



Norfolk County Council

Community and Environmental Services
County Hall
Martineau Lane
Norwich
NR1 2SG

[Redacted]
Highways England
Woodlands
Manton Lane
Bedford
MK41 7LW

NCC contact number: [Redacted]
Text relay no.: [Redacted]

Your Ref:
Date: 01 October 2018

My Ref:
Tel No.: [Redacted]
Email: [Redacted]

Dear [Redacted]

Agreement to Provide Civil Engineering Consultancy Services

We are writing to confirm the terms of our agreement concerning the provision of Civil Engineering Consultancy Services to You by WSP UK Limited (the "Main Consultant"). Individual commissions or "Services" under this agreement will be set out in separate Task Orders agreed between Highways England, Norfolk County Council and WSP UK Limited.

1. INTRODUCTION

- 1.1 Norfolk County Council, (the "Council" has entered into the Main Contract, attached as Annex 1 (the "Main Contract") on the understanding between the parties (and as set out in clause Z17.1 of the Main Contract) that it would allow other local authorities and public bodies to access the services provided by the consultants under the Main Contract through them.
- 1.2 This Agreement will operate on a "back-to-back" basis with the Council in accordance with the provisions set out below.
- 1.3 "The Main Consultant" is defined as WSP UK Limited whose registered office is at WSP House, 70 Chancery Lane, London, WC2A 1AF. WSP UK Limited is the successor in title to Mouchel Limited, Mouchel Limited being named originally as the "Provider" under the Main Contract.
- 1.4 "You" is defined as Highways England Company Limited whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ utilising the Council's Contract for delivery of services.
- 1.5 "Consultant" is defined as other consultants apart from the Main Consultant associated with the delivery of the commissioned service or project as part of the Main Contract.

- 1.6 Individual commissions or "Services" under this agreement will be set out in separate Task Orders agreed between Highways England, Norfolk County Council and WSP UK Limited. In the case of any difference, discrepancy or conflict between the terms of a Task Order and Annex 1, the Task Order shall take precedence.

2. COMMENCEMENT AND DURATION

- 2.1 This Agreement shall be effective from 01 October 2018 (the "Commencement Date") and shall continue in force until the parties have discharged all their obligations under it unless:
- 2.1.1 the Main Contract is terminated for any reason, in which case this Agreement shall terminate immediately and automatically, without further action being necessary by the parties, and subject to all the rights of the parties accrued up to the date of termination; or
- 2.1.2 this Agreement is terminated by one of the parties under clause 6.1.

3. BACK – TO – BACK ARRANGEMENTS

- 3.1 As provided or by clause Z17.1 of the Main Contract the Main Consultant will provide the Services on the Council's behalf, to You further to your request to the Council. In doing so, You shall have in full all the rights, privileges, options and protections that the Council has in the Main Contract.
- 3.2 Except as further provided in this Agreement, the Main Contract shall be used to determine the respective rights and duties of the Council and You under this Agreement except wherever in the Main Contract there is a reference to the Council or a term referring to the Council, for the purposes of this Agreement that will be taken as also including a reference to You.
- 3.3 The Council will use its best endeavours to procure that the Main Consultant provides You with a Collateral Warranty as provided for by clause Z17.4 and Annex B of the Main Contract.

4. INDEMNITY AND DISPUTES

- 4.1 Subject to clauses 4.2 and 4.3 You will indemnify the Council against all losses, claims, demands, costs and expenses incurred or suffered by the Council including all claims for liquidated damages (and or compensation events) by the Consultant against the Council as a direct result of the Council allowing You to participate in the Main Contract and having accepted Your request to receive the Services from the Main Consultant.
- 4.2 You will not be liable to indemnify the Council under clause 4.1 where any such losses, claims, demands, costs and expenses are incurred or suffered as a result of the Council's own negligent actions, negligent omissions breach of contract or breach of statutory duty.
- 4.3 Save where arising (i) as a result of death or personal injury to any person caused by Your negligence or (ii) fraud or fraudulent

misrepresentation by You Your liability to the Council under clause 4.1 of this Agreement shall not exceed one hundred thousand pounds (£100,000).

