



**Ealing Council**

**Tender 1197**

**Part C – Sample Form of Contract**

**For**

**Architectural Services**

**at**

**Lot 1: Land at West End Gardens**  
**Lot 2: Land rear of Doncaster Drive**  
**Lot 3: Land on Hotspur Road**

**Northolt**

**Front sheet**

**Ealing Council**

**- and -**

**[to be entered]**

**Conditions of contract for Architectural  
Services at [to be entered]**

This Contract is dated the ..... day of ..... 2015

**EXECUTED as a DEED for and on behalf of the Council of the London Borough of Ealing by affixing the Common Seal of the Council in the presence of:**

Signature : .....

Name IN CAPITALS : .....  
Director of Legal and Democratic Services

LBE SEAL BOOK

Vol, No.

Date : .....

**EXECUTED as a DEED for and on behalf of [to be entered]**

Signature : .....  
Director

Signature : .....  
Director/Secretary

Date : .....

## 1. Parties

- 1.1 **The Council : The Council of the London Borough of Ealing** of Town Hall, New Broadway, Ealing, London W5 2BY
- 1.2 **The Architect : to be entered** (company no: **to be entered**) whose registered address is **to be entered**
- 1.3 The **Council** and the **Architect** are the **Parties** to this contract (“the **Contract**”); individually, they are each a **Party** to the Contract.
- 1.4 Where the context allows or requires, **Council** and **Architect** include employees, agents, contractors and sub-contractors of the relevant **Party**.
- 1.5 The Council intends to carry out regeneration of land on **[West End Gardens] or [to the rear of Doncaster Drive] or [on Hotspur Road] - deleted as appropriate** in Northolt (“the **Project**”).
- 1.6 The Council wishes to appoint the Architect to provide architectural design and planning services in connection with the Project.

## 2. Contract

- 2.1 The Council hereby appoints the **Architect** under the Contract to perform architectural design and planning services in connection with the Project (“the **Services**”) in accordance with the terms and conditions of the Contract, and the specification at schedule 1 (“the **Specification**”).
- 2.2 This **Contract** comprising these terms and conditions and schedules 1, 2 and 3 is the sole and entire contract between the **Parties** for the provision of the **Services** in relation to the Project and, save as expressly provided herein, supersedes all prior negotiations, submissions and undertakings in respect of the **Services**.
- 2.3 For the avoidance of doubt, where a conflict exists between the **Architect’s** offer and this **contract** then the terms of the **contract** shall have precedence

## 3. Provision of the Services

- 3.1 The **Architect** shall provide the **Services** from the **Commencement Date** until the **End Date** which shall be the earlier of the date on which (i) the Architect completes the Services; or (ii) either Party terminates the Contract in accordance with the Contract terms. The Architect shall perform the Services with all the due skill, care and diligence reasonably expected of a competent and professional architect experienced in providing architectural services of the same nature, size, scope and complexity as the Services.
- 3.2 In performing the **Services** the Architect shall:

- 3.3.1 perform the Services so far as is reasonably practical, in accordance with the Specification, and without undue delay;
- 3.3.2 advise the **Council** on progress in delivery of the Services and of any issue that may affect the delivery, cost, or quality of the Project;
- 3.3.3 when so authorised by the **Council**, act as the **Council's** representative in dealing with any other party;
- 3.3.4 advise on compliance with any statutory requirements, Acts of Parliament, European Community Law, Local Authority requirements or by-laws;
- 3.3.5 co-operate with other persons and organisations appointed by the **Council** in connection with the Project;
- 3.3.6 make no material alteration to the to the **Services** or an approved design without the consent of the Council;
- 3.3.7 except with the Council's consent (which will not be unreasonably withheld) not subcontract any part of the work.

#### **4. Management of the Contract**

- 4.1 The **Council** will notify the **Architect** of the **Council Contract Manager ("CCM")** who is authorised by the **Council** to manage the **Contract** on its behalf at a day-to-day operational level and to exercise all powers of the **Council** in relation to the **Contract**.
- 4.2 If the **Architect** requires any explanation or clarification of the **Services** it shall apply to the **CCM**, and shall accept and comply with the **CCM's** explanation or direction. Nothing contained in any consent, approval, or agreement given by the **Council** or the **CCM** in connection with the **Architect's** performance of the **Services** shall modify or affect or otherwise relieve the **Architect** from any of its obligations to the Council under the Contract.
- 4.3 From time to time the **CCM** or the **Council** may appoint one or more other persons to act in his place, either generally or for specified periods or purposes. The **CCM** shall notify the **Architect** of any such appointments he may make.
- 4.4 The **Architect** shall appoint a competent, qualified and experienced **Service Delivery Manager ("SDM")** to manage the **Services** on its behalf. The **SDM** shall be authorised to act on behalf of the **Architect** for all purposes connected with the **Contract** and any statement or direction given to the **SDM** shall be deemed to have been given to the **Architect**.
- 4.5 The **SDM** shall make himself available during normal working hours to be contacted and to work in connection with the **Services**. Normal working hours are 09.00 to 17.30 on all days of the week except Saturdays, Sundays and public holidays in

England. If the **SDM** is unavailable because of holiday, sickness or statutory daily breaks, he shall nominate a deputy to perform the duties of the **SDM**.

