

**DATED** 6 August

**2025**

**(1) NEW FOREST DISTRICT COUNCIL**

**- and -**

**(2) MERIDIES CONSULTING LTD**

## **AGREEMENT**

relating to the supply of  
Local Plan and CIL Charging Schedule Viability Appraisal Consultancy Services

This Agreement is made the 6<sup>th</sup> day of August 2025

Between:

- (A) **NEW FOREST DISTRICT COUNCIL** of Appletree Court, Beaulieu Road, Lyndhurst, Hampshire SO43 7PA ("the Council")
- (B) **[CONSULTANT]** (Company Number 09442037) whose registered office is Jitty Cottage, 8 Apsley Hill, Woburn Sands, MK17 8NJ ("the Consultant")

## 1. INTERPRETATION

### 1.1 In these terms and conditions:

"Agreement"	means this contract between the Council and the Consultant;
"Charges"	means the charges for the Consultancy Services as specified in Schedule 1;
"Commencement Date"	means 05/08/25;
"Confidential Information"	means all information, whether written or oral (however recorded), provided by the disclosing Party to the receiving Party and which (i) is known by the receiving Party to be confidential; (ii) is marked as or stated to be confidential; or (iii) ought reasonably to be considered by the receiving Party to be confidential;
"Expiry Date"	means the date for expiry of the Agreement, being 31/07/27;
"FOIA"	means the Freedom of Information Act 2000;
"Information"	has the meaning given under section 84 of the FOIA;
"Key Personnel"	means any persons specified as such in <b>Schedule 2</b> or otherwise notified as such by the Council to the Supplier in writing;
"Party"	means the Consultant or the Council (as appropriate) and "Parties" shall mean both of them;
"Purchase Order Number"	means the Council's unique number relating to the supply of the Services;
"Request for Information"	has the meaning set out in the FOIA or the Environmental Information Regulations 2004 as relevant (where the meaning set out for the term "request" shall apply);
"Services"	means the consultancy services to be supplied by the Consultant to the Council under the Agreement;

“Specification”	means the specification for the Services as set out in Schedule 3;
“Staff”	means all directors, officers, employees, agents, consultants and contractors of the Consultant and/or of any sub-contractor of the Consultant engaged in the performance of the Consultant’s obligations under the Agreement;
“Staff Vetting Procedures”	means vetting procedures that accord with good industry practice or, where requested by the Council, the Council’s procedures for the vetting of personnel as provided to the Consultant from time to time;
“Term”	means the period from the date of the Agreement to the Expiry Date as such period may be extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement;
“VAT”	means value added tax in accordance with the provisions of the Value Added Tax Act 1994; and
“Working Day”	means a day (other than a Saturday or Sunday) on which banks are open for business in the City of London.

1.2 In these terms and conditions, unless the context otherwise requires:

- 1.2.1 references to numbered clauses are references to the relevant clause in these terms and conditions;
- 1.2.2 any obligation on any Party not to do or omit to do anything shall include an obligation not to allow that thing to be done or omitted to be done;
- 1.2.3 the headings to the clauses of these terms and conditions are for information only and do not affect the interpretation of the Agreement;
- 1.2.4 any reference to an enactment includes reference to that enactment as amended or replaced from time to time and to any subordinate legislation or byelaw made under that enactment; and
- 1.2.5 the word ‘including’ shall be understood as meaning ‘including without limitation’.

## **2. BASIS OF AGREEMENT**

- 2.1 The Council wishes to receive consultancy services to provide a viability appraisal of policies and proposals in the Local Plan Review and advice and recommendations on the CIL Charging Schedule.
- 2.2 The Consultant has the skills, background and experience in providing viability appraisal work for local planning authorities.

- 2.3 The Consultant is willing to provide the Services and the Council is willing to appoint the Consultant to provide the Services, all in accordance with the provisions of this Agreement.
- 2.4 The Agreement shall commence on the Commencement Date and shall expire on the Expiry Date unless it is terminated in accordance with the terms and conditions of the Agreement.

### **3. SUPPLY OF SERVICES**

- 3.1 In consideration of the Council's agreement to pay the Charges, the Consultant shall supply the Services to the Council for the Term subject to and in accordance with the terms and conditions of the Agreement.
- 3.2 In supplying the Services, the Consultant shall:
- 3.2.1 co-operate with the Council in all matters relating to the Services and comply with all the Council's instructions;
  - 3.2.2 perform the Services with all reasonable care, skill and diligence in accordance with good industry practice in the Consultant's industry, profession or trade;
  - 3.2.3 ensure that the Services shall conform with all descriptions and specifications set out in the Specification;
  - 3.2.4 comply with all applicable laws; and
  - 3.2.5 provide all equipment, tools and vehicles and other items as are required to provide the Services.
- 3.3 The Services shall only be performed by the persons named in the Specification.
- 3.4 If the Consultant wishes persons other than the Consultant to perform the Services, the Consultant shall only do so after obtaining the prior written approval of the Council.
- 3.5 The Council may by written notice to the Consultant at any time request a variation to the scope of the Services. In the event that the Consultant agrees to any variation to the scope of the Services, the Charges shall be subject to fair and reasonable adjustment to be agreed in writing between the Council and the Consultant.

### **4. TERM**

- 4.1 The Agreement shall take effect on the date of the Agreement and shall expire on the Expiry Date, unless it is otherwise extended in accordance with clause 4.2 or terminated in accordance with the terms and conditions of the Agreement.
- 4.2 The Council may extend the Agreement for a period of up to 6 months by giving not less than 10 Working Days' notice in writing to the Consultant prior to the Expiry Date. The terms and conditions of the Agreement shall apply throughout any such extended period.

