

Short Form Agreement for Consultant Engagement

Between: Wellington City Council (WCC)

.....
(Client)

and: Opus International Consultants Ltd (Opus)

.....
(Consultant)

Collectively referred to herein as the "Parties" and individually as a "Party"

Project: Island Bay to Wellington CBD Cycleway Feasibility Study	Location: Wellington
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Scope & nature of the Services:

To identify and assess the most viable cycleway facility and route option between Island Bay and Wellington CBD. As stated in the attached "Offer of Service", the scope of works shall include determining the extent to which the scheme meets NZTA's funding criteria. To ensure maximum value for money the work will be undertaken in three project stages:

Stage 1 - Data collection, option identification, site visit & preliminary evaluation;

Stage 2 - Stakeholder meetings, detailed option assessment & cost estimating;

Stage 3 - Development of the funding application;

At the completion of both Stage 1 & 2 there will be a hold point at which WCC officers confirm or otherwise the continuation of the project. Should the project progress to Stage 3 the final output to be provided will be a short report structured in a way to support an NZTA funding application.

Programme for the Services:

Stage 2 stakeholder workshops are to occur during the week commencing the 4th of February 2013 or sooner. If the project progresses to Stage 3 the final report and its appending information shall be provided to WCC by Friday the 1st of March 2013.

Fees & timing of payments:

The work will be procured on a lump sum basis to be paid monthly according to the work completed. No fees will be accrued on Stage 2 until Stage 1 is complete. No fees will be accrued on Stage 3 until Stage 2 is complete. While the total project fee will be \$44,858.33 +GST, the breakdown on a per stage basis will be as indicated below:

Stage 1 - \$30,385.62 + GST

Stage 2 - \$6,771.51 + GST

Stage 3 - \$7,701.20 + GST

Should work be required outside the scope of this contract, the hourly rates detailed on page 15 of the attached "Offer of Service" will be applied. If additional data collection is required this will be negotiated with WCC to ensure fees are as low as possible.



Information or services to be provided by the Client:

WCC annual cycle and pedestrian monitoring counts (2012)

WCC GIS layers as requested;

WCC RAMM data if required.

The Client engages the Consultant to provide the Services described above and the Consultant agrees to perform the Services for the remuneration provided above. Both Parties agree to be bound by the provision of the Short Form Model Conditions of Engagement (overleaf), including clauses 2, 3, 9 and 10 and any variations noted below. Once signed, this agreement, together with the conditions overleaf and any attachments, will replace all or any oral agreement previously reached between the Parties.

Variations to the Short Form Model Conditions of Engagement (overleaf):

(Add to Clause 10)

The Consultant shall not be liable for and the Client will indemnify the Consultant for any loss or damage whatsoever arising from a breach of this agreement by the Consultant, directly or indirectly arising out of, resulting from, in consequence of, contributed to or aggravated by asbestos in whatever form or quantity.

Client authorised signatory (ies):

[Redacted signature area]

Print name:

Date:

Consultant authorised signatory (ies):

[Redacted signature area]

Print name:

Date:



