



Dated *19th August* 2013

BETWEEN

The Mayor and Burgesses of the London Borough of Lewisham

And

Sector Treasury Services Limited

**Contract for the provision of a Treasury Management
Advisory Service**

**Head of Law
London Borough of Lewisham
Town Hall
Catford SE6 4RJ**

CONTRACT FOR CONSULTANCY SERVICES

THIS Contract is made the 19th day of August 2013

Between

The Mayor and Burgesses of the London Borough of Lewisham of Town Hall, Catford, London, SE6 4RJ (hereinafter called "the Council")

AND

Sector Treasury Services Limited of [REDACTED]
[REDACTED] hereinafter called "the Consultant")

WHEREAS

- A. The Council wishes to engage the services of the Consultant in respect of an Treasury Management Advisory Service for the London Borough of Lewisham ("the Service")
- B. The Consultant has agreed to provide the Service on the terms and conditions set out in this Contract.

IT IS HEREBY AGREED as follows:

Definitions

1.1 The following words and phrases shall have the following meanings except where the context requires otherwise:-

"Authorised Officer"	means [REDACTED] or his/her nominee, as may from time to time be notified to the Consultant;
"Commencement Date"	means 1 May 2013
"Contract Period"	means three years from the date hereof, subject to earlier termination in accordance with clause 14 or the Council's right to extend the Contract Period by up to a maximum period of one year;
"Consultancy Fee"	means the sums exclusive of VAT paid by the Council to the Consultant in accordance with the terms hereof
"Consultancy Manager"	means the person who is empowered to act on behalf of the Consultant for all purposes connected with the Contract

"Consultancy Materials"	means the documents, drawings, data and databases, written reports and any other information that is provided to the Consultant in relation to this Contract, whether by the Council or anyone else
"Consultant"	means the firm or person or organisation appointed to carry out the Service and their personnel, sub contractors and agents, including any partner or director
"Specification "	means the document setting out the Services attached hereto as Schedule 1
"Contract Documents"	means this Contract and the Schedules hereto: the Specification (Schedule 1) the Pricing Document (Schedule 2); the Council's Code of Practice for Contractors, Suppliers and Service Providers (Schedule 3) and Tender Submissions (Schedule 4)
"Data and Reports"	means all documents drawings data and databases written reports and any other information produced by the Consultant in connection with the Services, whether in electronic or any other format
"Intellectual Property Rights"	means all intellectual property rights including without limitation copyright, database rights, trademarks, service marks and patents, and including all rights of a similar nature conferred by laws in force in all other parts of the world
"Reports"	means such reports as are required by the Specification or Method Statements or as are requested
"Service"	means the work to be done as set out in the Specification, Method statements or amended Method Statements and other Contract Documents and any later instructions issued by the Council

1.2 Words importing one gender shall be construed as importing the other and words importing the singular shall be construed as importing the plural and vice versa

1.3 This Contract shall be deemed to include the Contract Documents

Consultant's Obligations

2. The Consultant will:-

- 2.1 provide the Service in a timely and efficient manner and to a professional standard in accordance with the Contract Documents and all relevant legal, regulatory or best practice requirements, exercising all reasonable skill, care and diligence in the provision of the Service
- 2.2 Where appropriate, comply with the Council's Standing Orders in relation to contracts and Code of Practice for Contractors and Suppliers (at Schedule 3) with the exception of paragraphs 2.3 (Bond)
- 2.3 Meetings attend such meetings in connection with the provision of the Service as are required by the Council
- 2.4 Reports and information submit to the Council such reports and information as are required by the Contract Documents or as may be reasonably requested within any time limits specified
- 2.5 Staffing All staff or other persons engaged by the Consultant in the provision of the Service must be suitably qualified and experienced. The Council may require any person engaged in the carrying out of the Service to be withdrawn therefrom where in its reasonable opinion it is not appropriate for that person to be so engaged by reason of lack of qualifications experience or some other relevant reason
- 2.6 The Consultant shall provide the Service (and any variation thereof authorised under this Contract) in a proper and skilful manner to the quality and standard set out in the Specification and Method Statements in conformity with the Contract with effect from the Commencement Date throughout the term.
- 2.7 The Consultant shall:
 - (a) comply with all applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010 (Relevant Requirements);
 - (b) not engage in any activity, practice or conduct which would constitute an offence under sections 1, 2 or 6 of the Bribery Act 2010 if such activity, practice or conduct had been carried out in the UK;
 - (c) promptly report to the Client any request or demand for any undue financial or other advantage of any kind received by the Consultant in connection with the performance of this agreement.
- 2.8 Breach of clause 2.7 shall be deemed a material breach of this agreement.
- 2.9 Financial Conduct Authority (FCA)