### **5. CHARGES, PAYMENT AND RECOVERY OF SUMS DUE**

- 5.1 The Charges for the Services shall be as set out in Schedule 1 and shall be the full and exclusive remuneration of the Consultant in respect of the supply of the Services.

Unless otherwise agreed in writing by the Council, the Charges shall include every cost and expense of the Consultant directly or indirectly incurred in connection with the performance of the Services.

- 5.2 The Consultant shall invoice the Council as specified in the Agreement. Each invoice shall include such supporting information required by the Council to verify the accuracy of the invoice, including the relevant Purchase Order Number and a breakdown of the Services supplied in the invoice period.
- 5.3 Where the Consultant submits an invoice to the Council in accordance with clause 5.2, the Council will consider and verify that invoice in a timely fashion. Any undue delay on the part of the Council in substantiating the invoice will not of itself be reason to consider the invoice invalid. Where there is an undue delay in considering and verifying the invoice on the part of the Council, the invoice shall be regarded as valid and undisputed for the purposes of clause 5.4 after a reasonable time has passed.
- 5.4 In consideration of the supply of the Services by the Consultant, the Council shall pay the Consultant the invoiced amounts no later than 30 days after receipt of a valid invoice which includes a valid Purchase Order Number. The Council may, without prejudice to any other rights and remedies under the Agreement, withhold or reduce payments in the event of unsatisfactory performance.
- 5.5 All amounts stated are exclusive of VAT which shall be charged at the prevailing rate. The Council shall, following the receipt of a valid VAT invoice, pay to the Consultant a sum equal to the VAT chargeable in respect of the Services.
- 5.6 If there is a dispute between the Parties as to the amount invoiced, the Council shall pay the undisputed amount. The Consultant shall not suspend the supply of the Services unless the Consultant is entitled to terminate the Agreement for a failure to pay undisputed sums in accordance with clause 17.4. Any disputed amounts shall be resolved through the dispute resolution procedure detailed in clause 20.
- 5.7 If a payment of an undisputed amount is not made by the Council by the due date, then the Council shall pay the Consultant interest at the interest rate specified in the Late Payment of Commercial Debts (Interest) Act 1998.
- 5.8 If any sum of money is recoverable from or payable by the Consultant under the Agreement (including any sum which the Consultant is liable to pay to the Council in respect of any breach of the Agreement), that sum may be deducted unilaterally by the Council from any sum then due, or which may come due, to the Consultant under the Agreement or under any other agreement or contract with the Council. The Consultant shall not be entitled to assert any credit, set-off or counterclaim against the Council in order to justify withholding payment of any such amount in whole or in part.

## **6. PREMISES AND EQUIPMENT**

- 6.1 If necessary, the Council shall provide the Consultant with reasonable access at reasonable times to its premises for the purpose of supplying the Services. All equipment, tools and vehicles brought onto the Council's premises by the Consultant or the Staff shall be at the Consultant's risk.
- 6.2 If the Consultant supplies all or any of the Services at or from the Council's premises, on completion of the Services or termination or expiry of the Agreement (whichever is the earlier) the Consultant shall vacate the Council's premises, remove the Consultant's plant, equipment and unused materials and all rubbish arising out of the

provision of the Services and leave the Council's premises in a clean, safe and tidy condition. The Consultant shall be solely responsible for making good any damage to the Council's premises or any objects contained on the Council's premises which is caused by the Consultant or any Staff, other than fair wear and tear.

- 6.3 If the Consultant supplies all or any of the Services at or from its premises or the premises of a third party, the Council may, during normal business hours and on reasonable notice, inspect and examine the manner in which the relevant Services are supplied at or from the relevant premises.
- 6.4 The Council shall be responsible for maintaining the security of its premises in accordance with its standard security requirements. While on the Council's premises the Consultant shall, and shall procure that all Staff shall, comply with all the Council's security requirements.
- 6.5 Where all or any of the Services are supplied from the Consultant's premises, the Consultant shall, at its own cost, comply with all security requirements specified by the Council in writing.
- 6.6 Without prejudice to clause 3.2.5, any equipment provided by the Council for the purposes of the Agreement shall remain the property of the Council and shall be used by the Consultant and the Staff only for the purpose of carrying out the Agreement. Such equipment shall be returned promptly to the Council on expiry or termination of the Agreement.
- 6.7 The Consultant shall reimburse the Council for any loss or damage to the equipment (other than deterioration resulting from normal and proper use) caused by the Consultant or any Staff. Equipment supplied by the Council shall be deemed to be in a good condition when received by the Consultant or relevant Staff unless the Council is notified otherwise in writing within 5 Working Days.

## **7. PROVISION AND OWNERSHIP OF REPORTS**

- 7.1 The Consultant will provide reports at the times and in the format specified in the Specification.
- 7.2 Unless otherwise specified in the Specification the copyright (and all other intellectual property rights) in the reports (or any other material, documentation or data) developed, written, created or prepared by or for the Consultant in performing the Services ("Consultancy Materials"), shall belong to the Council.
- 7.3 The Consultancy Materials created under this Agreement shall be original works created by the Consultant and shall:
  - 7.3.1 not include intellectual property owned by or licensed to a third party except for intellectual property which the Consultant has the right to use (including the right to use the intellectual property for the purposes of this Agreement);
  - 7.3.2 not subject the Council to any claim for the infringement of any intellectual property rights of a third party.

