**Appendix 3**

**Contract**

**Agreement to design, supply, demount, install, store and maintain Christmas Displays across Todmorden**

**This Agreement is between:**

**The Employer**

Organisation Name: Todmorden Town Council

Address: Todmorden Community College

Burnley Road

Todmorden

Lancashire

Ol14

**And:**

**The Principal Contractor**

Business Name:

Address:

Business Number:

**Contract Administrator**

Organisation: Todmorden Town Council

Name: Colin Hill

Town Clerk

## **DEFINITIONS & INTERPRETATIONS**

In this Contract, save where the context otherwise requires, the following expressions shall have the meanings hereby assigned to them:

|  |  |  |
| --- | --- | --- |
| CDM  Commencement Date | means  means | the Construction (Design and Management) Regulations 2015 where relevant  the date from which the Contractor will be required to commence to provide the services, as notified by the Contract Administrator or such other date as may be agreed. |
| Conditions | means | these conditions, any supplementary conditions and any modification thereof. |
| Contract | means | any formal Contract document entered between the Contractor and the Employer and includes the documents incorporated therein and forming part thereof |
| Contractor | means | the person, persons or company whose tender is accepted by the Council and includes the Contractor's personal representative and successors. |
| Contract Administrator  Displays | Means  means | Any person authorised by The Employer responsible for all aspects of the contract and ensuring the obligations are met. If more than one individual is named, then each person has equal authority and either person can decide without requiring authority from the others named.  Those Christmas display including frames and lighting as indicated within the tender documents. |
| Employer | means | the named Authority which is the organisation purchasing the goods or services outlined in the Contract and referred to as The Employer, Authority or the Organisations formal name. |
| Bids  Materials | means  means | the sites to be provided with Christmas diisplays where the Works will take place  any goods supplied by The Contractor in relation to the project. |
| Works  Reservation of Title | means  means | the services to be undertaken by the Contractor as described in the Tender documents or any supporting documentation.  Alien over Christmas Displays held to the order of Todmorden Town Council where rights are reserved to collect displays in the event of entering into insolvency, liquidation or administration or failure of the contractor to install such displays. |
| Tender Documents | means | the tender and accompanying documents relating thereto. |

# **THE WORKS**

* 1. **Overview of Requirements**

The Employer is to design, supply, install, demount, store and maintain all Christmas displays in accordance with the details provided by The Contractor and accepted by The Employer. All works and obligations are the responsibility of the Principal Contractor, including all details covered within this agreement in addition to the documentation outlined in 2.3.

* 1. **BS EN Regulations and CDM Regulations**

Each Party undertakes to the other that in relation to the Works and site, he will duly comply with applicable CDM Regulations.

The finished products and work must comply must comply with the relevant British Standards or its European equivalent.

* 1. **Documentation**

The Employer has had the following documents provided by The Contractor, and are deemed to form and construed as part of this Agreement:

1. The tender submission
2. The quotation outlining costs associated with the project
3. Any designs and drawings
4. Any health and safety plans
5. Signed “Form of Tender” – Appendix 1
6. Completed “Warranty and Reference Information” - Appendix 2
7. Contract – Appendix 3
8. Details of existing displays - Appendices 4a-c
9. Details of existing locations – Appendices 4d-f
10. Any emails or communications from the Contractor during or following the tender process including revisions to the original submission

## **GENERAL QUALITY AND METHOD OF WORKS**

**3.1 Levels of skills required**

Operatives must be appropriately skilled and experienced for the type and quality of work.

The contractor shall Inspect all components / materials carefully before using and reject any which are defective.

**3.2 Supervision**

In addition to the constant management and supervision of the work provided by the contractor person in charge, all significant types of work must be under the close control of a competent supervisor to ensure maintenance of satisfactory quality and progress of the works alongside the Contracts Administrator or authorised person, who will meet/remote meet with the contractor at pre-arranged dates throughout the period.

**3.3 Repairs and Re-instatement**

The contractor shall make good any damage because of carrying out works described herein. The method and material used to repair any damage shall be agreed to in writing as part of the documents provided that form the necessary requirements within this agreement.

**3.4 Good Practice**

Where and to the extent that materials, products and workmanship are not fully detailed or specified they are to be:

1. Of a standard appropriate to the Works and suitable for the purposes stated herein or
2. reasonably to be inferred from the project documents, and in accordance with good practice.

