

# CONTRACT AGREEMENT FOR THE DESIGN AND BUILD OF A SKATEPARK AT FRYER FIELD, WEST MOORS

**THIS AGREEMENT** is made the [ ] day of [ ] **BETWEEN WEST MOORS PARISH COUNCIL**, 4 Park Way, West Moors BH22 0HL (hereinafter called "the Employer") of the one part and [ ] whose registered office is situated at [ ] (hereinafter called "the Contractor") of the other part.

**WHEREAS THE** Employer has accepted the Tender of the Contractor to undertake the design and build of a skatepark within the **WEST MOORS PARISH COUNCIL** estate commencing on the [ 20xx] until the [ ]

**IT IS HEREBY AGREED** as follows:-

1. In this Agreement words and expressions shall have the same meanings as are assigned to them in the Contract Documents hereinafter referred to
2. The following Contract Documents shall be deemed to form and be read and construed as part of this Agreement:
  - a) the Tender
  - b) the Conditions of Contract.
  - c) the Specification and Appendices;
  - d) Drawings
  - e) Bill of Quantities;
  - f) Health and Safety Plan
3. In consideration of the payments to be made by the Employer to the Contractor as hereinafter mentioned the Contractor hereby covenants with the Employer to carry out the services within the West Moors Parish Council conformity in all respects with the provisions of the Contract Documents and to the satisfaction of the Employer.
4. The Employer hereby covenants to pay the Contractor in consideration of the performance of the Services the Contract Sum at the time and in the manner prescribed by the Contracts Documents.

**IN WITNESS** whereof the Employer and the Contractor have put their signature to be hereunto affixed the day and year first before written

## **REPRESENTATIVE**

### **WEST MOORS PARISH COUNCIL**

was hereunto affixed in the presence of:

Parish Clerk: Mrs J Weedon

Signature:.....

Date.....

## **REPRESENTATIVE**

of .....

was hereunto affixed in the presence of:-

Authorised Signatory Name.....

Director Signature:.....

Date.....

# CONDITIONS OF CONTRACT

## 1. DEFINITIONS & INTERPRETATIONS

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

|                   |       |  |
|-------------------|-------|--|
| Commencement Date | means | the date from which the Contractor will commence to provide the services, as notified by the Client Officer or such other date as may be agreed.     |
| Conditions        | means | these conditions, any supplementary conditions and any modification hereof.  |
| Contract          | means | any formal Contract document entered between the Council and the Contractor and includes all 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.         |
| Client Officer    | means | Clerk for the time being of the Parish Council or any person duly authorised by the Clerk in writing to act on their behalf.                         |
| Council           | means | the Council of the West Moors Parish   |
| Materials         | means | any goods.   |
| Services          | means | the services to be undertaken by the Contractor as described in the Tender documents.  |
| Tender Documents  | means | the Tender and accompanying documents relating thereto.  |

## 2. HEALTH, SAFETY AND WELFARE

The Contractor in performing the services covered by the contract, so as to ensure the Health, Safety and Welfare of the contractors 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 with regard to 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.

If in the opinion of the Client Officer the Contractor's method of working is such as to present a risk of serious personal injury to the employees of the Contractor, employees of the Council or any other person the Client Officer shall issue a notice that the unsafe

method or working practice is to be remedied within a period of time that he considers reasonable having regard to all the circumstances. If the Contractor fails to remedy the unsafe working practice within the time stated in the notice the Client Officer will have the power to suspend the performance of all or part of the Services until such time as he considers the Contractor has adopted safe working practices. Any such suspension will be entirely at the Contractors own expense.

### 3. 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 Client Officer.
- (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.
- (c) If any variation to the contract is issued and where the work has been previously quoted for in the Bill of Quantities, that rate shall then be used.

### 4. THE CLIENT OFFICER

The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Client Officer.

The Client Officer shall inform the Contractor verbally or in writing if any other person has been authorised to act on behalf of the Client officer.

The Contractor shall in no circumstances question any person authorised by the Client Officer to act on their behalf.

