

Oakham Town Council – Public WC's

APPOINTMENT AGREEMENT

AND

SCOPE OF SERVICES

FOR

PROFESSIONAL BUILDING AND PROJECT CONSULTANCY SERVICES

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APPOINTMENT PARTICULARS

THIS AGREEMENT is made on the _____ day of _____ 20__

The Client: Oakham Town Council

The Consultant: Eddisons Commercial Ltd
of The Lawns
33 Thorpe Road
Peterborough, PE3 6AB

Project: Refurbishment works
at Oakham Public WC's

Basic Services: The Consultant, subject to the Conditions of this Appointment, performs the services relating to the Project which are identified by reference in the Schedule.

Fee: The total amount of the Consultant's Fee for the Basic Services (which fee is exclusive of VAT) is 11% of the agreed final account for Design, Project management, Contract Administrator services and Principal Designer services.

Reimbursable Expenses: The Consultant is entitled to charge the Client for the following disbursements and expenses in the next VAT invoice after they are incurred, provided that they are incurred in performing the Services and the Consultant provides satisfactory evidence of them:

- OS Map procurement (or equivalent supplier)
- Provision of Standard Contract Documentation
- Access provisions (Cherry pickers etc.)

Payment for Additional Services: The Consultant is entitled to be paid an additional fee at the following rates (which are exclusive of VAT) for any Additional Services performed under this Appointment:

<u>Role/Position</u>	<u>Hourly Rate (£)</u>
- Director	£200.00
- Associate Director	£175.00
- Surveyor	£125.00

Payment Terms: The Client pays the Fee by instalments and the Consultant invoices the Client on the dates or on completion of the activities or work stages set out below:

<u>Instalment date/activity/work stage/Key Date</u>	<u>Proportion of Fee for the Basic Services (amount or percent)</u>
– Fees on account	Equal to work carried out to date.
– Tender return date	50% less fees invoiced to date
– Monthly (issued on / around 25 th of the month)	Equal instalments of the residual total amount.

If the dates, work stages or activities are not set out, the Fee is payable in instalments at intervals of not less than one month, the first instalment being one month from the date the Consultant first commences performance of the Basic Services.

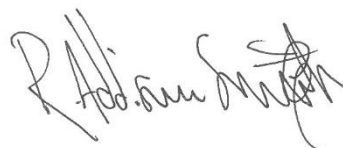
Limitation of Liability: The maximum aggregate liability of the Consultant is £5 million pounds (£5,000,000.00).

Professional Indemnity Insurance: The Consultant maintains professional indemnity insurance in the sum of Five Million pounds (£5,000,000.00) for any one claim in any one period.

Signed by or on behalf of the parties (under hand)

SIGNED by
(Director/Secretary/Partner/Member) for
and on behalf of the CLIENT

SIGNED by Rory Addison Smith BSc (Hons)
MRICS
(Director) for
and on behalf of the CONSULTANT



CONDITIONS

1 Appointment

- 1.1 The Client appoints the Consultant to provide the Services (which include the Basic Services and any Additional Services as described in Clause 6 below) and the Consultant accepts such appointment upon and subject to these Conditions (the "Appointment"). The Appointment takes effect on the date when the Consultant first commenced performance of the Services, irrespective of the date of the Appointment.
- 1.2 The Consultant regularly liaises and consults as necessary with the Contractor and other members of the Professional Team set out in the Appointment Particulars.

2 Standard of Care

The Consultant, when performing the Services, exercises the reasonable skill and care to be expected of an appropriately qualified professional consultant of the same discipline as the Consultant holding itself out as having the competence and resources to perform the Services.

3 Statutory Requirements

When performing the Services, the Consultant complies with the requirements of all statutes and legislation relevant to the Project. In particular, the Consultant complies with the Construction (Design and Management) Regulations 2015, to the extent they apply to the Project.

4 Prohibited Materials

The Consultant, exercising the required standard of care:

- (a) does not specify for use in connection with the Project any materials which by their nature or application contravene any British Standard or EU equivalent current at the time of specification or which are otherwise generally known within the construction and engineering industry at the time of specification to be harmful to health and safety or to the durability of works in the particular circumstances in which they are specified for use; and
- (b) insofar as reasonably practicable and having regard to the nature and extent of the Services, sees that such materials are not used in the construction of those parts of the Project to which the Services relate.

5 Fee

As consideration for the performance of the Basic Services, the Client pays the Consultant the Fee and the Reimbursable Expenses set out in the Appointment Particulars. The Fee is adjusted if the performance of the Basic Services is materially delayed and/or disrupted for any cause outside the Consultant's reasonable control. The parties agree the adjustment to the Fee and the timing of its payment. If not agreed, such adjustment is based on the rates set out for the Basic Services and, if no rates are set out, on the rates set out for the Additional Services. The Fee is then the Fee as adjusted.