- 4.6 The **Architect** shall be responsible for the activities of its personnel engaged in the provision of the **Services**. The **Architect's** personnel includes employees, agency staff and sub-Architects. The **Architect** shall engage sufficient competent, qualified and experienced personnel to ensure that the **Services** are provided at all times and in all respects in accordance with the **Specification**, the **Architect's Tender** and the terms and conditions of this Contract.
- 4.7 The **CCM**, acting reasonably, may require the **Architect** to remove any such personnel from the provision of the **Services** by giving the **SDM** written notice to that effect, stating the reasons. The **Architect** shall forthwith remove such personnel as may be required by the **CCM** from the provision of the **Services** and shall as soon as reasonably possible provide a replacement of appropriate skills and experience. For the avoidance of doubt, removal of **Architect's** personnel from the provision of the **Services** does not mean dismissal from the employment of the **Architect** and the **Council** shall not be liable either to the **Architect** or to any of its personnel in respect of any liability, loss or damage occasioned by removal from the provision of the **Services**.
- 4.8 The **SDM** shall meet with the **CCM** as often as is reasonably necessary to monitor the performance of the **Contract** and to ensure that it is performed in a continuous, effective and efficient manner and in accordance with the **Specification** and the terms and conditions of the Contract. The **Architect** shall allow the **Council** access at all reasonable times and on reasonable notice to all records and information relating to the **Contract**, to any of the **Architect's** personnel and to all resources and systems used by the **Architect** in connection with the **Contract** to inspect work undertaken as part of the **Services**.

## **5. Payment**

- 5.1 In consideration of the **Architect** fully performing its obligations under the **Contract**, the **Council** shall pay the **Architect** the **Price** in accordance with this clause 5.
- 5.2 The **Price** shall be calculated in accordance with the Architect's fee offer in schedule 3
- 5.3 The **Council** shall pay to the **Architect** 60% of the fee at submission of a detailed Planning Application, 30% of the fee at receipt of planning consent, 10% of the fee upon the discharge of planning conditions, if any, that can reasonable be the responsibility of the **Architect** (as opposed to the Building Contractor).

- 5.4 The **Council** will pay to the **Architect** any disbursements authorised or reasonably incurred on receipt of a valid invoice.
- 5.5 The **Architect** shall submit VAT invoices to the **CCM** in respect of the **Services** provided. Invoices will not be considered correct and valid unless they include the number of the relevant purchase order.
- 5.6 The **Council** shall pay each invoice, subject to any permissible deductions and together with Value Added Tax at the appropriate rate, within thirty days of receipt.

## **6. The Architect's Specific Obligations**

- 6.1 The **Architect** shall, at its own cost, provide all necessary premises, facilities, equipment, materials, computer software, personnel and anything else required for the proper performance of the **Contract**.
- 6.2 The **Architect** shall at all times comply with:
  - 6.2.1 the requirements of the Health and Safety at Work etc. Act 1974, the Management of Health and Safety at Work Regulations 1999 and all other statutory provisions relating to health and safety;
  - 6.2.2 all statutory requirements required to be observed and performed in connection with the **Contract**;
  - 6.2.3 anti-money laundering legislation
  - 6.2.4 the Council's Counter-fraud, Corruption and Whistle-blowing policies and
  - 6.2.5 all other Council policies insofar as they have been provided to the Architectand shall co-operate with the Council in legal proceedings and in enquiries by Scrutiny Committees of the Council or the Local Government Ombudsman.
- 6.3 The **Architect** shall adopt a policy to comply with the requirements of all equal opportunities legislation and shall not treat an individual or a group of people less favourably than others because of colour, race, nationality, ethnic origin, religion, faith or belief, sex, sexual orientation, disability or age and, further, shall seek to promote equality among its personnel and generally. The **Architect** shall set out its equal opportunities policy in instructions to those concerned with recruitment, training or promotion, in documents available to its personnel and recognised trade unions or other representative groups of its personnel and in its advertisements and literature. The **Architect** shall take all reasonable steps to ensure that its personnel do not act towards the Council's residents, customers, personnel or members of the public in a manner that could amount to discrimination on any of the grounds mentioned in this clause 6.3.