### 5. CONTRACT PERIOD

- (a) This initial contract shall extend for a period of [insert time frame] weeks (or that period specified in the Schedule/Appendix to the Form of Tender) and shall not be terminated by either party within that period save in accordance with these conditions. The contractor shall undertake this contract within the timescale following commitment by the contractor in writing that they can meet the deadline as specified, unless otherwise agreed in writing by the Client Officer.
- (b) The work shall be completed within [xxx] weeks of commencement and any delay will result in the contractor paying the Council the sum of £250 daily.
- (c) The contractor is advised that they will be paid for the design and build work with an **interim payment of 5% being held over** to cover the maintenance period.
- (d) All work shall be completed on site by the agreed date before invoices are submitted to this Council.

### 6. 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 Client Officer.

- (b) The Contractor shall at all times perform such Services in accordance with a written daily Programme of Work which shall be submitted to the Client Officer prior to commencement of any work (and any modifications thereof authorised under the Conditions).
- (c) The maintenance period for the contract is 12 months, starting from the adoption date of the site by West Moors Parish Council.

## 7. CERTIFICATE OF PRACTICAL COMPLETION AND DEFECTS LIABILITY

- (a) The Client Officer shall issue to the Contractor a Certificate of Practical Completion to confirm that all works have been undertaken. The Contractor will then arrange for a Post Installation inspection to be carried out before hand over of the site to the Council.
- (b) On the production of a successfully completed Post Installation Report confirming 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 no payment will be made until the Client Officer is satisfied that all works have been completed to the contract specification.
- (d) The Contractor shall complete any rectification work within 2 weeks of notification and failure to do so will result in payment by the Contractor to the Council of £250 daily.
- (e) The Contractor shall make any payment due to the Council as a result of his failure to undertake the works within the given time period unless previously agreed in writing with the Client Officer, within 28 days of notification.

## 8. VALUE ADDED TAX

- (a) On receipt of a satisfactory Post Installation Report, the Contractor shall be advised that he may issue a V.A.T. invoice for those works, which shall be paid within 28 days of the date of receipt of the invoice.

## 9. ASSIGNMENT AND SUB-LETTING

The Contractors shall not: -

- (a) Assign the work or undertakings, or any part thereof or any benefit in or under the contract without the written consent of the Client Officer, such consent not to be unreasonably withheld.
- (b) The Council shall be entitled to assign the benefit of the contract or any part thereof and shall give written notice of any assignment to the Contractor.

- (c) The Contractor shall not sublet the Contract or any part thereof except where such subletting may be customary to the trade concerned. Any such subletting to be notified to the Client Officer within five (5) working days.
- (d) Where the Council has consented to the placing of sub-contracts, copies of each sub-contract shall be provided by the Contractor to the Council within five (5) working days.
- (e) If with the Council's written consent the Contractor has sub-contracted the provision of any element of the Services, every act or omission of the sub-contractor shall for the purposes of the Contract be deemed to be the act or omission of the Contractor and the Contractor shall be liable to the Council thereafter as if such act or omission had been committed or omitted by the Contractor itself.
- (f) Where the contractor enters into a sub-contract with a supplier or contractor for the purpose of performing the Agreement, he shall cause a term to be included in such a sub-contract which requires payment to be made of undisputed sums by the Contractor to the sub-contractor within a specified period not exceeding 30 days from the receipt of a valid invoice, as defined by the sub-contract requirements.

## 10. AGENCY

In carrying out the Services the Contractor act as Principal and not as the Agent of the Council.

Accordingly:

- (a) The Contractor shall not (and shall ensure 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 Council; and
- (b) Nothing in this Contract shall impose any liability on the Council 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 Council to the Contractor that may arise by virtue of either a breach of the Contract or by negligence on the part of the Council, the Council's employees, servants or agents.
- (c) The Contractor shall not hold itself out as being authorised to enter into any contract on behalf of the Council 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 Council.

## 11. LIABILITY OF CONTRACTORS

- (a) The Contractor shall fully and promptly indemnify the Council against any liability to any person whatsoever arising out of or connected with the performance of the Services or with any act or omission of any employee of the Contractor howsoever such liability may arise.

