

DATED

26th July

2019

HAMPSHIRE COUNTY COUNCIL

- and -

BDW TRADING LIMITED

Deed of Agreement for Highway Works at Havant Road, Emsworth, Signalised
Junction works pursuant to (inter alia) S.278 Highways Act 1980

HCC Legal File Ref: 123819
HCC Dev. Con. File Ref: 6/3/13/152
HCC Eng. Con. Ref:

Barbara Beardwell, MA., Solicitor
Head of Law and Governance and Monitoring
Officer
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

HAMPSHIRE COUNTY COUNCIL
SECTION 278 DEED OF AGREEMENT

Date: 26th July 2019

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
- B. The Developer is the registered proprietor with title absolute of the Land
registered at Land Registry under Title Number(s) SH51444 for the benefit of
which Land the Works hereinafter referred to are carried out
- C. 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
- D. The Developer now wishes to dedicate as public highway that part of the Land
upon which the Works are to be constructed which does not currently form
part of the public highway and the County Council agrees to accept such
dedication and adopt that part of the Land and the Works as highway

maintainable at public expense on the terms and conditions hereinafter contained

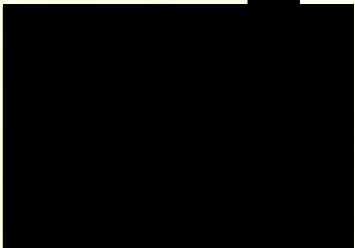
- E. The County Council is satisfied pursuant to Section 278 of the Highways Act 1980 that it will be of benefit to the public for the County Council to enter this Agreement for the execution of the Works at the expense of the Developer which Works the County Council is authorised to execute pursuant to the Highways Act 1980 or are the subject of the Planning Permission

NOW THIS DEED OF AGREEMENT WITNESSETH as follows:

Definitions

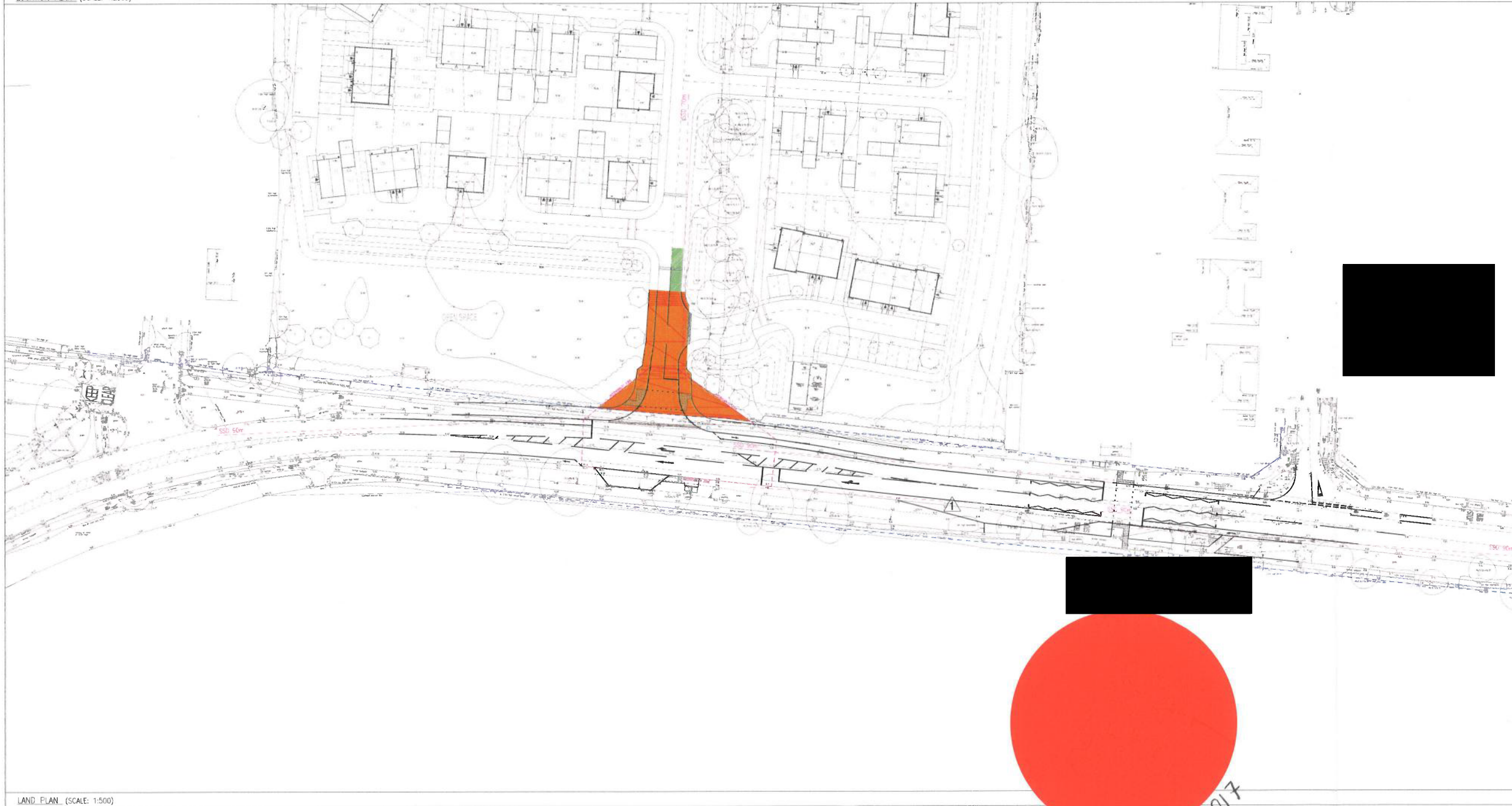
1. In this Agreement the following expressions shall have the following meanings:

