**JCLI Terms & Conditions:**

**Radcliffe & Redvales Phase 1**

**December 2021**

**Environment Agency**

**Horizon House**

**Deanery Road**

**Bristol**

**BS1 5AH**

The following Form of Contract will be deemed to operate:

1. The Joint Committee for Landscape Industries (JCLI) Landscape Maintenance Works Contract 2017 (JCLI LMWC 2017) published by the Landscape Institute.

Note the application of the Environment Agency publication *“Constructing a Better Environment”,* a *Safety, Health, Environment and Wellbeing (SHEW) Code of* *Practice*. All landscape contractors (Contractors) should ensure they are conversant with its content that is applied to Services procured and delivered.

Part A Section 1 will provide context to the application of the Form of Contract. Specific particulars for this contract at Radcliffe & Redvales Phase 1 then follow in Part B.

**PART A**

**1) JCLI LANDSCAPE MAINTENANCE WORKS CONTRACT 2017:**

FOR USE IN THE ESTABLISHMENT AFTERCARE MAINTENANCE OF A PROJECT (COVERING THE RECTIFICATION/ REPLACEMENT OF DEFECTIVE STOCK DERIVED FROM THE WORKS IMPLEMENTATION) UNTIL THE END OF MAINTENANCE (THE DATE OF CERTIFICATION OF COMPLETION).

Allow for the obligations, liabilities and services described therein against the headings set out below:

RECITALS:

First Recital: Add: “The Work will comprise as per Part B Section 1 of this document and as Clause A13/120 in the Landscape Specification”

Second Recital: The drawings are listed as follows:

* + ENV0000389C-MMD-DZ-00-DR-L-0307008-S2-C03 FLM Close Park 1 of 2
  + ENV0000389C-MMD-DZ-00-DR-L-0307023-S2-C01 FLM Close Park 2 of 2
  + ENV0000389C-MMD-DZ-CP-DR-EN-0302015-C03 Close Park WFD Area
  + ENV0000389C-MMD-DZ-00-DR-L-0307009-S2-C03 FLM Dumers Lane 1 of 1
  + ENV0000389C-MMD-DZ-CP-DR-L-0307040-S2-P02 Close Park Seeding Plan

The reference to Work Schedules shall be deleted and replaced by “Schedule of Rates”.

ARTICLES:

Article 2: Option B applies. The Contract Sum has been detailed in Part B, Section 2b, Article 2.

Article 3 shall read: “For the purposes of this Contract, the Landscape Architect/Contract Administrator is:

“(*Insert name of Chartered Landscape Architect acting as Contract Administrator*) of the Environment Agency, National Environmental Assessment and Sustainability (NEAS)”.

Add the following paragraph: “The named Landscape Architect/Contract Administrator may delegate in writing his powers and duties under the Contract to other staff or professional consultants employed by the Environment Agency”.

Article 4: Principal Designer

Soft landscape maintenance is not deemed to be “construction work” under the CDM Regulations 2015 and unlikely to last more than 30 days, to have more than 20 workers working simultaneously at any point in the project or exceed 500 person days of “construction work”, the work is deemed not to be notifiable.

Article 5: Principal Contractor

For this contract the landscape works are being directly undertaken for the Environment Agency as Employer, and not as part of a larger engineering project, therefore the name of the Landscape Contractor acting to fulfil the role of Principal Contractor and its representative will be added upon award of the contract.