- 2.9.1. The Consultant is authorised and regulated by the Financial Conduct Authority (FCA) and is entered on the FCA register with registration number 150403. The Consultant is permitted to conduct certain designated business as defined in the FCA handbook. Further information may be obtained from the FSA's Register. The FCA's current address is 25 The North Colonnade, Canary Wharf, London E14 5HS.
- 2.9.2. The Consultant has designated the Council as a "Professional Client" as defined under the Financial Conduct Authority ("FCA") client classification rules. The Council has the right to request a different classification which would increase the degree of regulatory protection that is afforded to the Council, however the Consultant is not obliged to agree to such request.
- 2.9.3. The Consultant's normal place of business is [REDACTED] the Consultant communicates with its clients via letter, e-mail, telephone, face-to-face meetings and the use of its website.
- 2.10 Creditworthiness
- 2.10.1 The Consultant is not a credit rating agency. It is acknowledged that the provision of any advice and information to the Council under this Contract concerning credit ratings is provided by independent leading credit rating agencies. The Consultant does not in any way warrant the creditworthiness of third parties including but not limited to the suitability of any financial institution.

3. Council's Obligations

The Council will

- 3.1 perform its obligations as set out in this Contract;
- 3.2 provided that it is satisfied that the Service has been carried out in a satisfactory manner and in accordance with the terms hereof, pay to the Consultant the Consultancy Fee in accordance with the Pricing Schedule. Payment will be due within 30 days of the Council receiving a valid invoice from the Consultant for the same;
- 3.3 nominate a lead officer to be known as the "Authorised Officer" and any replacement, nominee or deputy necessary. That officer has authority to issue any instructions or notices in accordance with this Contract.

4. Consultancy Fee and expenditure

- 4.1 The Consultancy Fee will not be paid unless the Consultant complies with this Contract.

4.2 The Council may reduce, suspend or withhold, or require repayment of the Consultancy Fee or any part of it if the condition set out above is not fulfilled.

4.3 If the Consultant is in the reasonable view of the Council in breach of its obligations, the Council may in its absolute discretion require repayment of the whole or part of the Consultancy Fee (such part to be pro rata to the extent of breach) in addition to its other remedies, and the Consultant must immediately repay the sum demanded which shall be recoverable as a debt.

4.5 Information supporting payment The Consultant must give to the Council forthwith whatever information receipts or other documentation in support of any invoice or request for payment submitted the Council may reasonably require.

4.6 Financial records The Consultant must keep and make available to the Council when requested a record of all expenditure.

4.7 The Consultant agrees that it will maintain an open book accounting policy in respect of this contract and the Services, and that it will allow the Authorised Officer or another person nominated by him to inspect the Consultant's accounting records in so far as they relate to the Services.

4.8 The Consultant must promptly repay to the Council any payment made to it as the result of error, which sum is recoverable by the Council as a debt.

5. Equal Opportunities

5.1 The Consultant must not treat any person less favourably than another person by reason only of his or her age, race, gender, colour, nationality, disability, ethnic origin or sexuality in relation to anything relevant to the delivery of the Service or otherwise and must follow Best Practice and comply with Legislation in relation to equal opportunities.