## **8. STAFF AND KEY PERSONNEL**

- 8.1 If the Council reasonably believes that any of the Staff are unsuitable to undertake work in respect of the Agreement, it may, by giving written notice to the Consultant:

- 8.1.1 refuse admission to the relevant person(s) to the Council's premises;
- 8.1.2 direct the Consultant to end the involvement in the provision of the Services of the relevant person(s); and/or
- 8.1.3 require that the Consultant replace any person removed under this clause with another suitably qualified person and procure that any security pass issued by the Council to the person removed is surrendered,

and the Consultant shall comply with any such notice.

8.2 The Consultant shall:

- 8.2.1 ensure that all Staff are vetted in accordance with the Staff Vetting Procedures;
- 8.2.2 if requested, provide the Council with a list of the names and addresses (and any other relevant information) of all persons who may require admission to the Council's premises in connection with the Agreement; and
- 8.2.3 procure that all Staff comply with any rules, regulations and requirements reasonably specified by the Council.

8.3 Any Key Personnel shall not be released from supplying the Services without the agreement of the Council, except by reason of long-term sickness, maternity leave, paternity leave, termination of employment or other extenuating circumstances.

8.4 Any replacements to the Key Personnel shall be subject to the prior written agreement of the Council (not to be unreasonably withheld). Such replacements shall be of at least equal status or of equivalent experience and skills to the Key Personnel being replaced and be suitable for the responsibilities of that person in relation to the Services.

## **9. ASSIGNMENT AND SUB-CONTRACTING**

9.1 The Consultant shall not without the written consent of the Council assign, sub-contract, novate or in any way dispose of the benefit and/ or the burden of the Agreement or any part of the Agreement. The Council may, in the granting of such consent, provide for additional terms and conditions relating to such assignment, sub-contract, novation or disposal. The Consultant shall be responsible for the acts and omissions of its sub-contractors as though those acts and omissions were its own.

9.2 Where the Consultant enters into a Sub-Contract for the purpose of performing its obligations under the Agreement, it shall ensure there are included in such Sub-Contract:

- (a) Provisions having the same effect as clauses 5.2 – 5.4 of this Agreement;
- (b) A provision requiring the counterparty to that Sub-Contract to include in any Sub-Contract which it awards provisions having the same effect as clauses 5.2 – 5.4 of this Agreement,

In clause 8.2, "Sub-Contract" means a contract between two or more Consultants, at any stage of remoteness from the Council in a subcontracting chain, made wholly or

substantially for the purpose of performing (or contributing to the performance of) the whole or any part of this Agreement.

- 9.3 Where the Council has consented to the placing of sub-contracts, the Consultant shall, at the request of the Council, send copies of each sub-contract, to the Council as soon as is reasonably practicable.
- 9.4 The Council may assign, novate, or otherwise dispose of its rights and obligations under the Agreement without the consent of the Consultant provided that such assignment, novation or disposal shall not increase the burden of the Consultant's obligations under the Agreement.

## **10. INTELLECTUAL PROPERTY RIGHTS**

- 10.1 All intellectual property rights in any materials provided by the Council to the Consultant for the purposes of this Agreement shall remain the property of the Council but the Council hereby grants the Consultant a royalty-free, non-exclusive and non-transferable licence to use such materials as required until termination or expiry of the Agreement for the sole purpose of enabling the Consultant to perform its obligations under the Agreement.
- 10.2 All intellectual property rights in any materials created or developed by the Consultant pursuant to the Agreement or arising as a result of the provision of the Services shall vest in the Consultant. If, and to the extent, that any intellectual property rights in such materials vest in the Council by operation of law, the Council hereby assigns to the Consultant by way of a present assignment of future rights that shall take place immediately on the coming into existence of any such intellectual property rights all its intellectual property rights in such materials (with full title guarantee and free from all third party rights).
- 10.3 The Consultant hereby grants the Council:
- 10.3.1 a perpetual, royalty-free, irrevocable, non-exclusive licence (with a right to sub-license) to use all intellectual property rights in the materials created or developed pursuant to the Agreement and any intellectual property rights arising as a result of the provision of the Services; and
- 10.3.2 a perpetual, royalty-free, irrevocable and non-exclusive licence (with a right to sub-license) to use:
- (a) any intellectual property rights vested in or licensed to the Consultant on the date of the Agreement; and
- (b) any intellectual property rights created during the Term but which are neither created or developed pursuant to the Agreement nor arise as a result of the provision of the Services,
- including any modifications to or derivative versions of any such intellectual property rights, which the Council reasonably requires in order to exercise its rights and take the benefit of the Agreement including the Services provided.
- 10.4 The Consultant shall indemnify, and keep indemnified, the Council in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, penalties, and reasonable legal and other professional fees awarded against or incurred or paid by the Council as a result of or in connection with any claim made



against the Council for actual or alleged infringement of a third party's intellectual property arising out of, or in connection with, the supply or use of the Services, to the extent that the claim is attributable to the acts or omission of the Consultant or any Staff.

## **11. GOVERNANCE AND RECORDS**

### **11.1 The Consultant shall:**

11.1.1 attend progress meetings with the Council at the frequency and times specified by the Council and shall ensure that its representatives are suitably qualified to attend such meetings; and

11.1.2 submit progress reports to the Council at the times and in the format specified by the Council.

11.2 The Consultant shall keep and maintain until 6 years after the end of the Agreement, or as long a period as may be agreed between the Parties, full and accurate records of the Agreement including the Services supplied under it and all payments made by the Council. The Consultant shall on request afford the Council or the Council's representatives such access to those records as may be reasonably requested by the Council in connection with the Agreement.