Article 6:

Article 6 of JCLI LMWC 2017 applies, but the initial stages of the dispute resolution process prior to Adjudication shall be as set out in the additional sub-clauses:

**DISPUTE RESOLUTION**

* 1. All disputes under or in connection with this agreement shall be referred first to negotiators nominated at a suitable and appropriate working level by the Environment Agency and the Contractor.
  2. If the parties' negotiators are unable to resolve the dispute within a period of forty five days from its being referred to them, the dispute shall be referred at the instance of either party to the parties' respective senior managers or directors (supported as necessary by their advisors).
  3. If the parties' respective senior managers or directors are unable to resolve the dispute within forty five days the dispute shall be referred to the Centre for Dispute Resolution who shall appoint a mediator and the parties shall then submit to the mediator's supervision of the resolution of the dispute.
  4. Recourse to this dispute resolution procedure shall be binding on the parties as to submission to the mediation but not as to its outcome. Accordingly all negotiations connected with the dispute shall be conducted in strict confidence and without prejudice to the rights of the parties in any future legal proceedings. Except for any party's right to seek interlocutory relief in the courts, no party may commence other legal proceedings under the jurisdiction of the courts or any other form of arbitration until forty five days after the appointment of the mediator.
  5. If, with the assistance of the mediator, the parties reach a settlement, such settlement shall be put in writing and, once signed by a duly authorised representative of each of the parties, shall remain binding on the parties.
  6. The parties shall bear their own legal costs of this dispute resolution procedure, but the costs and expenses of mediation shall be borne by the parties equally.
  7. Any of the time limits in 6.1 to 6.7 above may be extended by mutual agreement. Such agreed extension shall not prejudice the right of either party to proceed to the next stage of resolution of adjudication.

Article 7:

Arbitration provisions of Article 7 and Schedule 1 apply but refer to Article 6 ”Dispute Resolution” (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Article 8:

Legal proceedings apply.

CONTRACT PARTICULARS

Article 2: Option B applies and A will be deleted.

Fourth Recital:

Delete the second and third asterisked items, leaving the first.

For the purpose of this contract, the CDM Regulations are deemed to not apply. Therefore, retain the text: “The CDM Regulations do not apply and Articles 4 and 5 and clause 3.9 are not applicable (unless circumstances change)”.

Note that should the scope of works change, the contractor is reminded that the definition of construction shall apply.

Fifth Recital: Not Applicable

Sixth Recital and Schedule 5: All apply with the exception of cost savings and value improvements (Supplemental Provision 3). The Employer’s nominee will be the Contract Administrator and the Contractor’s nominee will be the Contract Manager.

Article 7: Article 7 and Schedule 1 apply but refer to Article 6 ”Dispute Resolution” (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Clause 2.2:

The Commencement Date is the date for commencement of the contract for the maintenance works.

The End Date for this contract will be 4 years from the Commencement date.

Clause 3.5: Period to comply with written notice is 3 working days.

Clause 4.2.1: Periodic payment interval is 3 months (or routinely a longer interval as agreed with the CA) during the whole of the establishment aftercare period.

Clause 4.7: Delete the second asterisked item, leaving the first.

Liquidated damages shall be calculated at a weekly rate or part thereof. A liquidated damages schedule is included in Part B and will be calculated once the contract has been awarded.

Clause 4.8: This Bonus clause does not apply.

Clause 4.9 Inflation: Price Index shall be the Consumer Price Index, subject to the Contractors tendered reduction.

Clause 4.10 and Schedule 2 (Paragraph 12): Not applicable.

Clause 5.3: Contractor’s Public Liability insurance shall be £5 million.

Clause 6.4.3: KPI’s will be used to evaluate contractor performance. The following indicators will be applied to this contract:

* Three consecutive quarters below 70 = termination of contract;
* Two RIDDOR or RAMS issues (score of 0) in a rolling 4 quarter reporting period = termination of contract
* Three occurrences of a score of 0 or 1 for the same KPI in a rolling 4 quarter reporting period = termination of contract

Clause 6.8.2: One month.

Clause 6.10.1: One month.

Clause 7.2: The Adjudicator shall be the President or a Vice President of the Landscape Institute.

Schedule 1 (paragraph 2.1): Arbitration shall apply but refer to Article 6 ”Dispute Resolution” (sub-clauses 6.1 to 6.7) which shall take precedence prior to Adjudication being applied.

Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2): Insert the relevant Base Date (date for Contract Commencement).

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| **PART B**  **SECTION 1 - Specifics of Radcliffe & Redvales Phase 1 contract** | | | | | | | | | | |
| **Landscape specification will apply along with relevant JCLI terms and conditions: -** | | | | | | | | | | | |
| JCLI Landscape Works Contract 2017 (JCLI LWC 2017) | | | | |  | | JCLI Landscape Maintenance Works Contract 2017 (JCLI LMWC 2017) | | |  | |
| (Please also complete Section 2a) | | | | |  | | (Please also complete Section 2b) | | |  | |
|  | | | | | | | | | | | |
| **Contract:** | | Radcliffe & Redvales Phase 1 | | | | | |  |  | | |
| **Nature of works:** | | |  | | --- | | To undertake 4 year’s establishment aftercare as part of the Radcliffe & Redvales scheme. | | | | | | | | | | |
| **Location and access arrangements:** | | | | Close Park and Dumers Lane, Radcliffe, Manchester M26 2QA | | | | | | | |
| Further detail to be given at the pre-start meeting or by CA. | | | | | | | | | | | |
| **Site specific limitations:** | | | Owned by Bury Council. This is a park, with open public access. 24-hour access for pedestrians but vehicles require key for gates. | | | | | | | | |
| **The date for Commencement of the works is:** | | | | | | Date will be confirmed upon appointment of contractor but expected to commence on 10th January 2022. | | | | | |
| **The date for Completion shall be:** | | | | | | 4 years from the date of commencement. | | | | | |
| **The dates for any Phasing of works is:** | | | | | | Not applicable. | | | | | |
| **NEAS Coordinating Landscape Architect:** | | | | | | | | | | | |
| Name: | TBC | | | | | | | | | | |
| Address: |  | | | | | | | | | | |
| Office Tel: |  | | | | | | | | | | |
| Mobile Tel: |  | | | | | | | | | | |
| **Consultant Landscape Architect/Landscape Clerk of Works** | | | | | | | | | | | |
| Name: | TBC | | | | | | | | | | |
| Address: |  | | | | | | | | | | |
| Office tel.: |  | | | | | | | | | | |
| Mobile tel.: |  | | | | | | | | | | |

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| **Contract Administrator:** | For the purposes of this Contract, the Landscape Architect/Contract Administrator is: Julian Francis CMLI  The named Landscape Architect/contract Administrator has delegated his powers and duties under the Contract to other professional consultants employed by the Environment Agency, namely TBC | | | | |
| Copies of the contract drawings and documents will be issued to the landscape contractor and are as follows:  ENV0000389C-MMD-DZ-00-DR-L-0307008-S2-C03 FLM Close Park 1 of 2  ENV0000389C-MMD-DZ-00-DR-L-0307023-S2-C01 FLM Close Park 2 of 2  ENV0000389C-MMD-DZ-CP-DR-EN-0302015-C03 Close Park WFD Area  ENV0000389C-MMD-DZ-00-DR-L-0307009-S2-C03 FLM Dumers Lane 1 of 1  ENV0000389C-MMD-DZ-CP-DR-L-0307040-S2-P02 Close Park Seeding Plan | | | | | |
|  | | | | | |
| If applicable, aspects of the works which is to be carried out by other approved firms, nominated subcontractors or suppliers: | | | | | |
| To be confirmed by the landscape contractor upon appointment of the contract. | | | | | |
| Agreed date, time and location for pre-start meeting: | | | To be confirmed upon appointment. | | |
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| Requirement for any site specific herbicide licences, permits to work and other approvals, or any applied for by the Environment Agency: Likely to be required for the following (but not necessarily exhaustive):  Permit for the application and spraying of herbicide adjacent to watercourse.  Water abstraction licence.  Site access approval. | | | | | |
| Under the Construction (Design and Management) Regulations 2015 (as amended) this project is deemed to be: *(please indicate as appropriate)* | | | | Notifiable |  |
| Not notifiable |  |
| CDM Principal Designer: (if applicable): | | Not applicable | | | |
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**GENERAL NOTES/GUIDANCE**

**Health and Safety**

The Contractor is required to complete a site specific Health & Safety risk assessment, a working methods statement (RAMS) and a proposed programme of works. These must be returned to the Contract Administrator for approval and award of contract before works may commence on site.

