

DATED 28th March 2024

HAMPSHIRE COUNTY COUNCIL

- and -

BDW TRADING LIMITED

Deed of Agreement for Highway Works at
Forty Acres, Rusty Cutter Roundabout, Harbour Place
pursuant to (inter alia) S.278 Highways Act 1980

HCC Legal File Ref: [Legal/140356/CMR]
HCC MasterGov Ref: [001119]

David Kelly
Assistant Director for Legal Services
and Monitoring Officer
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

HAMPSHIRE COUNTY COUNCIL
SECTION 278 DEED OF AGREEMENT

Date:

28th March

2024

PARTIES:

1. **HAMPSHIRE COUNTY COUNCIL** of The Castle Winchester Hampshire SO23 8UJ ("**the County Council**")
2. **BDW TRADING LIMITED** (Company Registration Number 03018173) whose registered office is situated at Barratt House Cartwright Way, Forest Business Park, Bardon Hill, Coalville, Leicestershire, LE67 1UF ("**the Developer**")

WHEREAS

- A. The County Council is the Highway Authority for Hampshire for all roads except for trunk roads and special roads
- B. National Highways is the Highway Authority for special roads and trunk roads in Hampshire
- C. The Developer is the registered proprietor with title absolute of the Land registered at Land Registry under Title Numbers SH55541 for the benefit of which Land the Works hereinafter referred to are carried out
- D. The Developer is desirous of entering into this Agreement for the purposes of securing the carrying out of the Works as defined herein and the Developer has agreed that it will pay the cost of construction and maintenance of the Works
- E. The County Council is satisfied pursuant to Section 278 of the Highways Act 1980 that it will be of benefit to the public for the County Council to enter this Agreement for the execution of the Works at the expense of the Developer which Works the County Council is authorised to execute pursuant to the Highways Act 1980 or are the subject of the Planning Permission

- F. The Parties acknowledge that part of the Works proposed are to be undertaken on public highways for which National Highways is the Highway Authority
- G. The County Council and National Highways have agreed subject to the County Council and National Highways entering into a s6 Agreement simultaneously with this Agreement to permit the Developer to carry out such of the Works that are proposed on the public highway for which National Highways is the highway authority on behalf of the County Council as agent for National Highways pursuant to the s6 Agreement.

NOW THIS DEED OF AGREEMENT WITNESSETH as follows:

Definitions

1. In this Agreement the following expressions shall have the following meanings:

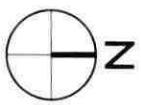
"Assets"	Means the existing amended and new traffic signals and all associated equipment shown coloured orange on drawings - AMALO-PBA-RC1 Rev C, AMALO-PBA-RC2 Rev C, and AMALO-PBA-RC3 Rev C each labelled ITS Assets Management Plan attached at Schedule 1 comprising the traffic signals and equipment on the Trunk Road and the traffic signals and equipment on the Council Network and a reference in this Agreement to the Works includes (except where otherwise expressly stated) all such Assets)
"Assistant Director Legal Services"	Means the County Council's Assistant Director for Legal Services and Monitoring Officer or such other officer or officers as may from time to time be primarily responsible for the provision of legal advice to the County Council
"Bond"	Means such sum of ONE MILLION AND TWENTY SIX THOUSAND EIGHT HUNDRED AND SEVENTEEN POUNDS (£1,026,817) pursuant to clause 9 hereof

"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015
"Certificate of Completion"	Means a certificate issued by the County Council confirming the Works have been executed to its satisfaction and in accordance with the approved drawings, specification and any recorded and agreed changes during the Works and can be placed on maintenance
"Certificate of Maintenance"	Means a certificate issued by the County Council pursuant to the provisions of Clause 9.5 of this Agreement following the expiry of the Maintenance Period
"Chartered Engineer"	Means a person registered as an engineer with the Engineering Council as having the technical knowledge and practical experience to satisfy its preferred requirements
"Competent Engineer"	Means a qualified engineer, who has the technical knowledge and practical experience to satisfy the requirements to be employed under a Construction Contract in accordance with Schedule 2, paragraph 6.2 and who is independent from the Contractor
"Construction Contract"	Means the contract between the Developer and the Contractor for the purposes of providing the Works which provides for the appointment of a Competent Engineer
"Contractor"	Means a contractor who complies with the Section 278 Guidance for Developers document June 2021 ("Appointing a Contractor") prepared by the Director (as modified and extended by any supplements and revisions) appointed by the Developer to undertake the Works
"Default Event"	Means the occurrence of any of the following: where the Developer is a corporation:

- (i) has an administrative receiver or receiver appointed over the whole or part of the Developer's or suffers the appointment of an administrator; or
- (ii) any step is taken in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or
- (iii) an application is made for an administration order in relation to the Developer; or
- (iv) an administrator is appointed or documents are filed with the court for the appointment of an administrator or notice is given of an intention to appoint an administrator by the Developer or its directors, or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
- (v) a receiver or manager is appointed in relation to any property or income of the Developer; or
- (vi) a liquidator is appointed in respect of the Developer; or
- (vii) a voluntary winding-up of the Developer is commenced, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies; or
- (viii) a petition is made for a winding-up order for the Developer; or
- (ix) the Developer is struck-off from the Register of Companies; or
- (x) the Developer otherwise ceases to exist; or
- (xi) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Developer; or

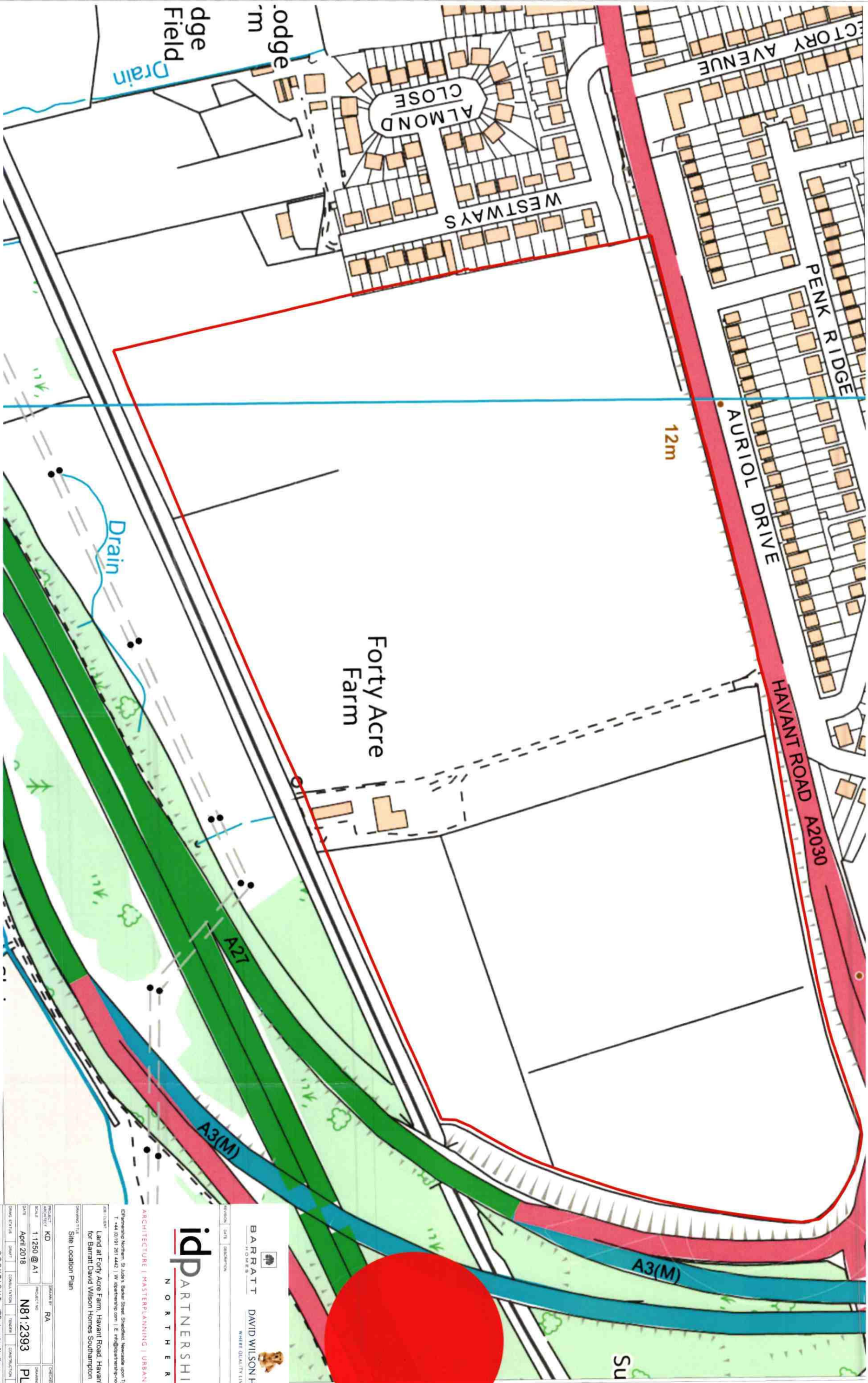
	(xii) the making of an application for a bankruptcy order, the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Developer.
"Director"	Means the County Council's Director of Universal Services and/or the Director of Hampshire 2050 or such other officer or officers as may from time to time be primarily responsible for the County Council's functions duties and responsibilities as a Highway Authority pursuant to the Act
"DLOA"	Means a Detailed Local Operating Agreement setting out the operational construction maintenance and communication protocol for the scheme during normal operation and any emergencies encountered to be entered into between the County Council the Developer and National Highways
"DMRB"	Design Manual for Roads and Bridges published by National Highways and any amendment to or replacement of it for the time being in force save to the extent ^{there is} ~~they are~~ a departure from such standards ~~and have been~~ approved by National Highways;
"Guidance Notes"	Means the "Highway Development Agreements Guidance" and "Section 278 Guidance for Developers" prepared by the Director to inform the Developer of the processes practices and procedures required by the County Council when undertaking design and works on a highway under s278 Highways Act 1980
"Hampshire County Permit Scheme"	Means the Traffic Management (Hampshire County Council) Permit Scheme Order 2019 dated 31st January 2019 made pursuant to the Traffic Management Act 2004
"Hampshire Street Lighting PFI Contract"	Means the contract relating to the provision and maintenance of street lighting and illuminated traffic signage pursuant to the Government's Private Finance Initiative
"HCC Works"	Means the highway works on the County Council network and which form part of the Works

"Inspection Deposit"	Means a sum equal to 5% per cent of the cost of the Works as estimated by the County Council or £2,000 (whichever is the greater) being a sum on account of the County Council's reasonable costs incurred in inspecting and administering the Works
"Interest Accrued"	Means the [simple] interest accrued on any Security Deposit provided to the County Council pursuant to this Agreement such interest to be calculated at the Bank of England Base Rate minus 0.5%
"Land"	Means the land for the purposes of identification only shown edged red on plan PLO1 – Site Location Plan attached hereto having the benefit of the Planning Permission
"Maintenance Period"	Means a period of at least 12 months following the date of the Certificate of Completion
"Mud Method Statements"	Means method statements submitted by the Developer for approval by the County Council of the detailed measures to be taken during the construction works consequent to the Planning Permission to prevent earth and subsoil on vehicles leaving the Land and adjacent development land being deposited on the public highway.
"National Highways"	Means National Highways Limited (registered Company Number 09346363 whose registered address is at Bridge House 1 Walnut Close Guildford Surrey GU1 4LZ
"NH Administration Fee"	Means the fee payable as part of the National Highways costs pursuant to the s6 Agreement that represents the internal costs of National Highways in administering the implementation of the NH Works and the requirements of the s6 Agreement and charged as a flat fee based on the final costs of the NH Works
"NH Asset Data"	Means the information and data required by National Highways for the purposes of updating relevant databases to ensure



KEY

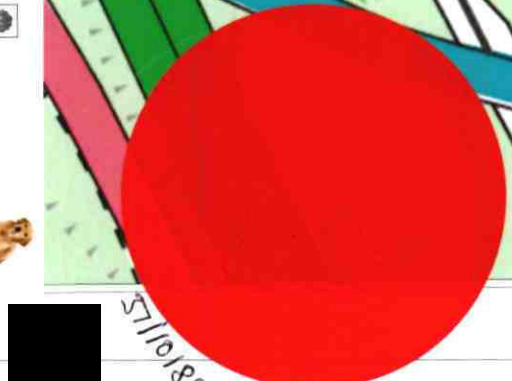
SITE BOUNDARY



DO NOT SCALE
All dimensions to be checked on site and Architect to be notified of any discrepancies prior to commencement

DESIGNER'S RISK ASSESSMENT
Continued Design and Management Regulations 2014
RESIDUAL RISKS:

REF	DESCRIPTION	DATE
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BARRATT
HOMES
DAVID WILSON HOMES
WHERE QUALITY LIVES

idp PARTNERSHIP
N O R T H E R N

ARCHITECTURE | MASTERPLANNING | URBAN DESIGN

© idp Partnership Northern, 50 Lady Street, Sheffield, S1 4AG. Havant, 400 Tynes Way, Havant, PO9 1AA. T: +44 (0)1903 261 442 | W: idppartnership.com | E: info@idppartnership.com

FOR CLIENT:
Land at Forty Acre Farm, Havant Road, Havant
for Barratt David Wilson Homes Southampton

