

MEMORIAL GARDENS SALUTING BASE CONTRACT

THIS CONTRACT is made the xxxxxxxxxxxxxxxxx

between

BELPER TOWN COUNCIL of St Johns Chapel, the Butts, Belper, DE56 1HX ("the Council") and

XXXXXXXXXXXXXXXXXXXXXXXXXXXXX
("The Contractor")

BACKGROUND

- (1) The Council wishes to have the Work undertaken and has invited quotations for the Work.
- (2) The Contractor is willing to undertake the work and submitted the best quotation.

AGREED TERMS:

1. Definitions and Interpretations

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

"Commencement Date" means Monday XXXX;

"Contract Standard" means such standard as complies in each and every respect with all relevant provisions of the Contract including the Schedules and where to the extent that no provision or criteria are stated in the Contract or Schedules such standard is to be to the entire satisfaction of the Supervising Officer;

"Conditions" means these conditions and any modification thereof, duly made in accordance with their provisions;

"Contract" means this Contract, including the Conditions and Schedules;

"Contractor" XXXXX

"Council" means Belper Town Council and any successor authority and any body to which all or part of its functions may lawfully be transferred;

"Parish" means the administrative area of the Council;

"Party" and "Parties" means the Council and the Contractor

"Plant" means all large machinery required to undertake the Works.

"Price" means the costs provided in the Schedule 2

"Works" means creating a new saluting Base on the Memorial Gardens, King Street, Belper as set out in the Specification in Schedule 1 and the quotation return in Schedule 2 together with any agreed modification of any of them;

"Supervising Officer" means the Town Clerk of the Council and any person who, may subsequently be appointed by the Council to carry out all or any of the functions carried out by the Town Clerk at the Commencement Date and any person duly appointed by the Council to be a deputy or assistant to the Town Clerk.

"Working Days" means Monday to Friday inclusive excluding Christmas Day, Boxing Day, Good Friday and Easter Monday.

2. Commencement Date and Duration

2.1 The Contract shall commence on the Commencement Date subject until Termination in accordance with Condition 11.

3. Performance of the Works

3.1 The Contractor shall perform the Works in strict accordance with the Contract Standard and in a proper, skillful and workmanlike manner, to the entire satisfaction of the Supervising Officer.

3.2 The Contractor shall provide all labour, materials, Plant and everything of a temporary or permanent nature required in, or for the performance of the Works.

3.3 The Contractor shall in carrying out the Works comply at all times with all relevant Acts of Parliament, statutory regulations, notices or orders and Codes of Practice and shall indemnify the Council against any loss or damage caused by non-compliance with any such provisions.

3.4 The Contractor shall hold all relevant Licenses, including if required a Waste Carriers License.

3.5 The Contractor shall comply with the conditions and regulations, imposed by the Licenses and will notify the Supervising Officer immediately in the event that such License is suspended or terminated.

3.6 The Contractor will allow the Supervising Officer to inspect the Licenses immediately upon request.

4. Modifications and Omissions

4.1 Except as otherwise expressly provided, the Schedules and Conditions of the Contract are to be taken as mutually explanatory of one another. In case of ambiguities, discrepancies or inconsistencies the same shall be explained and adjusted by the Council acting through the Supervising Officer, who shall thereupon issue to the Contractor appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions. Any adjustment to the Works arising there from shall be treated as a modification pursuant to this Condition.

4.2 Any error in the Contract or omission there from shall not vitiate the Contract nor release the Contractor from the performance of the whole or any part of the Works or from its obligations or liabilities under the Contract. Any such error or omission shall be corrected by the Supervising Officer, who shall thereupon issue the Contractor with appropriate instructions in writing and the Contractor shall carry out and be bound by such instructions. Any adjustment to the Works arising there from shall be treated as a modification pursuant to this Condition.

4.3 No omissions from, addition to, or variation of the Conditions shall be valid, or of any effect unless it is agreed in writing and signed by the Supervising Officer and by a duly authorised representative of the Contractor.

