

INTERNATIONAL CONSULTANCY AGREEMENT

**Preparation of a Development Plan & Integrated Transport
Strategy for the Paceville Area, Malta**

CONSULTANCY AGREEMENT

THIS CONSULTANCY AGREEMENT made the 11th day of May between the Planning Authority of Malta (company number NA) (hereinafter called "the Client") of the one part and Mott MacDonald Limited of Mott MacDonald House 8-10 Sydenham Road, Croydon, CR0 2EE United Kingdom, (company number 1243967) (hereinafter called "the Consultant") of the other part.

WHEREAS

- i) the Client wishes to employ the Consultant to provide certain Services in respect of 'Preparation of a Development Plan & Integrated Transport Strategy for the Paceville Area, Malta' (hereinafter referred to as "the Project");
- ii) the Consultant is willing to supply Services as more particularly identified in Schedule 2 and has made a proposal for the same which has been accepted by the Client;

NOW THIS CONSULTANCY AGREEMENT WITNESSES AS FOLLOWS:

1. In this Consultancy Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions hereinafter referred to.
2. This Consultancy Agreement comprises the following documents which shall all constitute to form an integral part of this agreement:

Schedule 1.	The Conditions
Schedule 2.	The Scope of Services
Schedule 3.	The Personnel, Equipment, Facilities and services of others to be provided by the Client
Schedule 4.	Remuneration and Payment
Schedule 5.	Warranty (if included herein)
Appendix 1	Paceville Area, Malta - Response to Terms of Reference
3. In consideration of the payments to be made by the Client to the Consultant as hereinafter mentioned the Consultant agrees with the Client to perform the Services in conformity with the provisions of this Consultancy Agreement.
4. The Client hereby agrees to pay the Consultant in consideration of the performance of the Services such amounts as become payable under the provisions of the Consultancy Agreement at the times and in the manner prescribed by the Consultancy Agreement.

IN WITNESS whereof the parties hereto have caused this Consultancy Agreement to be executed under hand the day and year first before written

Signed
by Planning Authority

.....
Executive Chairman

Signed
by Mott MacDonald Ltd

Peter Cran
.....
Director

SCHEDULE 1 - THE CONDITIONS

1.1 DEFINITIONS AND INTERPRETATION

1.1.1 Definitions

In this Consultancy Agreement all words and expressions have the same meaning as described below unless otherwise provided or where the context otherwise requires.

- i) "Client" means the Planning Authority its legal successors and permitted assignees.
- ii) "Confidential Information" means all information, specifically identified by the disclosing party as confidential at the time of disclosure or is information that a reasonable person would consider from the nature of said information and circumstances to be confidential, including without limitation confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulas, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, programs, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information.
- iii) "Consultant" means Mott MacDonald Limited, its legal successors and permitted assignees.
- iv) "Country" means the country (or countries) in which the services are to be performed.
- v) "Project" means the 'Preparation of a Development Plan & Integrated Transport Strategy for the Paceville Area, Malta
- vi) "Services" means the services to be performed by the Consultant in accordance with the Consultancy Agreement and as more particularly included in Schedule 2.
- vii) "Intellectual Property" means all intellectual property and all rights therein in any part of the world including, without limiting the generality of the foregoing, any patent, patent application, trade mark, trade mark application, registered design, registered design application, trade name, trade secret, business name, discovery, invention, process, formula, specification, improvement, technique, copyright, unregistered design right, technical information or drawing, including rights in computer software and data base and topographic data rights.

1.1.2 Interpretation

- i) The headings in the Consultancy Agreement shall not be used in its interpretation.
- ii) The singular includes the plural, the masculine includes the feminine, and vice-versa where the context requires.

1.2 OBLIGATIONS OF THE CONSULTANT

1.2.1 Scope of Consultant's Services

The Consultant shall perform the Services as stated in Schedule 2 - Scope of Services in accordance with the terms and conditions of this Consultancy Agreement.

1.2.2 Duty of Care

The Consultant shall perform the Services using the degree of skill care and diligence to be

expected from a consultant experienced in the provision of services for projects of similar size scope and complexity as the Project. The Consultant shall comply with all standards, legislation, practices and the like applicable or in the reasonable expectation of the Consultant likely to be applicable to the Services.