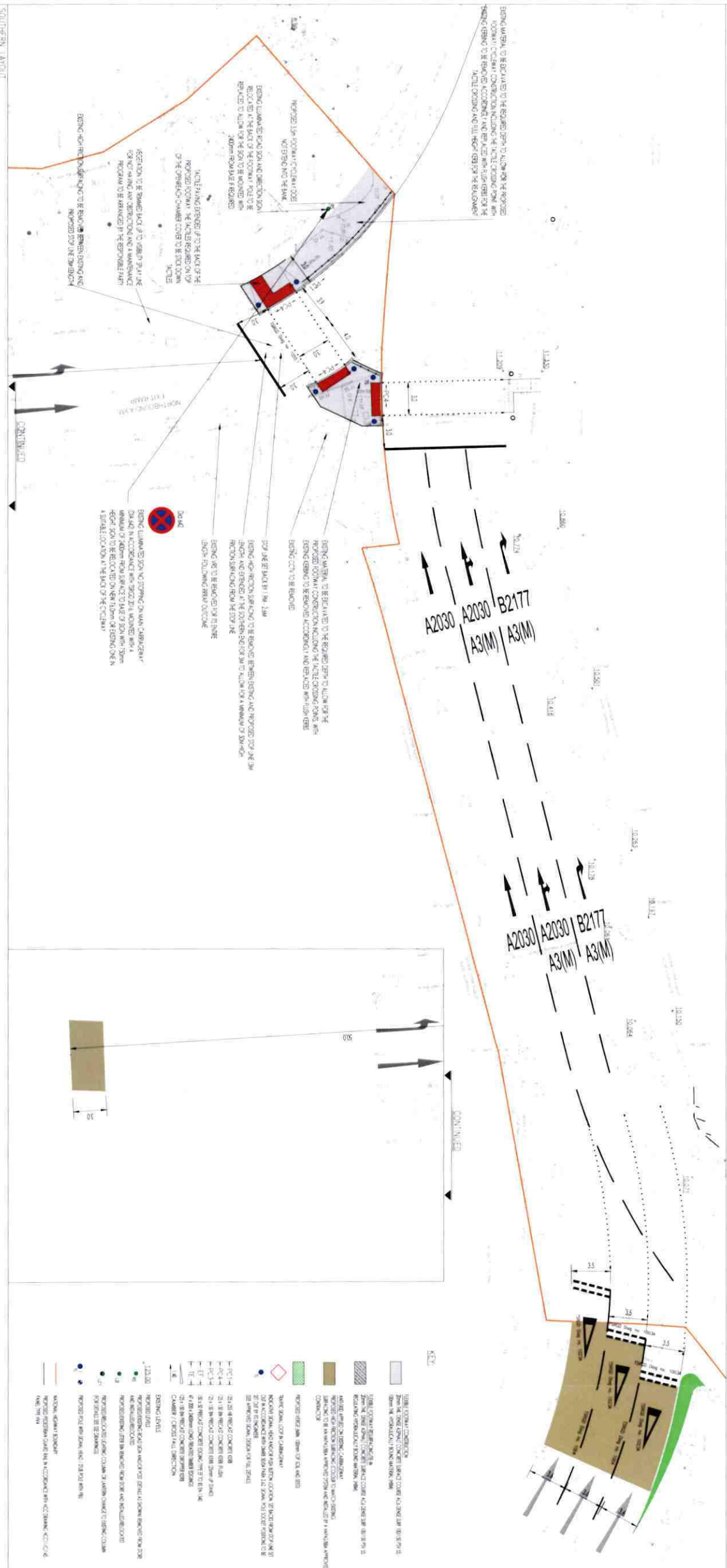
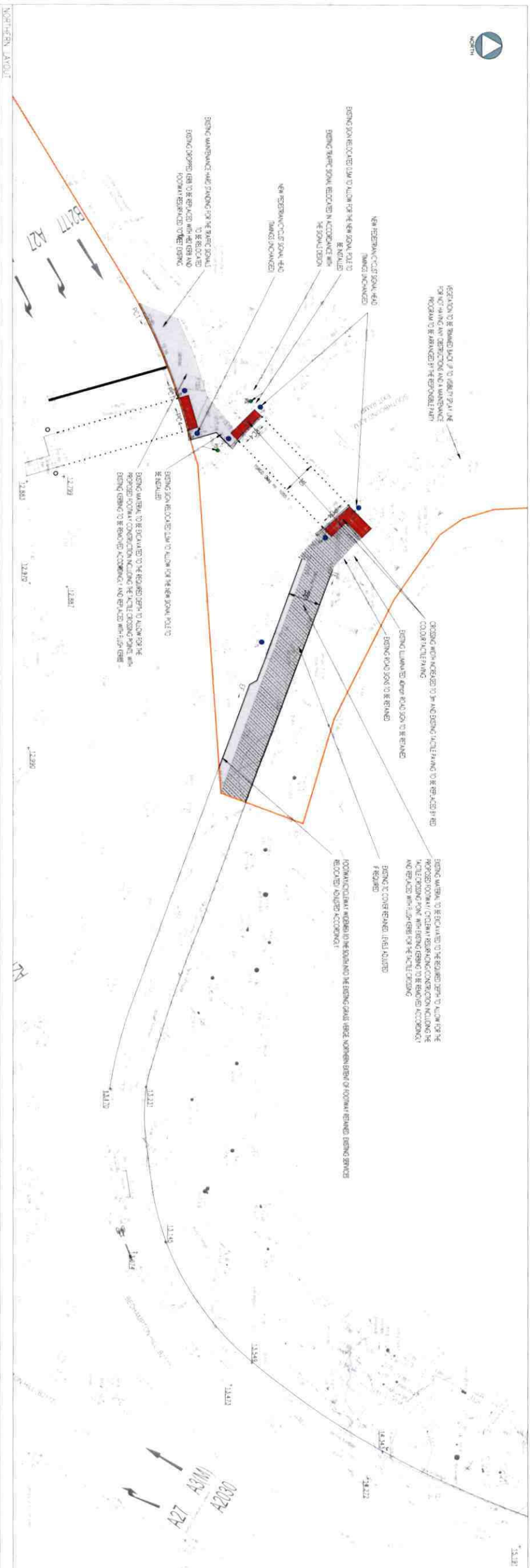
DRAWING TITLE:
Site Location Plan

PROJECT	DESIGNER	DATE	REVISION	DATE	REVISION
KD	RA	1:1250 @ A1	N81:2393	PL01	
DATE	APRIL 2018	COMPLETION	TRIGGER	CONSTRUCTION	RECOMING

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	compliance with National Highways' Asset Data Management Manual (ADMM) in operation at the relevant time
"NH Commuted Sum"	Means such sum to be agreed by the County Council and National Highways following approval of the final design of the NH Works to be used to fund the future cost of maintaining or replacing the NH Works
"NH Costs and Expenses"	Means the costs and expenses reasonably and properly incurred by National Highways in relation to the NH Works and the implementation of the s6 Agreement including without prejudice to the generality of the following any such costs and expenses in relation to: (a) the approval of design work carried out by or on behalf of the County Council (b) the carrying out of any supervision of the NH Works (c) legal expenses and administrative expenses not included in the NH Administration Fee (d) the NH Administration Fee (e) the costs of drafting, negotiating and completing this Agreement and for the avoidance of doubt all VAT charged by National Highways to the County Council shall be payable by the Developer
"NH Estimated Costs"	Means the estimate by National Highways of NH Costs and Expenses
"NH Excess Cost"	Means the estimate by National Highways of the amount by which NH Costs and Expenses will exceed the NH Estimated Costs
"NH Final Account"	Means such the final figure for NH Costs and Expenses actually incurred by National Highways

"NH Handover Information"	Means the information and documents which National Highways requires in accordance with the DMRB, CTM – 077 YNE and SE UTC Traffic Signal Migration Guidance Rev.4 and any other information National Highways may reasonably require in relation to the Works
"NH Initial Deposit"	Means the initial sum payable to National Highways towards NH Costs and Expenses pursuant to the s6 Agreement to cover all initial stages of the NH Works
"NH Works"	Means the works to the Trunk Road shown on drawing 041.5023A.140 Rev A annexed hereto
"Planning Permission"	Means the planning permission reference APP/18/00450 granted on 17th January 2020 by Havant Borough Council for the development of the Land requiring the Works
"Programme"	Means the programme for execution of the Works agreed in writing by the County Council pursuant to Schedule 2 paragraph 1.1 and shall include but not be limited to; • start dates, access dates, key dates and completion dates. • the order and timing of operations of the contractor employed to undertake the Works. • traffic management operations and resources employed. • allowances for others as required for undertaking Works.
"s6 Agreement"	Means an agreement pursuant to section 6 of the Highways Act 1980 and made between National Highways and the County Council on the date hereof in the form attached at Appendix 1
"Security Deposit"	Means a cash deposit in the sum of THIRTEEN THOUSAND SIX HUNDRED AND SIX POUNDS AND EIGHTY EIGHT PENCE (£13,606.88)



1. THE DRAWING IS THE PROPERTY OF PAUL BASHAM ASSOCIATES. THE DRAWING AND THE INFORMATION ARE NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF PAUL BASHAM ASSOCIATES. ANY UNAUTHORIZED REPRODUCTION OR TRANSMISSION OF THIS DRAWING IS A BREACH OF THE COPYRIGHT AND WILL BE PROSECUTED TO THE FULL EXTENT OF THE LAW.

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CDM Regulations 2015 Reg 9

Notwithstanding to whomsoever the design is submitted, the designer shall remain responsible for the design and shall ensure that the design is fit for the purpose for which it is intended to be used.

GENERAL NOTES

1. THIS DRAWING IS INTENDED TO BE USED IN CONJUNCTION WITH ALL RELEVANT ARCHITECTURAL, ENGINEERING, SERVICES AND SPECIALIST DRAWINGS AND SPECIFICATIONS.
2. ANY VARIATIONS OR DISCREPANCIES BETWEEN THESE DRAWINGS IN TERMS OF DIMENSIONS OR DETAILS SHOULD BE SHOWN TO THE CLIENT AND THE ARCHITECT AND/OR THE ENGINEER FOR CLARIFICATION.
3. THE DESIGNER ACCEPTS NO RESPONSIBILITY FOR THE CONSTRUCTION OF THE WORKS SHOWN ON THESE DRAWINGS UNLESS THE DESIGNER HAS BEEN SPECIFICALLY INSTRUCTED TO DO SO.
4. ALL DIMENSIONS AND LEVELS ARE IN METERS UNLESS OTHERWISE STATED.
5. THIS DRAWING SHOULD NOT BE USED FOR CONSTRUCTION OF THE WORKS UNLESS IT HAS BEEN SPECIFICALLY INSTRUCTED TO DO SO BY THE CLIENT AND THE ARCHITECT AND/OR THE ENGINEER FOR CLARIFICATION.
6. THE DESIGNER ACCEPTS NO RESPONSIBILITY FOR THE CONSTRUCTION OF THE WORKS SHOWN ON THESE DRAWINGS UNLESS THE DESIGNER HAS BEEN SPECIFICALLY INSTRUCTED TO DO SO.

BOUNDARY NOTES

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EXISTING SERVICES

IT IS THE RESPONSIBILITY OF ANY CIVIL ENGINEER TO VERIFY AND LOCATE ANY UTILITY PLANS PRIOR TO CONSTRUCTION WORK BEING UNDERTAKEN.

UNDERGROUND SERVICES MUST BE LOCATED IN ACCORDANCE WITH THE DRAINAGE NOTES (HSC4).

SERVICES TO BUILDINGS ARE NOT SHOWN BUT MUST BE ASSUMED TO BE LOCATED IN ACCORDANCE WITH THE DRAINAGE NOTES (HSC4).

THE LOCATION OF ANY MAIN AND SERVICES MUST BE INSTANTLY SHOWN ON THE FINAL PLAN. THE LOCATION OF ANY MAIN AND SERVICES MUST BE INSTANTLY SHOWN ON THE FINAL PLAN. THE LOCATION OF ANY MAIN AND SERVICES MUST BE INSTANTLY SHOWN ON THE FINAL PLAN.

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DETAILED DESIGN

18.03.24 EK 18.03.24 (AT A1 SIZE)

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PAUL BASHAM ASSOCIATES

BARATT HOMES

"Specification"	Means the 'Manual of Contract Documents for Highway Works: Volume 1 Specification for Highway Works' published by TSO as modified and extended by any supplements and revisions and further as modified and extended by Hampshire County Council's Model Contract Specification (available at www.hants.gov.uk/transport/developers/standard-details), Hampshire County Council's Highway Construction Standard Details (available at www.hants.gov.uk/transport/developers/standard-details), Hampshire County Council's Technical Guidance Notes (available at www.hants.gov.uk/transport/developers/technical-guidance) and Hampshire County Council's Companion Document to Manual for Streets where applicable (available at http://documents.hants.gov.uk/transport/manual_for_streets.pdf) all as in force at the date of commencement of the Works
"Structure(s)"	Means any structure or structures (as the context so requires) as defined in Design Manual for Roads and Bridges – Document CG 300 – Technical Approval of Highway Structures
"SuDs" Sustainable Drainage	Means a sequence of conveyance systems and control structures designed to manage the drainage of surface water more sustainably than conventional techniques by providing treatment and reducing flow rates and volumes
"Trunk Road"	Mean the A3(M) junction with Bedhampton Roundabout
"TSO"	Means The Stationery Office Limited (company number: 03049649) and whose registered office is at 1-5 Poland Street, Soho, London, England, W1F 8PR being formerly Her Majesty's Stationery Office

"Working Day"	Means any day Monday to Friday inclusive excluding bank holidays between the hours of 0830 and 1630 and the expression 'Working Days' shall be construed accordingly
"Works"	Means the HCC Works and the NH Works together described in Schedule 1 hereto

Statutory Powers

2. This Deed of Agreement is made pursuant to Sections 6 and 278 and 251 of the Highways Act 1980 Section 111 of the Local Government Act 1972 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and all other enabling powers including the Localism Act 2011

General Matters

3. For the purposes of Section 251 of the Highways Act 1980 the County Council certifies that this Agreement is made in connection with its functions as Highway Authority under the Highways Act 1980
4. Where any agreement certificate or approval is to be given by the County Council under the terms of this Agreement then the same shall be in writing and not be unreasonably withheld or delayed
5. Any notice or other communication to be served by the Developer under the terms of this Agreement shall be in writing **citing reference 140356/CMR** and shall not be deemed to be given until received by the County Council at The Castle, Winchester, Hampshire SO23 8UJ and addressed to the Assistant Director Legal Services or to such addressee as the County Council may from time to time stipulate

Developer's Covenants

6. The Developer hereby covenants with the County Council as follows:

Execution of Works

- 6.1. To carry out at its own expense and at no cost to the County Council the Works described in Schedule 1 as contractor for the County Council in a good and workman like manner and with proper materials and in accordance in all respects with the terms and conditions described in Schedule 2
- 6.2. Not to commence the Works unless and until the design of the Works and the Programme and all expenditure have been approved in writing by the County Council and unless and until a DLOA prepared by the Developer has been approved by the County Council and National Highways.
- 6.3. To ensure that all road safety audits and other mandatory reports are carried out in accordance with DMRB, including GG119 (Road Safety Audit) and GG 142 (walking cycling and horse riding assessment) (or such updated or revised standards as may be published from time to time)
- 6.4. To construct the Works:
 - 6.4.1. in accordance with the requirements of National Highways; this includes undertaking all operations relating to the Assets in accordance with the requirements within GG 182 (Major schemes: Enabling handover into operation and maintenance), MCH 1399 (Notification of a change in equipment), MCH 1349 (Process for Commissioning and Handover of Roadside Operational Technology. Issue G.), CTM – 077 YNE and SE UTC Traffic Signal Migration Guidance Rev.4), and
 - 6.4.2. subject to clause 6.4.1 in accordance with the Manual of Contract Documents for Highway Works and the DMRB.