5. Supervising Officer

5.1 The functions, rights and powers conferred by this Contract upon the Council shall be exercised by the Supervising Officer as defined in the Conditions. The Contractor shall in no circumstances question the existence or extent of the authority of any person notified to the Contractor (whether orally or in writing) to be the Supervising Officer.

6. Payments

6.1 Upon completion of the Works the Contractor shall submit an invoice in accordance with 6.5, for the Price.

6.2 The Council will pay 90% of the invoice which will be paid within 14 days of the submission of invoice. The remaining 10% will be settled on the 6 month anniversary of the invoice less deductions as detailed in 6.3.

6.3 The Council shall be entitled to deduct from any payment any sum certified by the Supervising Officer as being deductible by reason of any omission or non-performance of the Works by the Contractor, or the defective performance of the Works by the Contractor, or any variation in the Works performed by the Contractor, or as a result of any modification in the Contractor's method of carrying out the Works or by way of charges, payments, compensation, agreed damages or other sums payable to the Council in pursuance of any of the Conditions.

6.4 The Council shall add to the Price any sum certified by the Supervising Officer as being due to the Contractor, by reason of any additional works actually performed by the Contractor, pursuant to an instruction of the Supervising Officer, or any variation in the Works performed by the Contractor pursuant to an instruction of the Supervising Officer.

6.5 The Contractor shall submit to the Supervising Officer an invoice detailing payment it considers itself entitled under the Contract. The invoice shall specify:

- a) Which part or parts of the Works are exempt from VAT;
- b) Which part or parts of the Works bear a zero rate of VAT;
- c) Which part or parts of the Works bear a rate of VAT greater than zero;

And in each case specifying the exact rate chargeable.

7. Vehicles, Plant and Machinery

7.1 The Contractor shall at all times, be fully responsible for obtaining all licenses, the payment of all licensing fees, taxes and insurances required in connection with or arising out of the possession or use of all plant employed in the performance of the Works.

7.2 The Contractor shall procure and effect fully comprehensive insurance cover in respect of all vehicles employed in the performance of the Works.

7.3 The Contractor shall put and keep all plant employed in the performance of the Works at all times in good and servicable repair and in such condition as is commensurate with the proper performance by the Contractor of its obligations under this Contract.

8. Drivers and Plant Operators

8.1 The Contractor shall ensure that:

- a) All drivers and operators of Plant are responsible for the operation and use of Plant and where necessary hold the appropriate licenses for that item of Plant.

- b) All drivers of Plant, drive safely and correctly at all times in accordance with statutory regulations and instructions of the Contractor; speed limits must be observed.
- c) All drivers are trained and thoroughly competent in the safe use of their plant.
- d) The routes taken by Plant for all purposes required in connection with the performance of the Works are clearly defined and first agreed with the Supervising Officer.
- 6) All Plant operations are carried out in a reasonable and workmanlike manner without causing obstruction or annoyance to the public or damage to property.

9. Health and Safety

- 9.1 The Contractor shall in undertaking the Works adopt safe methods of work in order to protect the health and safety of the employees and of all other persons including members of the public.
- 9.2 The Contractor shall at all times comply with the requirements of the Health and Safety at Work, etc, Act, 1974 the Management of Health and Safety at Work Regulations 1999 (and shall supply a copy of its risk assessment under these Regulations when requested by the Council), Workplace (Health and Safety and Welfare Regulations 1992) and of other Acts, Regulations, Orders, Approved Codes of Practice, Guidance or rules of law pertaining to health and safety.
- 9.3 The Contractor shall adhere at all times to COSHH Regulations 1999. The Contractor shall produce and implement comprehensive written instructions for the safe use, delivery, handling and storage of all chemicals.

10. Policies and Procedures

- 10.1 The Contractor will at all times comply with its policies and procedures on Health and Safety, Equal Opportunities and complaints.