## **12. CONFIDENTIALITY, TRANSPARENCY AND PUBLICITY**

### **12.1 Subject to clause 12.2, each Party shall:**

12.1.1 treat all Confidential Information it receives as confidential, safeguard it accordingly and not disclose it to any other person without the prior written permission of the disclosing Party; and

12.1.2 not use or exploit the disclosing Party's Confidential Information in any way except for the purposes anticipated under the Agreement.

12.2 Notwithstanding clause 12.1, a Party may disclose Confidential Information which it receives from the other Party:

12.2.1 where disclosure is required by applicable law or by a court of competent jurisdiction;

12.2.2 to its auditors or for the purposes of regulatory requirements;

12.2.3 on a confidential basis, to its professional advisers;

12.2.4 to the Serious Fraud Office where the Party has reasonable grounds to believe that the other Party is involved in activity that may constitute a criminal offence under the Bribery Act 2010;

12.2.5 where the receiving Party is the Consultant, they may provide Confidential Information to their Staff on a need to know basis to enable performance of the Consultant's obligations under the Agreement provided that the Consultant shall procure that any Staff to whom it discloses Confidential Information pursuant to this clause 12.2.5 shall observe the Consultant's confidentiality obligations under the Agreement; and

12.2.6 where the receiving Party is the Council:

- (a) on a confidential basis to the employees, agents, consultants and contractors of the Council;
- (b) on a confidential basis to any other central government body, any successor body to a Central Government Body or any company to which the Council transfers or proposes to transfer all or any part of its business;
- (c) to the extent that the Council (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions; or
- (d) in accordance with clause 13.

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Council under this clause 12.

12.3 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of the Agreement is not Confidential Information and the Consultant hereby gives its consent for the Council to publish this Agreement in its entirety to the general public (but with any information that is exempt from disclosure in accordance with the FOIA redacted) including any changes to the Agreement agreed from time to time. The Council may consult with the Consultant to inform its decision regarding any redactions but shall have the final decision in its absolute discretion whether any of the content of the Agreement is exempt from disclosure in accordance with the provisions of the FOIA.

12.4 The Consultant shall not, and shall take reasonable steps to ensure that the Staff shall not, make any press announcement or publicise the Agreement or any part of the Agreement in any way, except with the prior written consent of the Council.

### **13. FREEDOM OF INFORMATION**

13.1 The Consultant acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations 2004 and shall:

- 13.1.1 provide all necessary assistance and cooperation as reasonably requested by the Council to enable the Council to comply with its obligations under the FOIA and the Environmental Information Regulations 2004;
- 13.1.2 transfer to the Council all Requests for Information relating to this Agreement that it receives as soon as practicable and in any event within 2 Working Days of receipt;
- 13.1.3 provide the Council with a copy of all Information belonging to the Council requested in the Request for Information which is in its possession or control in the form that the Council requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

- 13.1.4 not respond directly to a Request for Information unless authorised in writing to do so by the Council.
- 13.2 The Consultant acknowledges that the Council may be required under the FOIA and the Environmental Information Regulations 2004 to disclose Information concerning the Consultant or the Services (including commercially sensitive information) without consulting or obtaining consent from the Consultant. In these circumstances the Council shall, in accordance with any relevant guidance issued under the FOIA, take reasonable steps, where appropriate, to give the Consultant advance notice, or failing that, to draw the disclosure to the Consultant's attention after any such disclosure.
- 13.3 Notwithstanding any other provision in the Agreement, the Council shall be responsible for determining in its absolute discretion whether any Information relating to the Consultant or the Services is exempt from disclosure in accordance with the FOIA and/or the Environmental Information Regulations 2004.

#### **14. PROTECTION OF PERSONAL DATA AND SECURITY OF DATA**

- 14.1** The provisions of Schedule 4 shall apply if so stated in that Schedule.

#### **15. LIABILITY AND INSURANCE**

- 15.1 The Consultant shall not be responsible for any injury, loss, damage, cost or expense suffered by the Council if and to the extent that it is caused by the negligence or wilful misconduct of the Council or by breach by the Council of its obligations under the Agreement.
- 15.2 Subject always to clauses 15.3 and 15.4, except in the case of claims arising under clauses 10.4 and 19.3, in no event shall the Consultant be liable to the Council for any:
- (a) loss of or damage to goodwill;
  - (b) loss of savings (whether anticipated or otherwise); and/or
  - (c) any indirect, special or consequential loss or damage.
- 15.3 Nothing in the Agreement shall be construed to limit or exclude either Party's liability for:
- 15.3.1 death or personal injury caused by its negligence or that of its Staff;
  - 15.3.2 fraud or fraudulent misrepresentation by it or that of its Staff; or
  - 15.3.3 any other matter which, by law, may not be excluded or limited.
- 15.4 The Consultant's liability under the indemnity in clauses 10.4 and 19.3 shall be unlimited.
- 15.5 The Consultant shall effect, be a reputable company, public and employers liability and other insurances necessary to cover the risks contemplated by this Agreement or arising out of the Consultants performance of this Agreement, including death or personal injury, loss of or damage to property, financial loss from any advice given or omitted to be given by the Consultant or any other loss. The Consultant shall, at the request of the Council, produce the relevant policy or policies together with receipts or other evidence of the latest premium due and paid thereunder. Public liability cover of

at least £3 million, and Professional Indemnity cover of £2 million in relation to any one claim or series of claims shall be obtained, unless otherwise agreed with the Council. The terms of any insurance or the amount of cover shall not relieve the Consultant of any liabilities under the Agreement. The Consultant shall hold and maintain such insurance for a minimum of six years following the expiration or earlier termination of the Agreement.