- 6.5. To comply with any reasonable requirement of National Highways as to the manner in which the NH Works are to be carried out
- 6.6. To collect and provide to the County Council the NH Asset Data
- 6.7. To notify the County Council and National Highways of alterations to the Works prior to implementing any such alteration and not to make any material alteration to the Works without the prior written consent of the County Council (such consent not to be unreasonably withheld or delayed) and in the case of the NH Works also not without the prior written consent of National Highways
- 6.8. To provide the County Council with copies of documents, correspondence, data and other information as the County Council may from time to time reasonably require for itself and/or on behalf of National Highways
- 6.9. To provide the County Council and National Highways with not less than 14 (fourteen) days' notice of any access to any road or lane space required for the execution of the Works
- 6.10. To give the County Council not less than 5 (five) Working Days notice (or in cases of emergency then as much notice as is reasonably possible) of all site meetings and must allow the National Highways Project Manager and other representatives of National Highways to attend all site meetings as well as representatives of the County Council
- 6.11. To allow the County Council and National Highways access to the Works and the areas adjacent to the Works at any such time as the County Council may reasonably require upon not less than 5 (five) Working Days' prior notice for the purpose of viewing the state and progress of the Works and in order to determine whether the Works are being carried out in accordance with the requirements of the s6 Agreement
- 6.12. To notify the County Council in writing when the developer considers that the Works have reached completion (including the carrying out of a Stage 3 Safety audit if required and in that

event the completion of works resulting from the audit) and to allow the County Council and National Highways to inspect the Works

- 6.13. To notify the County Council in writing as to the date the Works are opened to the public no later than one month following such opening in addition to and without prejudice to the issuing of the Certificate of Completion
- 6.14. Before issue of the Certificate of Maintenance to provide to the County Council for the County Council and for National Highways:
 - 6.14.1. an as-built record of the finished works which must show all above ground apparatus, including the Assets and all street lights, signs, markings, poles, columns, boxes, cabinets, covers, drainage gullies, expansion joints, and safety rails structures on a survey base;
 - 6.14.2. copies of the recorded location of all as-constructed below ground statutory and highway authority controlled apparatus

Street Lighting

- 6.15. To maintain access to all apparatus that is part of the Hampshire Street Lighting PFI Contract and where this is not possible the maintenance responsibility for that apparatus shall be removed from the Hampshire Street Lighting PFI Contract and shall pass to the Developer and FURTHER where the Developer removes or relocates any apparatus that is part of the Hampshire Street Lighting PFI Contract the maintenance responsibility for that apparatus shall be removed from the Hampshire Street Lighting PFI Contract and shall pass to the Developer

Traffic Signals

- 6.16. With regard to the Assets
 - 6.16.1. During the Maintenance Period to carry out normal maintenance and to repair any errors identified
 - 6.16.2. To provide the NH Handover Information to the County Council prior to issue of the Certificate of Completion

Indemnity

- 6.17. That it hereby indemnifies and shall keep indemnified the County Council in respect of all actions claims demands fees charges expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and any works required by any statutory undertaker including (but not limited to)
- 6.17.1. any costs expenses and penalties incurred by the County Council in the event the Developer exceeds the timescale specified in the Programme other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions below shall apply
 - 6.17.2. third party claims for death, personal injury or damage to property
 - 6.17.3. third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right
 - 6.17.4. statutory or other liability for the safety or security of the working methods, employment practices, protection of the environment and control of pollution
 - 6.17.5. any claims under Section 10 of the Compulsory Purchase Act 1965, the Land Compensation Act 1973, and any claims for compensation under the Noise Insulation Regulations 1975 arising out of, in connection with or incidental to the carrying out of the Works and the Scheme
 - 6.17.6. all fees incurred by claimants which the County Council or National Highways is obliged to pay, and those of the County Council and/or National Highways or their agent or contractors in negotiating claims (together with VAT payable on any professional advisors' fees); statutory interest payments to claimants and their professional

advisors; and the County Council's and/or National Highways' reasonable and proper legal and administrative costs in making the compensation, fees and interest payments

Public Liability

- 6.18. That it shall without prejudice to its liability under Clause 6.4 and 6.19 6.6 hereof to indemnify the County Council be insured against public liability risks for a sum of at least TEN MILLION POUNDS (£10,000,000) in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured against public liability risks and the Developer or any person authorised by it to carry out the Works shall (without prejudice to the requirements of Schedule 2 paragraph 1.8 of this Agreement) on request by the County Council produce for inspection evidence of the relevant policies of insurance

Land Compensation Claims

- 6.19. That it hereby indemnifies the County Council against all costs associated with its responsibilities and all claims under section 10 of the Compulsory Purchase Act 1965 and pursuant to Part I and Part II of the Land Compensation Act 1973 (as amended) and regulations made there under (including claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975) arising out of the use of the Works

Bond

7. The Developer shall not commence the Works until it has provided to the County Council
- 7.1. the Security Deposit; and
- 7.2. a Bond by a surety acceptable to the Assistant Director Legal Services to the effect that if the Developer fails at any time to carry out or observe any of the terms conditions and stipulations on its part contained in this Agreement or in the event of a

Default Event occurring the surety shall pay to the County Council on demand such sum as may be certified by the County Council to be required in order to complete the HCC Works and/or the NH Works or reinstate the highway or complete such alternative works as the County Council considers appropriate and remedy any defects prior to the Works becoming maintainable at the public expense or occurring or discovered during the Maintenance Period and the cost of any other sums due under the terms of this Agreement and such further sum as the Assistant Director Legal Services may certify to be necessary to fully reimburse the County Council in respect of any costs and expenses incurred by the County Council in the enforcement of the obligations on the part of the Developer under this Agreement together with the cost to the County Council of preparing an alternative contract and of supervising the execution of this alternative contract PROVIDED THAT

- 7.3. upon issue of the Certificate of Completion the Bond may by agreement in writing by the County Council be reduced by 80% or to the sum of £5,000.00 whichever is the greater value save insofar as any claim or claims have been against the Developer or liability on its part has arisen before that date in which case the remaining Bond value shall be a sufficient sum to ensure that the County Council does not have to meet any costs for or arising from the Works ("the Revised Bond Figure") and PROVIDED FURTHER that upon issue by the County Council of the Certificate of Maintenance the Bond may by agreement of the County Council in writing be reduced by 80% of the Revised Bond Figure and be replaced by the Security Deposit at which point in time the Bond shall be released save insofar as any claim or claims have been against the Developer or liability on its part has arisen under this Agreement before that date in which case the remaining Bond value shall be a sufficient sum to ensure that the County Council does not have to meet any costs for or arising from the Works and PROVIDED FURTHER

that upon the date which is seven (7) years after the issue of the Certificate of Completion the County Council shall release the Developer in writing from the Developer's obligations under this Agreement (and in so far as the Bond remains in place the surety shall also be released from its obligations) and the Security Deposit shall be repaid to the Developer with Interest Accrued save insofar as any claim or claims have been made against the Developer or liability on its part has arisen under this Agreement before that date..

Payments

8. The Developer further covenants with the County Council to pay to the County Council:

On the date of the Agreement

- 8.1. On the date hereof the whole of the reasonable costs incurred by the Assistant Director Legal Services and the Director in the preparation of this Deed and in the preparation of the s6 Agreement.

Prior to commencement of the Works

- 8.2. On demand and in any event prior to commencement of the Works the NH Initial Deposit
- 8.3. On demand and in any event prior to commencement of the Works the NH Estimated Costs less the NH Initial Deposit if already paid
- 8.4. On demand and in any event prior to commencement of the Works the reasonable cost to the County Council of approving the detailed contract drawings, specification and any relevant reports for the Works including the cost of approval of preliminary design check drawings and structural approvals (less any pre-check fees already paid to the County Council) on account of such costs
- 8.5. On demand and in any event prior to commencement of the Works the Inspection Deposit and further shall pay any

reasonable additional sum incurred by the County Council in inspecting and administering the Works within 30 days following receipt of an invoice from the County Council

- 8.6. Prior to commencement of the Works the full cost to the County Council of any road traffic orders required to facilitate the Works
- 8.7. Prior to commencement of the Works the full cost to the County Council of any permanent traffic regulation orders or road hump notices

Prior to issue of Certificate of Completion

- 8.8. On demand and in any event prior to issue of the Certificate of Maintenance any NH Excess Costs that the County Council has been made aware of by National Highways
- 8.9. On demand within thirty (30) days of request and in any event prior to issue of the Certificate of Maintenance the NH Commuted Sum
- 8.10. Prior to the issue of the Certificate of Completion and in accordance with Schedule 3 any commuted sums due in respect of the future maintenance of the HCC Works and in the event that Rate B as set out in Schedule 3 applies the Developer elects to pay a fixed rate of 4% interest adjustment for inflation as set out Schedule 3
- 8.11. On demand and in any event prior to the issue of the Certificate of Completion the costs of all design checks and inspections together with any accrual payment incurred or to be incurred at the time of adoption by the County Council in respect of the Works pursuant to the Hampshire Street Lighting PFI Contract
- 8.12. Prior to the issue of the Certificate of Completion any sums incurred by the County Council pursuant to the requirements of Schedule 2
- 8.13. On demand any maintenance costs incurred by the County Council under the terms of the s6 Agreement in respect of the period prior to the issue of the defects certificate referred to in clause 9 of the s6 Agreement

Prior to the Reduction of the Bond

- 8.14. On demand and in any event prior to the reduction of the Bond the sum of £200 for costs incurred in approving and administering reducing the Bond

Prior to the Release of the Bond

- 8.15. On demand and in any event prior to the release of the Bond the sum of £200 for costs incurred in approving and administering releasing the Bond

Prior to issue of Certificate of Maintenance

- 8.16. On demand and in any event prior to issue of the Certificate of Maintenance and subject to clause 9 below the sum if any by which the NH Final Account exceeds the amount already paid by the Developer to the County Council in respect of NH Costs and Expenses
- 8.17. On demand and in any event prior to the issue of the Certificate of Maintenance the costs of all design checks and inspections together with any accrual payment incurred or to be incurred at the time of adoption by the County Council in respect of the Works pursuant to the Hampshire Street Lighting PFI Contract
- 8.18. On demand and in any event prior to the issue of the Certificate of Maintenance to re-imburse the County Council in respect of the balance if any of such legal costs and/or technical costs and/or expenses and/or commuted sums incurred or to be incurred under the terms of the s6 Agreement as not already paid by the Developer in accordance with Clause 8.6
- 8.19. Prior to the issue of the Certificate of Maintenance any outstanding sums due pursuant to this Agreement

Payment on Demand

- 8.20. Where any payment due to the County Council under this Agreement is outstanding the Developer covenants with the County Council that the Developer shall pay all outstanding payments to the County Council within ten (10) Working Days of the County Council's written demand ("the demand") as well as

the interest on the sum outstanding from the due date under this Agreement until the actual date of payment to the County Council such interest to be calculated at whichever rate is higher of either

8.20.1. the rate of 4% (four per cent) per annum above the base lending rate of the HSBC at the date of the demand; or

8.20.2. the rate of 1% (one per cent) above the rate payable in respect of compensation under section 32 of the Land Compensation Act 1961

County Council's Covenants

9. The County Council hereby covenants with the Developer as follows:
 - 9.1. That it hereby authorises the Developer and the Contractor to carry out the HCC Works within the public highway subject to and strictly in accordance with the terms conditions and stipulations in Schedule 2
 - 9.2. That it hereby authorises the Developer and the Contractor to carry out such of the NH Works that are proposed on the public highway pursuant to the s6 Agreement for which National Highways is the highway authority and strictly in accordance with the terms conditions and stipulations in Schedule 2
 - 9.3. To procure from National Highways as soon as reasonably practicable all necessary consents approvals inspections and certificates required by National Highways pursuant to the s6 Agreement so as not to materially prejudice the delivery of the Works and development granted pursuant to the Planning Permission and to enforce the terms of the s6 Agreement if National Highways fails to comply with its obligations contained therein
 - 9.4. To co-ordinate so far as is reasonably practicable the inspections of the Works with National Highways so as to avoid any delay to the completion of the Works caused by double inspections

