

[ADDRESSEE]

[ADDRESS LINE 1]

[ADDRESS LINE 2]

[POSTCODE]

[DATE]

Dear [ADDRESSEE],

[PROJECT DESCRIPTION] (Project) at [PROPERTY DESCRIPTION] (Property)

Thank you for appointing us to act as Consultant for your project. We will perform the Services, subject to the following conditions:

1. DEFINITIONS AND INTERPRETATION

The following definitions and rules of interpretation apply in this appointment:

1.1 Definitions:

Architectural Services Agreement: the agreement between us and NWLDC in relation to the Frontage Improvement Scheme for the provision of architectural services to you in respect of your application to the Frontage Improvement Scheme.

Business Day: a day other than a Saturday, Sunday or public holiday in England.

Construction Products Regulations: the Construction Products Regulations 2013 (SI 2013/1387) and the Construction Products Regulation (305/2011/EU).

Frontage Improvement Scheme: the Frontage Improvement Scheme for Coalville town centre

Material: all designs, drawings, models, plans, specifications, design details, photographs, brochures, reports, notes of meetings, CAD materials, calculations, data, databases, schedules, programmes, bills of quantities, budgets and any other materials provided in connection with the Project and all updates, amendments, additions and revisions to them and any works, designs, or inventions incorporated or referred to in them for any purpose relating to the Project.

NWLDC: North West Leicestershire District Council

Services: as defined at schedule 1 of this agreement

1.2 Paragraph and Schedule headings shall not affect the interpretation of this appointment.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.

1.4 A reference to a **company** shall include any company, corporation or other body corporate, wherever and however incorporated or established.

1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.

1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

1.7 This appointment shall be binding on, and ensure to the benefit of, the parties to this appointment and their

respective personal representatives, successors and assigns, and references to any party shall include that party's personal representatives, successors and permitted assigns.

1.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

1.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.10 Any reference to a party's **consent** or **approval** being required is to a consent or approval in writing which must be obtained before the relevant act is taken or event occurs.

1.11 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.

1.12 A reference to **writing** or **written** includes fax and email.

1.13 References to paragraphs and Schedules are to the paragraphs and Schedules of this appointment.

1.14 Any reference to an English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall, in respect of any jurisdiction other than England, be deemed to include a reference to that which most nearly approximates to the English legal term in that jurisdiction.

1.15 A reference to a document is a reference to that document as varied or novated (in each case, other than in breach of this appointment) at any time.

1.16 Unless this appointment otherwise expressly provides, a reference to the Property or the Project is to the whole and any part of it.

1.17 Unless otherwise expressly provided, the obligations and liabilities of the persons forming the parties under this appointment are joint and several.

1.18 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. OUR OBLIGATIONS

2.1 Subject to Paragraph 2.2, we warrant and undertake that we shall:

- (a)** comply with the terms of this appointment;
- (b)** not without both your and NWLDC's written consent, make any material change to the designs or specifications for the Project after they have been settled or approved;
- (c)** provide you with as many copies of the "as built" drawings of the Project as you reasonably require;
- (d)** carry out and fulfil, in all respects, the duties of a designer and principal designer under the Construction (Design and Management) Regulations 2015 (SI 2015/51);
- (e)** act fairly and impartially when exercising our power to issue certificates and award extensions of time under any building contract relating to the Project;
- (f)** regularly liaise with any building contractors or professional consultants engaged on the Project.

2.2 We warrant and undertake that we shall exercise all the reasonable skill, care and diligence to be expected of a qualified and experienced member of our profession undertaking the Services on works similar in scope and character to the Project:

- (a)** when performing the Services;

(b) not to specify for use in the Project any materials, equipment, products or kits, which, at the time of specification or use, are generally accepted, or generally suspected, in the construction industry at the relevant time as:

(i) posing a threat to the health and safety of any person;

(ii) posing a threat to the structural stability, performance or physical integrity of the Project or any part or component of the Project;

(iii) reducing, or possibly reducing, the normal life expectancy of the Project or any part or component of the Project;

(iv) not being in accordance with any relevant British Standard, relevant code of practice, good building practice or any applicable agrément certificate issued by the British Board of Agrément; or

(v) having been supplied or placed on the market in breach of the Construction Products Regulations;

(c) to comply with (and ensure the completed Project complies with) any statutory requirements, secondary legislation, regulations, bye-laws and planning agreements, obligations and consents; and

(d) to perform the Services and prepare all Material for those elements of the Project for which we are responsible according to the Project programme or, in the absence of a Project programme, in sufficient time to facilitate the efficient progress of the Project.