6 Additional Services

If at any time the Client requires the Consultant to perform any services which are not identified as Basic Services in the services listed in the Schedule (“Additional Services”), the Client pays the Consultant for such Additional Services at the rates set out in the Appointment Particulars unless otherwise agreed. If the Client requires any Additional Services, the Consultant informs the Client of the likely additional fee to be charged. Unless otherwise agreed, the additional fee is payable after performance of the relevant Additional Services.

7 Payment of Remuneration and Reimbursable Expenses

- 7.1 The Consultant submits to the Client a VAT invoice in respect of the Fee, any additional fee payable for Additional Services and the Reimbursable Expenses on each instalment date or on completion of each activity or work stage set out in the Appointment Particulars. All invoices are accompanied by such supporting documents, records and receipts reasonably necessary for checking each invoice. The invoices and supporting documents, records and receipts (if any) specify the sum that the Consultant considers to be due to it on the payment due date under this Clause and the basis on which that sum is calculated. The payment due date is the date the Client receives the relevant invoice (the “due date”).
- 7.2 Not later than 5 days after the due date, the Client gives notice in writing to the Consultant of the sum that the Client considers to have been due at the due date in respect of the payment and the basis on which that sum is calculated.

8 Final Date for Payment

- 8.1 The Client, subject to any pay less notice (referred to below), pays the Consultant the sum referred to in the Client’s payment notice under Clause 7.2 (or, if the Client has not given notice under Clause 7.2, the sum stated in the invoice referred to in Clause 7.1) (the “notified sum”) on or before the final date for payment of the invoice. The final date for payment is 14 days after the due date.
- 8.2 If the Client intends to pay less than the notified sum, it gives the Consultant notice of that intention not later than 7 days before the final date for payment by specifying the amount the Client considers to be due to the Consultant at the date the notice is given and the basis on which that sum is calculated (the “pay less notice”). Where a pay less notice is given, the payment to be made on or before the final date for payment is not less than the amount stated as due in the pay less notice. Provided that this Clause does not apply where the Client is a residential occupier under the Housing Grants, Construction and Regeneration Act 1996 (as amended).
- 8.3 In relation to the requirements for the giving of notices under Clause 7 and 8, it is immaterial that the amount then considered to be due may be zero.

9 **Default, Interest and Suspension**

If the Client fails to pay the notified sum (or, where a pay less notice is issued in accordance with and where necessary under Clause 8.2, the amount specified in that notice) by the final date for payment:

- (a) the Client pays the Consultant simple interest on the unpaid amount for the period from the final date for payment until the date of actual payment, calculated on a daily basis at the rate of 4% above the base rate set from time to time by the Bank of England's Monetary Policy Committee (or any successor to it);
- (b) where such a failure continues for 7 days after the Consultant has given the Client notice in writing of its intention to suspend performance of any or all of the Services and the ground or grounds on which it intends to suspend performance, the Consultant may suspend such performance until such amount is paid; and/or
- (c) the Consultant may by notice in writing to the Client suspend the copyright licence under Clause 12 until such amount is paid.

10 **Limitations of Liability**

10.1 Except for liability for death or personal injury, the maximum aggregate liability of the Consultant to the Client under or in connection with this Appointment (whether in contract or tort (including negligence) or for breach of statutory duty) is limited to the amount specified in the Appointment Particulars. If no such amount is specified, such liability is limited to the amount of the Consultant's professional indemnity insurance specified in Clause 11.1.

10.2 Without prejudice to the above limitation or any other exclusion or limitation of liability available to the Consultant, the Consultant's liability for loss or damage suffered by the Client in the event of any breach of this Appointment is limited to the proportion of such loss or damage that it would be just and equitable to require the Consultant to pay having regard to the extent of responsibility of the Consultant for the same and on the assumptions that:

- (a) all contractors and sub-contractors and other members of the Professional Team have provided contractual undertakings to the Client on terms no less onerous than those set out in this Appointment in respect of the carrying out of their obligations in connection with the Project;
- (b) there are no exclusions or limitations of liability nor joint insurance or co-insurance provisions between the Client and any such persons; and
- (c) all such persons have paid to the Client such sums as it is just and equitable for them to pay having regard to the extent of their responsibility for such loss or damage.

Provided always that the Consultant does not assert that it has no or a reduced liability to the Client under this Appointment solely by reason of the fact that the Contractor accepts responsibility for the design of the Project, to the extent that such design is undertaken by the Consultant.