- 9.5. That upon completion of the Works in accordance with the approved drawings, specification and any recorded changes agreed in writing during the Works that have been completed to the satisfaction of the County Council the County Council will issue a Certificate of Completion and as from the date of the Certificate of Completion that part of the Works as are at the date of this Agreement within the public highway shall become maintainable at public expense SAVE THAT for the Maintenance Period the Developer shall maintain the Works and after the expiry of the Maintenance Period and PROVIDED ALWAYS that the Works have been fully maintained as aforesaid and that any defects appearing or safety issues identified during the Maintenance Period including but not limited to all additional works, alterations or amendments to the Works as a result of the Stage 4 safety audit (if required) have been made good by the Developer to the reasonable satisfaction of National Highways and of the County Council and all sums due under this Agreement have been paid and the Developer has provided the NH Asset Data to the reasonable satisfaction of the County Council and of National Highways and all records required under clause 6.14 of this Agreement **the County Council shall thereupon issue a Certificate of Maintenance** PROVIDED FURTHER THAT the County Council shall be at liberty to delay the issue of the Certificate of Maintenance if in its opinion the Works are likely to be subjected to heavy loading or used by construction vehicles driven by or on behalf of the Developer or his or its servants and agents or contractors or other developers in connection with road or building works carried out on the Land or on adjoining land in any of which cases the Maintenance Period shall be extended accordingly PROVIDED FURTHER THAT unless and until the Developer provides the NH Handover Information to the satisfaction of National Highways and of the County Council under clause 6.4 above then the Developer shall continue to

maintain the Assets on National Highways' behalf and at the Developer's expense and at no cost to the County Council

- 9.6. That it shall repay to the Developer within 30 days of receipt of such payment from National Highways the sum if any by which the total of the amounts already received by the County Council from the Developer in respect of NH Costs and Expenses (including the NH Initial Deposit and the NH Estimated Costs) exceeds the NH Final Account

Further Agreement Between Parties

10. It is further agreed between the parties that:
- 10.1. In accordance with Regulation 4(8) of the CDM Regulations the Developer hereby elects to be the only client for the purposes of the CDM Regulations for any part of the Works as may be within the public highway and the County Council consents to such an election and for the avoidance of doubt the County Council shall have a duty only under Regulations 4(4), 8(4) and 8(6) of the CDM Regulations insofar as those duties relate to health and safety information in the County Council's possession as a Highway Authority
- 10.2. If the estimated value of the contract for the Works equals or exceeds the threshold identified in Regulation 5(1) of the Public Contracts Regulations 2015 (as amended from time to time) then the Developer as contractor for the County Council shall in appointing an economic operator to carry out the Works comply with the Public Contracts Regulations 2015 (as amended from time to time).
- 10.3. During the Works the highway shall remain open to the public subject as necessary to traffic management
- 10.4. The Developer must obtain prior approval in writing from the County Council and Natural England as appropriate for any required licences, and for the methodology, strategy and final

arrangements pertaining to the protection of wildflowers
identified in the Works area

Non-Compliance

11. Without prejudice to the terms hereof:

- 11.1. If the Developer fails to execute or complete the Works in accordance with its obligations hereunder the County Council shall after not less than fourteen (14) days' notice in writing to the Developer (or immediately in any case of emergency or danger) be entitled to complete the Works or reinstate the highway or complete such alternative works as the County Council or National Highways considers appropriate in default with its own employees or by contract or otherwise (entering the Land if necessary to do so) and to recover the full costs as certified by the County Council or National Highways from the Developer
- 11.2. After the expiry of the notice period in Clause 11.1 above or immediately in the case of emergency or danger the authority given to the Developer under clause 9.1 shall be revoked immediately upon the County Council exercising its powers at Clause 11.1 above
- 11.3 If the Developer fails to comply with the approved Mud Method Statements the County Council reserves the right to close any access to the Land until such time as the public highway is made safe
- 11.4 In the event of any breach of this Agreement or should for any reason the NH Works not be completed to the reasonable satisfaction of National Highways and where National Highways acting reasonably considers it would not be practical to complete the NH Works the County Council may:
 - (a) by notice to the Developer require the Developer to procure, at its own expense, reinstatement of the Trunk Road and other

land and premises of National Highways disturbed by the NH Works to their previous condition; or

- (b) inform the Developer that National Highways or the County Council intends to carry out such necessary works of reinstatement of the Trunk Road and other land and premises of National Highways disturbed by the Works to their previous condition and the Developer must indemnify the County Council for the costs of National Highways and / or of the County Council (reasonably and properly incurred) in doing so.

Arbitration

- 12. Save for matters of interpretation of this Agreement (which shall be matters for the Court) in the event of any dispute arising between the parties hereto in respect of any matter contained in this Agreement including questions of value and any question of reasonableness the same shall be referred to an expert ("Expert") to be agreed upon between the parties hereto or at the request and option of either of them to be nominated at their joint expense by or on behalf of the President for the time being of the Institution of Civil Engineers and the Expert's decision shall be final and binding on the parties hereto and whose costs (including the re-imbursement of the costs of any other experts' fees) shall be at his discretion

- 12.1 The Expert shall have at least ten years post qualification experience in the subject matter of the dispute and shall:

- 12.1.1 be appointed subject to an express requirement that he reaches a decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than 30 Working Days from the date of his appointment to act

- 12.1.2 be required to give notice to each of the third parties inviting each of them to submit to him within such period as he shall reasonably determine within ten (10) Working Days of his appointment written submissions and supporting material and shall afford to each of the

said parties an opportunity to make counter submissions within a further five (5) Working Days in respect of any such submission and material and the Expert shall disregard any representations made out of time and the Expert's decision shall be given in writing within fifteen (15) Working Days from receipt of any counter submissions or in the event that there are no counter submissions within fifteen (15) Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest error the Expert's decision shall be final and binding on the said parties

13. It is hereby declared and agreed between the parties hereto that nothing in Clause 12 shall be taken to fetter the ability of the County Council to seek legal redress of any breach of the obligations entered into by the Developer in this Agreement

Miscellaneous

14. The Developer hereby agrees that the Works are for the benefit of the Land
15. If the Works have not commenced in accordance with the terms of this Agreement within two (2) years of the date hereof this Agreement (save always for any outstanding liabilities on the part of the Developer) shall absolutely determine and cease to have any effect unless otherwise agreed in writing
16. For the avoidance of doubt reference wherever it appears in this Agreement to the Developer shall not include any successor in title thereto in respect of the authority granted to the Developer to carry out the Works pursuant to this Agreement
17. Reference whenever it appears in this Agreement to any statute or other legislation shall include any amendment thereto or other regulations Codes of Practice or other directions made or given there under
18. Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement confers or purports to confer any

rights to enforce any of the terms and provisions herein on any person who is not a party hereto or a successor in title to a party hereto

19. In no event shall any delay, neglect or forbearance on the part of the County Council in enforcing (in whole or in part) any provision of this Agreement be or be deemed to be a waiver of that provision or any other provision or shall in any way prejudice the right of that party under this Agreement.
20. This Agreement shall be registered as a Local Land Charge
21. Counterpart
This Deed may be executed in two counterparts, each of which when executed and delivered shall constitute a duplicate original, but both the counterparts shall together constitute the one Agreement. Transmission of the executed signature page of a counterpart of this Agreement by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the other with the original of such counterpart as soon as reasonably possible thereafter. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

SCHEDULE 1
Description of Works

The Works referred to in this Agreement and shown in principle on Drawings

041.5023A.101 Rev L – Engineering Layout (Sheet 1 of 3)

041.5023A.102 Rev M – Engineering Layout (Sheet 2 of 3)

041.5023A.103 Rev N – Engineering Layout (Sheet 3 of 3)

AMALO-PBA-RC1 Rev C – ITS Assets Management Plan

AMALO-PBA-RC2 Rev C – ITS Assets Management Plan

AMALO-PBA-RC3 Rev C – ITS Assets Management Plan

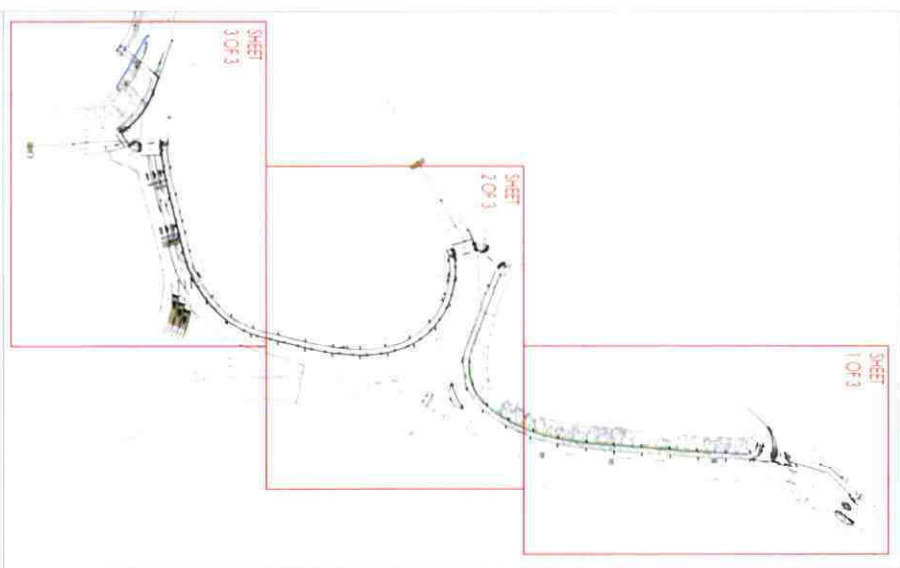
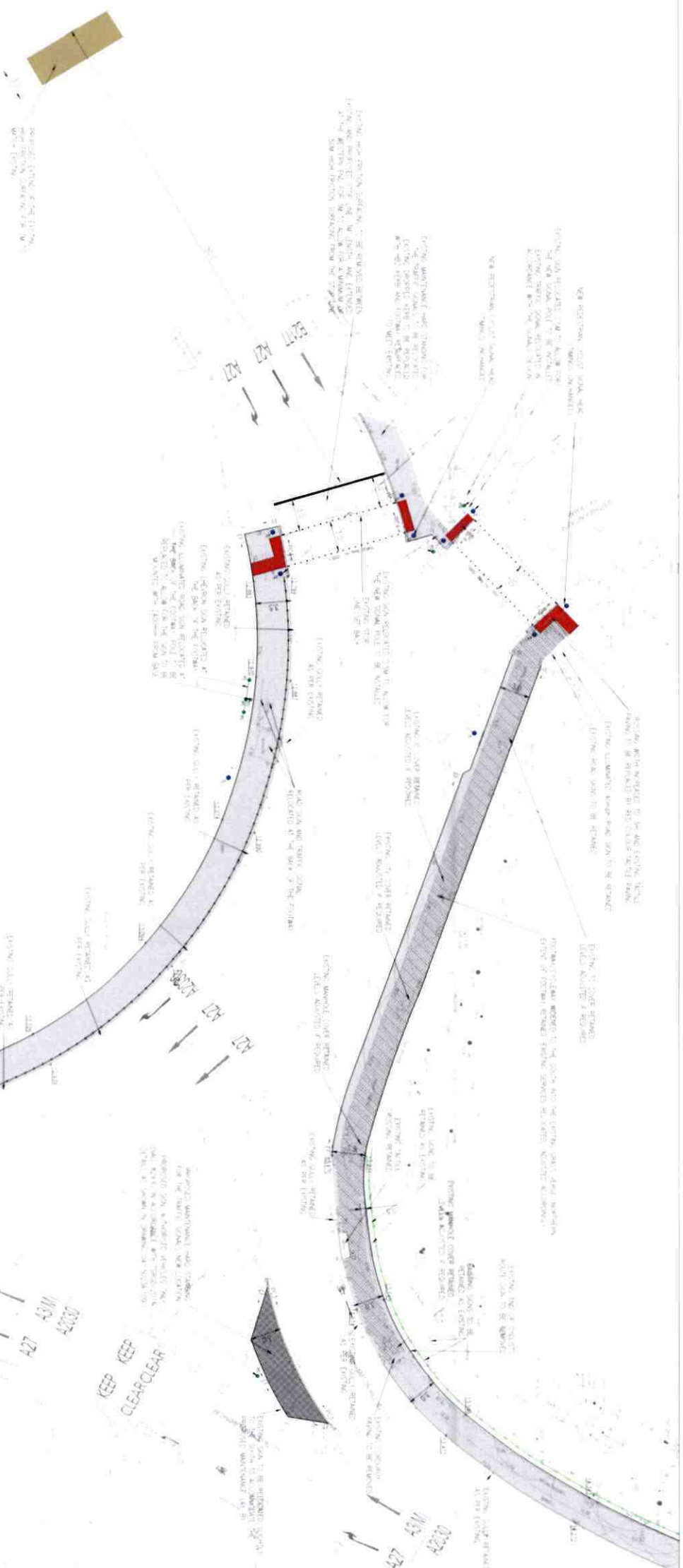
attached hereto shall comprise:-

- Pedestrian and cycle improvements including provision of controlled crossings of the northbound and southbound A3(M) off slip
- Alterations to the lane widths and new road markings on the A27 northbound off slip to the Rusty Cutter roundabout
- Amendments to the existing traffic signals (Assets) including relocation of the existing signal poles to suit the proposed works and installation of additional push buttons to serve pedestrian use.
- Construction of shared use footway/cycle path to link Bedhampton Hill to Havant Road

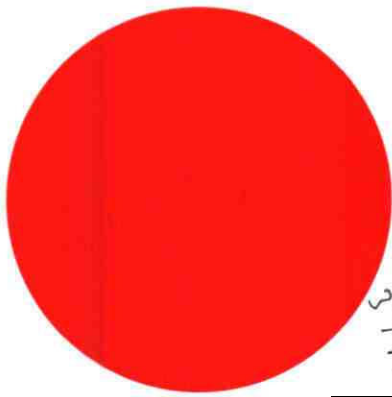
TOGETHER WITH such ancillary works as may be required by the County Council which ancillary works may include inter alia the provision of street

lighting traffic signs carriageway markings footways street furniture and drainage and any necessary alterations to statutory undertakers equipment PROVIDED THAT if the Department for Transport Technical Design Standards, Advice or HCCs Technical Guidance is amended after the date of this Agreement the County Council shall be at liberty to review the Works and require any amendments deemed necessary to ensure that the Works comply with the revised standards and advice SAVE THAT in circumstances where detailed contract drawings have been approved in writing by the County Council and the Works are commenced within three (3) months of the date of the written approval thereof then SUBJECT ALWAYS TO AND WITHOUT PREJUDICE to Schedule 2 hereof the County Council shall not seek any amendments to the Works unless this is required by National Highways in relation to the NH Works