SHORT FORM MODEL CONDITIONS OF ENGAGEMENT

1. The Consultant shall perform the Services as described in the attached documents.
2. Nothing in this Agreement shall restrict, negate, modify or limit any of the Client's rights under the Consumer Guarantees Act 1993 where the Services acquired are of a kind ordinarily acquired for personal, domestic or household use or consumption and the Client is not acquiring the Services for the purpose of a business.
3. The Client and the Consultant agree that where all, or any of, the Services are acquired for the purposes of a business the provisions of the Consumer Guarantees Act 1993 are excluded in relation to those Services.
4. In providing the Services the Consultant shall exercise the degree of skill, care and diligence normally expected of a competent professional.
5. The Client shall provide to the Consultant, free of cost, as soon as practicable following any request for information, all information in his or her power to obtain which may relate to the Services. The Consultant shall not, without the Client's prior consent, use information provided by the Client for purposes unrelated to the Services. In providing the information to the Consultant, the Client shall ensure compliance with the Copyright Act 1994 and shall identify any proprietary rights that any other person may have in any information provided.
6. The Client may order variations to the Services in writing or may request the Consultant to submit proposals for variation to the Services. Where the Consultant considers a direction from the Client or any other circumstance is a Variation the Consultant shall notify the Client as soon as practicable.
7. The Client shall pay the Consultant for the Services the fees and expenses at the times and in the manner set out in the attached documents. Where this Agreement has been entered by an agent (or a person purporting to act as agent) on behalf of the Client, the agent and Client shall be jointly and severally liable for payment of all fees and expenses due to the Consultant under this Agreement.
8. All amounts payable by the Client shall be paid within twenty (20) working days of the relevant invoice being mailed to the Client. Late payment shall constitute a default, and the Client shall pay default interest on overdue amounts from the date payment falls due to the date of payment at the rate of the Consultant's overdraft rate plus 2% and in addition the costs of any actions taken by the Consultant to recover the debt.
9. Where Services are carried out on a time charge basis, the Consultant may purchase such incidental goods and/or Services as are reasonably required for the Consultant to perform the Services. The cost of obtaining such incidental goods and/or Services shall be payable by the Client. The Consultant shall maintain records which clearly identify time and expenses incurred.
10. Where the Consultant breaches this Agreement, the Consultant is liable to the Client for reasonably foreseeable claims, damages, liabilities), losses or expenses caused directly by the breach. The Consultant shall not be liable to the Client under this Agreement for the Client's indirect, consequential or special loss, or loss of profit, however arising, whether under contract, in tort or otherwise.
11. The maximum aggregate amount payable, whether in contract, tort or otherwise, in relation to claims, damages, liabilities, losses or expenses, shall be five times the fee (exclusive of GST and disbursements) with a maximum limit of \$NZ500,000.
12. Without limiting any defences a Party may have under the Limitation Act 2010, neither Party shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on a Party within 6 years from completion of the Services.
13. The Consultant shall take out and maintain for the duration of the Services a policy of Professional Indemnity insurance for the amount of liability under clause 11. The Consultant undertakes to use all reasonable endeavours to maintain a similar policy of insurance for six years after the completion of the Services.
14. If either Party is found liable to the other (whether in contract, tort or otherwise), and the claiming Party and/or a Third Party has contributed to the loss or damage, the liable Party shall only be liable to the proportional extent of its own contribution.
15. Intellectual property prepared or created by the Consultant in carrying out the Services ("New Intellectual Property") shall be jointly owned by the Client and the Consultant. The Client and Consultant hereby grant to the other an unrestricted royalty-free license in perpetuity to copy or use New intellectual Property. Intellectual property owned by a Party prior to the commencement of this Agreement and intellectual property created by a Party independently of this Agreement remains the property of that Party. The ownership of data and factual information collected by the Consultant and paid for by the Client shall, after payment by the Client, lie with the Client. The Consultant does not warrant the suitability of New Intellectual Property for any purpose other than the Services or any other use stated in the Agreement.
16. The Consultant has not and will not assume any obligation as the Client's Agent or otherwise which may be imposed upon the Client from time to time pursuant to the Health and Safety in Employment Act 1992 ("the Act") arising out of this engagement. The Consultant and Client agree that in terms of the Act, the Consultant will not be the person who controls the place of work.
17. The Client may suspend all or part of the Services by notice to the Consultant who shall immediately make arrangements to stop the Services and minimise further expenditure. The Client and the Consultant may (in the event the other Party is in material default) terminate the Agreement by notice to the other Party. Suspension or termination shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.
18. The Parties shall attempt in good faith to settle any dispute by mediation.
19. This Agreement is governed by the New Zealand law, the New Zealand courts have jurisdiction in respect of this Agreement, and all amounts are payable in New Zealand dollars.