10.3 No action or proceedings for any breach of this Appointment may be commenced against the Consultant after the expiry of 6 years from practical completion of the Project.

11 Insurance

11.1 The Consultant maintains professional indemnity insurance in the sum specified in the Appointment Particulars, subject to such insurance being available in the insurance market on reasonable terms and rates.

11.2 The Consultant produces written evidence that this insurance is being maintained whenever reasonably requested to do so by the Client.

12 Copyright

12.1 Copyright in all drawings, plans, details specifications, bills of quantities, schedules, reports, records, calculations and all other documents including computer software and revisions of the same ("Documents") prepared by the Consultant for the purposes of the Project remains the property of the Consultant. Subject to Clause 9 (c), the Consultant grants to the Client a royalty-free, irrevocable, non-exclusive licence to use and reproduce the Documents and any designs contained in them for any purpose relating to the Project including the construction, completion, maintenance, operation, letting, sale reinstatement, mortgaging, refurbishment and repair of the Project (but not for any extension of the Project without the Consultant's written consent).

12.2 The Consultant is not liable for any use of the Documents for any purpose other than that for which they were originally prepared.

13 Suspension of the Services

13.1 The Client may at any time give notice in writing to the Consultant requiring it to suspend all or part of the Services.

13.2 The Consultant resumes performance of the Services which have been suspended as soon as reasonably practicable after it receives written notice to do so from the Client.

13.3 If the suspension continues for more than 3 months, either party may give notice in writing to the other terminating the Consultant's engagement under this Appointment.

14 Termination of Engagement

14.1 The Client may terminate the Consultant's engagement under this Appointment at any time by giving the Consultant 14 days' prior notice in writing.

14.2 If a party is in material breach of its obligations under this Appointment and fails to remedy such breach within 7 days after the other party gives it written notice to do so, the party which gave such notice may immediately thereafter terminate the Consultant's engagement under this Appointment by giving written notice to that effect to the party in breach.

14.3 If a party becomes insolvent (that is, is deemed unable to pay its debts under Sections 123, or 268 of the Insolvency Act 1986), then the other party may immediately terminate the Consultant's engagement under this Appointment by giving written notice to the insolvent party.

15 **Payment upon Suspension or Termination**

15.1 Upon any suspension or termination, the Client pays the Consultant in accordance with Clauses 7 and 8 (without prejudice to any rights the Client has in respect of any breach by the Consultant of its obligations under this Appointment):

- (a) that part of the Fee, the Additional Services Fee (if any) and any other sums which have accrued due up to the date of suspension or termination (as the case may be) and a fair and reasonable proportion of the next instalment of the Fee and any additional fee payable for Additional Services commensurate with the Services performed, less any amounts previously paid to the Consultant; and
- (b) (save where such suspension or termination is due to the Consultant being in breach) all reasonable costs, disbursements and expenses reasonably incurred by the Consultant (including any costs incurred in suspending and/or resuming performance of any or all of the Services) as a direct result of such suspension or termination.

15.2 Upon payment of the amount due under Clause 15.1, the Consultant hands over to the Client the Documents, subject to the terms of the copyright licence under Clause 12 and payment of the Consultant's reasonable copying charges.

15.3 Termination of the Consultant's engagement under this Appointment does not affect the accrued rights and remedies of the parties.

16 **Assignment and Sub-Contracting**

16.1 The Consultant does not assign or sub-contract any of its rights or obligations under this Appointment without the prior consent in writing of the Client (which consent is not to be unreasonably withheld or delayed).

16.2 The benefit of this Appointment may be assigned by the Client by way of an absolute legal assignment to any person providing finance or re-finance to the client on connection with the Project or to any person (A1) acquiring the Client's interest in the Project and by A1 to another person (A2) acquiring A1's interest in the Project. No further or other assignment is permitted and, in particular, A2 is not entitled to assign this Appointment.

17 **Disputes**

17.1 Notwithstanding any other provision of this Appointment, either party may at any time refer any dispute under it to adjudication under the Scheme for Construction Contracts (England and Wales) Regulations 1998, Part 1 (as amended).

17.2 The Adjudicator's decision is binding until the dispute or difference is finally determined by litigation. The Client and the Consultant attempt to agree the identity of the Adjudicator. If the parties fail to reach such agreement within 5 days after one party notifies the other that it wishes to agree the identity of the Adjudicator, the Adjudicator is appointed by the President or Vice President for the time being of RICS. Any dispute or difference in connection with the enforcement of a decision of the Adjudicator is referred to the Courts.