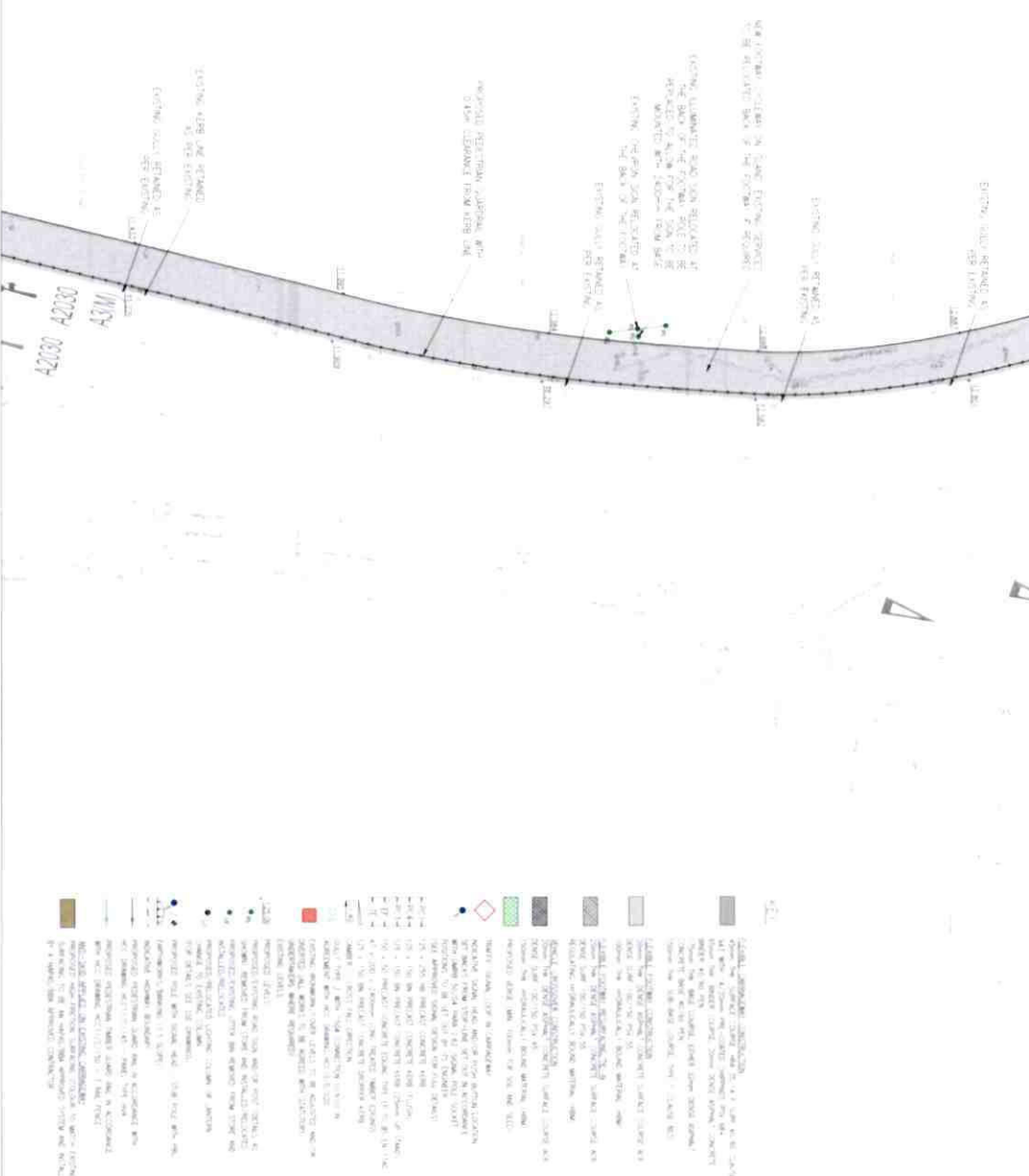
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NOT APPROVED

M	MANICURED TO SUIT HIS OWN NEEDS	10.5.14	EX	PM
L	COMMENTS ON SITE MEETING	26.1.14	EX	CON
K	MANICURED TO SUIT POLITICAL NEEDS	26.1.14	EX	EX
J	MANICURED TO SUIT THE CHAIRMAN'S	11.9.12	EX	EX
I	REMANICURED IN THE CROSSING	23.2.11	EX	PM
H	REMANICURED IN THE CROSSING	10.11.12	EX	EX
G	REMANICURED TO SUIT ACC AND BURNED	26.1.12	EX	EX
F	REMANICURED IN THE CROSSING	26.1.12	EX	EX
E	MANICURED CHAIRMAN	14.10.12	EX	EX
D	MANICURED CHAIRMAN	10.11.12	EX	EX
C	MANICURED CHAIRMAN	17.11.12	EX	EX
B	MANICURED TO SUIT ACC COMMENTS	26.1.12	EX	PM
A	MANICURED TO SUIT ACC COMMENTS	10.1.12	EX	PM
		Chair	EX	PM

p paulbasham
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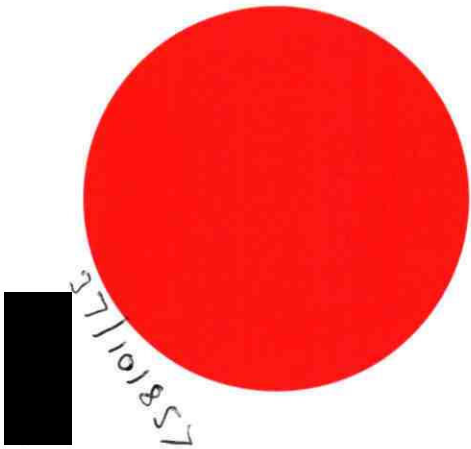


BARRAATT
— HOMES —

ROST 1 COTTER HUNTERBOUT BEDMAMPTON			
ENGINEERING LAYOUT SHEET 2 OF 3			
Project Name DETAILED DESIGN			
Checked By RW	Checked Date 19.02.21	Drawn By EK	Drawn Date 19.02.21
Issue / Revision No. -	Quantity 1,250	(AT A1 SIZE)	
HDS Drawing No.		Revision	
041 5023A.102		M	

PHASE INTERGREENS				
	A	B	C	D
A		5	5	-
B	7		-	7
C	5(10)	-		-
D	-	5(7)	-	

- South side specific notes
- Poles 5 and 6 to be fitted with cutaway tunnel hoods
 - Pole 5 to be Smart micro UMR11 Type 44, pole 1 to be Smart micro UMR12



DETECTOR FUNCTION TABLE

Detector label	Distance from stop line (m)	Phase (s)	Phase (s) extended	All Red extended	Call / Cancel	Comments
AIN1	56	A	-	-	-	-
AXZ	40	A	A	-	-	-
ASL3	2	A	A	-	-	-
AIN4	56	A	-	-	-	-
AX5	40	A	A	-	-	-
ASL6	2	A	A	-	-	-
AIN7	56	A	-	-	-	-
AX6	40	A	A	-	-	-
ASL9	2	A	A	-	-	-
BN10	110	B	B	-	-	-
BN11	40	B	B	-	-	-
BSL12	2	B	B	-	-	-
BN13	110	B	B	-	-	-
BN14	40	B	B	-	-	-
BN15	2	B	B	-	-	-
CPB7	-	C	-	-	0/2	-
CPB8	-	C	-	-	0/2	-
CPB9	-	C	-	-	-	-
CPB10	-	C	-	-	-	-
COCC	-	C	-	C	-	-
COCC8	-	C	-	C	-	-
COCC9	-	C	-	C	-	-
CKS8	-	-	-	-	0/2	-
CKS9	-	-	-	-	0/2	-
CPB1	-	D	-	-	-	-
CPB2	-	D	-	-	-	-
CPB3	-	D	-	-	-	-
CPB4	-	D	-	-	-	-
DOCC	-	-	-	D	-	-
DOCC3	-	-	-	D	-	-
DKS2	-	-	-	-	0/2	-
DKS3	-	-	-	-	0/2	-
BN18	120	-	-	-	-	Outer loop
BN19	120	-	-	-	-	Outer loop

SAFETY, HEALTH & ENVIRONMENTAL INFORMATION

5.8 - Street lighting: various street lighting columns and bollards within the build area 2.0 - water fountains within the excavation

MAINTENANCE / CLEANING

OPERATING

DEMOLITION / ADAPTATION

It is assumed that all works will be carried out by a competent technical worker, where appropriate, to an approved method statement. The Contractor or other party undertaking the works retains any further obligations under the conditions in respect of the Works. Please consult with the contractor of the project, prior to the Contractor start period for the Drawing, Copy number for the Works.

1. Do not scale from this drawing.
2. Please contact National Highways Traffic Signals department prior to setting out loop, pole, duct and chamber locations
3. All traffic signal equipment to be configured as ELV
4. All loop locations are vertical loops
5. Junction Traffic signal controller to be Siemens 990 ELV with signal MODA/UMC license
6. Audible units not to be used on Junction
7. 4G comes to be provided to Traffic Signal Controller
8. Vertical clearance to underside of all signal heads to be 2.3m throughput
9. 10mm diameter orange duct to be provided between each controller and freeriser pillar
10. Chambers shown are new and to be added to existing network
11. Please refer to NHI website for NAL Foundation details
(<https://naltsa.com/technical-library>)
12. All traffic signal equipment is to be new

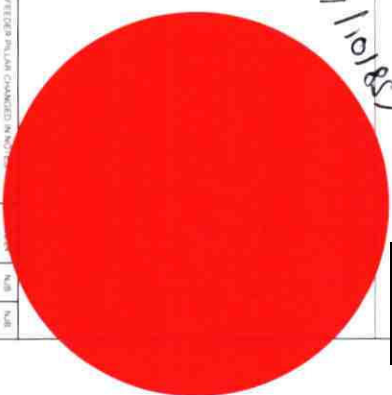
13. Documents J2/5, 5/2 and hazard risk assessment should be consulted alongside this drawing



Key

- [illegible]

27/10/2027



Case	Case Description	Case Number	Case Status	Case Type
C	PREVIOUSLY CHANGED IN NOV 1988	280224	NAB	NAB
B	CHANGES FOLLOWING AM COMMENTS	280224	NAB	NAB
A	ADDED LOOP AND STANDING INFO	279027	NAB	NAB
Case	Case Description	Case Number	Case Status	Case Type

**Amalo
Consulting Ltd**

Paul Basham
Associates

RUSTY CUTTER ROUNDABOUT
HAYVANT

TRAFFIC SIGNAL DESIGN
A1(M) Junction 5 Northbound and Southbound Off Slips
M4063 and 064 - Bedhampton Roundabout
(J435111 and J435121)

DETAILED

Created By	Created Date	Order By	Created Date
NJB	13/12/21	NJB	13/12/21

AMALO-PBA-RC3



VIEWPORT SCALE 1:500

VIEWPORT SCALE 1:500

SCHEDULE 2

Terms and Conditions of Works

The Works shall be carried out in accordance with the following terms and conditions:

1. The Works shall not be commenced until:
 - 1.1. Detailed design drawings, specification, Programme, Method Statement and traffic management measures have been prepared by the Developer and approved by the County Council in writing.
 - 1.2. The Developer has demonstrated to the satisfaction of the County Council how it will comply with the Code of Practice for the Co-ordination of Street Works for Road Purposes and Related Matters 1992 and has submitted to the County Council a Management Plan and such Management Plan has been approved by National Highways and approved in writing by the County Council.
 - 1.3. Where the estimated value of the contract for the works equals or exceeds the threshold provided in Regulation 5(1) of the Public Contracts Regulations 2015 (as amended from time to time) tenders shall have been invited under the Open Procedure and copies of the Contract Award Notice, independent financial tender and evaluation report justifying the selection of the economic operator in accordance with Regulation 58 has been submitted to the County Council
 - 1.4. The Developer has:-
 - 1.4.1 Obtained any necessary licences and given any necessary notices pursuant to the New Roads and Street Works Act 1991; and
 - 1.4.2 Obtained any necessary consents and permissions from any railway canal, inland navigation, dock or harbour undertakers or any other party or organisation where the consent or permission of the undertaker, party or

organisation is required for the Works to be lawfully undertaken and completed

- 1.5. Where in accordance with Regulation 4(8) of the CDM Regulations the Works are notifiable the Developer as the only client has provided to the County Council:-
 - 1.5.1 a copy of the notice to be served under Reg 6(2) of the CDM Regulations and a copy of the Notification of Project (form HSE10) to the HSE
 - 1.5.2. confirmation that duties under Reg 4(4) and 4(5) of the CDM Regulations are being carried out
- 1.6. Where in accordance with Regulation 5(1) of the CDM Regulations there is more than one contractor or it is foreseeable that there will be more than one contractor the Developer as the only client shall provide to the County Council written details of the principal designer and the principal contractor who will undertake these roles during the construction phase of the works
- 1.7. The Developer has paid all sums due prior to commencement of the Works pursuant to Clause 10
- 1.8. The original insurance policy and receipts referred to in Clause 6.5 or copies thereof certified by a solicitor have been produced
- 1.9. A noise survey and assessment in respect of the Works has been undertaken by a competent noise expert in accordance with the advice and instruction contained in the technical memorandum entitled '*Calculation of Road Traffic Noise*' published June 1988 by the TSO as may be amended from time to time and a copy of the survey and assessment has been submitted to the County Council and all and any requirements arising therefrom have been undertaken by the Developer at its own expense
- 1.10. The Developer has provided in writing to the satisfaction of the County Council measures to ensure the highway remains adequately lit at all times during the works and supply temporary lighting when required