2.4 Our duties or liabilities under this appointment shall not be negated or diminished by any approval, inspection, test or omission to approve, inspect or test, by you or on your behalf.

2.5 Our services under this agreement are limited to the extent of the Project agreed by NWLDC under the Coalville Frontage Improvement Scheme.

2.6 Whilst on your premises we shall comply with your Security Requirements.

3. YOUR OBLIGATIONS

You will:

- (a)** Allow us reasonable access to the Property to enable us to comply with our obligations as identified at paragraph 2;
- (b)** Allow contractors reasonable access to the Property to enable them to complete the works.
- (c)** Attend at site meetings as necessary.
- (d)** Maintain security of your premises in accordance with your standard security requirements.
- (e)** Promptly notify us of any health and safety hazards which may exist or arise at your premises which may affect us in connection with the performance of our obligations under this Agreement.

4. OUR AUTHORITY

Notwithstanding any other provision of this appointment, other than in an emergency or with both your and NWLDC's prior written consent, we have no authority to:

(a) make or instruct any material alteration to the Project or your Services;

(b) vary, terminate or waive compliance with the terms of any building contract or professional appointment relating to the Project;

(c) enter into any contract, commitment or undertaking on your behalf; or

(d) without prejudice to Paragraph 2.1(d), issue any instruction or notice under a building contract or professional appointment relating to the Project that:

(i) delay the Project; or

(ii) increase the cost of the Project.

5. TERMINATION

5.1 With the written consent of NWLDC you may terminate our engagement under this appointment at any time by giving ten Business Days' notice in writing to us.

5.2 either you or us, with NWLDC's written consent, may immediately terminate our engagement under this appointment by giving written notice to the other party if:

(a) the other party is in material breach of its obligations under this appointment and fails to remedy such breach within ten Business Days of receiving written notice requiring it to do so; or

(b) the other party becomes insolvent as defined in section 113 of the Housing Grants, Construction and Regeneration Act 1996.

6. CONSEQUENCES OF TERMINATION

6.1 On termination in accordance with paragraph 5 you shall not be liable to us for:

(a) any costs, expenses, disbursements or losses;

(b) any loss of profits, loss of fees, loss of chance or other similar losses; or

(c) any indirect losses or consequential losses

arising out of termination of our engagement under this appointment.

6.2 Termination of our engagement under this appointment shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of this appointment which existed at or before the date of termination.

7. ASSIGNMENT AND SUB-CONTRACTING

We shall not sub-contract the performance of any of the Services without NWLDC's prior written consent. We shall be responsible for any services we sub-contract to a third party as if we had performed such services ourselves.

9. COPYRIGHT

9.1 We own all intellectual property rights (including copyright) relating to the Material we produce.

9.2 We grant you, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence to copy and make full use of any Material prepared by, or on behalf of, us for any purpose relating to the Project and the Property, including the design, construction, completion, reconstruction, modification, refurbishment, development, maintenance, facilities management, funding, disposal, letting, fitting-out, advertisement, decommissioning, demolition, reinstatement, building information modelling and repair of the Property and the Project.

9.3 The licence in Paragraph 9.2 allows you to use the Material in connection with any extension of the Project, but not to reproduce the designs contained in the Material in any such extension.

9.4 The licence in Paragraph 9.2 carries the right to grant sub-licences and is transferable to third parties without our consent.

9.5 You grant us, with immediate effect, an irrevocable, non-exclusive, non-terminable, royalty-free licence (or, as the case may be, sub-licence) including the right to grant sub-licences (or, as the case may be, sub-sub-licences), to copy and make full use of the Material produced by you or on your behalf (including any produced by a building contractor or another member of the professional team) for the purpose of performing the Services.

9.6 Neither we nor you shall be liable to each other for:

(a) any use of Material created by (or on behalf of) you for any purpose other than that for which that Material was prepared and/or provided; or

(b) any amendment or modification of Material, except where such amendment or modification:

(i) was made with the consent (not to be unreasonably withheld) of the party that produced it (or on whose behalf it was produced);

(ii) was made for a use permitted in Paragraph 7.2 or Paragraph 7.5 following termination of the engagement of the party that produced it (or on whose behalf it was produced) in relation to the Project.