- (b) 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).
- (c) The Contractor shall fully and promptly indemnify the Council and all persons concerned in respect of any personal injury caused to any employee, councillor or other authorised person of the Council by any employee or agent of the Contractor (whether such injury be caused by negligence or in any other way whatsoever).
- (d) The Contractor shall be responsible at all times during the contract period for the security of the site and ensuring its boundaries are suitable for use in a public open space.
- (e) 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.
- (f) The Contractor shall at all times notify residents/ neighbouring properties 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 Client Officer, identifying:-
  - the Contractor's contact details
  - when their boundary fence will be removed
  - how long they will be without a permanent boundary
  - how long it will take to install the new fence
- (g) The Contractor shall be solely responsible for ensuring that any waste material deposited on the public highway (public footpath) is removed immediately leaving no residue that could cause a hazard or risk.

## 12. INSURANCE

- (a) The Contractor's attention is drawn to the insurance requirements set out below:-

|  |   |
|--|---|
| Minimum Amount of Public Liability Insurance                       | £10,000,000 for any one incident, (total unlimited) |
| Minimum Amount of Employers Liability Insurance                    | £10,000,000 for any one incident, (total unlimited) |
| Time of Completion/Opening<br>(Unless otherwise agreed in writing) | 6 weeks - 1 <sup>st</sup> July 2021                 |
| Liquidated Damages for Delay                                       | £250.00 per day                                     |
| Period of Maintenance  | 12 months   |

Minimum amount of Interim Certificates      £5,000.00

Time within which payment to be made  
after receipt of Statement                      28 days

- (b) The Contractor shall at all times 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

for the sum of at least £10 million for each occurrence. Total number of occurrences unlimited.

- (c) The Contractor shall prior to the commencement of the Contract, and at such other times as the Client Officer may require, supply the Client Officer with copies of all insurance policies, cover notes, premium receipt and other documents necessary to comply with Clause 12(a) above.
- (d) If the policy of insurance is amended such that it no longer complies with these requirements the Client officer shall require the Contractor to effect the necessary changes at its own expense. The decision of the Client Officer will be final.
- (e) 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 such notification and ensure that each claim is progressed and resolved with due diligence.

### 13. 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.

### 14. 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.

### 15. UNSATISFACTORY EMPLOYEES

If, with reasonable justification, the Council 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 Council 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.

## 16. TERMINATION

- (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 Council, or for showing or forbearing to show favour, or disfavour, to any person in relation to the Contract, or any other Contract with the Council, 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 Council, 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, Bribery Act 2010 or shall have given any fee or reward to any officer of the Council, 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 Council 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 Council 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.

- (c) If the Contractor's employment is terminated as provided in Condition 16(b), the Council shall:-
  - (i) cease to be under any obligation to make further payment until the costs, loss and/or damage resulting from or arising out of the termination of the Contractor's employment shall have been calculated and provided such calculation shows a sum or sums due to the Contractor;
  - (ii) be entitled to repossess any of its materials, equipment, vehicles or other goods loaned or hired to the Contractor and to exercise a lien over any of the materials, equipment, vehicles or other goods belonging to the Contractor for any sum due hereunder or otherwise from the Contractor to the Council;
  - (iii) be entitled to employ and pay other persons to provide and complete provision of the works or any part thereof and to use all such Contractor's materials, equipment, vehicles or other goods for the purposes thereof;
  - (iv) be entitled to deduct from any sum or sums which would but for Condition 16(c)(i) have been due from the Council to the Contractor under this Contract or any other contract or be entitled to recover the same from the Contractor as a debt, any loss or damage to the Council resulting from or arising out of the termination of the Contractor's employment. Such loss or damage shall include the reasonable cost to the Council of the time spent by its officers in terminating the Contractor's employment and in making alternative arrangements for the provision of the works or any part thereof;
  - (v) when the total costs, loss and/or damage resulting from or arising out of the termination of the Contractor's employment has been calculated and deducted so far as practicable from any sums which would but for Condition 16(c) (i) have been due to the Contractor, any balance shown as due to the Council shall be recoverable as a debt, or alternatively, the Council shall pay to the Contractor any balance shown as due to the Contractor.
- (d) The rights of the Council under Condition 16 are in addition to and without prejudice to any other rights the Council may have whether against the Contractor directly or pursuant to any guarantee, indemnity or bond.