- 6.4 The **Architect** shall not ask for or accept any gratuity, tip or any other form of money-taking or reward in connection with the **Contract**, other than the **Price**.
- 6.5 The **Architect** shall not speak to the press or broadcasting media about any matters connected with the **Contract**, except with the prior consent of the **CCM**. The **Architect** shall not advertise its provision of the **Services** to the **Council** or use the Council's corporate logo, coat of arms or name without the prior consent of the **CCM**.
- 6.6 The **Architect** shall co-operate fully with any enquiry or investigation made by the **Council's** internal or external auditors, or any other quality or performance inspectors, that in any way concerns the **Contract** or any sums claimed or charged in relation to the **Contract**. The **Council** may use information given by the **Architect** in connection with the **Contract** to prevent and detect fraud and money-laundering; it may also share this information, for the same purpose, with other organizations that handle public funds.
- 6.7 The **Architect** shall maintain (and shall ensure any sub-contractor maintains) throughout the **Contract**:
- 6.7.1 public and product liability insurance (including an indemnity of principals clause) of not less than £5 million; and
  - 6.7.2 employer's liability insurance (including an indemnity of principals clause and complying with the Employer's Liability (Compulsory Insurance) Act 1969) of not less than £10 million; and
  - 6.7.3 (for a period of twelve years after the **End Date**) professional indemnity insurance of not less than £5 million.
- The **Architect** shall produce written proof upon each policy renewal date that it has complied with this clause.
- 6.8 The **Architect** shall be liable to the Council for all reasonably foreseeable and fully mitigated liabilities, actions, damages, costs, losses, claims, expenses, demands and proceedings whatsoever arising directly from the breach by the **Architect** of any of its obligations under the **Contract** or which the **Architect** ought reasonably to have foreseen as being the probable result of its breach of any of its obligations under the **Contract**.
- 6.9 In accordance with the Contracts (Rights of Third Parties) Act 1999 the **Architect** hereby confers third party rights on any first purchaser of a legal interest in the sites or any buildings constructed there on provided such buildings were constructed in accordance with the **Services** provided by the **Architect**.
- 6.10 The **Architect** warrants :



- 6.10.1 that it will, on request, disclose to the **Council** accurate information as to the identity of its employees engaged wholly or mainly in delivering the **Services**;
  - 6.10.2 that it will indemnify the **Council** for any injuries, discrimination, harassment or harm of any sort suffered by any of those employees in the course of their employment by the **Architect**; and
  - 6.10.3 at the end of the **Contract**, it will co-operate fully and effectively with the **Council** and any subsequent Architect to ensure a smooth transition from one contract to another.
- 6.11 In so far as the **Contract** involves the **Architect** in processing data within the meaning of the Data Protection Act 1998, the **Architect** shall act only on the instructions of the **Council** when processing such data and shall put in place and maintain appropriate security measures to protect against unauthorised or unlawful processing or accidental loss or destruction of personal data.
- 6.11 Subject to any exemptions applicable, the **Architect** shall comply fully with any application for information made pursuant to the Freedom of Information Act 2000.

## **7. Contract Changes**

- 7.1 Either **Party** may propose a change to the **Contract**, including but not limited to the **Services**
- 7.2 If the proposal is agreed by the other **Party** or agreed subject to amendments, the contract change shall be recorded in writing on behalf of the **Parties**. If the proposal is not agreed by the other **Party**, the contract change shall not take effect.

## **8. Termination of the Contract**

- 8.1 If the **Architect** commits a material breach of any of its obligations under the **Contract**, the Council may give the **Architect** twenty working days notice to remedy the breach. If the breach is not remedied within that time, or if the breach is not capable of remedy, the **Council** may terminate the **Contract** by giving the **Architect** three months notice in writing.
- 8.2 The **Council** may terminate the **Contract** immediately by giving the **Architect** notice in writing if:
- 8.2.1 the **Architect** becomes bankrupt or insolvent, is in circumstances which entitle the Court or a creditor to appoint or have appointed a receiver, manager or administrative receiver, has a provisional liquidator appointed or has a winding-up order made;

- 8.2.2 the **Architect** (or anyone acting on behalf of the **Architect**, with or without the **Architect**'s knowledge) offers or gives or agrees to give any person any gift or consideration of any kind or value as an inducement or reward for doing or not doing anything in relation to obtaining the **Contract** or for showing or not showing favour or disfavour to any person in relation to the **Contract**; or
- 8.2.3 the **Architect** (or anyone acting on behalf of the **Architect**, with or without the **Architect**'s knowledge) commits any offence under the Prevention of Corruption Acts 1889 to 1916.