- 1.11. The Developer has submitted to the County Council and the County Council has approved a Highway Condition Survey
 - 1.12 the Developer has prepared for the County Council with regard to any Structures detailed contract drawings for technical approval in accordance with the relevant section of the Design Manual for Roads and Bridges (CG 300 Technical approval of highway structures) Technical Approval of Highways Structures and the HMMP or any amendment/replacement thereof
2. The Developer shall ensure that the structure design and checking procedure for any Structure is carried out by a Chartered Engineer familiar with Department for Transport Standards who shall state on "Form AIP" or any amendment/replacement thereof the documents which will be applicable and which will need to be agreed. The procedure document HMMP applicable to highway structures shall be obtained from the County Council before details are submitted for approval
3. The Developer shall notify the County Council as follows:
 - 3.1. In accordance with the provisions of the Hampshire County Permit Scheme
 - 3.2. At least 24 hours prior to the commencement of each and every stage of excavation and construction operations associated with highway structures
4. At least 3 months prior to commencement of the Works the Developer shall give notice to each statutory undertaker for the time being of any service(s) which may be affected by the Works of the proposal to carry out the Works or which might be required in consequence of the Works and shall place orders and pay any costs to all statutory undertakers for all works to their mains or services necessitated by the Works and shall relocate all street furniture affected to the satisfaction of the County Council
5. The Works shall be signed and protected to at least the standards of the Traffic Signs Manual Chapter 8 2nd Edition published by TSO in and the Safety at Street Works and Road Work A Code of Practice published by

Department of Transport and the proposed arrangements shall be approved in writing by the County Council before the Works commence

6. The Works shall be constructed:
 - 6.1 Under the terms of a Construction Contract, unless agreed otherwise by the County Council
 - 6.2 Under the direction and instructions of a Competent Engineer. The Competent Engineer shall be authorised to issue instructions to the Contractor in the normal execution of duties under the Construction Contract;
 - 6.3 In accordance with the Specification, detailed contract drawings and Programme, prepared in accordance with the Guidance notes, unless any changes to the Works are agreed by the County Council during the course of construction. The Competent Engineer shall be responsible for negotiating, agreeing and implementing any required changes;
- 7 During the progress of the Works the County Council shall have free access to every part of the Works to inspect the same as they proceed and all materials used or intended to be used therein and the Developer shall give effect to any reasonable requirements made or reasonable direction given by the County Council to conform to the approved detailed contract drawings the Specification and the Programme
- 8 The Developer shall not cover up any works without the approval of the County Council and shall afford full opportunity for it to examine and measure any work which is about to be covered up and to examine foundations before permanent work is placed thereon and shall give at least three (3) Working Days' notice to the County Council whenever any such work or foundations is or are ready for examination
- 9 The County Council shall have power in its reasonable discretion to test or require the testing of materials plant and workmanship used or proposed to be used in the Works and to reject any materials plant or workmanship so tested which it may reasonably find to be not in accordance with the approved detailed contract drawings and the Specification

- 10 The Developer shall as soon as is reasonably practicable replace or repair any materials, plant or workmanship which have been found to be not in accordance with the approved detailed design drawings and Specification.
- 11 Immediately prior to the issue of the Certificate of Completion and (also if required by the County Council prior to issue of the Certificate of Maintenance) on site road safety audits in accordance with the relevant section of the DMRB (GG 119 Road safety audit) and GG142 (walking cycling and horse ride assessment) and Hampshire County Councils Technical Guidance Note TG18 shall be carried out by the Developer in the presence of the County Council and arising therefrom the County Council shall be at liberty to require such alterations to the approved detailed contract drawings and to the Works at the expense of the Developer as may be reasonably required to ensure the safety of users of the highway
- 12 The Works shall be completed to the satisfaction of the County Council and the NH Works shall also be completed to the satisfaction of National Highways in accordance with the timescale specified in the Programme or any variation thereof agreed in writing by the County Council
- 13 To protect the County Council's legitimate interest as Highway Authority and the effective operation of the public highway, should the Works not be completed to the satisfaction of the County Council in accordance with the timescale specified in the Programme; the Developer shall, if required by the County Council, pay to the County Council on demand a sum proportionate to the disruption caused to the public highway by the delayed works of up to £2,000 as stipulated by the County Council per Working Day for each day the Works continue on the public highway past the timescale specified in the Programme or any other fines associated with non-compliance with Hampshire County Permit Scheme (Refer to Technical Guidance Note TG22).
- 14 The Developer shall not at any time give consent to the erection by any telecommunications operator of telegraph poles or telephone poles or to the erection by any statutory undertaker or public or private company

- firm or individual of any overground or underground equipment without the consent in writing of the County Council
- 15 The Developer shall fully maintain the Works for the Maintenance Period and shall make good any defects or damage which may arise or be discovered during such period
- 16 The Developer shall provide the County Council with the following
- 16.1 Prior to issue of the Certificate of Completion
- 16.1.1 CCTV Drain Survey together with details of gully manhole and catchpit locations in an agreed GPS format; and
- 16.1.2 an up-to-date Electrical Installation Certificate and schedule of test results in respect of any street lighting in accordance with BS7671 or any amendment/replacement thereof and which certificate shall be signed by a competent person in accordance with Appendix 6 of the BS7671 in a format approved by the County Council; and
- 16.1.3 written confirmation from the Developer that the street lighting apparatus complies with the 'Accrual Required Standards' issued by the County Council pursuant to the Hampshire Street Lighting PFI Contract
- 16.1.4 in respect of highway structures a maintenance manual to include suitable scale electronic data sets and paper sets (if required) of "as built" drawings soil reports records of materials tested Health and Safety file and revised forms AIP and associated certificates
- 16.1.5 accurate 1:500 scale of "as built" drawings (including all above ground apparatus and all below ground statutory and highway authority controlled apparatus) supplied dwg format (packaged with any associated cross references) and PDF format
- 16.1.6 records of the earthworks showing sources of material used in areas of fill, description of fill materials descriptions of sub-grades in cut areas copies of results

of tests of material carried out as part of the supervision
of the construction of the earthworks

- 16.1.7 records of the sources of supply of all other
manufactured materials (e.g. drainage goods fencing
materials traffic signs electrical components and cables
etc)

SCHEDULE 3**Commuted Sums**

Item	From the date of the completion of the agreement to the date the site is placed onto maintenance (issue of certificate of completion)		Unit/Basis for Calculation	Notes
	0 to 2 Years	>2		
	Unit Rate A	Unit Rate B		
Unusual paving, surfacing and HFS				
HFS	£31.85	Unit Rate A + interest adjustment for inflation*	per m ²	One-off replacement cost
Block paving 80mm on sand and sub-base in carriageway	£149.26	Unit Rate A + interest adjustment for inflation*	per m ²	One-off replacement cost
Block paving 80mm on resin and concrete in carriageway	£178.13	Unit Rate A + interest adjustment for inflation*	per m ²	One-off replacement cost
Block paving 60mm on sand and sub-base in Footway	£117.60	Unit Rate A + interest adjustment for inflation*	per m ²	One-off replacement cost
Permeable Pavements	TBC	Unit Rate A + interest adjustment for inflation*	per m ²	One-off replacement cost
Traffic signals including Controlled Crossing				
Traffic signals including controlled crossing	20% of works cost	Unit Rate A + interest adjustment for inflation*		Rate should include TM costs
Illuminated Signs				
Illuminated signs	£2,214.45	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Illuminated Signs >4m ²	£596 per m2	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Decorative – Non-Standard Lighting				
Decorative non-standard lighting < 6m	£3,398.85	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Decorative non-standard lighting > 6m	£3,897.60	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Street Furniture				
Bus Stop (Poles and Flags) ONLY	£262.50	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost

[S278 Rusty Cutter Roundabout]

Pedestrian Guardrail	£149.10	Unit Rate A + interest adjustment for inflation*	per /lm	One-off replacement cost
Cycle Rack (All Types)	£339.05	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Seating and Benches	£1,652.70	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Bollards (Dragons Teeth)	£97.13	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Bollard (Plastic Socketed)	£532.35	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Bollards (Concrete)	£359.10	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Bus Shelters, Including Passenger Information and Variable Message Signs				
Bus shelters, including passenger information and variable message signs	£17,333.93	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Bus Shelter	£4,905.60	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Structures Including Culverts Over 900 Diameters, Head Walls and Retaining Walls				
Structures including culverts over 900 diameters, head walls and retaining walls	20% of works cost	Unit Rate A + interest adjustment for inflation*		Rates should include TM and should be confirmed with the QS team if there are any concerns.
Trees – new				
Trees - new	£1,019.55	Unit Rate A + interest adjustment for inflation*	per tree	
Trees – Existing				
Trees (Semi Mature)	£1,272.60	Unit Rate A + interest adjustment for inflation*	per tree	
Trees (Mature)	£2,198.70	Unit Rate A + interest adjustment for inflation*	per tree	
Landscaping				
Shrub Beds	£30.45	Unit Rate A + interest adjustment for inflation*	m2	Based on maintenance cost over 25 years.
Verge (Grass)	£40.85	Unit Rate A + interest adjustment for inflation*	m ²	Based on maintenance cost over 25 years.

Soakaways				
Soakaways $\leq 5\text{m}^3$	£3,941.70	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost.
Soakaways $> 5\text{m}^3$	£788 per m^3	Unit Rate A + interest adjustment for inflation*	m^3	One off replacement cost
Hydrobrakes				
Vortex Flow Control	£5,760.30	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Petrol Interceptor				
Petrol interceptor $\leq 8\text{m}^3$	£21,576.45	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Petrol Interceptor $> 8\text{m}^3$	£37,294.43	Unit Rate A + interest adjustment for inflation*	per item	One-off replacement cost
Pebble Drains and Linear Ditches				
Pebble drains and linear ditches	£246.75	Unit Rate A + interest adjustment for inflation*	per/lm	Replacement and maintenance cost.
Linear ditches	£236.25	Unit Rate A + interest adjustment for inflation*	per/lm	Replacement and maintenance cost.

- 1) Commuted sums as per the table are payable prior to the issue of the certificate of completion
- 2) If the certificate of completion is issued within 2 years of the date of this Agreement, then unit rate A will be payable for any applicable items within the schedule.
- 3) If the certificate of completion is issued after 2 years of the date of this Agreement, then unit rate B will be payable for any applicable items within the schedule.
- 4) Unit rate B allows an annual compound interest rate to be applied to rate A to make an allowance for inflation and will only be applicable in the instance that issue of the certificate of completion is after 2 years from the date of this Agreement.
- 5) The form of the interest rate, applied after 2 years, can be selected by the Developer and "locked in" via the agreement, as either a fixed rate or a rate based on the Construction Output Price Indices for All Construction and the Developer's election is set out in clause 7.9.
- 6) If the interest rate used to calculate Rate B is to be fixed, an interest rate of 4% calculated on a compound annual basis shall be applied to Rate A for the period from the date of 2 years after the agreement until the date of payment
- 7) If the interest to calculate Rate B is to be based on the Construction Output Price Indices (OPI) for All Construction, an average OPI rate for each financial year will be calculated by HCC based on the Construction Output Price Indices for All Construction indices published by the Office for National Statistics. The interest rate calculated for each financial year will be

applied to rate A for any subsequent corresponding years. Where there is no calculated average for the current financial year, the previous annual average rate will be applicable.

8) In the event that the average OPI rate for each financial Construction Output Price Indices (OPI) for All Construction, for any given financial year is negative (i.e. shrinks) no interest will be applicable and rates will revert back to Rate A.

To calculate rate B (interest charged after 2 years). HCC will use the below formula.

Defined terms are:

- (a) The Base Date Index (B) is the index at the *base date*.
- (b) The Latest Index (L) is the index at the anniversary of the *base date*.
- (c) The Price Adjustment Factor is $(L - B)/B$ for the index linked to it.
- (d) The index used to calculate the Price Adjustment Factor is the Construction Output Price Indices for All Construction (OPI) published by The Office of National Statistics

The Base Date for indices is January (The final index figures for this month shall be used).

[S278 Rusty Cutter Roundabout]

APPENDIX 1
DRAFT s6 AGREEMENT

DATED 2024

NATIONAL HIGHWAYS LIMITED

and

HAMPSHIRE COUNTY COUNCIL

AGREEMENT
pursuant to section 6 and section 8 of
the Highways Act 1980
relating to highway works at
A3(M) junction with Bedhampton
Roundabout

THIS AGREEMENT is made this
BETWEEN

day of

2024

- 1 **NATIONAL HIGHWAYS LIMITED** registered in England and Wales with company number 09346363 of Bridge House 1 Walnut Tree Close Guildford Surrey GU1 4LZ ("**National Highways**"); and
- 2 **HAMPSHIRE COUNTY COUNCIL** of The Castle, Winchester, Hampshire, SO23 8UJ ("**the Council**")

and collectively referred to as the "Parties" or individually referred to as "the Party"

WHEREAS

- (A) The Council is the local highway authority for the administrative area in which the Scheme is located and is responsible for all highways in the County of Hampshire except for trunk roads and special roads.
- (B) National Highways is the strategic highways company appointed by the Secretary of State by virtue of the Appointment Order which appoints National Highways as highway authority in respect of all trunk roads and special roads within the whole of England and including the A3(M) Trunk Road to which this Agreement applies.
- (C) National Highways is exercising the powers given to it under section 6 of the Act and other enabling powers detailed in clause 2.1 of this Agreement to authorise the carrying out of certain of its functions in accordance with the terms of this Agreement by the Council and pursuant to section 8 of the Act, National Highways and the Council have agreed to the apportionment of costs and expenses incurred under this Agreement.
- (D) The Scheme involves carrying out the Works that will include alterations modifications and improvements to the Trunk Road and other works on the Council Network.
- (E) Planning permission has been granted for the Scheme by Havant Borough Council under application number APP/18/00450 approved on 17th January 2020.
- (F) The Council intends to enter into an agreement under section 278 of the Act to appoint the Developer to carry out the Works and other works on the Council Network on its behalf.