"Bond"	Means a bond in the sum of the tender price of the Works as approved by the County Council plus the estimated cost of any commuted sums payable in accordance with Clause 7.7 hereof in both cases as approved by the County Council together with the cost of any statutory undertakers works plus 10% thereof
"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

	commonly known as the NEC3 Engineering and Construction Contract Suite of Contract approved by the County Council in accordance with Schedule 2 paragraph 1.3
“Director of Economy Transport and Environment”	Means the County Council’s Director of Economy Transport and Environment 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
“Green Land” 	Means that part of the Land shown coloured green on Drawing number 041.5025.103 Rev ^F / _^ attached to this Agreement such land to be subject to the provisions of Clause 5.7 and 5.8
“Head of Law and Governance and Monitoring Officer”	Means the County Council’s Head of Law and Governance 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



LOCATION PLAN (SCALE: 1:2500)



LAND PLAN (SCALE: 1:500)

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GENERAL NOTES

1. THIS DRAWING IS INTENDED TO BE VIEWED IN COMBINATION WITH ALL RELEVANT ARCHITECTS, ENGINEERS, SERVICES AND SPECIALIST DRAWINGS AND SPECIFICATION.
2. ANY VARIATIONS OR DISCREPANCIES BETWEEN THESE DRAWINGS IN TERMS OF DIMENSIONS OR DETAILS SHOULD BE DRAWN TO THE ATTENTION OF THE ARCHITECT AND/OR THE ENGINEER FOR CLARIFICATION.
3. PAUL BASHAM ASSOCIATES ACCEPTS NO RESPONSIBILITY FOR THE ACCURACY OF BACKGROUND INFORMATION PROVIDED BY THIRD PARTIES - THIS MUST BE TREATED AS INDICATIVE ONLY.
4. ALL DIMENSIONS AND LEVELS ARE IN METRES. DO NOT SCALE THIS DRAWING, PRINT, PLOT OR DISK.
5. THIS DRAWING SHOULD ONLY BE USED FOR CONSTRUCTION IF THE PROJECT PHASE IN THE TITLE FRAME BELOW IS SHOWN AS "CONSTRUCTION". PAUL BASHAM ASSOCIATES TAKE NO RESPONSIBILITY FOR CONSTRUCTION WORKS UNDERTAKEN TO DRAWINGS WHICH ARE NOT MARKED UNDER THIS PHASE.