## **17. FAILURE & DEFAULT IN PERFORMANCE - LIQUIDATED DAMAGES**

- (a) If the Contractor shall fail to perform any of the works in accordance with the Tender documentation and approved designs then the Council shall be entitled to take such action as the Client Officer may consider necessary to ensure that the works are completed.

- (b) In such circumstances all the costs incurred by the Council shall be recovered by the Council from the Contractor in accordance with Condition 17(c) (iv).
- (c) All deductions payable by the Contractor to the Council pursuant to this Condition shall be paid as Liquidated Damages and not as a penalty.
- (d) Liquidated damages are payable at the rate set out in Clause 12 above, being £250 per day.

## 18. 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 Institute of Arbitrators or a person appointed by them.
- (b) Any award or decision of such Arbitrator shall be final and binding on the parties hereto.

## 19. BRITISH OR EU STANDARDS

Where an appropriate British or EU Standard Specification, British or EU Standard Code of Practice issued by the British Standards Institution or its European equivalent is current all goods used or supplied and all workmanship shall be in accordance with that Standard, unless otherwise stated.

## 20. OBSERVANCE OF STATUTORY REQUIREMENTS

The Contractor shall comply with all statutory and other provisions to be observed and performed in connection with the Services provided under the Contract and shall indemnify the Council accordingly.

## 21. STAMP DUTY AND LEGAL FEES

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

## 22. 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 Council 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 Council in so doing shall be paid by the Contractor to the Council on demand or may be deducted by the Council from any monies due or which may become due to the Contractor.

## 23. INSPECTION OF SITE, EXTENT AND NATURE OF SERVICES

- (a) 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.

- (b) In the event of adverse weather conditions preventing the performance of the Services the Contractor with the prior consent in writing of the Client Officer may modify his method of working.
- (c) 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.
- (d) 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.

## 24. INSPECTION & ACCESS

The Contractor shall at all times during the Contract Period allow the Client Officer or such person as may be nominated from time to time by the Client Officer access to all locations for the purpose of inspecting: -

- (a) Work being performed pursuant to the contract.
- (b) Records or documents in the possession of the Contractor in connection with the performance of such work.

## 25. NUISANCE

The Contractor shall take all necessary measures to minimise nuisance to occupiers of property adjoining the works and shall comply with any reasonable instructions given by the Council in this respect.

## 26. TIMING

The Contractor shall undertake all operations in a timely manner to ensure the completion of the works by the deadline stated in the Contract documentation or at the earliest practical date thereafter.

## 27. CLAIMS

- (a) No claims will be accepted on the grounds of failure to identify all the requirements of the contract. The Contractor shall be deemed to be fully aware of all aspects of the work required, areas to be treated and timescale involved. The Council will not accept any claims over and above the agreed estimates unless made with the written approval of the Client Officer.
- (b) The Council is will not provide storage facilities for the Contractor during the contract period; it is therefore the Contractors responsibility to take such

measures as to the provision of any materials or equipment on site. The Council will take no responsibility for any vandalism or theft which might occur as a result of materials or equipment being stored thereon. The Contractor shall be held responsible for any damage which might occur as a result of any such storage of materials or equipment.

## 28. POST INSTALLATION AND MAINTENANCE

- (a) On the satisfactory completion of all site operations the Contractor shall provide for and give to the Client Officer, a complete set of maintenance instructions.
- (b) The Contractor shall on submission of his invoice, provide Guarantee Certificates covering the life of the guarantee periods identified in the Tender Documents.
- (c) Final payment of the Contractor's invoice shall be made on the provision of a Post Installation Inspection Certificate from an approved RPII Inspector. This certificate will identify that all works have been completed to the current British and European Standards and the Council's specification.

## 29. SITE ACCESS

- (a) Vehicle access to the skatepark site (proposed under this contract) will be permitted either via Fryer Field Recreation Ground or via the Memorial Hall car park.