1.2.3 Performance of the Services

- i) The Consultant shall not alter the Services without the express instruction in writing of the Client. The Consultant shall inform the Client within two weeks on becoming aware of any matter that affects the satisfactory execution of the Services. To the extent that such matter requires the Services to be amended the Client shall issue an instruction accordingly.
- ii) The Consultant shall use reasonable endeavours to comply with any timetable for the execution of the Services as previously agreed between the Client and the Consultant.

1.3 OBLIGATIONS OF THE CLIENT

1.3.1 Scope of Obligations

The Client shall promptly and without charge provide to the Consultant all information, further information, approvals, consents and instructions as requested by the Consultant in relation to the Services so as to allow the Consultant to comply with any agreed timetable for the execution of the Services. Notwithstanding any approval or consent by the Client in respect of the Services, the Consultant shall not be relieved thereby of any obligation or liability arising under this Consultancy Agreement save to the extent that the Consultant shall be entitled to rely upon any instruction or direction issued by the Client in respect to the Services.

The Client acknowledges that the Consultant will rely on the accuracy, sufficiency and consistency of all information provided to the Consultant by or on behalf of the Client.

1.3.2 Details of Client's Supplies to the Consultant

The Client shall make available to the Consultant for the purpose of the, Services the equipment, facilities, personnel and services of others (if any) as described in Schedule 3. All of these shall be free of cost to the Consultant except where stated in Schedule 3.

1.4 LIABILITY

1.4.1 Liability and indemnity

- i) The Consultant shall only be liable to pay compensation to the Client under or in connection with this Consultancy Agreement if the Consultant commits a breach of Clause 1.2.2 of this agreement.
- ii) Notwithstanding any other term to the contrary in this Consultancy Agreement or any related document and whether the cause of action for any claim arises under or in connection with this Consultancy Agreement in contract or in tort, in negligence or for breach of statutory duty or otherwise, in relation to any and all causes of action as aforesaid the total liability of the Consultant in the aggregate for all claims shall be limited to the lesser of
 - a) a sum equivalent to ten (10) times the fee payable under this Consultancy Agreement or
 - b) £1,000,000 (One million Pounds).

- iii) Further and without prejudice to the aforesaid limit of liability any such liability of the Consultant for any loss or damage ("the loss or damage") in respect of any claim or claims shall be limited to such sum or sums as it would be just and equitable for the Consultant to pay having regard to the Consultant's responsibility for the same and on the basis that:
 - a) all other parties appointed or to be appointed by the Client to perform related services in connection with the Project shall be deemed to have provided undertakings on terms no less onerous than this Consultancy Agreement and shall be deemed to have paid to the Client such contribution as it would be just and equitable for them to pay having regard to their responsibility for the loss or damage; and
 - b) It shall be deemed that all such other parties have not limited or excluded their liability to the Client for the loss or damage in any way which may be prejudicial to the Consultant's liability under this clause.
- iv) Further and without prejudice to the foregoing the total liability of the Consultant under or in connection with this Consultancy Agreement for any and all claims in respect of contamination or pollution shall be limited to the lesser of
 - a) £250,000 (Two hundred and Fifty Thousand Pounds), or
 - b) the direct cost incurred by the Client in removing the contamination or pollution
- v) The Consultant shall have no liability to the Client in respect of any claim for loss or damage arising from acts of war or terrorism, nuclear or radioactive emissions, any incidence of toxic mould, or from or related to asbestos.
- vi) Neither party shall be liable to the other for any indirect, special or consequential loss (including but not limited to loss of profit whether direct or indirect, loss of production, loss of contracts, loss of use, loss of business, and loss of business opportunity).
- vii) No action or proceedings under or in connection with this Consultancy Agreement shall be commenced against the Consultant after the expiry of 10 (ten) years from completion of the Services save and without prejudice to any other applicable period of prescription or other statutory period for the institution of an action imposed by law.
- viii) Nothing in this clause shall operate to exclude or limit the Consultant's liability for death or personal injury.

1.5 COMMENCEMENT AND COMPLETION

1.5.1 Consultancy Agreement Effective Date

The effective date of this Consultancy Agreement shall be the date of execution of this Consultancy Agreement or the date upon which the Consultant first commenced performance of the Services, whichever is the earlier.