KEY

- LAND TO BE DEDICATED AS PUBLIC HIGHWAY
- ACCESS EASEMENT
- INDICATIVE HIGHWAY BOUNDARY
- INTERVISIBILITY ZONE
- STOPPING SIGHT DISTANCE



APPROVED

7	REVISED AS APPROVED	17.05.16	EA	WJ
6	REVISED DRAWING	25.03.15	EK	WJ
5	REVISED DRAWING	22.01.15	EK	WJ
4	REVISED DRAWING	22.10.14	EK	WJ
3	REVISED DRAWING	02.03.14	EK	WJ
2	REVISED DRAWING	02.03.14	EK	WJ
1	REVISED DRAWING	02.03.14	EK	WJ
0	REVISED DRAWING	02.03.14	EK	WJ

Paul Basham Associates Ltd
Unit 10, 11 & 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

HAVANT ROAD
EMSWORTH

S278 LAND DEDICATION PLAN

CONSTRUCTION

CL	15.09.17	EK	15.09.17
AS SHOWN			

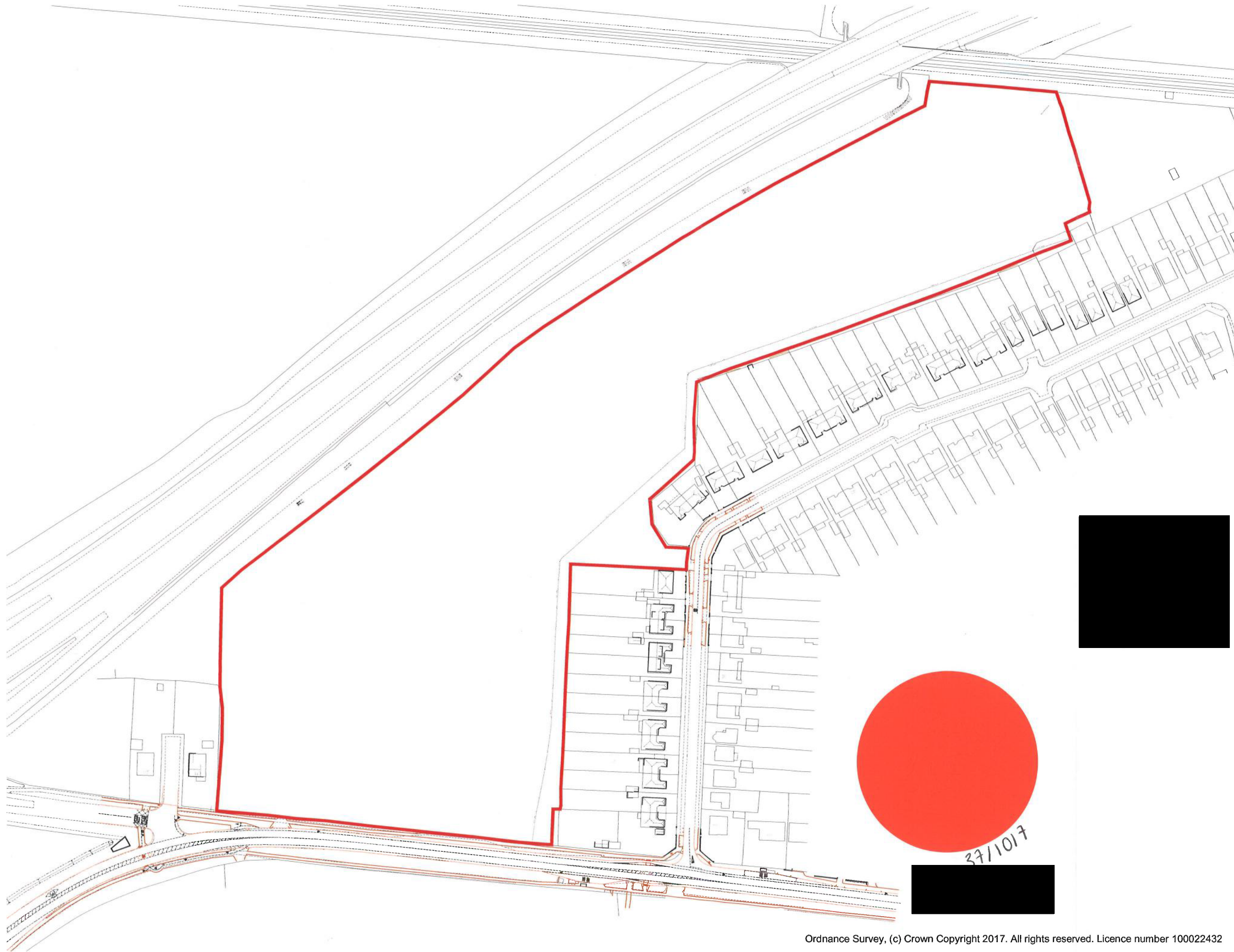
041.5025.103

F

37/1017

“Insurance Policy”	Means the policy of insurance on terms satisfactory to Hampshire County Council that names Hampshire County Council as an insured party and beneficiary able to call on the benefit of the policy to protect any aspect of the delivery of the Works, or the dedication of rights in the Orange Land or grant of rights on the Green Land
“Land”	Means the land for the purposes of identification only shown edged red on plan 18-2059-109 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
“Management Plan”	Means a works management plan showing how in the course of planning and construction of the Works the Developer will: (i) minimise disruption to all types of traffic; (ii) avoid instances of newly surfaced

	highway having to be re-excavated or have further works carried out on them; (iii) minimise the number of closures/diversions required by the Works; (iv) ensure that it takes into consideration the safety of all types of traffic that may be diverted or affected by the Works.
“Orange Land”	Means that part of the Land shown coloured orange on the drawing number 041.5025.103 Rev F attached to this Agreement such land to be dedicated pursuant to Clause 5.6
“Planning Permission”	Means the planning permission reference APP/16/00774 granted on 29.06.18 for the development of the Land requiring the Works
“Guidance Notes”	Means the “Section 278 Technical Submission Requirements” and “Section 278 Guidance for Developers” prepared by the Director of Economy Transport and Environment to inform Developers of



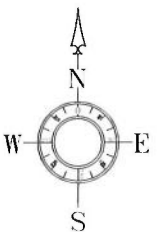
Drawn by RKDB Checked by MAH

Date: JANUARY 2017

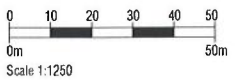
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Revisions

Rev	Date	Drawn	Checked



 SITE BOUNDARY
15.39ac / 6.23ha



Project:

HAVANT ROAD,
EMSWORTH, HAMPSHIRE

Drawing Title:

SITE LOCATION
PLAN

Client:



Simon Cooper Associates Limited,
Cenought House, 22/24 Guildford Road,
Bishopstoke, GU14 5JN
Telephone 01276 450039
info@simoncooper.net www.simoncooper.net

Drg No: 18-2059-109

Scale @ A2:1:1250 Rev: 

