

## WELBECK STRATEGIC LAND LLP

13 WOODSTOCK STREET, LONDON W1C 2AG TEL: 020 7529 3800 FAX: 020 7529 3801

Rob Ward  
Awcock Ward Partnership Consulting Limited  
Southgate House  
59 Magdalen Street  
Exeter, EX2 4HY

Our Ref: AH/GI  
18 October 2017

Dear Rob

### **Land at Gillingham – Flood Risk Assessment to support an outline application**

Further to our discussions, I write to confirm the agreed basis for the engagement between Welbeck Strategic Land LLP (the "**Client**") and Awcock Ward Partnership Consulting Limited (the "**Consultant**"), in respect of Land at Gillingham (the "**Project**").

The Terms and Conditions applicable to the engagement are attached to this letter.

The agreed fee is set out in Schedule 1 attached to the Terms and Conditions of Engagement. The fee is to be paid in accordance with clause 3 of the Terms and Conditions.

Any additional fees in connection with this project will also be appended to Schedule 1 and paid in accordance with the Terms and Conditions of Engagement.

You are to maintain professional indemnity insurance in an amount of not less than £5 million in accordance with clause 4 of the Terms and Conditions of Engagement.

I trust that this fully sets out the agreed basis for your engagement and would be grateful if you would sign the enclosed copy of this letter on behalf of Awcock Ward Partnership Consulting Limited confirming your acceptance to these Terms and Conditions.

Yours sincerely

**Andrew Hodgson**  
**Welbeck Strategic Management LLP**  
For and on behalf of Welbeck Strategic Land LLP

Encs.

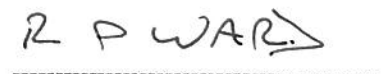
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We accept the Terms and Conditions of the engagement as described in this letter and enclosures.



A handwritten signature in black ink, appearing to read 'R. P. Ward', is written over a horizontal dashed line.

Signed for and on behalf of Awcock Ward Partnership Consulting Limited



A handwritten signature in black ink, appearing to read 'R P WARD', is written over a horizontal dashed line.

Name of person signing for and on

behalf of Awcock Ward Partnership Consulting Limited (printed)

## **TERMS AND CONDITIONS OF ENGAGEMENT OF CONSULTANTS**

### **DEFINITIONS**

In these Terms and Conditions, unless the context otherwise requires, the following words bear the following meanings:

**"Client"** means the person identified as the Client in the Letter;

**"Consultant"** means the person identified as the Consultant in the Letter;

**"Fee"** means the consideration for the Services identified in the Letter;

**"Letter"** means the covering Letter accompanying these Terms and Conditions;

**"Project"** means the project identified in the Letter;

**"Services"** means the services relating to the Project to be carried out by the Consultant identified in the Letter, as amended from time to time in accordance with these Terms and Conditions; and

**"Terms and Conditions"** means the terms and conditions set out below and other documents or parts of other documents expressly referred to in them.

### **1. ENGAGEMENT AND PROVISION OF SERVICES**

- 1.1 The Client confirms the engagement of the Consultant and the Consultant confirms its agreement to act in relation to the Project on these Terms and Conditions.
- 1.2 The Consultant shall carry out the Services and the obligations of the Consultant in accordance with these Terms and Conditions and all reasonable written instructions of the Client.
- 1.3 The Client may by written instruction to the Consultant amend the Services whether by omission, addition or alteration.

### **2. STANDARD OF CARE**

- 2.1 The Consultant warrants that it shall exercise in the performance of the Services the reasonable skill, care and diligence to be expected of professionally qualified and competent members of the Consultant's profession experienced in carrying out work of a similar size, scope, nature, complexity and purpose to the Project.
- 2.2 The Consultant warrants that it shall exercise the reasonable skill, care and diligence required by clause 2.1 to carry out the Services in accordance with all applicable legislation.