**3.5 Electricity supplies**

All power supplies and junctions necessary for the use of displays will be provided by the Employer.

All displays will be electrically certified each year before installation at the cost of the contractor and such certification provided by the end of September of each year

**3.6 Stability**

The contractor shall accept responsibility for the stability and structural integrity of the Frames during the Contract.

**3.7 Adjacent Areas and permissions**

The Employer expects the Installation and demounting of displays to be carried out in a safe manner and requires the appropriate safety wear to be worn and high access equipment to be used as identified in the contractor’s risk assessments and for any permissions required of the Highways Authority to be obtained prior to commencement of the installation process

**3.8 Nuisance**

The contractor shall take all necessary precautions to prevent nuisance from smoke, dust, rubbish and other causes, likely to cause nuisance to the general public.

**3.9 Site security and safety**

The contractor shall comply in all respects with the requirements and intent of the Health & Safety at Work Act, 1974, and the Construction (Health, Safety & welfare) Regulations 1996 and associated and current legislation and good practice as well as local rules as they affect the Works.

The contractor shall make available a copy of their Health & Safety policy.

**3.10 Welfare Facilities**

The contractor will need to provide their own water and/or toilets during the period of construction at their own cost if required during installation/demount.

**3.11 Use of the Site**

The contractor shall not use the locations for the use of displays for any purpose other than the carrying out of the Works.

**3.12 Lighting & Power**

The contractor shall make his own arrangements for light and power as may be required if working overnight to install or demount displays

**3.13 Health & Safety**

The CA (Contract Administrator) or Employer reserves the absolute right to suspend works at the site if any continuing breaches of Health and Safety legislation occur. Such closure will be at no cost to the Employer and no extension of time will be entertained. This will include breaches noted by the CA or advised to the CA by The Employer.

**3.14 Small Plant & Tools**

The contractor shall provide, as necessary, all tools and plant necessary for the proper execution of the works.

**3.15 Installation/Demount Requirements**

The contractor shall determine his own method of working.

During the execution of the works, any trafficking is to be kept to a minimum and every effort must be made to ensure that as little damage as possible is done to the surrounding grounds and areas.

**3.16 Risk assessment and Programme of Works**

The contractor is to undertake a risk assessment of the proposed works and to provide a copy of that to the Contracts Administrator for agreement purposes before any works are commenced on site.

*Note*: If there are any significant delays (greater than 1 week) on the original lead times to either start or complete the works, details are to be provided on the reasons for the delay and should be emailed to the Contract Administrator.

**3.17 Waste**

Any material deemed as hazardous or requires special waste disposal procedures must adhere to the UK regulations, allowing for the provision of evidence such as Waste Consignment Notes to the Employer.

# **CONTRACT PARTICULARS**

* 1. **HEALTH, SAFETY AND WELFARE**

The Contractor in performing the services covered by the contract, to ensure the Health, Safety and Welfare of the contractor’s staff, employees of the Council and all other persons including members of the public shall comply with: -

All duties and responsibilities placed upon him by the Health and Safety at Work Act 1974 and all subsidiary legislation especially about the use of unqualified operatives, facilities for workmen, and the protection of motorists and pedestrians. The Contractor must allow for this in his rates.

All other relevant Acts of Parliament, Statutory Instruments, regulations etc.

All revisions, modifications, and amendments to Acts of Parliament, Statutory Instruments, regulations etc.

All relevant Codes of Practice, British or EEC equivalent standards, EU Directives etc. and modifications, amendments and revisions thereto.

* 1. **VARIATION OF CONTRACT**

(a) Without prejudice to any other of the conditions hereof no omission from, addition to or variation of the Contract shall be valid or of any effect unless it is issued in writing and signed by the Contract Administrator.

(b) Save for an omission, addition or variation issued pursuant to paragraph (a) any provision inconsistent with the Conditions contained in any other document or in any oral agreement is to be void and of no effect.

* 1. **THE CONTRACT ADMINISTRATOR**

The functions, rights and powers conferred by this Contract upon the Council shall be exercised by any of the Contract Administrator listed in this document. The Contractor shall in no circumstances question the existence or extent of the Authority of any person authorised by the Contract Administrator to act on his behalf.

