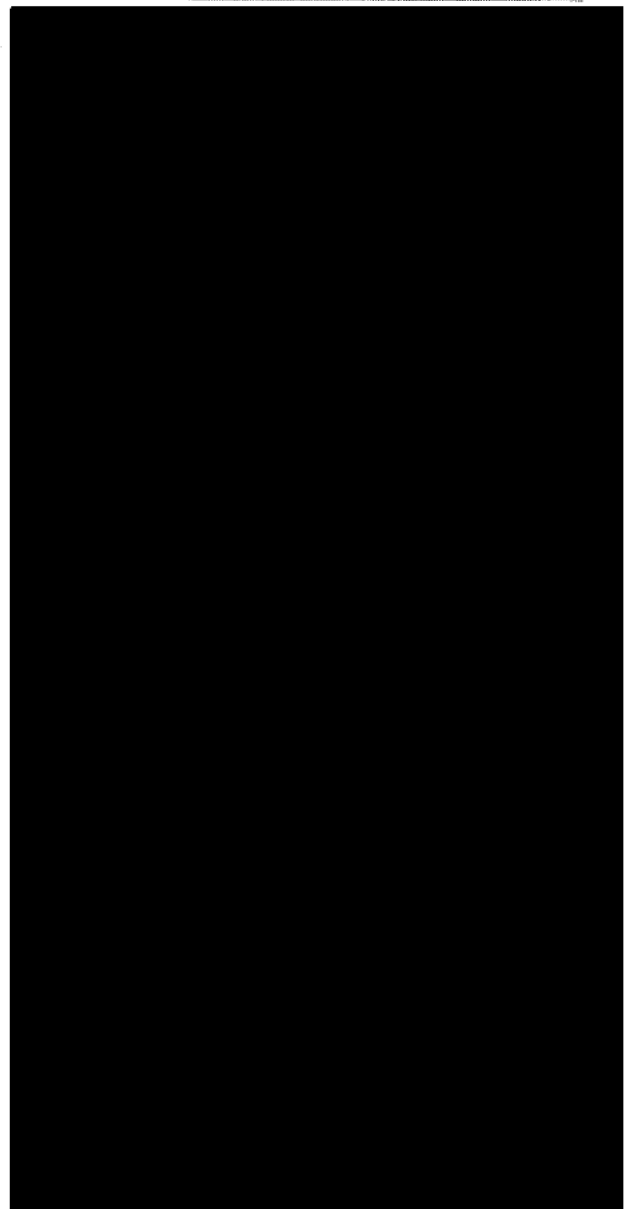


(3)
Name



Job Planning Manager

Responsibilities



Qualifications

Experience

(4)

Name

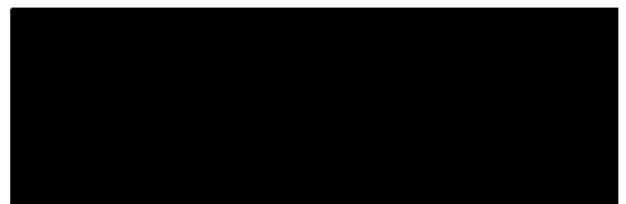
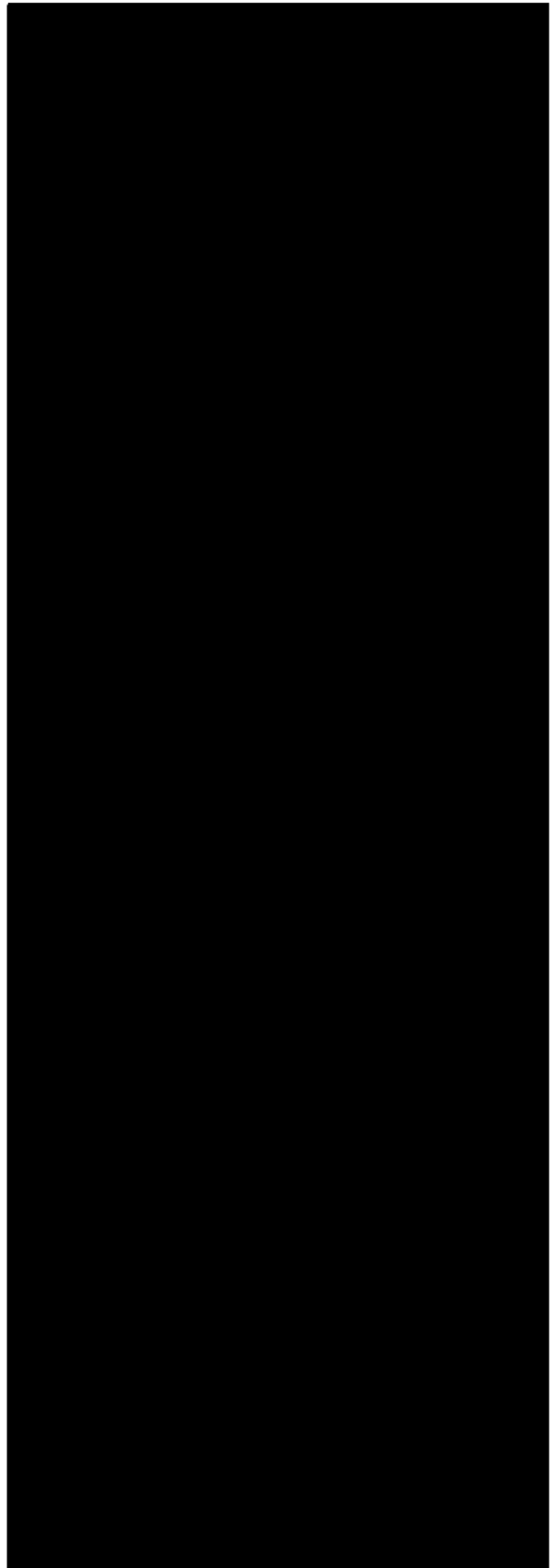
Job