### **3. THE FEE AND TERMS OF PAYMENT**

- 3.1 The Client agrees to pay to the Consultant as full remuneration for the Services the fee set out in the Letter.
- 3.2 Subject to clause 9, the Consultant shall submit tax invoices (showing amounts and supported by such documents, vouchers and receipts as shall be necessary for checking the same) to the Client when any amounts are due to the Consultant in respect of the Services, but not more frequently than the instalments specified in the Letter.
- 3.3 The due date for payment will be the date when the Client receives the relevant tax invoice (the **"Due Date"**).

- 3.4 Within 5 days of the Due Date the Client will give the Consultant a notice specifying the sum that the Client considers to be due at the Due Date and the basis on which that sum was calculated.
- 3.5 In the event that the Client fails to provide the Consultant with a notice as specified in clause 3.4 above, the Client shall accept the sum specified within the Consultant's invoice in accordance with clause 3.2 as the sum due.
- 3.6 The final date for payment shall be 30 days from the Due Date.
- 3.7 The Client shall pay to the Consultant the total amount of Value Added Tax properly chargeable by the Consultant on the supply to the Client of the Services.
- 3.8 The Client may issue a 'pay less notice' pursuant to Section 111 of the Housing Grants, Construction and Regeneration Act 1996 (as amended by Part 8 of the Local Democracy, Economic Development and Construction Act 2009) no later than 1 day before the final date for payment specified in clause 3.6.
- 3.9 The Fee shall be adjusted in the event of any amendment to the Services pursuant to clause 1.3 in accordance with any provisions for adjustment set out in the Letter, otherwise on a fair and reasonable basis taking account of the amount and make-up of the Fee prior to amendment.
- 3.10 The Fee shall be inclusive of all expenses and disbursements; exclusive of VAT which shall be added at the prevailing rate; and exclusive of any statutory and local authority fees (which shall be the responsibility of the Client).

#### **4. PROFESSIONAL INDEMNITY COVER**

Without prejudice to the Consultant's other obligations and liabilities, the Consultant shall maintain professional indemnity cover with reputable insurers based in the UK without any unusually onerous conditions and with a limit of indemnity of not less than the level stated in the Letter for each and every claim but in the annual aggregate in respect of pollution or contamination claims, and asbestos claims, for a period from the commencement of its obligations hereunder to the expiry of a period of six years from the date of practical completion of the Project or earlier abandonment thereof or earlier termination of the Consultant's engagement provided that such insurance remains available at commercially reasonable rates. The insurance shall cover claims arising out of the performance of the Services.

#### **5. DUTY OF CARE TO THIRD PARTIES**

The rights set out in the Third Party Rights Schedule (set out in Schedule 2) shall vest in a:

- (a) landowner from time to time of the whole or any part of the Project or
- (b) first purchaser of the of the whole or any part of the Project and any second purchaser (being a party purchasing the whole or any part of the Project from the first purchaser); or
- (c) first tenant of the of the whole or any part of the Project and any second tenant (being a party leasing the whole or any part of the Project from the first purchaser); or
- (d) (to the extent they are not so entitled pursuant to limb (b) above), any affordable housing provider with an interest in the whole or any part of the Project;

on the date of receipt by the Consultant of the Client's notice to that effect, stating the name of the landowner, purchaser, tenant or affordable housing provider and his interest in the Project.

## **6. SUBLETTING**

The Consultant shall not be entitled to sublet the performance of the Services without the prior written consent of the Client. If the Client does consent to any subletting the Consultant shall remain responsible for the performance of the sublet Services.

## **7. ASSIGNMENT**

The Client may without the consent of the Consultant, assign its benefit and rights under these Terms and Conditions and the Letter:

- (a) to any group company of the Client (meaning a subsidiary of the Client, a holding company of the Client or a subsidiary of a holding company of the Client); and /or
- (b) as security to any person having or acquiring a mortgage or charge over the Project or any part of it (and such rights may be reassigned on redemption); and/or
- (c) by way of absolute legal assignment to another company ("P1") and by P1 by way of absolute legal assignment to another person ("P2")

Thereafter any assignment shall only be permitted with the consent of the Consultant.

The Client shall provide written notice to the Consultant following any assignment.