NOW IT IS AGREED AS FOLLOWS:

1 Definitions

- 1.1 In this Agreement the following expressions unless the context otherwise requires have the following meanings:

“Act” means the Highways Act 1980 (as amended);

“Administration Fee” means the fee payable as part of the National Highways costs pursuant to clause 11.1 of this Agreement that represents the internal costs of National Highways in administering the implementation of the Works and the requirements of this Agreement and charged as a flat fee based on the final costs of the Works;

“Appointment Order” means the Appointment of a Strategic Highways Company Order 2015;

“Assets” means the existing amended and new traffic signals and all associated equipment shown [coloured red] on the three drawings labelled ITS Asset Management Plan attached at the Third Schedule comprising the traffic signals and equipment on the Council Network and the traffic signals and equipment on the Trunk Road which form part of the Works and a reference in this Agreement to the Works is (except where otherwise expressly stated) a reference to all such Assets

“Asset Data” means the information and data required by National Highways for the purposes of updating relevant databases to ensure compliance with National Highways’ Asset Data Management Manual (ADMM) in operation at the relevant time;

“Commuted Sum” means such sum to be agreed by the Parties currently estimated as [forty eight thousand two hundred and eighty eight pounds and forty eight pence (£48,288.48)], the final sum to be agreed following approval of the final design of the Works to be used to fund the future cost of maintaining or replacing the Works. It is envisaged that the estimated amount above will not change unless the scope or extent of the Works is altered;

“Completion Certificate” means the certificate issued by National Highways to certify that the Works have been completed in accordance with clause 7 of this Agreement;

“Consents” means approvals, consents, licences, permissions, or registrations (including but not limited to consents required from the local planning authority) in relation to the Scheme or any part of it required to enable the Works to be lawfully carried out and maintained;

“Council Network” means the highway network under the statutory responsibility of Hampshire County Council;

“Defects Certificate” means a certificate to be issued by National Highways when the Defects Period has expired;

“Defects Period” means a period of not less than 52 weeks from the date of issue of the Completion Certificate ending at the issue of the Defects Certificate during which the Council is required to maintain the Works;

“Developer” means BDW Trading Limited

"DLOA" means a Detailed Local Operating Agreement setting out the operational construction maintenance and communication protocol for the scheme during normal operation and any emergencies encountered

"DMRB" means the Design Manual for Roads and Bridges published by National Highways and any amendment to or replacement of it for the time being in force save to the extent there is a departure from such standards approved by National Highways;

"Effective Date" means the date of this Agreement;

"Handover Information" means the information and documents which National Highways requires in accordance with the DMRB, CTM – 077 YNE and SE UTC Traffic Signal Migration Guidance Rev.4 and any other information National Highways may reasonably require in relation to the Works

"Initial Deposit" means the estimated sum payable to National Highways pursuant to clause 11.2 of this Agreement to cover all initial stages of work until such time as the cost of the Works and the costs of National Highways payable pursuant to clause 11 of this Agreement can be estimated;

"Licence" means the licence dated 1 April 2015 issued pursuant to the Infrastructure Act 2015 setting out the Secretary of State for Transport's statutory directions and guidance to National Highways;

"Maintenance Layby" means a layby within the Council Network as shown coloured pink on drawing AMALO-PBA-RC4 - ITS Asset Management Plan to be provided by the Council for non-exclusive use by National Highways vehicles to enable National Highways to carry out its maintenance responsibilities under this Agreement;

"National Highways Project Manager" means the person nominated by National Highways to facilitate the Works throughout the design and construction of the Scheme and to be notified to the Council prior to the commencement of the Works or such replacement officer as may from time to time be appointed and notified to the Council;

"NH Surety Sum" means the sum of THREE HUNDRED AND FORTY THOUSAND ONE HUNDRED AND SEVENTY TWO POUNDS (£340,172);

"Programme" means the programme for the carrying out of the Works or such updated programme as the Parties may agree from time to time both Parties acting reasonably;

"Scheme" means the road improvement scheme on the Trunk Road and on the Council Network as described in the Second Schedule;

"Section 278 Agreement" means an agreement entered into between the Council and Developer pursuant to section 278 of the Act for the carrying out of the Works and related works on the Council Network;

“Section 8 Maintenance Agreement” means an agreement to be entered into between the Council and National Highways in accordance with clause 10.1 and pursuant to section 8 of the Act for the carrying out of maintenance of the Works after the date of issue under this s6 Agreement of the Defects Certificate;

“Security Deposit” means a cash deposit in the sum of THIRTEEN THOUSAND SIX HUNDRED AND SIX POUNDS AND EIGHTY EIGHT PENCE (£13,606.88);

“Streetworks Coordinator” means the party who has the duty to coordinate the execution of works and the use of the highway by traffic for the Scheme in accordance with section 59 of the New Roads and Street Works Act 1991;

“Traffic Management Measures” means the measures required to ensure the proper management of traffic during the construction of the Works in accordance with the provisions of section 16 and section 17 of the Traffic Management Act 2004 which must include (but are not limited to) the signing of diversion routes reasonably anticipated to be used by the public during the Scheme construction;

“Trunk Road” means the strategic road network at A3(M) junction with Bedhampton Roundabout including the on- and off- slip roads for which National Highways is the highway traffic and street authority;

“Working Day” means any day that is not a Saturday or Sunday or a public holiday;

“Works” means the works to the Trunk Road which forms part of the Scheme as described in the First Schedule below and shown in principle coloured grey, grey hatched, beige, cross hatched light green, red, blue, black, brown and green on the drawing 041.5023A.140 Rev A – Engineering Layout National Highways annexed thereto at the First Schedule.

- 1.2 Clause, Schedule and paragraph headings do not affect the interpretation of this Agreement.
- 1.3 The Schedules form part of this Agreement and have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.
- 1.4 Any reference to a statute or statutory provision includes a reference to that statute or statutory provision as amended extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute or statutory provision.
- 1.5 Words importing one gender must be read and construed to include any other gender.
- 1.6 Unless the context otherwise requires, words importing the singular include the plural and vice versa.

- 1.7 Reference to any person includes any reference to a body corporate unincorporated association or a partnership and vice-versa.
- 1.8 Reference to any right exercisable by any Party hereunder must be construed as including (where appropriate) the exercise of such right by all other persons having a like right.
- 1.9 References to a statute or a provision of a statute include any statute or provision of a statute amending consolidating or replacing it for the time being in force.
- 1.10 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that it be done and words placing a party under a restriction include an obligation not to permit or to allow infringement of the same.
- 1.11 Any words following the terms including, include, in particular, for example or any similar expression must be construed as illustrative and must not limit the sense of the words, description, definition, phrase or term preceding those terms.

2 Statutory Provisions

- 2.1 This Agreement is made pursuant to Section 6 and Section 8 of the Act, and is further entered into by National Highways pursuant to the Infrastructure Act 2015 and the powers given to it under the Licence and the Delegation of Functions (Strategic Highways Companies) (England) Regulations 2015.

3 Exercise of Highway Authority Functions

- 3.1 National Highways authorises the Council to carry out the Works (with the exception of those Assets to be constructed on the Council's network) as agent of National Highways at its own expense and at no cost to National Highways.
- 3.2 National Highways agrees that from the Effective Date until the issue of the Defects Certificate the exercise of its functions as Highway Authority in respect of the Works are delegated and allocated to the Council.
- 3.3 The authority given to the Council under clause 3.1 and clause 3.2 is limited to National Highways' functions relating to the maintenance, improvement or other dealing with the Trunk Road and for the construction of the Works.
- 3.4 The Parties shall at all times co-operate with each other to enable the Works to be carried out promptly effectively and without undue disruption to the existing highway network and in particular shall assist each other in the promotion and publication of any necessary traffic regulation orders and dealing with any other statutory requirements including those of any utility companies.

4 Obligations in relation to the carrying out of the Works

- 4.1 Prior to commencing the Works

- (a) the Council must obtain the written approval of National Highways to the design of the Works and the Programme;
 - (b) a DLOA shall be provided by the Council and approved by National Highways;
 - (c) the Council must obtain the approval of National Highways of the expenditure to be incurred by the Council in its discharge of the functions carried out by it pursuant to this Agreement.
- 4.2 The Council must obtain the relevant Consents for the Works and must carry out the Works in compliance with the Consents.
- 4.3 The Council must exercise all functions herein with reasonable skill and care.
- 4.4 The Council must:
- (a) ensure that all road safety audits and other mandatory reports are carried out in accordance with DMRB, including GG119 (Road Safety Audit) and GG 142 (walking cycling and horse riding assessment) (or such updated or revised standards as may be published from time to time);
 - (b) construct the Works in accordance with the Manual of Contract Documents for Highway Works and the DMRB;
 - (c) undertake all operations relating to the Assets in accordance with the requirements of National Highways but not limited to the requirements within GG 182 (Major schemes: Enabling handover into operation and maintenance), MCH 1399 (Notification of a change in equipment), MCH 1349 (Process for Commissioning and Handover of Roadside Operational Technology. Issue G.), CTM – 077 YNE and SE UTC Traffic Signal Migration Guidance Rev.4);
 - (d) comply with any reasonable requirement of National Highways as to the manner in which the Works are to be carried out;
 - (e) carry out the Works in accordance with the Programme unless otherwise agreed in writing (both parties acting reasonably);
 - (f) carry out and complete the Works to the reasonable satisfaction of National Highways;
 - (g) obtain approval in advance from National Highways for occupancy of the Trunk Road required for the carrying out of the Works in accordance with National Highways' requirements including Network Occupancy Management System (NOMS) used to manage road space bookings and network occupancy; and
 - (h) collate the Asset Data and provide the Asset Data to National Highways.

- 4.5 The Council must notify National Highways of alterations to the Works prior to implementing such alteration and must not make any material alteration to the Works without the prior written consent of National Highways, such consent not to be unreasonably withheld or delayed.
- 4.6 The Council must give National Highways not less than 14 days' notice of any access to any road or lane space required for the execution of the Works.
- 4.7 The Council must in the execution of the Works take such precautions for the protection of public and private interests as would be incumbent on National Highways if it were the Highway Authority.
- 4.8 The Council shall act as the Streetworks Coordinator for the Scheme. It must carry out the Traffic Management Measures associated with the Scheme PROVIDED THAT the Council shall first seek the approval of National Highways with regard to timings of all Traffic Management Measures required for the Works.

5 Procurement of the Works

5.1 The Council shall provide drafts of the s278 Agreement to National Highways and shall comply with any reasonable directions by National Highways as to the terms of the s278 Agreement including any reasonable additional requirements that National Highways submits in writing for inclusion in the section 278 Agreement provided that such directions and any additional requirements are provided without unreasonable delay.

6 Site meetings and inspections

- 6.1 The Council must provide National Highways with copies of documents, correspondence, data and other information as National Highways may from time to time reasonably require but the Council is not required to disclose to National Highways any commercially sensitive information.
- 6.2 The Council must give the National Highways Project Manager not less than 5 Working Days notice (or in cases of emergency then as much notice as is reasonably possible) of all site meetings and must allow the National Highways Project Manager and other representatives of National Highways to attend all site meetings.
- 6.3 The Council must allow National Highways access to the Works and the adjacent areas of the Scheme at any such time as National Highways may reasonably require upon at least 5 Working Days prior notice for the purpose of viewing the state and progress of the Scheme in order to determine whether the Scheme, and in particular the Works, are being carried out in accordance with the requirements of this Agreement and the Council must take proper consideration of any representations made by National Highways in respect of such.

7 Completion of the Works

- 7.1 When the Council considers that the Works have reached completion (which must include the carrying out of a Stage 3 safety audit in accordance with the DMRB and the requirements of National Highways and the completion of works if any resulting from the audit) it must notify National Highways and allow National Highways the opportunity to inspect the Works and National Highways shall carry out such inspection as soon as is reasonably practicable but no later than within thirty (30) Working Days.
- 7.2 The Council must procure that its project manager gives proper consideration to any representations that are made by National Highways.
- 7.3 When National Highways is satisfied that the Works have been completed in accordance with the terms of this Agreement National Highways shall issue the Completion Certificate to the Council
- 7.4 On completion of the Works and following the issue of the Completion Certificate, the Council must provide a copy of the following items to National Highways:
- (a) the health and safety file (produced in accordance with the requirements of the Construction (Design and Management Regulations) 2015; and
 - (b) the Asset Data
- 7.5 During the Works the highway shall remain open to the public subject as necessary to traffic management and from and including the date of issue of the Completion Certificate the Works shall subject to any necessary repairs during the Defects Period be fully available for use as a public highway.

8 Defects Period

- 8.1 The Defects Period begins upon the date of the Completion Certificate.
- 8.2 During the Defects Period the Council shall be responsible for rectifying any defects that are identified in the Works and the Works must be maintained by the Council to the reasonable satisfaction of National Highways until:
- (a) an as-built record of the finished works has been undertaken by the Council and submitted to National Highways such survey must show all above ground apparatus, including the Assets and all street lights, signs, markings, poles, columns, boxes, cabinets, covers, drainage gullies, expansion joints, and safety rails structures on a survey base;
 - (b) copies of the recorded location of all as-constructed below ground statutory and highway authority controlled apparatus has been submitted to the Council and National Highways;
 - (c) all defects identified through joint inspection and comprising matters within the scope of the Works have been remedied and all timescales

for the Defects Period have expired in accordance with the provisions of clause 9 below;

- (d) the Defects Certificate has been issued in accordance with the provisions of clause 9 below; and
- (e) the Council has provided the Handover Information.

9 Defects Certificate

9.1 No earlier than 52 weeks from the date of issue of the Completion Certificate and provided that:

- (a) all identified defects requiring remediation have been completed such that the Council consider the Defects Certificate may be properly issued; and
- (b) a Stage 4 safety audit has been carried out (if such Stage 4 safety audit is required under DMRB) and any additional works, alterations or amendments to the Works reasonably required as a result of the Stage 4 safety audit are completed; and
- (c) the draft Section 8 Maintenance Agreement has been agreed and is ready to be entered into

the Council shall notify National Highways in writing and give National Highways an opportunity to inspect the Works.