* 1. **CONTRACT PERIOD**

1. The contractor shall be expected to undertake this contract within the timescale agreed following commitment by the contractor in writing that they can meet the deadline as specified, unless otherwise agreed in writing by the Contract Administrator.
   1. **PERFORMANCE OF SERVICES**

(a) During the Contract Period the Contractor shall perform the Services (and any modification thereof authorised under the Conditions) in a manner totally consistent with the tender and the terms and conditions of the Contract and to the entire satisfaction of the Contract Administrator.

(b) The Contractor shall always perform such Services in accordance with a written Programme of Work which shall be submitted to the Contract Administrator prior to commencement of any work (and any modifications thereof authorised under the Conditions).

* 1. **CERTIFICATE OF PRACTICAL COMPLETION AND DEFECTS LIABILITY**

(a) The Contractor will arrange for a Post Installation inspection to be carried out.

(b) On the production of a successfully completed Post Installation Report identifying that all works have been undertaken in accordance with all relevant standards and specification, the Contractor shall be invited to submit his invoice for payment.

(c) Should the Contractor be required to rectify any defects then he should be aware that no payment will be made until the Contract Administrator is satisfied that all works have been completed to the contract specification.

(d) The Contractor shall make a payment of 10% of the contract value due to this Authority as a result of his failure to undertake the works within the given time period unless previously agreed in writing with the Contract Administrator.

**4.7 PAYMENT**

1. On receipt of the Certificates of Practical Completion the Contract Administrator shall inspect the display locations and if the work has been undertaken satisfactorily and approved by the Post Installation Report, the Contractor shall be advised that he may issue an invoice for those works which shall be paid within 30 days of the date of receipt of the invoice
2. Invoices relating to the ongoing nature of the contract (excluding any outright purchase of displays) will be issued as follows
   1. 50% on installation of and demounting of displays
   2. 25% May 1st
   3. 25% Sept 1st

**4.8 APPLICABLE LAW**

This contract shall be governed by and construed in accordance with the law of England

# **5. AGENCY**

In carrying out the Services the Contractor shall be acting as Principal and not as the Agent of the Council.

Accordingly:

1. The Contractor shall not (and shall not procure that its employees, servants or agents do not) say or do anything that might lead any other person to believe that the Contractor is acting as the Agent of the Authority; and
2. Nothing in this Contract shall impose any liability on the Authority in respect of any liability incurred by the Contractor to any other person but this shall not be taken to exclude or limit any liability of the Authority to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Authority, the Authority’s employees, servants or agents.
3. The Contractor has not and shall not hold himself out as having the power to make, vary, discharge or waive any Byelaw or regulation of any kind.
4. The Contractor shall not hold itself out as being authorised to enter into any contract on behalf of the Employer to the performance, variation, release or discharge of any obligation to a third party. The employees of the Contractor shall not hold themselves to be and shall not be held out by the Contractor as being servants or agents of the Employer.

# **6. LIABILITY OF CONTRACTORS**

1. The Contractor shall fully and promptly indemnify the Council against any liability to any person or property whatsoever arising out of or connected with the performance of the Services or any act or omission of any employee of the Contractor howsoever such liability may arise.
2. The Contractor shall fully and promptly indemnify the Council in respect of any damage caused to any land, building or chattel in the ownership, occupation or possession of the Council by any employee or agent of the Contractor (whether such damage is caused by negligence or in any other way whatsoever).
3. The Contractor shall fully and promptly indemnify the Council) and all persons concerned in respect of any personal injury caused to any employee of the Council by any employee or agent of the Contractor (whether such injury be caused by negligence or in any other way whatsoever).
4. The Contractor shall be responsible at all times during the contract period for the security of the boundaries to all residential and commercial property that abut the locations for displays and is affected by the nature of these works and in doing so shall therefore ensure that all boundaries remain intact either through the use of appropriate temporary security fencing or through the completion of each section of new boundary fencing at any given time.
5. The Contractor shall be solely responsible for liaising with residents and neighbouring properties over the works and working with them to minimise the risk of damage to property, vegetation and ensuring the security of the individual premises.
6. The Contractor shall always notify residents affected by the work of their progress and especially inform individual properties in writing, with a copy of each notification to be given to the Contract Administrator, identifying: -

* the Contractor’s contact details
* expected duration of the project
* working hours and days
* any relevant information pertaining to the construction

1. The Contractor shall be solely responsible for ensuring that any waste material is removed immediately leaving no residue that could cause a hazard or risk.