## **16. FORCE MAJEURE**

Neither Party shall have any liability under or be deemed to be in breach of the Agreement for any delays or failures in performance of the Agreement which result from circumstances beyond the reasonable control of the Consultant. Each Party shall promptly notify the other Party in writing when such circumstances cause a delay or failure in performance and when they cease to do so. If such circumstances continue for a continuous period of more than two months, either Party may terminate the Agreement by written notice to the other Party.

## **17. TERMINATION**

- 17.1 The Council may terminate the Agreement at any time by notice in writing to the Consultant to take effect on any date falling at least 1 month (or, if the Agreement is less than 3 months in duration, at least 10 Working Days) later than the date of service of the relevant notice.
- 17.2 Without prejudice to any other right or remedy it might have, the Council may terminate the Agreement by written notice to the Consultant with immediate effect if the Consultant:
- 17.2.1 (without prejudice to clause 17.2.5), is in material breach of any obligation under the Agreement which is not capable of remedy;
  - 17.2.2 repeatedly breaches any of the terms and conditions of the Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms and conditions of the Agreement;
  - 17.2.3 is in material breach of any obligation which is capable of remedy, and that breach is not remedied within 30 days of the Consultant receiving notice specifying the breach and requiring it to be remedied;
  - 17.2.4 undergoes a change of control within the meaning of section 416 of the Income and Corporation Taxes Act 1988;
  - 17.2.5 breaches any of the provisions of clauses 8.2, 12, 13, 14 and 18; or
  - 17.2.6 becomes insolvent, or if an order is made or a resolution is passed for the winding up of the Consultant (other than voluntarily for the purpose of solvent amalgamation or reconstruction), or if an administrator or administrative receiver is appointed in respect of the whole or any part of the Consultant's assets or business, or if the Consultant makes any composition with its creditors or takes or suffers any similar or analogous action (to any of the actions detailed in this clause 17.2.6) in consequence of debt in any jurisdiction.

- 17.2.7 this Agreement has been subject to substantial modification which would require a new procurement exercise.
- 17.2.8 where the Consultant should have been excluded from the procurement exercise for the award of this contract under the provision of Regulation 57 of The Public Contract Regulations 2015.
- 17.2.9 in circumstances where the Court of Justice of the European Union has declared that this Agreement should not have been awarded.
- 17.3 The Consultant shall notify the Council as soon as practicable of any change of control as referred to in clause 17.2.4 or any potential such change of control.
- 17.4 The Consultant may terminate the Agreement by written notice to the Council if the Council has not paid any undisputed amounts within 90 days of them falling due.
- 17.5 Termination or expiry of the Agreement shall be without prejudice to the rights of either Party accrued prior to termination or expiry and shall not affect the continuing rights of the Parties under this clause and clauses, 3.2, 6.1, 6.2, 6.6, 6.7, 8.2, 10, 11.2, 12, 13, 14, 15, 17.6, 18.4, 19.3, 20 and 21.7 or any other provision of the Agreement that either expressly or by implication has effect after termination.
- 17.6 Upon termination or expiry of the Agreement, the Consultant shall:
  - 17.6.1 give all reasonable assistance to the Council and any incoming Consultant of the Services; and
  - 17.6.2 return all requested documents, information and data to the Council as soon as reasonably practicable.

## **18. COMPLIANCE**

- 18.1 The Consultant shall promptly notify the Council of any health and safety hazards which may arise in connection with the performance of its obligations under the Agreement. The Council shall promptly notify the Consultant of any health and safety hazards which may exist or arise at the Council's premises and which may affect the Consultant in the performance of its obligations under the Agreement.
- 18.2 The Consultant shall:
  - 18.2.1 comply with all the Council's health and safety measures while on the Council's premises; and
  - 18.2.2 notify the Council immediately in the event of any incident occurring in the performance of its obligations under the Agreement on the Council's premises where that incident causes any personal injury or damage to property which could give rise to personal injury.
- 18.3 The Consultant shall:
  - 18.3.1 perform its obligations under the Agreement in accordance with all applicable equality Law and the Council's equality and diversity policy as provided to the Consultant from time to time; and

18.3.2 take all reasonable steps to secure the observance of clause 18.3.1 by all Staff.

18.4 The Consultant shall supply the Services in accordance with the Council's environmental policy as provided to the Consultant from time to time.

18.5 The Consultant shall comply with, and shall ensure that its Staff shall comply with, the provisions of section 182 of the Finance Act 1989.

## **19. PREVENTION OF FRAUD AND CORRUPTION**

19.1 The Consultant shall not offer, give, or agree to give anything, to any person an inducement or reward for doing, refraining from doing, or for having done or refrained from doing, any act in relation to the obtaining or execution of the Agreement or for showing or refraining from showing favour or disfavour to any person in relation to the Agreement, or commit any offence under the Bribery Act 2010, or defraud, attempt to defraud or conspire to defraud the Council.

19.2 The Consultant shall take all reasonable steps, in accordance with good industry practice, to prevent fraud or other breach of clause 18.1 by the Staff and the Consultant (including its shareholders, members and directors) in connection with the Agreement and shall notify the Council immediately if it has reason to suspect that any such fraud or breach has occurred or is occurring or is likely to occur.

19.3 If the Consultant or the Staff engages in conduct prohibited by clause 19.1 or commits fraud in relation to the Agreement or any other contract with the Council, the Council may:

19.3.1 terminate the Agreement and recover from the Consultant the amount of any loss suffered by the Council resulting from the termination, including the cost reasonably incurred by the Council of making other arrangements for the supply of the Services and any additional expenditure incurred by the Council throughout the remainder of the Agreement; or

19.3.2 recover in full from the Consultant any other loss sustained by the Council in consequence of any breach of this clause.