9.7 You may at any time (whether before or after completion of the Services, or after termination of our engagement under this appointment) request a copy or copies of (some or all of) the Material from us. On your payment of our reasonable charges for providing the copy (or copies), we shall provide the copy (or copies) to you.

10. CONFIDENTIALITY

10.1 Neither you nor we shall at any time disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by Paragraph 10.2.

10.2 Each party may disclose the other party's confidential information:

(a) to its employees, officers, representatives, contractors, sub-contractors or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this appointment. 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 10; and

(b) as may be required by law, to a court of competent jurisdiction or any governmental or regulatory authority.

10.3 Neither you nor we shall use any other party's confidential information for any purpose other than to exercise our rights or perform our respective obligations under or in connection with this appointment.

11. PROFESSIONAL INDEMNITY INSURANCE

11.1 During the term, we shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Agreement, and shall produce to the you on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.

12. DISPUTES

Notwithstanding any other provision of this appointment either we or you may refer a dispute arising under this appointment 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.

13. LIMITATION OF LIABILITY

13.1 We shall not be responsible for any injury, loss, damage, cost, or expense suffered by the you if and to the extent that it is caused by your negligence or wilful misconduct or by breach of your obligations under this agreement.

13.2 Our aggregate liability in respect of all defaults, claims, losses or damages howsoever caused, whether arising from breach of this agreement, the supply or failure to supply Services, misrepresentation (whether tortious or statutory), tort (including negligence), breach of statutory duty or otherwise shall in no event exceed in aggregate the indemnity limit of any applicable insurance policy maintained (or which should have been maintained pursuant to this Agreement of the amount which would have been paid out but for our doing something to vitiate the insurance) by us.

13.3 Nothing in this agreement shall exclude or limit our liability for:

- (a) death or personal injury caused by your negligence; or
- (b) fraud or fraudulent misrepresentation.

14. NOTICES

14.1 Any notice or other communication given to a party under or in connection with this appointment shall be in writing and shall be:

- (a) delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or
- (b) sent by fax to its main fax number.

14.2 Any notice or communication shall be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address;
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting or at the time recorded by the delivery service; or
- (c) if sent by fax, at 9.00 am] on the next Business Day after transmission.

14.3 This *Paragraph 14* does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

15. LIABILITY PERIOD

Neither party shall commence any legal action against the other under this appointment after six years from the date of making good of defects of all of the Project and any adjudicator's decision under Paragraph 12 of this appointment shall be finally binding on both of us unless either party has referred that dispute for final determination by legal proceedings, or has commenced any legal action to recover any overpayment to which the decision has led, before that date.

16. THIRD PARTY RIGHTS

A person who is not a party to this appointment shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this appointment.

17. SCOPE OF APPOINTMENT

17.1 This appointment takes effect from the date when we commence performance of the Services, regardless of the date of this appointment.

17.2 This appointment constitutes the entire agreement between us and you and supersedes and extinguishes all previous appointments, agreements, promises, assurances, warranties, representations and understandings between us and you, whether written or oral, relating to its subject matter.

17.3 Each party acknowledges that in entering into this appointment it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this appointment.

17.4 Each party agrees that it shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in this appointment.

17.5 Nothing in this Paragraph 17 shall limit or exclude any liability for fraud.

18. GOVERNING LAW

This appointment 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.

19. JURISDICTION

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

Please acknowledge receipt and acceptance of this appointment by signing, dating and returning the enclosed copy.

Yours faithfully,

.....

[NAME OF SENDER]

Enc.

We hereby acknowledge receipt and accept the contents of this letter

Signed

[NAME OF RECIPIENT]