# **INSURANCE**

1. The Contractor’s attention is draw to the insurance details set out below: -

|  |  |
| --- | --- |
| Minimum Amount of Public Liability Insurance | £10,000,000 for any one incident,  (total unlimited) |
| Minimum Amount of Employers Liability Insurance  Minimum Amount of Product Liability Insurance | £5,000,000 for any one incident,  (total unlimited)  £5,000,000 for any one incident,  (total unlimited) |

1. The Contractor shall always maintain in force such policies of insurance with reputable insurers or underwriters as shall fully insure and indemnify the Contractor against liability.

* to the Council and to any employee of the Council.
* to the employees of the Contractor.
* to any other persons

1. The Contractor shall prior to the commencement of the Contract, and at such other times as the Contract Administrator may require, supply the Contract Administrator with copies of all insurance policies, cover notes, premium receipt and other documents necessary to comply with sub clause (a) of this Clause.
2. The Contract Administrator shall be entitled to notify the Contractor in writing that in the opinion of the Contract Administrator any such policy of insurance does not affect sufficient cover to comply with the Conditions and to require the Contractor to affect such insurance as will so comply. Upon receipt of such notice, the Contractor shall forthwith procure and effect such insurance as the Contract Administrator shall require.
3. The Contractor will ensure that where it receives notification of any potential insurance claim, it shall deal with the matter directly and/or refer the matter to the contractor's insurers within a period of 28 days from the receipt of notification of the potential claim and ensure that each claim is progressed and resolved with due diligence.

# **BRIBERY AND CORRUPTION**

The Council shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination, if:

1. the Contractor shall have offered or given or agreed to give to any person any gift or consideration of any kind as inducement or reward for doing or forbearing to do.

or

1. for having done or forborne to do any action in relation to the Contract or any other Contract with the Council; or the like acts shall have been done by any person employed by him or acting on his behalf (whether with or without the knowledge of the Contractor);

or

1. in relation to any Contract with the Council the Contractor or person employed by him or acting on his behalf shall: -
2. have committed any offence under the Prevention of Corruption Acts 1989 to 1916.

or

1. have given any fee or reward the receipt of which is an offence under Section 117(2) of the Local Government Act 1972.

# **GRATUITIES**

The Contractor shall not, whether by himself or by any person employed by him to perform the Services, solicit any gratuity or tip or any other form of moneymaking or reward, collection or charge for any of the Services other than bona fide charges approved by the Council.

# **LIABILITY OF COUNCIL**

To the extent permitted by the Unfair Contracts Terms Act 1977 the Council shall not be liable for any loss or damage whether caused by the negligence of the Council, its servants or agent in any way whatsoever and the Council shall in no circumstances be liable to the Contractor for any loss of profit, business or production or any similar loss or damage whether direct, indirect or consequential however caused. The Council in no way warrants the truth or accuracy of any representations which may have been made to the Contractor and the Contractor acknowledges that he did not rely upon any representation made by or on behalf of the Council when entering into this Contract.

# **UNSATISFACTORY EMPLOYEES**

If, with reasonable justification, the Authority gives the Contractor notice that any person is not to become involved in or is to be removed from involvement with the performance of the Contract, the Contractor shall take all reasonable steps to comply with such notice and if required by the Authority the Contractor shall replace any such person removed under this condition with another suitably qualified person and procure that any pass issued to the person removed is surrendered.

# **TERMINATION OF CONTRACT AND RESERVATION OF TITLE TO DISPLAYS**

(a) If the Contractor shall have offered, or given, or agreed to give to any person any gift, or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done or forborne to do any action in relation to the obtaining of the Contract, or any other Contract with the Authority, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Authority, or if the like acts shall have been done by any person employed by the Contractor, or acting on the Contractor's behalf (whether with or without the knowledge of the Contractor), or if in relation to the Contract, or any other contract with the Authority, the Contractor or any person employed by the Contractor, or acting on the Contractor's behalf, shall have committed any offence under the Prevention of Corruption Acts 1889 to 1916 or shall have given any fee or reward to any officer of the Authority, which shall have been exacted or accepted by such officer by virtue of his office or employment and is otherwise than such officer's proper remuneration, the Authority shall be entitled to terminate the Contract and to recover from the Contractor the amount of any loss resulting from such termination.

(b) If the Contractor: -

(i)Commits a breach of any of his obligations under the Contract.

(ii) becomes bankrupt, or makes a composition or arrangement with his creditors, or has a proposal in respect of his company for the voluntary arrangements for a composition of debts, or scheme or arrangement approved in accordance with the Insolvency Act 1986.