19.3.3 by notice require the Consultant to remove from performance of this Agreement any Staff whose acts or omissions have caused the breach.

## **20. DISPUTE RESOLUTION**

20.1 The Parties shall attempt in good faith to negotiate a settlement to any dispute between them arising out of or in connection with the Agreement and such efforts shall involve the escalation of the dispute to an appropriately senior representative of each Party.

20.2 If the dispute cannot be resolved by the Parties within one month of being escalated as referred to in clause 20.1, the dispute may by agreement between the Parties be referred to a neutral adviser or mediator (the "**Mediator**") chosen by agreement between the Parties. All negotiations connected with the dispute shall be conducted in confidence and without prejudice to the rights of the Parties in any further proceedings.

- 20.3 If the Parties fail to appoint a Mediator within one month or fail to enter into a written agreement resolving the dispute within one month of the Mediator being appointed, either Party may exercise any remedy it has under applicable law.

## **21. GENERAL**

- 21.1 Each of the Parties represents and warrants to the other that it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under the Agreement, and that the Agreement is executed by its duly authorised representative.
- 21.2 A person who is not a party to the Agreement shall have no right to enforce any of its provisions which, expressly or by implication, confer a benefit on him, without the prior written agreement of the Parties.
- 21.3 The Agreement cannot be varied except in writing signed by a duly authorised representative of both the Parties.
- 21.4 The Agreement contains the whole agreement between the Parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The Parties confirm that they have not entered into the Agreement on the basis of any representation that is not expressly incorporated into the Agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 21.5 Any waiver or relaxation either partly, or wholly of any of the terms and conditions of the Agreement shall be valid only if it is communicated to the other Party in writing and expressly stated to be a waiver. A waiver of any right or remedy arising from a breach of contract shall not constitute a waiver of any right or remedy arising from any other breach of the Agreement.
- 21.6 The Agreement shall not constitute or imply any partnership, joint venture, agency, fiduciary relationship or other relationship between the Parties other than the contractual relationship expressly provided for in the Agreement. Neither Party shall have, nor represent that it has, any authority to make any commitments on the other Party's behalf.
- 21.7 Except as otherwise expressly provided by the Agreement, all remedies available to either Party for breach of the Agreement (whether under the Agreement, statute or common law) are cumulative and may be exercised concurrently or separately, and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 21.8 If any provision of the Agreement is prohibited by law or judged by a court to be unlawful, void or unenforceable, the provision shall, to the extent required, be severed from the Agreement and rendered ineffective as far as possible without modifying the remaining provisions of the Agreement, and shall not in any way affect any other circumstances of or the validity or enforcement of the Agreement.

## **22. NOTICES**

- 22.1 Any notice to be given under the Agreement shall be in writing and may be served by personal delivery, first class post or recorded delivery to the address of the relevant party set out above or such other address as that Party may from time to time notify to the other Party in accordance with this clause.

22.2 Notices served by personal delivery shall be deemed served on the Working Day of delivery provided delivery is before 5.00pm on a Working Day. Otherwise delivery shall be deemed to occur on the next Working Day. Notice served by first class post or recorded delivery shall be deemed to have been given 2 Working Days after the date on which the notice was posted unless the notice has been returned as undelivered.

## **23. ANTI-SLAVERY**

23.1 In performing its obligations under the contract the Consultant shall:

- (a) comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015; and
- (b) not engage in any activity, practice or conduct that would constitute an offence under sections 1, 2 or 4, of the Modern Slavery Act 2015 if such activity, practice or conduct were carried out in the UK; and
- (c) ensure that each of its subcontractors and suppliers shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including but not limited to the Modern Slavery Act 2015.

23.2 The Consultant represents and warrants that:

Neither the Consultant nor any of its officers, employees or other persons associated with it:

- (a) has been convicted of any offence involving slavery and human trafficking; and
- (b) having made reasonable enquiries, so far as it is aware, has been or is the subject of any investigation, inquiry or enforcement proceedings by any governmental, administrative or regulatory body regarding any offence or alleged offence of or in connection with slavery and human trafficking.

23.3 The Consultant shall implement due diligence procedures for its subcontractors, and suppliers and other participants in its supply chains, to ensure that there is no slavery or human trafficking in its supply chains.

23.4 The Consultant shall notify the council as soon as it becomes aware of:

- (a) any breach, or potential breach, of the applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force; or
- (b) any actual or suspected slavery or human trafficking in a supply chain which has a connection with this agreement.

23.5 The Council may terminate the contract with immediate effect by giving written notice to the Consultant if the Consultant or any of its supply chain commits a breach of the applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force.


## **24. GOVERNING LAW AND JURISDICTION**



The validity, construction and performance of the Agreement, and all contractual and non-contractual matters arising out of it, shall be governed by English law and shall be subject to the exclusive jurisdiction of the English courts to which the Parties submit.

Signed for and on behalf of

**NEW FOREST DISTRICT COUNCIL**


Signature:  .....

(print Name:) Dean Brunton .....

Service Manager, Planning Policy, Infrastructure and Delivery

Signed for and on behalf of

**MERIDIES CONSULTING LTD**

Signature:  .....

(print Name:) LauraEaston .....