## **8. COPYRIGHT**

Copyright in all documents prepared by or for the Consultant in connection with the Project and in any designs depicted in and works executed from these documents shall, unless otherwise agreed, remain the property of the Consultant but the Consultant hereby grants to the Client a non-exclusive, irrevocable, royalty free, transferable licence to copy, use and publish such documents (including copies thereof) and the right to grant sub-licences in respect of the same for any purpose connected with the Project. Such licence shall enable the Client to copy and use the Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained therein for any extension of the Project. The Consultant shall not be liable for any misuse of the documents by the Client.

## **9. TERMINATION**

- 9.1 The Client may, in addition to any other rights and remedies it may have, terminate the Consultant's engagement upon giving seven days' written notice.
- 9.2 If the Client terminates the Consultant's engagement because it has not carried out its obligations, it shall not be obliged to make any further payments to the Consultant, whether or not any payments have been invoiced, and the Client reserves its right to recover from the Consultant any loss or damage which it incurs as a result of any default.
- 9.3 If the Client terminates the Consultant's engagement for any reason other than the default of the Consultant, then it shall pay to the Consultant a fair and reasonable amount for the Services carried out up to the date of termination but nothing more.

## **10. APPROVALS**

No consent, approval or act or omission of the Client shall of itself relieve the Consultant of its obligations.

## **11. CONFIDENTIALITY**

11.1 Subject to clause 11.2, the Consultant shall not disclose any confidential information of which it has or may in the course of its engagement become possessed relating to the Client, customers of the Client and/or the Project.

11.2 The restrictions contained in clause 11.1 shall not apply to any disclosure made:

- (a) to the Consultant's professional advisers; or
- (b) to the Consultant's and/or Client's insurers and/or insurance brokers.

## **12. NOTICES**

Any notice to be given hereunder shall be in writing and shall be deemed to be duly given if it is delivered by hand at or sent by registered post or fax to the addresses of the parties identified in the Letter or other business addresses for the time being. In the case of notices sent by registered post the same shall be deemed to have been received two working days after being posted.

## **13. HEADINGS**

Headings to clauses are for convenience only and do not affect the interpretation of these Terms and Conditions.

## **14. LAW**

These Terms and Conditions and all matters relating thereto shall be governed by and construed in accordance with the laws of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.

## **15. SCOPE OF AGREEMENT**

These Terms and Conditions shall constitute the entire agreement between the parties in respect of the Project.

## **16. ADJUDICATION**

16.1 Any dispute shall be referred to adjudication in accordance with this clause. No party shall take any steps in any proceedings or arbitration beyond the issue of a claim form or the giving of a notice of arbitration until an adjudicator has delivered his decision on the dispute to all the parties.

16.2 The referring party shall request the President of the Royal Institution of Chartered Surveyors or his representative to nominate an adjudicator.

16.3 The provisions of Part I of the Schedule to the Scheme for Construction Contracts (England and Wales) Regulations 1998 (SI 1998/649), as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011 (SI 2011/2333) (as further amended from time to time) shall apply subject to the provisions of this clause 16.

## **17. LIMITATION OF LIABILITY**

17.1 Notwithstanding anything to the contrary in these Terms and Conditions, the liability of the Consultant under or in connection with the Terms and Conditions whether in contract or in tort, for breach of the statutory duty or otherwise (other than in respect of personal injury or death or fraud or fraudulent misrepresentation) shall not exceed in the sum of £5,000,000 for each and every claim.

17.2 No action or proceedings for any breach of these Terms and Conditions shall be commenced against the Consultant after the expiry of 6 (six) years from the date of completion of Services or the termination of the Services if earlier.

**18. THIRD PARTY RIGHTS**

18.1 Save for the rights of landowners, purchasers or tenants as take effect pursuant to clause 5, no person may enforce any of these Terms and Conditions and/or the provisions set out in the Letter by virtue of the Contracts (Rights of Third Parties) Act 1999.