6. Documents and Data

6.1 The Data and Reports and the copyright and other intellectual property rights contained therein shall be and shall remain the exclusive property of the Council and shall vest in the Council at the time they are created.

6.2 The Consultant shall not use the Consultancy Materials or the Data and Reports for any purpose other than the provision of the Service without the prior written consent of the Council.

- 6.3 Upon request by the Council and in any event upon expiration or termination of this Contract the Consultant shall forthwith deliver to the Council all copies of the Consultancy Materials and the Data and Reports then in its custody or control.

7. Confidentiality

- 7.1 The Consultant shall not use the Consultancy Materials or the Data and Reports or any information obtained as a result of their involvement in the Service for any purpose other than the provision of the Service without the prior written consent of the Council.
- 7.2 The Consultant shall not use or divulge or communicate to any person without the Council's written consent:
- a) any information it has obtained from the Council or any other person or body in relation to the provision of the Service prior to during or after the provision of the Service except in connection with the performance of the Service;
 - b) the Consultancy Materials and the Data and Reports or the substance thereof

AND it is agreed that this sub-clause shall survive the termination or expiration of the rest of this Contract

8. Insurance

- 8.1 The Consultant must take out and maintain with reputable insurers such policy or policies of insurance as may in the view of the Council be necessary to insure the Consultant against all risks as may be reasonably anticipated and in particular must maintain:-
- (i) Professional indemnity insurance with a minimum limit of **£5 million** in respect of any one act or occurrence or series of acts or occurrences in any one year.
- 8.2 Evidence of such insurance must be made available to the Council if requested.

9. Gifts and Hospitality

- 9.1 The Consultant must not offer or give any gift, reward or benefit to any members or employees of the Council to induce favours of any kind.

10. Conflict of Interest

- 10.1 The Consultant shall promptly notify the Council, and confirm in writing, if at any time it becomes aware of any conflict or potential conflict arising between the Consultant's duties to the Council under this

Contract and any duties the Consultant may have to another party. The Consultant shall not act for both parties in respect of any such matter unless otherwise agreed in writing by the Consultant and the Council.

- 10.2 Subject to clause 10.1, should a conflict of interest arise the Consultant shall take reasonable steps to remove or avoid the cause of any such conflict of interest to the reasonable satisfaction of the Council.

- 10.3 The Consultant shall not employ any employee of the Council without prior written consent of the Council which the Council may withhold in its absolute discretion.

11. Warranty and Indemnity

- 11.1 Nothing in this Contract shall render the Council liable to indemnify the Consultant in respect of any loss liability or damage of any kind incurred by the Consultant save where such loss liability or damage is due to the negligent act or omission of the Council.

- 11.2 The Consultant warrants that:-

- a) all information representations and other matters of fact communicated to the Council by the Consultant are true to the best of its knowledge and complete and accurate in all respects
- b) it is entitled to use and disseminate all or any of the information used by it in carrying out the Service and agrees to indemnify the Council in respect of all costs claims actions demands and proceedings made against it by third parties as a result of a breach by the Consultant of this warranty or any copyright or on account of infringement of any other protected right contained therein

- 11.3 The Consultant must indemnify the Council against all liabilities incurred, damage and loss suffered, claims, demands, actions and proceedings made or brought and costs, disbursements and expenses incurred by the Council which arise directly or indirectly out of any breach or non-observance by the Consultant or any of its servants or agents of any of the Consultant's obligations under this Contract.

12. Sub-Contracting and Assignment

- 12.1 The Consultant may not assign, sub-contract or otherwise transfer this Contract or any of the rights benefits or liabilities arising under it without the prior written consent of the Council.

13. Disputes procedure

- 13.1 Without prejudice to the rights of either party to take any action available (including suspension, withdrawal or termination), the parties

must try to resolve any differences between them amicably. The following procedure is set to try to help them to do that.