Date

Schedule 1

Coalville Frontage Improvement Scheme Architectural Services

Scope of services

- The consultant will be responsible for providing all architectural services required to support the delivery of capital works through to scheme completion, in line with stages 0-7 of the RIBA Plan of Work 2013.
- The consultant will act as the lead consultant and contract administrator for the delivery of capital works.
- The consultant will need to enter into an agreement with the grant applicant to provide professional services, in line with RIBA stages 0-7. This will include planning the works, appointing and managing contractors, as well as overseeing the works to completion.
- In accordance with the RIBA Plan of Work 2013, the appointed consultant will be responsible for the procurement and management of any additional professional services and disbursements required. This will include coordinating and managing all enabling works relating to the frontage, including procuring the necessary professional services and contractors.
- The appointed consultant will perform the role of Principal Designer under the Construction Design and Management Regulations 2015.
- The appointed consultant will need to be sufficiently flexible to be able to carry out tasks within a reasonable timeframe as and when they arise throughout the lifetime of the contract. On occasions, this may involve weekend work if necessary to oversee works.
- The contract will include attendance of all necessary meetings (including grant panel meetings), and site visits.
- The consultant will liaise at all times to keep the project team informed of progress and issues, and to ensure the cost plan remains within budget.
- Tenderers will need to provide a clear statement demonstrating that they, or their practice, has appropriate RIBA/CIAT accreditations, with the documentation submitted to evidence this accreditation.

Specific duties

Duties of the architectural consultant will include the following:

- Liaison between the project team, the grant applicant, contractors and all other parties involved in the delivery of individual projects.

- To determine other professional support required, including surveys, and appoint on behalf of the grant applicant as necessary, subject to the agreement of the grant applicant and the council.
- Preparation of sketch scheme designs.
- Preparation of detailed design documents, including all working drawings, the schedule of works and specification. It is anticipated the drawings will comprise at a minimum:

Proposed elevation/s: scale 1:50

Detailed elements, and profiled parts of the frontage, at an appropriate scale: between 1:5 and 1:20

- Prepare an estimate of the total cost of the proposed works.
- Preparation of written reports and documentation for the grant panel.
- Where necessary, apply for and obtain all necessary statutory permissions to be able to deliver individual project, consents and approvals, including, as appropriate, Planning Consent, Advertisement Consent, Listed Building Consent, and Building Regulations.
- Preparation of all detailed information for discharge of statutory conditions, approval for variations to existing permissions and any subsequent applications for statutory approvals as required to deliver the scheme.
- Lead on contract administration, and at all times keep the project team informed.
- Ensure all works are compliant with current regulations including those relating to health and safety.
- Act as Principal Designer under the Construction Design and Management (CDM) Regulations 2015.
- Plan, manage, monitor and coordinate health and safety documentation, including the preparation of all necessary technical documentation.
- Co-ordinate pre-construction information, and provide the information other designers and contractors need to carry out their duties.
- Work with any other 'designers' on the project to eliminate foreseeable health and safety risks to anyone affected by the work and, where that is not possible, take steps to reduce or control those risks.
- Ensure provision by contractors of a CDM compliant health and safety pack.

- Advise on suitable forms of building contract, and the associated responsibilities.
- To reflect the grant payment processes of the Frontage Improvement Scheme, the consultant will need to supply a contract between the grant applicant and any contractors that will withhold 2.5% of the cost of works for 12 months after practical completion and until they have been certified to be free from defects. The final 2.5% will be paid to the contractors after a certificate of making good defects has been issued by the consultant.
- For each individual project, obtain three competitive quotes from contractors known to be able to achieve the standards required, and with demonstrable experience of working on conservation projects.
- Appoint suitable contractors, undertaking checks to ascertain insurance, track record and suitability.
- Oversee the procurement of additional technical services/disbursements necessary for individual projects.
- Preparation of all further information for construction as required.
- Coordinate and administer the construction contracts.
- Conduct meetings with the contractors to review progress.
- Provision to the contractors of further information as and when required, and review of information provided by contractors and specialists.
- Inspect works and issue certificate of practical completion after the works have been completed to the required standard, including resolution of identified snags. Ensure the CDM health and safety file etc. is compliant.
- Prepare a short written report for the project team for each project upon practical completion, with suggested recommendations to enhance future projects.
- Provision of architectural services associated with the administration of the construction/manufacture/installation contracts after practical completion, assisting users during the initial period of use and the review of project performance in use.
- Manage issues arising during the defects liability period and issue a certificate of making good defects at the end of the defects liability period, in order for retention monies to be released.
- Ensure any updates and amendments are made to the 'as built' drawings and the CDM health and safety file etc. during the defects liability period.

- Compile the maintenance and operational strategy, incorporating a programme for maintenance of the frontage.
- Provide a reasonable number of appropriate images in digital format, through the life of each of the individual projects, both as a record of projects, and to promote the scheme e.g. publications, website, digital media etc. These images should be copyright free.