1.5.2 Commencement and Completion

The Consultant shall proceed with the performance of the Services regularly and diligently and shall use reasonable endeavours to comply with any programme, timetable or schedule of deliverables as agreed between the Client and the Consultant.

1.6 VARIATION TO SERVICES

1.6.1 Variations

- i) The Client, by way of addition, omission, substitution or other amendment, may instruct a variation to the Services from time to time in writing to the Consultant, provided always that any such variation shall be relevant to the Project or the Services. Where the Client requires a variation to the Services the Consultant shall within two weeks notify the Client of the likely impact (if any) of the variation on the Services both in terms of the additional or reduced fees and time to complete the Services. The Consultant shall not be required to commence the varied Services until such time as the Client has given his written approval of the fees and additional time associated with the varied Services. The Consultant shall use reasonable endeavours to minimise the adverse effect of any variation upon the Services.
- ii) If the Consultant is of the opinion that the Services have been varied, impeded by the Client or otherwise delayed or disrupted by any matter that is outwith the reasonable control of the Consultant, then the Consultant shall notify the Client within two weeks of the likely impact of such upon the Services. The Consultant shall use reasonable endeavours to minimise the adverse effect of such matters upon the Services.
- iii) Pursuant to sub-clauses (i) and (ii) above the Consultant shall be entitled to compensation from the Client where the Services are varied, delayed or disrupted and any adjustment to the fees or the time for performance of the Services shall be calculated in accordance with the provisions of Schedule 4 or where no such provisions are stated then in accordance with that which is reasonable in all the circumstances.

1.7 SUSPENSION OR TERMINATION

1.7.1 By Notice of the Client

- i) The Client may by 28 days written notice to the Consultant suspend any or all performance of the Services. Upon receipt of any notice to suspend any or all performance of the Services, the Consultant shall take immediate steps to minimise further expenditure thereon. The Client may by 28 days written notice require the Consultant to recommence any of the Services previously suspended under this clause. The Consultant shall be reimbursed any additional costs reasonably incurred as a result of any notice issued under this Clause.
- ii) Where any or all the Services have been suspended under Clause 1.7.1(i) and notice to recommence the same has not been received by the Consultant within 3 months from the date of suspension then the Consultant may treat those Services as having been abandoned by the Client and the Consultancy Agreement in respect to any or all the Services affected shall be terminated forthwith.
- iii) The Client may terminate the Consultancy Agreement by 28 days notice where the Services are no longer required for the Project or where the Project has been abandoned or is no longer being performed by the Client. In all other circumstances the Client may only terminate this Consultancy Agreement in accordance with Clause 1.7.1(iv) below.
- iv) If the Consultant commits a material breach of the Consultancy Agreement and, despite notice of such breach in writing by the Client to the Consultant, the Consultant fails to remedy such breach within 28 days of the notice then the Client may terminate the Consultancy Agreement forthwith.

1.7.2 By Notice of the Consultant

If the Client commits a material breach of the Consultancy Agreement and, despite notice of such breach in writing by the Consultant to the Client, the Client fails to remedy such breach within 28 days of the notice then the Consultant may terminate the Consultancy Agreement

forthwith.

1.7.3 Rights and Liabilities on Termination

Termination of the Consultancy Agreement shall not prejudice or affect the accrued rights or claims or liabilities of either party.

1.8 PAYMENT

1.8.1 Payment to the Consultant

i) The Client shall pay the Consultant for the proper performance of the Services such sums as become due under the Consultancy Agreement. The Client shall make payment in accordance with any conditions, methods and currencies stipulated in Schedule 4. Subject to any provision to the contrary in Schedule 4 the Consultant may render an invoice for services properly performed monthly in arrears.

ii) Payment of an invoice shall become due upon the date of issue of such invoice by the Consultant. The final date for payment shall be 28 days after payment becomes due.