13.2 If a dispute occurs about any issue arising out of this Contract, the parties will first attempt to resolve that dispute informally. Each party will set out in writing the matters forming the dispute and the Authorised Officer and the Consultancy Manager must then meet to discuss those documents and attempt to resolve the dispute. If no resolution is reached within 2 weeks of the Authorised Officer and Consultancy Manager first meeting then the parties will refer the matter to their respective senior officers who must meet for the same purpose.

13.3 If no resolution is reached within 2 weeks of the respective senior officials first meeting under clause 13.2, the dispute may be referred by either party to an expert (the 'Expert') for determination using the procedure set out in this Clause:-

13.3.1 the party referring the matter to the Expert must serve a Notice on the other party in writing setting out the details of the dispute in full and specifying its views on the dispute and the outcome preferred by it (a 'Dispute Resolution Notice');

13.3.2 the parties must try to agree the identity of the Expert but if this is not possible within one calendar month of service of the Dispute Resolution Notice then the President for the time being of the Law Society will be requested to appoint an Expert who is suitable, available, qualified and of at least ten years relevant experience. If that Expert becomes unavailable, a further request will be made to the President of the Law Society;

13.3.3 in any case where the President for the time being of the Law Society is unable or unwilling to exercise the functions conferred by this Clause the said functions may be exercised by a nominee of the Law Society or such other person or body as the parties may agree;

13.3.4 the Expert must allow the parties at least 15 Working Days opportunity to make written representations to her/him; will give a copy of each party's representation to the other; and will allow at least ten Working Days for each party to comment on the representation made by the other party; and

13.3.5 any costs associated with any referral to the Expert or any appointment or determination made in connection therewith will be borne as decided by the Expert. The parties may at any time refer any dispute to any other procedure agreed

between them or to litigation.

13.4 In making his award, the Expert will act as an expert and not as an arbitrator. The award of the Expert will be final and binding on the parties, however nothing in this clause 24 will restrict, at any time while the above dispute resolution procedures are in progress or before they are invoked the parties rights to have all disputes dealt with by the Courts of England and Wales.

13.5 Even though a dispute is being dealt with under any procedure, each Party must still perform their obligations under this Contract except where this is otherwise provided for (such as in relation to reduction or suspension by the Council of the Consultancy Fee).

14. Breach of Contract and Termination

14.1 The Council may terminate this Contract for any reason whatsoever by giving three (3) months written notice to the Consultant at any time.

14.2 If the Consultant commits a material breach of this Contract then it shall compensate the Council for any loss which occurs as a result of the breach, including the cost of engaging someone else to provide the Service and any additional costs arising because of any need for urgent continuation or completion of the Service and:-

(a) in the case of a material breach which is capable of being remedied the Consultant shall at its own expense remedy the breach within seven days of receiving notice from the Council: and

(b) in the case of a material breach which is not capable of being remedied or in the case where the Consultant has failed to remedy a breach in accordance with paragraph (a) above the Council may terminate this Contract forthwith by giving written notice to the Consultant that the Contract has been so terminated

14.3 The Council may terminate this Contract at any time if the Consultant becomes insolvent or is wound up or is otherwise dissolved or if any administrator or receiver is appointed or being an individual has an interim order to bankruptcy order made against him or if the Consultant makes a composition or arrangement with its creditors or a Liquidator is appointed OR if any other events or circumstances arise which affect or are likely to affect the ability of the consultant to carry out the Services (such as the death or incapacity of key personnel of the Consultant)

14.4 Upon termination or expiration of this Contract the Consultant shall return to the Council upon the Council's request all Consultancy Materials and Data and Reports and any other property equipment or information belonging to the Council and any part of the Consultancy

Fee which relates to any part of the Service which will not then be carried out by the Consultant

- 14.5 Upon the expiry or other termination of this Contract, the Consultant shall, at no cost to the Council, promptly provide such assistance and comply with such timetable as the Council may reasonably require for the purpose of ensuring an orderly transfer of responsibility. The Council shall be entitled to require the provision of such assistance both prior to and, for a reasonable period of time after the expiry or other termination of this Contract.