(iii) has a winding-up order made, or (except for the purposes of amalgamation or reconstruction) a resolution for voluntary winding-up passed.

(iv) has a provisional liquidator, receiver, or manager of his business or undertaking duly appointed.

(v) has an administrative receiver, as defined in the Insolvency Act 1986, appointed.

(vi) has possession taken, by or on behalf of the holders of any debentures secured by a floating charge, of any property comprised in, or subject to, the floating charge.

(vii) is in circumstances which entitle the court or a creditor to appoint, or have appointed, a receiver, a manager, or administrative receiver, or which entitle the court to make a winding-up order.

then in any such circumstances the Employer may, without prejudice to any accrued rights or remedies under the Contract, terminate the Contractor's employment under the Contract by notice in writing having immediate effect.

1. all Christmas displays whether purchased outright or by way of the All Inclusive agreement option, will remain the property of Todmorden Town Council and held to its order and unfettered access will be allowed for Todmorden Town Council to remove such items at their own expense, with such displays clearly marked as the property of Todmorden Town Council and as specified in the schedule of displays provided as per the Tender Document and any subsequent amendment/addition thereto whereby either
   1. clause 12(b) applies
   2. the contractor fails to install the displays as agreed

# **ARBITRATION**

(a) All unresolved disputes between the parties arising out of or connected with this Contract or the performance of the Services by the Contractor shall be referred to an Arbitrator to be agreed upon by the parties or in default of such agreement to be nominated by the President of the Institute of Arbitrators or a person appointed by him.

(b) Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

# **STAMP DUTY AND LEGAL FEES**

Each party shall bear their own legal and other fees that may be due in relation to the preparation and submission of the Tender documents and any formal Contract documents arising there from.

# **DEFAULT BY CONTRACTOR**

If the Contractor, for whatever reason, fails to provide or perform the Services in whole or in part completely in accordance with the terms of the Contract, then without prejudice to any other remedy contained herein the Authority may by its own or other workmen provide and perform such Services or part thereof in which the Contractor has made default. The costs and charges incurred by the Authority in so doing shall be paid by the Contractor to the Authority on demand or may be deducted by the Authority from any monies due or which may become due to the Contractor.

# **INSPECTION OF SITE, EXTENT AND NATURE OF SERVICES**

1. The Contractor shall be deemed to have fully acquainted himself with all conditions likely to affect the execution of the Works and have visited the site to satisfy himself with the nature and extent of services to be undertaken as detailed in the Contract Documents and as to the nature of access and all matters likely to affect the execution of the Service.
2. In the event of adverse weather conditions preventing the performance of the Services the Contractor with the prior consent of the Contract Administrator may modify his method of working.
3. In submitting his Tender, the Contractor will have been deemed to understand the nature of the Works and included within his tender sum for performing the Works in adverse weather conditions or such other conditions for periods within the Contract Period.
4. The Contractor shall not be entitled to make any claims in any respect regarding the contract through lack of knowledge or understanding of the specified works. Any costs or losses incurred during the preliminary investigations and Tender preparation shall be borne by the Contractor alone.

# **INSPECTION & ACCESS**

The Contractor shall always during the Contract Period allow the Contract Administrator and his staff, the Authority's Internal Auditor or such person as may be nominated from time to time by the Contract Administrator access to all locations for the purpose of inspecting: -

1. Work being performed pursuant to the contract.
2. Records or documents in the possession of the Contractor in connection with the performance of such work.

# **POST INSTALLATION AND MAINTENANCE**

* 1. On the satisfactory completion of all site operations the Contractor shall provide for and give to the Contract Administrator, a list of all displays led by them on behalf of Todmorden Town Council illustrated with a unique refence number and such number to be marked on the displays together with “Property of Todmorden Town Council
  2. The Contractor shall on submission of his invoice, provide Guarantee Certificates covering the life of the guarantee periods identified in the Tender Documents.
  3. Final payment of the Contractor's invoice shall be made on the provision of a Post Installation Inspection Certificateprovided by the employer**.** This certificate will identify that all works have been completed to the current British and European Standards and our specification, and any remedies or actions detailed in the report, regardless of risk, have been satisfactorily addressed.

***EXECUTION OF THE AGREEMENT***

**Signed on behalf of The Employer**

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**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Signed on behalf of The Principal Contractor**

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**Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**