**CDM Regulations**

Not applicable.

**Form of Contract**

Upon the Landscape Contractor signing the Form of Agreement, the following Forms of Contract will be signed:

1. The Joint Committee for Landscape Industries (JCLI) Landscape Maintenance Works Contract 2017 (JCLI LMWC 2017) published by the Landscape Institute.

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| **SECTION 2b - JCLI LMWC 2017 - Landscape Maintenance Works Contract** | | | |
| ***Guidance:*** *For use in the establishment aftercare period of a project (covering the rectification/defects period in the construction/implementation contract if applicable) until the end of establishment aftercare (the date of certification of completion)*.  *Generic obligations, liabilities and services relating to this project and described therein are set out above. Specific aspects relating to this contract are set out below:* | | | |
| **RECITALS** | | | |
| **Second Recital:** the Employer has had the following documents prepared which show and describe the work to be undertaken relating to maintenance operations: (tick appropriate box): | | | |
|  | The drawings numbered | | ENV0000389C-MMD-DZ-00-DR-L-0307008-S2-C03 FLM Close Park 1 of 2  ENV0000389C-MMD-DZ-00-DR-L-0307023-S2-C01 FLM Close Park 2 of 2  ENV0000389C-MMD-DZ-CP-DR-EN-0302015-C03 Close Park WFD Area  ENV0000389C-MMD-DZ-00-DR-L-0307009-S2-C03 FLM Dumers Lane 1 of 1  ENV0000389C-MMD-DZ-CP-DR-L-0307040-S2-P02 Close Park Seeding Plan |
|  | A Specification | |  |
|  | A Schedule of Rates | |  |
|  | A Schedule of Liquidated Damages | |  |
| **ARTICLES** | | | |
| **Article 2** | | | |
| The Employer will pay the Contractor at the times and in the manner specified in the Conditions:  b) a VAT-exclusive sum calculated in accordance with the priced Schedule of Rates | | | |
| **Article 3** | | | |
| For the purposes of this Contract, the Landscape Architect/Contract Administrator is TBC: | | | The named Landscape Architect/Contract Administrator has delegated his powers and duties under the Contract to other professional consultants employed by the Environment Agency, namely TBC |
| **Article 4** | | | |
| *Not Applicable* | | | |
| **Article 5** | | | |
| *The landscape works are being directly undertaken for the Environment Agency as Employer, and not as part of a larger engineering project. The name of the Landscape Contractor’s representative will be added upon appointment.* | | | |
| **Contractor’s representative:** | | To be added upon appointment of contractor. | |
| **Address:** | |  | |

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| **CONTRACT PARTICULARS** | | |
| Clause 2.2: The Commencement Date is: | | Date will be confirmed upon appointment of contractor but expected to commence on 10th January 2022 |
| Clause 2.2: The End Date or Duration shall be: | | Duration shall be 4 years from the commencement date. |
| Clause 4.2:Liquidated damages: | *Liquidated damages is applicable in accordance with the Schedule of Liquidated Damages*  *Rate per week will be equal to £xxx per week or part thereof calculated as:*  *The provision of this liquidated damages schedule will be completed upon appointment of the contractor.*  *£Contract value x bank base rate % £xxx + £472.00 LCoW/wk + £206.50NEAS time/wk = £xxx*  *52* | |
| Schedule 2 (paragraphs 1.1, 1.2, 1.5, 1.6, 2.1 and 2.2) | | Base date (insert day, month and year upon appointment of contractor). |
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