## **9. Assignment and Sub-letting**

- 9.1 The **Council** shall be entitled to assign the **Contract** to another public body or a Registered Social Landlord on the **Council**'s list of preferred partners.
- 9.2 The **Council** has selected the **Architect** to perform the **Contract** and the **Contract** is personal to the **Architect**. Accordingly, the **Architect** shall not assign its interest in the **Contract** (including to a purchaser of the **Architect**'s business) nor use the **Contract** as security nor sub-contract any of its obligations under the **Contract** without first obtaining the consent in writing of the **Council**, such consent not to be unreasonably withheld or delayed.
- 9.3 Any failure by an approved sub-Architect to perform the **Contract** in accordance with its terms and conditions shall be treated as a failure of the **Architect**.

## **10. Copyright**

- 10.1 The copyright in all drawings, reports, specifications, calculations and other similar documents ("the **Documents**") produced or provided by the **Architect** in connection with the **Contract** remain vested in the **Architect**.
- 10.2 The **Architect** grants to the **Council** a non-exclusive, royalty-free, irrevocable (subject to the right to suspend set out in clause 10.5 below) non-exclusive licence to use, copy, reproduce the **Documents** and designs contained therein for any purpose related to the Project including but not limited to the construction, completion, maintenance, letting, sale, promotion, advertisement reinstatement and repair of the Project. Such licence:
- a) shall enable the Council to copy and use the drawings and other documents for any extension of the Project;
  - b) continue notwithstanding termination or other determination of the Architect's engagement under the Contract;
  - c) confer the Council's right to grant sub-licences;

and

d) is transferable to third parties.

- 10.3 The **Architect** shall not be liable for any use of the **Documents** for any purpose other than that for which they were prepared.
- 10.4 The **Architect** hereby warrants and undertakes that any documents referred to in clause 10.1 and all other products and services shall be original to him and their use by the **Council** in accordance with clause 10.2 shall not infringe the copyright, design rights, moral or intellectual rights, or any other rights of any other third party.
- 10.5 The **Architect** may suspend such licence if, and for so long as the **Council** is in breach of its payment obligations under this contract by giving not less than 7 days notice of its intention to do so.

## **11. Law of the Contract and Jurisdiction and dispute resolution**

- 11.1 This **Contract** shall be governed by the laws of England and Wales and subject to the exclusive jurisdiction of the Courts of England and Wales.
- 11.2 Should any dispute or difference arise between the **Architect** and the **Council** under the contract either Party may, at any time, by written notice to the other require that such dispute or difference be referred for determination by adjudication in accordance with the Technology and Construction Solicitors Association ("TeCSA") adjudication rules, the latest edition of which are deemed to apply upon such notice and to be incorporated by reference into this clause, subject to the following provisions:
- 11.2.1 The Parties shall, within four days of written notice referred to above being issued, attempt to agree upon a suitable Adjudicator to carry out the adjudication, prior to either Party applying to the Chairman of TeCSA for a nomination;
- 11.2.2 Both the **Architect** and the **Council** agree that if a dispute or difference to be referred to adjudication raises issues which are substantially the same or connected with issues raised in a related dispute or difference between the Council and any other party associated with the Project and if the related dispute has already been referred to an Adjudicator, then the Parties shall use reasonable endeavours to ensure that any dispute is referred to the same Adjudicator appointed to determine the related dispute; and such Adjudicator shall have power to make directions in the same way as if the procedure of the High Court as to joining one or more defendants or joining co-defendants or third parties was available to the Parties and to the Adjudicator.

- 11.2.3 Any meeting with the Adjudicator shall be held in London unless the Adjudicator considers that another venue would be more appropriate.
- 11.2.4 Notwithstanding the existence of a dispute or difference following the service of a notice and unless the Contract has been terminated the **Architect** and **Council** shall continue to perform their obligations under the Contract.
- 11.2.5 Rules 14 and 17 of the TeCSA Adjudication rules 2002 v2.0 or such similar rules as may be incorporated into a subsequent revision shall not apply.
- 11.3 The decision of the Adjudicator appointed under clause 11.2 above shall be binding on both Parties until the earlier of the completion or alleged completion of the services or the determination of the Contract whereupon any Party may refer the same dispute or difference or any other dispute or difference to the jurisdiction of the Courts. For the avoidance of doubt no decision of an Adjudicator on any question shall be binding on the Courts.
- 11.4 The Parties acknowledge that, if and to the extent that any decision of the Adjudicator or any part of it is inconsistent with any subsequent decision of the Courts, they may suffer loss as a result if the interim implementation of the Adjudicator's decision or that part of it. Any such loss may be recovered as an additional head of damages at the discretion of the Courts.

Appended documents:

Schedule 1 – Specification of Services

Schedule 2 – site plan

Schedule 3 – Architects offer (the form of tender)