Director

### Schedule 1

#### Charges

Stage	Description	Total Stage Fee	Fee Payable
1	Receipt of high-level Viability Appraisal of Spatial Options	£16,963	100% of stage fee on satisfactory completion
2	Receipt of draft Viability Appraisal Receipt of final Viability Appraisal Report	£17,300	70% of stage fee on satisfactory completion 30% of stage fee on satisfactory completion

### Schedule 2

#### Key Personnel

Name	Description of Role
Kathleen Dunmore	Project Director
Laura Easton	Project Manager

### Schedule 3

#### Specification

1	Background and Context
<p><b>Background</b></p> <p>New Forest District Council is carrying out this procurement exercise to identify, select and award a contract to a supplier who satisfies the selection criteria and has submitted compliant bids under this procurement process.</p> <p>New Forest District Council wishes to appoint a suitably qualified consultant, or consultant team with appropriate experience and expertise, to undertake a Viability Appraisal of the policies and proposals in the Local Plan Review. The work being commissioned will form an integral part of the evidence base to be used to inform the development of the content of the Local Plan Review</p> <p><b>Context</b></p>	

The Council is currently in the early stages of preparing the Local Plan Review and is consulting on the Issues and Scope in early 2025 (Reg 18 consultation). The Council has committed to a rapid timetable to undertake the Local Plan Review and anticipates a further Reg 18 consultation spatial options Draft Local Plan in October/November 2025 and submission of a Reg 19 Local Plan by December 2026.

The Viability Appraisal will need to meet the requirements of:

- the National Planning Policy Framework (NPPF) paragraph 59 – which requires that all viability assessments, including those undertaken at plan making stage, should reflect the approach in national planning guidance, including standardised inputs.
- Planning Practice Guidance on [viability](#) - paragraphs 10-001 to 10-021 & 10-029.

The Council is aware that there is the potential for national legislation, policy and guidance to change during the lifetime of the project. The Council reserves the right to stop or revise the scope of the work at any point should legal requirements, policy or guidance change. If the work were to stop the Council would pay for the work undertaken to that point.

2	Scope
<p>The focus of this brief is on the outputs that the appointed consultant/consultant team will need to provide. The consultant's proposals to meet them are invited as part of this procurement process.</p> <p>The consultants will need to describe how their Viability Assessment methodology will address government policy and planning practice guidance, alongside a programme of work to set out how it will be undertaken.</p> <p>Council officers will advise the consultants of:</p> <ul style="list-style-type: none"> <li>• The emerging policies and proposals in the draft Local Plan Review</li> <li>• The contents of the emerging Infrastructure Delivery Plan</li> <li>• The current recreational mitigation strategies for Bird Aware Solent and the New Forest and any emerging changes following monitoring and the outcomes of the HRA of the Local Plan Review</li> <li>• The processes and potential costs for achieving nutrient neutrality</li> <li>• The following planning application related data: <ul style="list-style-type: none"> <li>○ The proportion and type of affordable housing secured</li> <li>○ Planning obligations for strategic sites</li> <li>○ Viability assessments related to affordable housing provision.</li> </ul> </li> </ul> <p>The Council is keen to explore options to include policies to facilitate net zero carbon development. The Council is also currently awaiting the outcome of a Housing Needs Assessment which will examine the need for affordable housing and how this need might best be met. The Viability Assessment will be a crucial part of the consideration of how different priorities may need to be balanced against each other. The methodology and programme will need to facilitate appropriate consideration of policy choices within the context of</p>	

viability and the need to demonstrate that the Local Plan Review is deliverable.

Having adopted a Community Infrastructure Levy (CIL) charging schedule in 2014 the Council is keen to explore the options to revise the CIL rates and whether there is a case for any 'CIL islands' (areas that would be exempt from CIL).

It is assumed the appointed consultant will follow the residual appraisal approach (unless an alternative approach can be shown to be justified). Submissions should, however, include a reasoned justification to demonstrate why the proposed approach to the assessment is robust, with evidence of at least two examples where the methodology and viability assessment have successfully withstood and passed independent scrutiny at a Local Plan Examination.

### **Out of scope**

The Local Plan Review will only cover the parts of the district that are outside of the New Forest National Park. The National Park Authority will be preparing a separate Local Plan and associated evidence base.

### **Study outputs**

The consultant will prepare a Viability Assessment of the Local Plan Review, in accordance with planning practice guidance. Consultants should set out their proposed methodology and programme of work to be undertaken to deliver the viability assessment in 2 stages:

- Initial high level viability appraisal of spatial options (prior to Reg 18 consultation)
- Viability appraisal of full draft Local Plan (prior to Reg 19 consultation).

The viability assessment will also include options for a revised CIL charging schedule.

The adopted Local Plan identifies 3 plan sub-areas: Totton and the Waterside, South Coastal Towns and Avon Valley and Downlands. The adopted affordable housing policy has different requirements for Totton and the Waterside, based on the land values and the viability of development. The Viability Assessment will need to consider whether similar geographical differentiation is justified in the Local Plan Review.

The appointed consultants will need to present their findings at a confidential presentation and policy workshop for elected members. This will take place before the public consultation on the full Draft Local Plan (Reg 18) in Autumn 2025.

### **Optional Study add-ons**

The Council may require the consultants to appear as an expert witness at a future local plan, and CIL charging schedule, examinations (or other meetings) to defend the Viability Assessment. The Council may also require assistance with responses to consultation comments. Any submission should therefore provide the consultant's current daily fee rate for appearing at

examination hearings and/or meetings, and also the daily fee rate for pre-meetings or statement preparation and/or responding to consultation comments, should the rate be different.

It is not possible to be certain about whether the viability study will need to be reviewed and updated prior to the Regulation 19 public consultation and submission of the plan for examination. It would be helpful if an estimate could be provided for the likely potential cost if the study does need to be updated, for example, if there are significant changes to relevant policies.

These items should not be included in the fixed price quotation and should be provided separately.