	the processes practices and procedures required by the County Council when undertaking design and works on a highway under s278 Highways Act 1980
“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; • 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. • Float, time risk and weather allowances • Submission of information and acceptance allowances.
“Specification”	Means the ‘Manual of contract documents for highway works: Volume 1 Specification for highway

		works' published by TSO in November 2009 as modified and extended by any supplements and revisions and further as modified and extended by supplements or practice notes issued by the County Council including the practice note "Offsite Highway Works carried out by Developers on behalf of the Highway Authority" all as in force at the date of commencement of the Works
"TSO"		Means The Stationery Office Limited (03049649) and whose registered office is at 10 Eastbourne Terrace, London W2 6LG 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 highway works described in Schedule 1 hereto

2. This Deed of Agreement is made pursuant to Sections 38, 251, 278 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
3. 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
4. Any notice or other communication to be served by the Developer under the terms of this Agreement shall be in writing 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 Head of Law and Governance and Monitoring Officer or to such addressee as the County Council may from time to time stipulate

Developer's Covenants

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

The Works

- 5.1. 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
- 5.2. 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

Indemnity

5.3. 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) 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 of below shall apply

Public Liability

5.4. That it shall without prejudice to its liability under Clause 5.3 and 5.5 hereof to indemnify the County Council be insured against public liability risks for a sum of at least £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 1.9 of this Agreement) on request by the County Council produce for inspection the relevant original policies of insurance together with receipts for the premiums paid

Land Compensation Claims

5.5. 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

Dedication

- 5.6. That it hereby dedicates the Orange Land as public highway such dedication to take effect from issue of the Certificate of Completion PROVIDED THAT on default by the Developer of any of the terms of the Agreement the County Council shall have the right to enter the Orange Land to complete the Works and in this case dedication shall be effective from the date of such entry