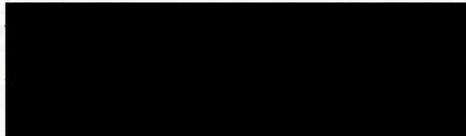
- 4.4 The Council will give You notice in writing as soon as possible after it becomes aware of any dispute between the Council and one or more of the Consultants arising out of the Main Contract.
- 4.5 Save where clause 4.2 applies You will deal with any disputes that arise between the Council and the Consultants under the Main Contract as a consequence of this Agreement, and shall control and pay in full for any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure in which the Council might be involved. Where clause 4.2 applies the Council will be responsible for dealing with any dispute, to include controlling and paying in full for any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure that follows.
- 4.6 You will:
 - 4.6.1 On demand, pay to the Council the amount of all reasonable costs and expenses incurred by the Council in connection with enforcing or preserving any rights under, or monitoring the provisions of this Agreement, and any other document referred to in it save where any such actions under this clause have become necessary as a result of the Council's negligent actions or negligent omissions, breach of contract or breach of statutory duty; and
 - 4.6.2 Indemnify the Council against any costs, loss or liability the Council incurs in relation to the Services including all costs, fees, duties and taxes payable in respect of this Agreement and any other document referred to in it save where any such costs, loss or liability are incurred or suffered as a result of the Council's own negligent actions or negligent omissions, breach of contract or breach of statutory duty.
 - 4.6.3 Save where arising (i) as a result of death or personal injury to any person caused by Your negligence or (ii) fraud or fraudulent misrepresentation by You Your liability to the Council under clause 4.6.1 of this Agreement shall not exceed one hundred thousand pounds (£100,000).

5. FEES

- 5.1 You will pay to the Council as full consideration for the performance by the Council of its duties under this Agreement the Charges estimated and set out in each individual Task Order, subject to Clause 5.2.
- 5.2 If You or the Council become aware that the actual Charges payable by You under Clause 5.1 will exceed the estimated sums set out in the Task Order, either party will as soon as practicable provide notification to the other and shall, acting reasonably, discuss and

agree the matters referred to in the notification. Any variations to the Charges in the Task Order that are agreed in writing are valid without the need to amend or vary this Agreement in accordance with Clause 8.

- 5.3 If the parties, acting reasonably, fail to agree pursuant to clause 5.2, the Council or You shall be entitled to terminate this Agreement and the provisions of clause 6.2 and 6.4 shall apply.
- 5.4 You will pay the Council any amounts due to the Council by bank transfer within 30 days of date of any invoice, unless otherwise stated in this Agreement.
- 5.5 The Council's bank details are:



6. TERMINATION

- 6.1 Without prejudice to any rights that have accrued under this Agreement or any of its rights or remedies, either party may terminate this Agreement with immediate effect by giving written notice to the other party if:
 - 6.1.1 the other party commits a material breach of this Agreement and (if such breach is remediable) fails to enter discussions to remedy that breach within a period of 14 days after being notified in writing to do so and fails to as soon as practicable, remedy that breach in accordance with the agreed outcome of the discussions;
 - 6.1.2 the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this Agreement.
- 6.2 The Council or You may terminate this agreement with immediate effect by serving a written notice on the other party if following discussions pursuant to clause 5.2, the parties cannot agree a satisfactory resolution.
- 6.3 The Council may terminate this agreement with immediate effect by serving a written notice on You if You fail to pay any amount due under this Agreement on the due date for payment and remain in default not less than 14 days after being notified to make such payment.
- 6.4 If this Agreement is terminated by the Council for cause,
 - 6.4.1 it is Your responsibility to ensure that all works to the highways that are in progress at the date on which termination becomes effective are completed and/ or both parties are satisfied that the highway is safe; and

6.4.2 the parties agree such termination shall be at no loss or cost to the Council and You hereby indemnify the Council against any such losses or costs which the Authority may suffer as a result of any such termination for cause. Your liability under this clause 6.4.2 shall not exceed one hundred thousand pounds (£100,000).

7. NO PARTNERSHIP OR AGENCY

7.1 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party except as expressly provided.

7.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

8. VARIATION

This Agreement may only be varied by a document signed by both You and the Council.

9. THIRD PARTY RIGHTS

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

10. GOVERNING LAW

This Agreement 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.

11. JURISDICTION

The courts of England shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

Please sign and return the enclosed copy of this letter to acknowledge your agreement to this Agreement.

Signed for and on behalf of Norfolk County Council

Date 7/11/18

Signatory 1.....

Signatory 2.....

Section 151 Officer -

Signed for and on behalf of Highways England

Date *4th March 2019*

Signed 

..... 

Print name

..... *Procurement Delivery Partner*

Job Title

Annex 1

Main Contract Between the Council and the Main Consultant

See attached .pdf file