15. Variation

- 15.1 This contract may only be varied by the agreement of both parties and any such variation shall be made in writing and signed by both parties

16. Data Protection

- 16.1 The Consultant shall comply with the requirements of the Data Protection Act 1998 together with all relevant subordinate legislation and any other data protection legislation for the time being in force and shall not disclose or allow access to any personal data provided by the Council or acquired by the Consultant during the Contract Period other than to a person employed or engaged by the Consultant.
- 16.1 The Consultant agrees to have in effect and maintain appropriate technical and organisational security measures to prevent unauthorised or unlawful processing of personal data and accidental loss or destruction of, or damage to, personal data.
- 16.2 Any use, disclosure of or access to personal data allowed under this clause 16 shall be made in confidence and shall extend only so far as that which is specifically necessary in connection with the Service.
- 16.3 The Consultant shall store or process such personal data in accordance with the Council's reasonable instructions and at sites specifically agreed in writing in advance with the Council.
- 16.4 For the purpose of this clause 16, "process" or "processing" has the same meaning as that in the Data Protection Act 1998.

17 Freedom of Information

- 17.1 The Consultant acknowledges that the Council is subject to the requirements of the Freedom of Information Act 2000 ("FOIA") and shall facilitate the Council's compliance with its information disclosure requirements pursuant to the same in the manner provided for under clauses 17.2 – 17.7 (inclusive) below.
- 17.2 Where the Council receives a Request for Information in relation to information that the Consultant is holding on its behalf, the Council

shall transfer to the Consultant such Request for Information that it receives as soon as practicable and in any event within two Working Days of receiving a Request for Information and the Consultant shall:

17.2.1 provide the Council with a copy of all such information in the form that the Council requires within 5 Working Days (or such other period as the Council may specify) of the Council's request at no cost to the Council; and

17.2.2 provide all necessary assistance as reasonably requested by the Council in connection with any such information, to enable the Council to respond to a Request for Information within the time for compliance set out in section 10 of the FOIA at no cost to the Council.

17.3 The Council shall be responsible for determining at its absolute discretion:-

17.3.1 whether the information is exempt from disclosure under the FOIA and the Environmental Information Regulations;

17.3.2 whether the information is to be disclosed in response to a Request for Information

Under no circumstance shall the Consultant respond directly to a Request for Information unless expressly authorised to do so by the Council.

17.4 The Consultant acknowledges that the Council may, acting in accordance with the Department for Constitutional Affairs' Code of Practice on the Discharge of Functions of Public Authorities under Part I of the Freedom of Information Act 2000, be obliged under the FOIA to disclose Information:-

17.4.1 without consulting with the Consultant;

17.4.2 following consultation with the Consultant and having taken its views into account.

17.5 The Consultant shall ensure that all information held on behalf of the Council is retained for disclosure and shall permit the Council to inspect such information as requested from time to time.

17.6 The Consultant shall transfer to the Council any Request for Information received by the Consultant as soon as practicable and in any event within five Working Days of receiving it.

17.7 The Consultant acknowledges that any lists provided by it listing or outlining confidential information, are of indicative value only and that the Council may nevertheless be obliged to disclose confidential information in accordance with Clause 17.4.

- 17.8 The Council shall in no event be liable to the Consultant for any loss, damage, harm or detriment, howsoever caused, arising from or in connection with the lawful disclosure under FOIA of any exempt information or other information whether relating to this Contract or otherwise relating to the Consultant.