The Client may not withhold payment of any part of an invoice for a sum or sums due to the Consultant under the Consultancy Agreement by reason of claims or alleged claims against the Consultant unless the amount to be withheld has been agreed by the Consultant as due to the Client or has been awarded in adjudication, arbitration or litigation in favour of the Client and arises under or in connection with this Consultancy Agreement. Save as aforesaid all rights of set off at common law or in equity which the Client would otherwise be entitled to exercise are hereby expressly excluded.

iii) Where the Client fails to pay in full the amount due under the Consultancy Agreement by the final date for payment then the Consultant may suspend performance of the Services. The Consultant may only exercise this right after giving the Client 14 days notice of the Consultant's intention to suspend performance. Such right will expire immediately upon payment by the Client of the sum due. Any period of suspension of the Services in accordance with this Clause shall be disregarded in computing any contractual time limit to complete work directly or indirectly affected by the exercise of the rights conferred by this Clause or as the case may be the time for completion of such work shall be extended by a period equal to the period of suspension.

iv) Any payment made after the final date for payment shall attract interest at a rate of 8% per annum.

v) All fees, expenses and disbursements under the Consultancy Agreement are exclusive of Value Added Tax. The Client shall pay any Value Added Tax payable on the Services.

1.9 INSURANCE REQUIREMENTS

1.9.1 Consultants Insurance

The Consultant shall maintain public liability and professional indemnity insurance sufficient to cover the Consultant's liabilities under this Consultancy Agreement provided always that such insurance is available at commercially reasonable rates and terms and subject to all normal exceptions exclusions and limitations to the scope of cover generally in operation at the time of renewal.

1.10 FORCE MAJEURE

If circumstances arise for which the Consultant is not responsible and which make it impossible

for him to perform in whole or in part the Services in accordance with this Agreement ("force majeure") he shall promptly notify the Client. In these circumstances, the affected Services shall be deemed to be suspended for the duration of the force majeure event.

Where the Services (or parts thereof) are affected by an event of force majeure the time for their completion shall be extended for a period equal to the time during which such party was unable to perform such action as a result of force majeure.

An event of force majeure shall include (but not be limited to) the following:

- i) acts of God, hostilities, wars, invasion, act of foreign enemies, rebellion, revolution, insurrection, or military or usurped power;
- ii) the imposition of sanctions of any kind in the Country by the government of Malta, or any other international body recognised by the same Government which prohibit, in an absolute manner, the consultant from performing his services under this contract; and
- iii) any other similar events, not within the control of the Consultant and which by the exercise of due diligence the Consultant is unable to overcome.

Where the event of force majeure continues for a period of 90 days, either party may give to the other notice of termination which shall take effect immediately.

1.11 DISPUTE RESOLUTION PROCEDURE

1.11.1 Notification of a dispute

Without prejudice to any other term of this Consultancy Agreement any disagreement or dispute arising out of or relating to this Consultancy Agreement (collectively or singularly "the dispute") shall be advised promptly in writing to the other party. The dispute shall be resolved in accordance with clause 1.11.2.

1.11.2 Disputes

Any dispute arising out of or relating to the Consultancy Agreement shall, in the first instance, be referred to the Managing Director/Chief Executive of each party who shall attempt in good faith to resolve the dispute. If the parties fail to resolve the dispute by mutual agreement within 14 days (or such other time as may be agreed) then the dispute shall be referred to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce current at the time of the referral under this clause. Such Rules are deemed to be incorporated by reference into this clause. The law governing the arbitration shall be that of Malta.

1.12 GENERAL PROVISIONS

1.12.1 Languages and Law

The language of the Consultancy Agreement shall be English.

The law to which the Consultancy Agreement is subject shall be the law of Malta.

1.12.2 Assignment and Subcontracting

- i) The Client shall not assign the whole or any part of the benefit or in any way transfer its obligations under this Consultancy Agreement without the written consent of the Consultant.
- ii) If the Consultant wishes to subcontract any of the Services to a specialist sub-consultant he shall notify the Client accordingly. The Consultant shall remain responsible for the

performance and payment of any specialist sub-consultant.

1.12.3 Notices

Notices under the Consultancy Agreement shall be in writing and will take effect from receipt at the principal place of business of the party to whom the notice is addressed or at such other address as shall be advised by notice from time to time. Delivery can be by hand, or by registered letter.

1.12.4 Administration

The Client may designate a person or firm who shall be deemed to have authority to make decisions on behalf of the Client under this Consultancy Agreement subject to notification by the Client to the Consultant in writing to that effect.

1.12.5 Whole Agreement

This Consultancy Agreement (together with the Schedules and any documents referred to herein) shall constitute the whole agreement between the parties and shall supersede any previous agreements or arrangements in respect of the Services.