9.2 The Council must procure that it gives proper consideration to any representations that are made by National Highways

9.3 National Highways shall not issue the Defects Certificate until:

- (a) the Maintenance Layby is ready for use;
- (b) all additional works, alterations or amendments to the Works reasonably required as a result of the Stage 4 safety audit if required are completed;
- (c) any additional works necessary to remediate any defects identified during the Defects Period have been completed;
- (d) the Asset Data has been provided;
- (e) all fees payable pursuant to this Agreement, including the Commuted Sum, have been paid to National Highways; and
- (f) the Section 8 Maintenance Agreement has been entered into.

9.4 When National Highways is satisfied that all obligations under clauses 9.1 to 9.3 above have been completed National Highways shall issue the Defects Certificate to the Council.

10 Maintenance of the Works and Reallocation of Functions

- 10.1 National Highways and the Council agree to act reasonably in the negotiation and preparation of the Section 8 Maintenance Agreement and the parties further agree that in order to prevent any unnecessary delay in the issue of the Defects Certificate neither party shall cause any unreasonable delay in the drafting or completion of the s8 Maintenance Agreement.
- 10.2 Following the issue of the Defects Certificate National Highways shall maintain the Works in accordance with the Section 8 Maintenance Agreement.
- 10.2 The Council shall not remove or alter the location of the Maintenance Layby unless agreed in writing by National Highways.

11 Payment of costs of National Highways

- 11.1 The Council must pay to National Highways the costs and expenses reasonably and properly incurred by National Highways, prior to costs being incurred by National Highways, in relation to the Works and the implementation of this Agreement including but not limited to any such costs and expenses in relation to:
- (a) the approval of design work carried out by or on behalf of the Council;
 - (b) the carrying out of any supervision of the Works;
 - (c) legal expenses and administrative expenses not included in the Administration Fee;
 - (d) the Administration Fee;
 - (e) the costs of drafting, negotiating and completing this Agreement.
- 11.2 National Highways must provide to the Council notification of the amount required as the Initial Deposit as soon as reasonably practicable and the Council must pay an amount equal to the sum notified to it within 28 days of receipt of the notification and National Highways hereby confirms that it has received the Initial Deposit.
- 11.3 National Highways must provide the Council with an estimate of the costs referred to in clause 11.1, including its estimate of the Administration Fee payable, as soon as reasonably practicable following the Effective Date (save for the cost associated with clause 11.1(e) above) and the Council must pay a sum equal to the estimate within thirty (30) days of receipt of the estimate (**Estimated Costs**) less the Initial Deposit and in any event prior to commencing the Works.

- 11.4 If, at any time or times after the payments referred to under clause 11.2 and 11.3 have become due National Highways believes that its costs will exceed the relevant estimate notified to the Council, National Highways may give notice to the Council of the amount it estimates its costs will exceed the relevant estimate (**Excess**) and the Council must pay an amount equivalent to the Excess within thirty (30) days of notification.
- 11.5 As soon as reasonably practicable after the issue of the Defects Certificate, National Highways must give to the Council a final account of the costs it has incurred in accordance with clause 11.1 (**Final Account**) and:
- (a) if the Final Account shows that a further sum is due to National Highways the Council must pay the sum shown due within thirty (30) days of the date of the Final Account; and
 - (b) if the Final Account shows that the sum or sums previously paid by the Council have exceeded the costs incurred by National Highways, National Highways must refund the amount shown due to the Council within 30 (thirty) days of the date of the Final Account.
- 11.6 Each amount stated to be payable by the Council under or pursuant to this Agreement is exclusive of VAT.
- 11.7 If any VAT is at any time chargeable on any supply made by National Highways under or pursuant to this Agreement the Council must pay National Highways an amount equal to that VAT as additional consideration on receipt of a valid VAT invoice.
- 11.8 If any sums payable under this Agreement are unpaid on the due date then the paying party must pay interest on the sum outstanding from the due date until the actual date of payment at a rate of one per cent above the rate payable in respect of compensation under section 32 of the Land Compensation Act 1961

12 Payment of a Commuted Sum

- 12.1 The Council must pay the Commuted Sum to National Highways within thirty (30) days of request and in any event prior to the issue of the Defects Certificate.

13 Surety and Bonding

13.1 The Council shall include in the bond provided by the Developer to the Council under the s278 Agreement a sum not exceeding the NH Surety Sum which shall be used to indemnify National Highways against all losses damages costs and expenses arising from any breach of any one or more of the obligations of the Council under this Agreement PROVIDED THAT upon issue of the Completion Certificate the NH Surety Sum may by agreement in

writing by National Highways be reduced by 80% save insofar as any claim or claims have been made against the Council or liability on its part has arisen before that date in which case the remaining NH Surety Sum shall be a sufficient sum to ensure that National Highways does not have to meet any costs for or arising from the Works ("the Revised Surety Sum") and PROVIDED FURTHER that upon issue by National Highways of the Defects Certificate the NH Surety Sum shall by agreement of National Highways in writing be reduced by 80% of the Revised Surety Sum and replaced by the Security Deposit at which point in time the element of the Revised Surety Sum for the benefit of National Highways shall be released save insofar as any claim or claims have been made against the Council or liability on its part has arisen under this Agreement before that date in which case the Revised Surety Sum shall be a sufficient sum to ensure that National Highways does not have to meet any costs for or arising from the Works and PROVIDED FURTHER that upon the date which is seven (7) years after the issue of the Completion Certificate National Highways shall release the Council in writing from its obligations under this Agreement and the Security Deposit shall be released save insofar as any claim or claims have been made against the Council or liability on its part has arisen under this Agreement before that date.

14 Indemnities

- 14.1 The Council must indemnify National Highways against any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any Traffic Management Measures associated with the Scheme and out of any breach or non-observance by the Council of its obligations in this Agreement relating to the design, construction and management of the Works (including without limitation any negligent or defective design or construction of the Works), including but not limited to:
- (a) third party claims for death, personal injury or damage to property;
 - (b) statutory or other liability for the safety or security of the working methods, employment practices, protection of the environment and control of pollution; and

- (c) third party claims for unlawful interference with any rights of light, air, support, water, drainage or any other easement or right.

14.2 The Council must indemnify National Highways in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, the Land Compensation Act 1973, and any claims for compensation under the Noise Insulation Regulations 1975 arising out of, in connection with or incidental to the carrying out of the Works and the Scheme.

14.3 The Council must indemnify National Highways against all costs and expenses properly incurred in complying with its obligations under any statutory provision arising from the construction or use of the Works.

14.4 The indemnification referred to in this clause 14 includes:

- (a) all fees incurred by claimants which National Highways is obliged to pay, and those of National Highways or its agent or contractor in negotiating claims (together with VAT payable on any professional advisors' fees);
- (b) statutory interest payments to claimants and their professional advisors; and
- (c) National Highways' reasonable and proper legal and administrative costs in making the compensation, fees and interest payments.

The indemnification referred to in this clause 14 does not apply in respect of any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any act, neglect, default or liability of National Highways.

15 National Highways' Power to Execute the Works in Default

15.1 In the event of any breach of this Agreement or should for any reason the Works not be completed to the satisfaction of National Highways then at its absolute discretion National Highways may by notice to the Council:

- (a) direct that the Council procure, at its own expense, the carrying out of such works necessary in order for National Highways to be so satisfied; or
- (b) inform the Council that it intends to carry out such necessary works and the Council must indemnify National Highways for its costs in doing so.

15.2 In the event of any breach of this Agreement or should for any reason the Works not be completed to the reasonable satisfaction of National Highways and where National Highways acting reasonably considers it would not be practical to complete the Works National Highways may:

- (a) by notice to the Council require the Council to procure, at its own expense, reinstatement of the Trunk Road(s) and other land and premises of National Highways disturbed by the Works to their previous condition; or
- (b) inform the Council that it intends to carry out such necessary works of reinstatement of the Trunk Road(s) and other land and premises of National Highways disturbed by the Works to their previous condition itself and the Council must indemnify National Highways for its costs (reasonably and properly incurred) in doing so.

16 Notices

16.1 All notices and communications in relation to this Agreement are valid and effectual if dispatched by first class recorded delivery letter to the Party to whom such notice request demand or other written communication is to be given or made under this Agreement and addressed as follows:

- (a) in the case of the Council to The Castle, Winchester, Hampshire, SO23 8UJ quoting the reference HLS-140356/CMR;
- (b) in the case of National Highways to the National Highways Project Manager at Bridge House 1 Walnut Tree Close Guildford Surrey GU1 4LZ;

or such other name and address for service as has been previously notified to the other Party.

17 Settlement of disputes

17.1 In the first instance in the event of a disagreement arising between the Parties, the Parties shall raise the disagreement with their respective Divisional Directors and/ or Chief Executives for further discussion in an effort to reach agreement on the dispute.

17.2 In the event of any dispute or difference arising between the Parties to this Agreement which is not satisfactorily resolved through the means outlined in clause 17.1 in respect of any matter contained in this Agreement such dispute or difference shall be referred to an independent and suitable person holding appropriate professional qualifications to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the Institution of Civil Engineers and such person shall act as an expert whose decision will be final and binding on the Parties in the absence of manifest error and any costs will be payable by the Parties to the dispute in such proportion as the expert determines and failing such determination must be borne by the Parties in equal shares.

17.3 Any expert howsoever appointed must be subject to the express requirement that a decision is reached and communicated to the relevant Parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight Working Days after the conclusion of any hearing that takes place or twenty-eight Working Days following receipt of any file or written representation.

18 General

18.1 No consent or approval modification alteration or waiver of any of the provisions of this Agreement except as otherwise herein provided for is effective unless the same is in writing and signed on behalf of the Parties and annexed to this Agreement.

- 18.2 This Agreement including the Schedules constitutes the entire agreement between the Parties in relation to the Works and supersedes all prior and contemporaneous agreements understandings representations and statements whether oral or written in relation to the Works save as regards any future compliance with any statutory requirements or any subsequent amendments to this Agreement by Deed of Variation or that may in accordance with this Agreement from time to time be agreed in writing between the Parties.
- 18.3 Any termination of this Agreement is without prejudice to the rights of the Parties against each other for any breach of this Agreement which occurred before termination.
- 18.4 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed and declared that nothing herein confirms any third party rights
- 18.5 This Agreement is strictly personal to each Party who is not entitled to part with or assign in any way with its interest and obligations under this Agreement unless to a successor body.
- 18.6 If the Works have not commenced in accordance with the terms of this Agreement within two (2) years of the date hereof this Agreement shall absolutely determine and cease to have any effect except in so far as any costs that are payable to National Highways before commencement of the Works are outstanding and remain payable

19 Governing Law

- 19.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) is governed by and construed in accordance with the law of England and Wales.

20 Counterpart

- 20.1 This Deed may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts shall together constitute the one Agreement. Transmission of the

executed signature page of a counterpart of this Agreement by e-mail (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible thereafter. No counterpart shall be effective until each party has executed and delivered at least one counterpart.

FIRST SCHEDULE

Description of Works

The Works referred to in this Agreement shall comprise:-

- amendments to the Assets comprising the existing traffic signals to allow for the installation of the controlled pedestrian/cyclist crossings, which includes removal of the existing signals and installation of additional poles for the pedestrian push button facilities
- tactile crossings 3 metres in width on the northern and southern side of the roundabout as shown in the relevant drawings
- extension of the footway works up to end of the Trunk Road highway boundary
- white lining works, to include the relocation of the existing stop lines/give way lines and additional white lining to accommodate the pedestrian/cyclist crossing points
- clearance of the existing vegetation in the slip roads to the northern and southern side of the roundabout to extend the visibility splay
- relocation of the road signs to the back of the proposed footway/cycleway
- removal of the existing VRS on the southern side of the roundabout

as shown in principle on the drawing annexed hereto:-

- 041.5023A.140 Rev A – Engineering Layout National Highways

SECOND SCHEDULE

Description of the Scheme

The Scheme consists of improvements to the Bedhampton roundabout resulting from the construction of housing estates at Harbour Place & Forty Acre Farm comprising the Works including the Assets on the Trunk Road together with other works including the Assets on the Council Network

situated at the location shown on the Scheme location plan:

- 041.5023A.108 Rev G – Location Plan

and as shown in principle coloured dark grey, light grey, hatched grey, cross hatched grey, cross hatched green, red, dark blue, light blue and green on drawings:

- 041.5023A.101 Rev L – Engineering Layout Sheet 1 of 3

- 041.5023A.102 Rev M – Engineering Layout Sheet 2 of 3

- 041.5023A.103 Rev N – Engineering Layout Sheet 3 of 3

THIRD SCHEDULE

Assets

Drawing showing the Assets on the Trunk Road and on the Council Network and also showing the location of the proposed Maintenance Layby:

- AMALO-PBA-RC4 Rev D - ITS Asset Management Plan
- AMALO-PBA-RC5 Rev B – ITS Assets Management Plan
- AMALO-PBA-RC6 Rev B – ITS Assets Management Plan

IN WITNESS whereof the Parties have executed this document as a Deed delivered the day and year first before written.

Executed as a Deed by affixing the common seal of **HAMPSHIRE COUNTY COUNCIL** in the presence of:

..... Authorised Signatory

..... Name (capitals)

..... Position

Executed as a Deed by affixing the common seal of **NATIONAL HIGHWAYS LIMITED** in the presence of:

..... Director or Authorised Signatory

.....

In presence of a Witness:

.....

Witness Name:

Witness Address:
.....

Witness Occupation:

IN WITNESS whereof the parties hereto have executed this document as a
Deed delivered the day and year first before written

EXECUTED as a DEED by affixing the)
COMMON SEAL of **HAMPSHIRE**)
COUNTY COUNCIL in the presence of:-)

Authorised Signatory

Name **ADRIAN COWEN**

Position **AUTHORISED OFFICER**

SIGNED by [] and []
pursuant to a Power of Attorney dated []
on behalf of
BDW TRADING
LIMITED in the presence of:-

Director

Director/Secretary