<b>3</b>	<b>Functional Requirements</b>
<p>The evidence provided by the Viability Assessment must be robust and suitable to inform the approach taken in the preparation of the Local Plan Review. It must stand up to scrutiny at examination and during planning appeals.</p> <p>The consultant will be required to take responsibility for all data collection and collation (noting that the Council will provide any relevant data it holds, including parts of the evidence base not yet in the public domain, such as the Housing Needs Assessment and, and the emerging policies and proposals intended to be included in the Local Plan Review). To ensure that information is provided to the consultant promptly, a list of all data requirements from the Council should be included within the tender submission.</p> <p>All work must be undertaken by suitably experienced and trained personnel who can demonstrate they possess the knowledge and skills necessary to undertake the work. At all times the contractor shall demonstrate the highest levels of professionalism in carrying out the contract.</p> <p>The final reports should be presented in an accessible format for the reader using non-technical language as far as possible and include maps, tables and graphics where appropriate. It should include a non-technical summary of the information within the main report.</p> <p>The final report should be written in plain text and to meet accessibility requirements. It should be provided in an electronic format (MS Word and PDF – files under 5MB in size). Any associated data should be provided in MS Excel, or other formats compatible with the Council's IT software. Where mapping is required, it should also be provided in a compatible GIS format.</p>	
<b>4</b>	<b>Quality Assurance Requirements</b>
<p>Reports should be written in plain English using reasoned and evidenced assumptions that are transparent, appropriately explained and referenced.</p>	
<b>5</b>	<b>Performance Requirements</b>

Reports should be written in plain English using reasoned and evidenced assumptions that are transparent, appropriately explained and referenced.

**6**

## **Implementation Programme**

Details of the Council officer(s) who will co-ordinate the study will be confirmed once the contract is awarded. This officer will act as Project Manager and will be the main point of contact for the consultant, arranging contact with other relevant officers and external contacts as required.

The consultant will be expected to provide regular progress reports to the nominated contact officer via email. Additional meetings, held via Microsoft Teams may be required as necessary.

Below is the proposed timescale for the target completion date for these evidence base documents. The Council welcomes any suggested amendments in order to meet the brief requirements.

Submissions in response to this brief should also indicate any proposed variations to the proposed programme subject to achieving the target deadline for the issue of the final Viability Assessment Report. The timetable is challenging and it may be possible to run some of the workstreams (or parts of them) in parallel, rather than sequentially.

Officers are aware that progress on the Viability Study will be contingent upon supplying the details of the policies and proposals in the emerging Local Plan Review. This is timed for mid-June.

The Local Development Scheme does not contain specific dates for progressing the Local Plan Review beyond the public consultation on the full Draft Local Plan (Reg 18) and so all dates beyond this point are indicative.

Bid closing date	25/07/25
Appointment	01/08/25 NFDC reserves the right not to make an appointment.
Inception meeting	w/b 04/08/25

Collation of baseline data		04/08/25 – 29/08/25
Council officers to provide detail of spatial options proposed for consultation		01/09/25
Preparation of high-level Viability Appraisal of spatial options		01/09/25 – 19/09/25
Council officers to provide detail of policies and proposals in Local Plan Review		TBD
Preparation of draft Viability Appraisal and draft CIL charging schedule to inform policy choices		TBD
Members workshop to consider policy choices		TBD
Prepare final draft Viability Appraisal Report		TBD
Consideration of final draft Viability Appraisal Report		TBD
Final Viability Assessment Report		TBD
TBD		TBD

7	Constraints
The Council will be producing a number of different evidence base documents alongside this.	

8	Contact Details
This electronic tender is administered through the Councils e-Tendering tool, ProContract hosted via the South East Business Portal (SEBP).	
Clarification Questions regarding this tender must be raised via the Message feature of ProContract.	

9	Purchase to Payment Process (P2P)
See Outcome Specifications (Appendix B)	
Ordering process: Following the award of contract a purchase order number will be raised. This must be quoted on all invoices.	
Cost management: The fee proposal should include the total amount for <u>each stage</u> of the work. See table below.	

Stage	Description	Fee Payable
1	Receipt of high-level Viability Appraisal of Spatial Options	100% of stage fee on satisfactory completion

2	Receipt of draft Viability Appraisal	70% of stage fee on satisfactory completion
2	Receipt of final Viability Appraisal Report	30% of stage fee on satisfactory completion
<p>Invoicing &amp; Payment process: The supplier will be required to invoice the Council in accordance with the above payment schedule.</p> <p>The supplier invoice should be sent to the Council's accounts payable team in electronic format (e-invoice) or via eMail in .pdf format to:</p> <p>eMail: <a href="mailto:accountspayable@nfdc.gov.uk">accountspayable@nfdc.gov.uk</a></p> <p>Accounts Payable New Forest District Council Appletree Court Beaulieu Road Lyndhurst Hampshire SO43 7PA Phone 02380 285588</p> <p>A purchase order will be required for any invoice, and this will be provided on appointment.</p> <p>The supplier will also need to be added to our supplier invoicing system and appropriate forms will be issued on appointment. To enable prompt payment these forms should be returned as soon as possible.</p>		
<b>10</b>		<b>Definitions</b>
<p><b>"Supplier"</b> means the organisation providing the works, goods or services referred to in this specification. The term "Supplier" also translates to "Contractor", "Consultant", "Vendor", etc depending on the naming conventions used in the related contract terms and conditions.</p> <p><b>"Council"</b> means New Forest District Council being a Local Authority.</p>		

#### Schedule 4

The provisions of Schedule 4 shall not apply to this Agreement.