11. Termination

- 11.1 The Contract shall come to an end upon the Councils full payment of the Contractor's invoice.
- 11.2 The Council may terminate this Contract immediately on what it considers in its sole discretion to be a material and serious breach of the Contract

12. Waiver and accumulation of remedies

- 12.1 The rights and remedies provided by this Contract may be waived only in writing by the Contractor and the Supervising Officer in a manner that

expressly states that such waiver is intended for, and such waiver shall only be operative with regard to, the specific circumstances referred to.

13. Force Majeure

13.1 Notwithstanding any provision of this Contract or in any document referred to or incorporated in it neither of the Council nor the Contractor shall be liable for any failure to carry out or delay (or for the consequences of any failure or delay) in performing any of their respective obligations under this Contract if such delay is due to acts of god, fire, war, riot, civil commotion, lightening, earthquakes, flood or similar natural calamity strikes or other industrial action or dispute (other than involving the Contractor's Personnel) acts of government and the party so delayed shall be allowed a reasonable extension of the time for performing such obligations.

14 Guarantees, Indemnity and Insurance

14.1 The Contractor shall indemnify and keep indemnified the Council against all Losses in respect of or in any way arising out of the provision of the Workss in relation to the injury to or death of any person and loss of or damage to any property including property belonging to the Council.

14.2 The Contractor shall obtain insurance cover to the sum of five million pounds (£5,000,000.00) for public indemnity and one million pounds (£1,000,000.00) for Employers Liability.

14.3 The Contractor shall supply to the Supervising Officer forthwith and upon each renewal date a copy of any relevant policy a certificate from its insurers or brokers confirming that the Contractor's insurance policies.

15 Freedom of Information Act 2000

15.1 The Contractor acknowledges that the Council is subject to the provisions of the Freedom of Information Act 2000 ('FOIA') and the Environmental Information Regulations 2004 (EIR).

15.2 The Contractor shall upon request by the Council (and within such period as the Council may specify) provide the Council with all assistance and Information under its control to enable the Council to respond to a request for Information within the time for compliance prescribed by FOIA or EIR

15.3 The Contractor acknowledges that the provisions of the FOIA or EIR may override any obligation of confidentiality as between the Council and the Contractor and that the Council may be obliged to disclose Information without consulting the Contractor or having consulted the Contractor but in opposition to the views of the Contractor.

16.1 The Contractor shall not assign, novate or otherwise dispose of any or all of its rights and obligations under this contract without the prior written consent of the Council (which consent shall not be unreasonably withheld or delayed).

17 Relationship of the Parties

17.1 Nothing in this Contract is intended to create a partnership or legal relationship of any kind that would impose liability on one party for the act or failure to act of the other party, or to authorise either party to act as agent for the other party. Neither party shall make representations, act in the name of, on behalf of or otherwise bind the other party.

18 Severance

18.1 If any provision of this contract is held invalid, illegal or unenforceable for any reason by any court of competent jurisdiction, such provision shall be severed without effect to the remainder of the provisions. If a provision of this Contract that is fundamental to the accomplishment of the purpose of this Contract is held to any extent to be invalid, the Contractor and the Council shall immediately commence good faith negotiations to remedy such invalidity. Neither party shall unreasonably withhold or delay their agreement to any such matters.

19. Amendments

19.1 No amendment to the Contract shall be binding unless they are in writing and signed by the duly authorised representatives of the Council and of the Contractor and expressed to be for the purpose of such amendment.

20. Entire Agreement

20.1 This Contract constitutes the entire agreement and understanding between the parties in respect of the matters dealt with in it and supersedes, cancels and nullifies any previous agreement between the parties in relation to such matters notwithstanding the terms of any previous agreement or arrangement expressed to survive termination.

20.2 Each of the parties acknowledges and agrees that, in entering into this Contract it does not rely on, and shall have no remedy in respect of, any

statement, representation, warranty or undertaking (whether negligently or innocently made) other than as expressly set out in this agreement. The only remedy available to either party in respect of any such statement, representation, warranty or undertaking shall be for breach of contract under the terms of this Contract.