1.12.6 Third Party Rights

Notwithstanding any provision to the contrary in this Consultancy Agreement, no person or entity shall have any rights in relation to this Consultancy Agreement, whether as third parties or otherwise, save the parties to this Consultancy Agreement.

1.12.7 Intellectual Property

The legal and beneficial ownership of all Intellectual Property prepared or developed by or on behalf of the Consultant in connection with the Project shall remain vested in the Consultant. Upon full payment of the fees due under the Consultancy Agreement, the Consultant shall grant to the Client an irrevocable, royalty-free, non-exclusive licence to use all rights, titles and interest in any such Intellectual Property in connection with the construction, completion, maintenance, reinstatement, repair, letting, promotion and/or advertisement (whether by the Client or by a third party authorised by the Client) of the Project. The Consultant shall have no liability for any use of the Intellectual Property other than for the purposes for which it was originally intended.

1.12.8 Use of Deliverables

Under no circumstances may any report, materials, deliverable or other work product extract or summary thereof be disclosed or used or attributed to the Consultant in connection with any public or private securities offering, including, without limitation, any related memorandum or prospectus for any securities offering, whatsoever or stock exchange listing or announcement.

1.12.9 Confidentiality

Except with the prior written consent of the other party which shall not be unreasonably withheld, the parties shall not disclose nor cause or permit their employees, agents and consultants to disclose to third parties any Confidential Information relating to the Services, provided always that the parties may disclose such Confidential Information if required by applicable law or regulation, but only that portion of information which, to the extent permitted by the relevant law or regulatory requirement, is legally required to be furnished. The obligations set forth in this Clause 1.12.9 shall expire two (2) years after the termination of the Consultancy Agreement.

1.12.10 Severance

Should any term or condition of this Agreement be held to be invalid, illegal or unenforceable then such term or condition shall be disregarded and the remaining terms and conditions shall remain in full force and effect.

1.12.11 Ethical Conduct of the Parties

In the performance of their obligations under or in connection with this Consultancy Agreement the parties, their agents and employees shall comply with all applicable laws rules regulations, including where appropriate, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

The parties

- a) warrant and represent that they have not carried out; and
- b) undertake that they will not carry out;

directly or indirectly through any other person or entity any unlawful act including without limitation the offer or payment of a bribe to a public official or any other person in connection with any matter connected with this Consultancy Agreement or the Project.

Further each party shall notify the other immediately in writing with full particulars in the event that they receive a request from any public official or any other person of influence requesting illicit payments.

If a party is in breach of any term of this clause then the other party shall be entitled to terminate the Consultancy Agreement at any time on written notice with immediate effect.

The defaulting party under this clause 1.12.11 shall indemnify and keep indemnified the non-defaulting party against any and all claims arising out of or in connection with a breach of this clause by the defaulting party to the fullest extent permissible under the law of this Agreement.

1.12.12 Warranties

Where the Client and the Consultant have agreed prior to signing this Consultancy Agreement that the Consultant shall enter into and provide collateral warranties for the benefit of other parties then it shall be a condition of such agreement that the provision of any and all warranties will be on the basis that such warranties will not confer on the beneficiary or beneficiaries collectively any greater benefit in quantum, duration or otherwise than is given to the Client under this Consultancy Agreement and the issuance of such warranties shall not act so as to increase the Consultant's aggregate liability under or in connection with this Consultancy Agreement as provided for at Clause 1.4.1. Any warranty shall be as per Schedule 5 or as otherwise amended by agreement.

SCHEDULE 2 - SCOPE OF SERVICES

Please refer to Appendix attached to this contract:

Paceville area, Malta

Response to Terms of Reference

Preparation of a Development Plan & Integrated Transport Strategy for the Paceville Area, Malta

Constraints

Assumptions and exclusions are listed on Pages 26 and 27 of the attached Appendix document as noted above

SCHEDULE 3 - DETAILS OF CLIENT'S SUPPLIES TO CONSULTANT

Data to be provided by the Client (Planning Authority) is included within the Methodology section of Appendix 1

SCHEDULE 4 - TERMS OF PAYMENT

Payment details are include in the Commercial Approach – Our Fee Proposal chapter on pages 24 and 25 of Appendix 1

SCHEDULE 5 – WARRANTY TERMS – (if agreed)

None applicable