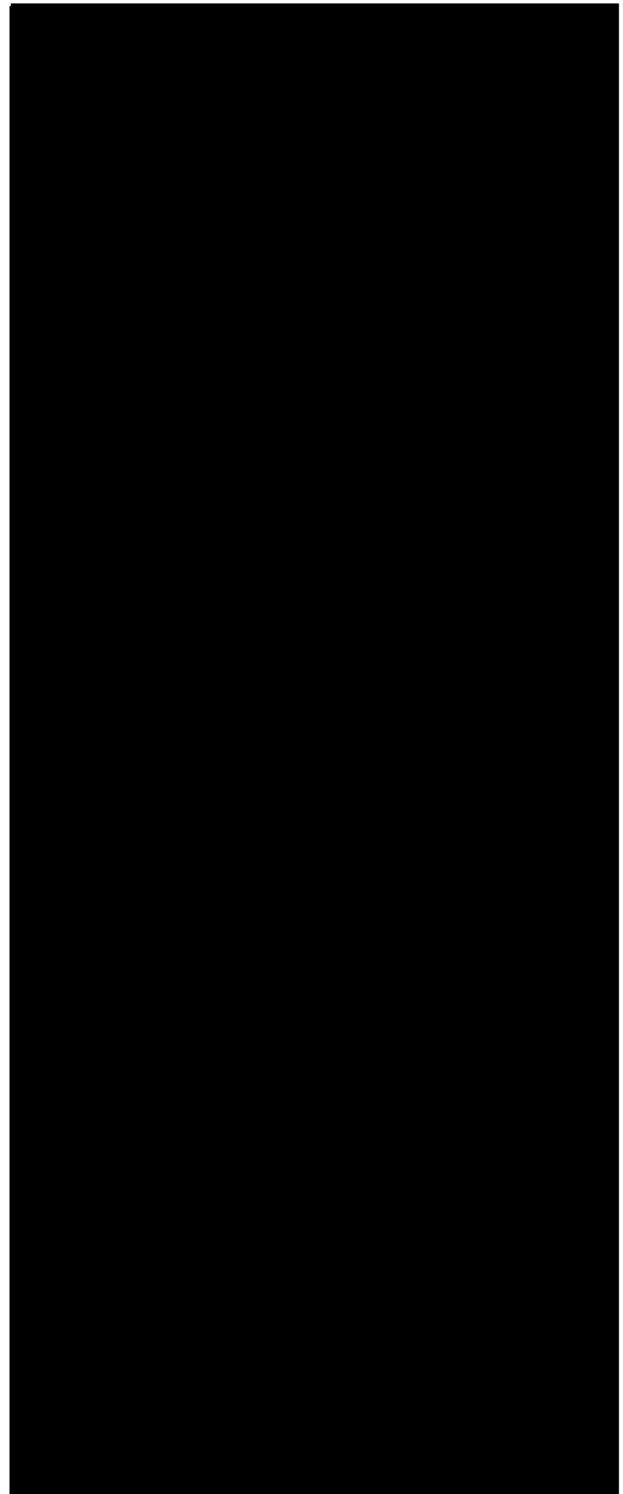
Construction Manager

Responsibilities

Qualifications

Experience



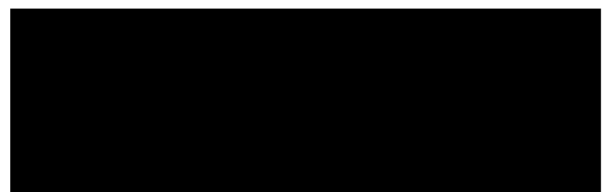


(5)
Name



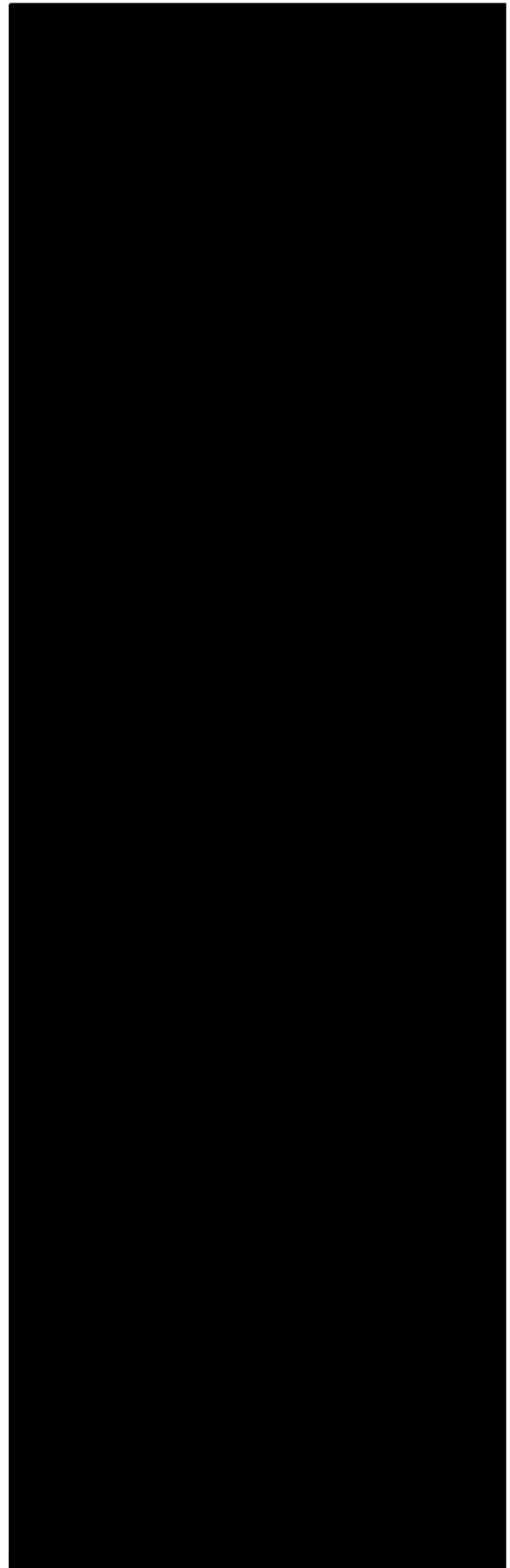
Job Senior Estimator

Responsibilities

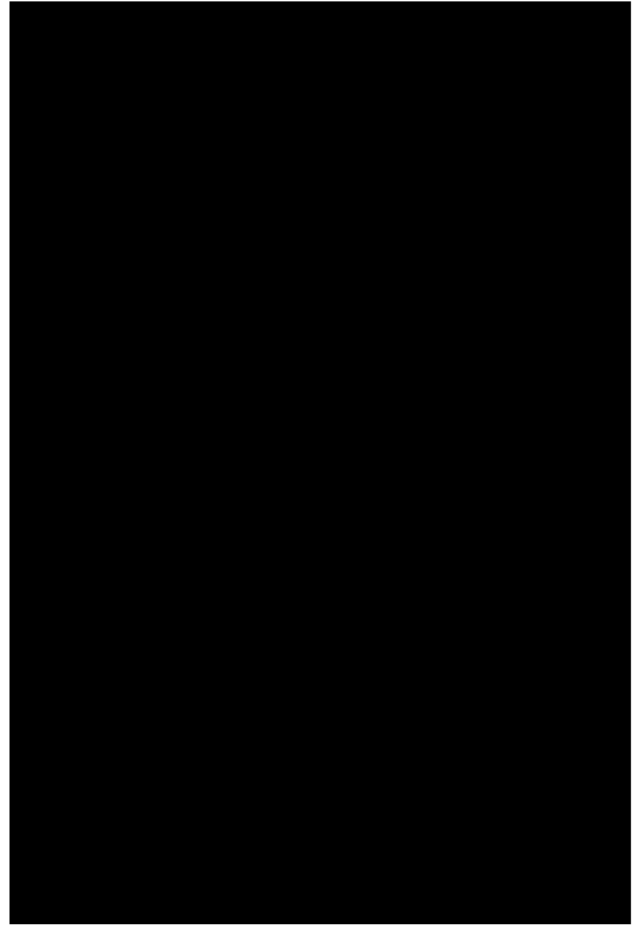


Qualifications

Experience







- The *staff rates* are

name/designation

Rate

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| name/designation | Rate |
|--------------------------|------|
| [Redacted Table Content] | |

Optional statements

- The *expenses* stated by the *Consultant* are

| item | amount |
|------|--------|
| | |

- The *Employer* provides access to the following persons, places and things

| access to | access date |
|-----------|-------------|
| | |