18 **General**

18.1 The Appointment supersedes any previous agreements or arrangements between the parties in respect of the Project.

18.2 Nothing in this Appointment confers or purports to confer any right to enforce any of its terms on any person who is not a party to it. Only the Client (and the Client's permitted assignees) and the Consultant can take action to enforce the terms of this Appointment.

18.3 Any reference to a statute or statutory provision is construed as a reference to that statute or provision as amended, consolidated, supplemented or re-enacted (with or without modifications) from time to time.

18.4 Where any Clause requires an act to be done within a specified period after or from a specified date, the period begins immediately after that date. Where the period includes Christmas Day, Good Friday or a day which, under the Banking and Financial Dealings Act 1971, is a bank holiday in England and Wales, that day is excluded.

19 **Notices**

19.1 Any notice under this Appointment is deemed to be given if it is in writing and delivered by hand or sent by pre-paid, recorded or special delivery post to the Client or the Consultant (as the case may be) at the address set out for each party in this Appointment or any other address notified by one party to the other in accordance with this Clause.

19.2 Any notice sent by hand is deemed received upon actual receipt by the party to whom it is addressed.

19.3 Any notice sent by postal method described in Clause 19.1 is deemed received 48 hours after it was posted.

20 **Governing Law and Jurisdiction**

This Appointment is governed by and construed in accordance with English law and the parties submit to the exclusive jurisdiction of the Courts of England and Wales.

SCOPE OF BUILDING SURVEYING SERVICES

Including the roles of Contract Administrator and Principal Designer

This Scope of Services is issued in accordance with the attached Appointment Agreement for Building Surveying Services.

1. Scope of Services

In all respects relevant to this project to take instructions properly issued from the client and to act as a liaison between the client and the contractor as far as reasonably practicable.

1.1 To carry out all of the normal duties reasonably required of a contract administrator under the selected and agreed form of contract.

1.2 To carry out the normal duties reasonably required of a Principal Designer as required by CDM 2015.

1.3 To carry out these duties, as far as reasonably practicable, from commencement of the project (RIBA Stage 0), through preparation and briefing (RIBA Stage 1), concept design (RIBA Stage 2), develop design (RIBA Stage 3), technical design (RIBA Stage 4), construction (RIBA Stage 5) and handover and closeout (RIBA Stage 6) specifically as follows:

1.3.1 To take the client's brief and instructions and to incorporate these instructions and design decisions into the specification of the works.

1.3.2 To develop the design, drawings and specification in cooperation with the client and Principal Contractor to meet the client's brief.

1.3.3 To report to the client at regular intervals as appropriate throughout the course of the project and to obtain the client's instructions and approval before proceeding to the next stage.

1.3.4 To make recommendations to the client where appropriate to ensure that design decisions, designs, outlines and the like are appropriate and reasonable.

1.3.5 To obtain building control approval as required for the specified works as instructed by the client. To prepare all planning drawings required and issue to the client's planning consultant.

1.3.6 To negotiate a contract figure in conjunction with the client and with the client's appointed contractor.

1.3.7 To advise the client on the proposed contract sum and to obtain the client's approval and instructions prior to issuing contract documents.

1.3.8 To advise the client on an appropriate form of contract allowing for contractor's design.

1.3.9 To prepare the contract documents and issue to the client and principal contractor for signature.

- 1.3.10 To receive the client's instruction to commence work and to arrange for the contractor to programme the works and to issue a programme.
- 1.3.11 To provide all necessary and reasonably foreseeable information to the contractor to allow works to commence on site.
- 1.3.12 To arrange a prestart meeting with the client and the contractor to discuss site issues and arrangements and to issue written minutes.
- 1.3.13 To visit the site during the course of the works as reasonably required in order to monitor progress and to answer technical questions and to report back to the client.
- 1.3.14 To monitor progress of the works against the contractor's programme and to raise any concerns over progress with the contractor and the client as appropriate. Where necessary request instructions from the client where variations are likely to result in an extension to the contract period.
- 1.3.15 To monitor costs throughout the works, bringing any cost issues arising from the works or variations to the works to the client's attention and seek instructions.
- 1.3.16 Where either time or cost issues seem likely to affect the completion date or contract cost, bring these to attention of the client with recommendations for taking appropriate action. Where the variations will result in an increase in the final contract sum, seek client instructions before proceeding.
- 1.3.17 Arrange and chair monthly progress meetings on site, inviting representatives of the client and contractor and any other relevant party. Issue minutes.
- 1.3.18 To issue variation orders as required to confirm instructions.
- 1.3.19 To value the works at the appropriate intervals and to issue payment certificates in accordance with the terms of the contract.
- 1.3.20 To certify practical completion.
- 1.3.21 To agree the final account with the contractor and client and to issue all appropriate contract certificates.