18. Operational And Financial Records

- 18.1 Complete records The Consultant will maintain current, complete, clear and accurate financial and operational records in relation to all work carried out by it, and in particular relating to the provision of the Service including (but not limited to) a daily record of the nature and quality of the Service performed under this Contract.
- 18.2 Availability and inspection The records referred to above must be available for inspection by the Authorised Officer and any other person authorised by the Council at all reasonable times. Copies must be provided to the Council forthwith upon request. The Consultant must provide requested information or documents no later than ten Working Days from the date of the request, or sooner if (in the opinion of the Council) that is necessary. The Consultant must allow the Council at reasonable times and upon reasonable notice to visit and allow the Authorised Officer or someone authorised by him/her to inspect records. This provision will survive the termination or earlier expiry of this Contract or the termination of the provision of the Service.
- 18.3 Claims and complaints The Consultant must keep a complete and accurate record of all live claims or complaints by or against the Consultant relating to the performance of the Service.
- 18.4 Retention of records The Consultant must retain all such records during the Contract Period and for at least six years after the Termination Date.
- 18.5 Meetings The Consultant will attend meetings in accordance with clause 2.3 of this Contract, which may cover operational and financial matters.
- 18.6 Problems The Consultant must tell the Council about anything that might affect their performance of this Contract or the Service and in particular anything to do with financial or service problems.

19. Option to Extend

- 19.1 The Contract shall continue in force (subject as hereinafter provided) for up to a further period of 1 year, and may be extended on one or more occasions, at the Council's discretion. In the event of the Council exercising its option to extend the Contract then all Conditions of the

Contract, unless previously amended in accordance with the provisions of the Contract, will remain in force.

- 19.2 Not later than 1 month before the end of the Contract Period, the Council shall consider extending this Contract for a period of time as identified in Clause 19.1 above and give notice in writing of any decision to extend to the Consultant. Any decision to extend the ~~Contract for any period of time will be subject to the Consultant having~~ fully satisfied the Council in its performance of the Service required under the Contract. Any subsequent agreement to extend the Contract shall be made on the same basis.

20. Severability

- 20.1 If any provision in this Contract shall be adjudged by a court to be unlawful void or unenforceable such provision shall to the extent required be severed from this Contract but shall in no way affect the ~~validity or enforceability of the remainder of this Contract~~

21. Waiver

- 21.1 No forbearance or delay by either party in enforcing their respective rights under this Contract will prejudice or restrict the rights of that party to enforce such rights and nor shall they be deemed to have waived those rights unless expressly provided in writing but where any rights have been so waived by a party in accordance with the terms hereof this shall not be deemed to affect any of their other rights under this Contract or terms hereof

22. Notices

- 22.1 All notices consents or approvals given under this Contract shall be in writing and shall be personally delivered or sent by pre-paid first class post to the parties at their respective addresses shown above or to such other address as may be notified to the other party in writing AND in the case of delivery by post the notice consent or approval will be deemed to have been delivered two working days after the date of posting

23. Force Majeure

- 23.1 Neither party shall be liable for any losses which arise as a result of any delay in performing their obligations under this Contract where such delay is caused by events or circumstances which are beyond the reasonable control of the party so delaying

24. Jurisdiction

- 24.1 This Contract is governed by English law and the parties agree to submit to the exclusive jurisdiction of the English Courts

25. Third Party Rights

- 25.1 It is hereby expressly agreed and declared that none of the provisions of this Contract are intended to or will operate to confer any benefit pursuant to the Contracts (Rights of Third Parties) Act 1999 on any person who is not named as a party to this Contract save except where set out otherwise.

AS WITNESS the hands of the parties

Signed for and on behalf
of the Council by

Signed for and on behalf
of the Consultant by

.....(Signed)

.....(Signed)

19/08/2013 (Date)

07/08/2013 (Date)

EXECUTIVE DIRECTOR (Position)
FOR RESOURCES + REGENERATION

 (Position)

[REDACTED]

[REDACTED]

[REDACTED]