20.3 Nothing in this Condition shall operate to exclude any liability for fraud.

21 Third Party Rights and Sole Remedy

21.1 This Contract does not create, and shall not be construed as creating, any right under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not party to this Contract.

21.2 The Contractor's sole remedy with regard to any breach or termination of this Contract shall be such remedies contained within this agreement other than its right to claim for specific performance of any obligations contained herein.

22 Notices

22.1 Any Notice required to be given under or in connection to this Contract shall be in writing, signed by or on behalf of the Party giving it and shall be served by delivering it personally, or by sending it by pre-paid first-class post, recorded delivery or registered post, or by fax, to the address or fax number and for the attention of the relevant Party notified for such purpose.

22.2 Notices shall not be deemed to be served if sent by e-mail.

22.3 A notice shall be deemed to have been received:

- a) if delivered personally, at the time of delivery;
- b) in the case of pre-paid first-class post, three (3) Working Days from the date of posting; and
- c) in the case of fax, on the day of transmission if sent before 4.00 pm on any Working Day and otherwise at 9.00 am on the next Working Day provided that, at the time of transmission, an error-free transmission report has been received by the sender.

22.4 In proving Works, it shall be sufficient to prove that the envelope containing the Notice was addressed to the relevant Party at its address previously notified for the receipt of notices (or as otherwise notified by that Party) and delivered either to that address or into the custody of the postal authorities as pre-paid first-class post, recorded delivery, registered post or airmail letter, or that the notice was transmitted by fax to the fax number of the

relevant party at its fax number previously notified for the receipt of notices (or as otherwise notified by that Party).

23 Governing law and jurisdiction

23.1 This Contract and any disputes or claims arising out of or in connection with it, its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with English Law and submitted to the exclusive jurisdiction of the English Court.

EXECUTED as a Deed by the Parties the day and year as written:

SIGNED ON BEHALF OF }
BELPER TOWN COUNCIL }

Mayor

Date

Deputy Mayor

Date

Witnessed by

Town Clerk

Date

SIGNED ON BEHALF OF THE }
CONTRACTOR: }

Director

Date _____

Secretary

Date

Schedule 1

SPECIFICATION

The Town Council is based at St Johns Chapel, The Butts Belper, Derbyshire. It owns and maintains the Belper Memorial Gardens on King Street, Belper, DE56 1QA. This area used to be the garden of the Strutt family who then gifted the land to the Urban District of Belper in 1920 in memory of those who died in the Great War. The UDC erected a war memorial in the Gardens and it has since been dedicated as a Commemorative Field.

The Council has used the area marked in Green on the attached plan as a saluting base for a number of years. The saluting base is used to salute the uniformed organisations as they pass on parade for St George's Day and Remembrance Sunday. The current saluting base is no longer appropriate and the Council wishes to create a new saluting base on the area marked in yellow on the attached plan. The new Saluting Base will be created over the top of an existing air raid shelter.

SPECIFICATION

- fence off the working area
- set up temporary edge protection
- carefully excavate to the top of the existing shelter roof using mini excavator
- reshape existing lawn area to meet the lowered level of the paving
- remove excess spoil from site
- sweep clean the existing concrete roof (assuming no waterproofing present)
- apply slurry primer to existing concrete roof (assuming no waterproofing present)
- mix on site, fine bedding concrete and lay 36no plain concrete flags (600mmx600mmx50mm)
- sweep kiln dried sand into joints between flags
- topsoil and seed reshaped lawn area (utilising topsoil from site)
- supply and install steel railings (to match existing cast iron railings) drilled and fixed into existing stone coping/ existing concrete walls
- remove temporary edge protection
- clear site

Include the plan of the works and photographs of the area, existing flags and cast iron metal railings.

SCHEDULE 2
QUOTATION RETURN