Easement

- 5.7. That it hereby grants to the County Council with effect from issue of the Certificate of Completion the right in fee simple to enter upon the Green Land at all times with or without vehicles materials plant machinery and contractors for the purpose of inspection maintenance repair or renewal of the signalised junction loops and any equipment associated with the Works subject to the County Council doing as little damage as reasonably possible to the Green Land and making good as soon as reasonably practicable any such damage caused PROVIDED THAT should it be necessary for the County Council to execute or complete the Works in accordance with Clause 10 the right granted to the County Council pursuant to this Clause 5.7 together with the right to install any part of the Works shall take effect from the date the County Council commences the Works in accordance with Clause 10
- 5.8. The Developer consents to the registration of this easement against the title to the Green Land and the Developer shall pay the County Council's costs of

£150 on the date of completion of this agreement in respect of the County Council's costs and disbursements to be incurred in applying to register the easement and the Developer will for the purposes of enabling registration provide or obtain any necessary consents.

- 5.9. The Developer hereby confirms and warrants that the Developer is the registered proprietor of the land in Title No. SH51444 and that they have full power to enter into this Deed and to grant the right of easement and dedicate the highway rights

Security

6. The Developer shall not commence the Works until it has provided to the County Council a Bond by a surety acceptable to the Head of Law and Governance and Monitoring Officer 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 the Developer becoming bankrupt or going into liquidation or entering administrative receivership or entering into a deed of arrangement for the benefit of its creditors 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 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 Head of Law and Governance and Monitoring Officer 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 upon issue of the Certificate of Completion the Bond may be reduced by 85 % or to the sum of £5,000.00 which ever is the greater value as agreed by the County Council and PROVIDED FURTHER that upon issue by the County Council of the Certificate of Maintenance the Bond shall be released

Payments

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

On the date of the Agreement

7.1. On the date hereof the whole of the reasonable costs incurred by the Head of Law and Governance and Monitoring Officer and the Director of Economy Transport and Environment in the preparation of this Deed.

7.2. On the date hereof the sum of £150.00 for costs incurred by the County Council in registering the easement pursuant to clause 5.8

Prior to commencement of the Works

7.3. 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 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

- 7.4. On demand and in any event prior to commencement of the Works 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 and further shall pay any additional sum incurred by the County Council's in inspecting and administering the Works within 14 days following receipt of an invoice from the County Council
- 7.5. Prior to commencement of the Works the full cost to the County Council of any road traffic orders required to facilitate the Works
- 7.6. 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

- 7.7. Prior to the issue of the Certificate of Completion and in respect of the future maintenance of:-
- 7.7.1. soakaways (if any) including any rubble drains terminal soakaways or linear ditch soakaways – a commuted sum of £3,500.00 per soakaway PROVIDED THAT should any soakaway have a cubic capacity exceeding 5 cubic metres an additional sum will be payable calculated pro rata in respect of any cubic capacity in excess of 5 cubic metres
- 7.7.2. unusual paving surfacing and high friction surfaces (if any) a commuted sum equal to the replacement cost
- 7.7.3. illuminated signs (if any) a commuted sum equal to the replacement cost
- 7.7.4. decorative (i.e. non standard) street lighting (if any) a commuted sum equal to the replacement cost

- 7.7.5. street furniture (if any) a commuted sum equal to the replacement cost
- 7.7.6. bus shelters (including any variable message signs traffic travel and bus passenger information) (if any) a commuted sum equal to the replacement cost
- 7.7.7. landscape works (if any) a commuted sum of:
- 7.7.7.1. in respect of any bed, grass or shrub planting
£40 per square metre
 - 7.7.7.2. in respect of any new trees £400 per tree
 - 7.7.7.3. in respect of any retained trees £1,500 per tree
- 7.7.8. highway structures (including culverts over 900mm diameter head walls and retaining walls with a retained height of over 1500mm or more) (if any) the sum of 20% of the works cost of the construction of those works
- 7.7.9. traffic signal installations (including controlled pedestrian crossings and any CCTV variable message signs traffic travel and bus passenger information systems)(if any) the sum of £13,400.00
- 7.7.10. hydrobrakes petrol interceptors pebble drains linear ditches (if any) a commuted sum equal to the replacement cost per hydrobrake petrol interceptor pebble drains linear ditch
- 7.7.11. Water attenuation systems Sustainable Drainage Systems (SUDS) and any other drainage systems other than those referred to in Clauses 7.7.1 and 7.7.10 above (if any) a commuted sum equal to the replacement costs of such systems being solely for the disposal of highway water
- 7.8. 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 South Coast Street Lighting Private Finance Initiative