18.2 The rights of the Client and/or the Consultant to:

- i. terminate the Consultant's employment under these Terms and Conditions, or to agree to rescind these Terms and Conditions; or
- ii. agree to amend or otherwise vary or to waive any terms of these Terms and Conditions; or
- iii. agree to settle any dispute or other matter arising out of or in connection with these Terms and Conditions, in each case in or on such terms as they shall in their absolute discretion think fit,

shall not be subject to the consent of any landowner, purchaser or tenant.





## **SCHEDULE 1**

### **The Services and Fee**

The Services and Fee are described in the fee proposal from Rob Ward of Awcock Ward Partnership Consulting Limited to Andrew Hodgson of Welbeck Strategic Management LLP for and on behalf of Welbeck Strategic Land LLP dated 17 October 2017 attached hereto.



## SCHEDULE 2

### Third Party Right Schedule

#### Particulars

Client: [Identity and registered office]

Consultant: [Identity and registered office]

Beneficiary: [Identity and registered office]

Consultancy Agreement by which Client approved [date]  
Consultant:

Project: [details]

#### Operative Provisions

1. The Consultant warrants that it has complied with and shall continue to comply with its obligations under the Consultancy Agreement provided that it shall owe no greater obligations to the Beneficiary than it would have owed if the Beneficiary had been named joint client under the Consultancy Agreement with the Consultant owing its duties thereunder to each client separately. The Consultant shall be entitled in any action or proceedings by the Beneficiary to rely on any limitation in the Consultancy Agreement and to raise the equivalent rights in defence of liability (save in respect of set-off and counterclaim) as it would have against the Client under the Consultancy Agreement.
2. Copyright in all documents prepared by or for the Consultant in connection with the Project and in any designs depicted in and works executed from these documents shall, unless otherwise agreed, remain the property of the Consultant but the Consultant hereby grants to the Beneficiary a non-exclusive, irrevocable, royalty free, transferable licence to copy, use and publish such documents (including copies thereof) and the right to grant sub-licences in respect of the same for any purpose connected with the Project including without limitation its sale, letting, use, maintenance, redesign, repair, reinstatement, advertisement, marketing, alteration, extension, renewal, redevelopment or refurbishment and the Consultant agrees not to assert any moral rights in such documents or the Project granted pursuant to the Copyright, Designs and Patents Act 1988 or any statutory re-enactment or modification thereof. Such licence shall enable the Beneficiary to copy and use the Documents for the extension of the Project but such use shall not include a licence to reproduce the designs contained therein for any extension of the Project. The Consultant shall not be liable for the use of such documents for a purpose other than that for which they were prepared.
3. The Consultant shall maintain professional indemnity cover with reputable insurers based in the UK without any unusually onerous conditions with a limit of indemnity of not less than the amount specified in the Consultancy Agreement for each and every claim for a period from the commencement of its obligations under the Consultancy Agreement to the expiry of a period of six years from the date of practical completion of the Project provided that such insurance remains available at commercially reasonable rates. The insurance shall cover claims hereunder arising out of the performance of the Consultant's duties under the Consultancy Agreement. The Consultant shall produce to the Beneficiary at its request a brokers covernote evidencing the insurance arrangements described herein within 7 days of being so required.

4. The Beneficiary may assign all or any part of the benefit of and rights under this Schedule, without the Consultant's consent:

- iv. to an Associated Company at any time and;
- v. as security to any person having or acquiring a mortgage or charge over the Project or any part of it (and such rights may be reassigned on redemption); and/or
- vi. by way of absolute legal assignment to another company ("P1") and by P1 by way of absolute legal assignment to another person ("P2")

Thereafter, any further assignments shall be with the Consultant's consent.

For the purposes of this clause 4, "Associated Company" means in respect of a relevant company, a company which is a subsidiary, a Holding Company (as that term is described in Section 1159 of the Companies Act 2006) or a company that is a subsidiary of the ultimate Holding Company of that relevant company.

The Beneficiary shall provide written notice to the Consultant following any assignment.



## fee proposal

Kensington Court  
Woodwater Park  
Pynes Hill  
Exeter  
EX2 5TY  
Tel: 01392 409007  
[www.awpexeter.com](http://www.awpexeter.com)

### Ham Farm & Newhouse Farm, Gillingham

#### Flood Risk Assessment

Project number	0456
Date	17 October 2017
Client	Welbeck Land
Prepared by	R Ward
Authorised by	I Awcock
File reference	P:\0456 Ham Farm, Gillingham\A Management\01 Contract and Fees\0456 Ham Farm - AWP fee proposal for FRA for outline application.doc

#### 1 INTRODUCTION

- 1.1 Further to our recent discussions (Lauren Hawksworth – Rob Ward) we are pleased to submit this fee proposal to undertake a Flood Risk Assessment (FRA) to support an outline application for the proposed redevelopment of Ham Farm and Newhouse Farm at Gillingham.
- 1.2 We prepared a high-level masterplan FRA to support the South Gillingham Master Plan Framework (MPF) in 2016. We subsequently drafted a Water Resources ES chapter earlier this year.
- 1.3 We would propose to build on this preliminary work and prepare a new site-specific Flood Risk Assessment including an updated Surface Water Strategy to reflect the latest masterplan that is being submitted to support the outline application.
- 1.4 At the MPF stage we attended a public consultation event in November 2015 and discussed the existing flooding issues with local residents and also Gillingham Town Council's Flood Wardens. We committed to liaise further with the Flood Wardens at the next stage when drainage strategies were firmed up to support planning applications. We would therefore propose to visit the site in conjunction with the Town Council's Flood Wardens, if they are available in the tight timeframe available. We would look to incorporate any specific comments that they have in the FRA report and drawings.

- 1.5 We understand that you propose to use the Environmental Statement for the overarching MPF and don't require any further update to this document.
- 1.6 We also understand that there were some comments / questions raised about the flood risk and drainage strategies at the recent public consultation event. If you could forward those, we could make sure our FRA addresses these concerns.

## 2 FEE SUMMARY

- 2.1 Our proposed fee for preparing a standalone FRA to support the outline planning application including a surface water strategy to reflect the current masterplan is **£2,250 + VAT**. We would make sure that the FRA complies with the requirements of any updated legislation, e.g. climate change allowances or updates to SFRAs. Our lump sum fee above includes for the site meeting with the Flood Wardens.
- 2.2 Finally, although it is thought unlikely that team meetings will be required, we have included rates for any further meetings if required.

Item	Comments	Budget (exc VAT)
Meetings	Chris Yalden: <ul style="list-style-type: none"> <li>• half day meeting = £400</li> <li>• full day meeting = £600</li> </ul> Rob Ward: <ul style="list-style-type: none"> <li>• half day meeting = £500</li> <li>• full day meeting = £800</li> </ul>	

## 3 EXPENSES

- 3.1 We will look to recover any expenses at cost. In this instance that is likely to be limited to mileage to the site meeting.

## 4 INFORMATION REQUIRED

- 4.1 We would request the following information in due course:
- AutoCAD .dwg file of approved masterplan to be submitted for planning
  - Feedback from the public consultation event with questions regarding flood risk or surface water drainage

## 5 PROGRAMME

- 5.1 We understand and appreciate your desire to submit an outline application in early November. We have a number of committed deadlines over the next couple of weeks, but will do everything that we can to undertake this work ASAP.

- 5.2 If we receive a prompt instruction and can arrange the site meeting with Gillingham Town Council, we would aim to issue our FRA by Friday 27 October, but this might creep early into the following week.

**6 TERMS AND CONDITIONS**

- 6.1 Our appointment will be in accordance with our attached Terms and Conditions.
- 6.2 We will invoice upon submission of the FRA against the scope of works set out above.

**7 CDM REGULATIONS 2015**

- 7.1 You will be aware that the Construction Design and Management Regulations 2015 place legal requirements upon the promoters (clients) of projects to undertake certain health and safety duties. As required by the Act, and by means of an aide memoire, we enclose our Formal Notification of Client Duties advice note.

**8 INSTRUCTIONS TO PROCEED**

- 8.1 A simple written response providing confirmation of the approach set out above would be acceptable.