7.9. Prior to the issue of the Certificate of Completion any sums due pursuant to Schedule 2

Prior to the Reduction of the Bond

7.10. On demand and in any event prior to the reduction of the of the Bond the sum of £150 for costs incurred in approving administering and reducing the Bond required pursuant to clause 6

Prior to the Release of the Bond

7.11. On demand and in any event prior to the release of the of the Bond the sum of £150 for costs incurred in approving administering and releasing the Bond required pursuant to clause 6

7.12. 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 South Coast Street Lighting Private Finance Initiative

7.13. Prior to the issue of the Certificate of Maintenance any sums due pursuant to Schedule 2

County Council's Covenants

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

8.1. That it hereby authorises the Developer and the Contractor to carry out the Works within the public highway subject to and strictly in accordance with the terms conditions and stipulations in Schedule 2

8.2. That upon completion of the Works to the satisfaction of the County Council and upon provision of the Insurance Policy 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 or which are on that part of the Land which will become public highway pursuant to Clause 5.6 of this Agreement 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 have been made good and all sums due under this Agreement have been paid 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 used by heavy or other construction vehicles driven by or on behalf of the Developer or his or its servants and agents or contractors in connection with road or building works carried out on the Land or on adjoining land in any which cases the Maintenance Period shall be extended accordingly

9. It is further agreed between the parties that:

- 9.1. 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
- 9.2. 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 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.
- 10.1 Without prejudice to the terms hereof 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 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 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 cost as certified by the County Council from the Developer
- 10.2 In the event that the Developer fails to execute or complete the Works in accordance with the timescale set out within the notice referred to in clause 10

and the County Council is subsequently required to exercise its powers set down in clause 10 hereof then the authority given to the Developer under clause 8.1 shall be immediately revoked

Arbitration

11. 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 Royal Institution of Chartered Surveyors 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. The Expert shall:

- 12.1. have at least ten years post qualification experience in the subject matter of the dispute
- 12.2. 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

12.3. 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 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 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 15 Working Days from receipt of any counter submissions or in the event that there are no counter submissions within 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 Clauses 11 and 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 Clause 8.1

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. This Agreement shall be registered as a Local Land Charge

SCHEDULE 1

The Works referred to in this Agreement and shown in principle on Drawing(s) 041.5025.100 Rev S attached hereto shall comprise the provision of:-

1. Signalised Junction onto Havant Road and stand alone toucan crossing

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 or Advice is amended after the date of this Agreement the County Council shall be at liberty to review the Works and require any amendments he deems 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 months of the date of the written approval thereof then SUBJECT ALWAYS TO AND WITHOUT PREJUDICE to Schedule 2 paragraph 12 hereof the County Council shall not seek any amendments to the Works

SCHEDULE 2

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 contract drawings a Programme 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.

1.3. Written details of the form of Construction Contract for the Works has been submitted to the County Council and approved by the County Council

1.4. 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 tenders have been invited under the Open Procedure and in compliance with the Public Contract Regulations 2015 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

1.5. The Developer has:-

1.5.1 Obtained any necessary licences and given any necessary notices pursuant to the New Roads and Street Works Act 1991; and

1.5.2 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

- 1.6. 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:-
 - 1.6.1. 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
 - 1.6.2. confirmation that duties under Reg 4(4) and 4(5) of the CDM Regulations are being carried out
- 1.7. 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
- 1.8. Paid all sums due prior to commencement of the Works pursuant to Clause 7
- 1.9. The original insurance policy and receipts referred to in Clause 5.4 or copies thereof certified by a solicitor have been produced
- 1.10. 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

- 1.11 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.
 - 1.12 The Developer will maintain access to all apparatus that is part of the South Coast Lighting Initiative and where this is not possible the maintenance responsibility for that apparatus shall be removed from the South Coast Lighting Initiative and shall pass to the Developer
 - 1.13 Where the Developer removes or relocates any apparatus that is part of the South Coast Lighting Initiative the maintenance responsibility for that apparatus shall be removed from the South Coast Lighting Initiative and shall pass to the Developer
2. Detailed contract drawings for highway structures (if any) shall be prepared by the Developer and submitted for written approval to the County Council in accordance with Department for Transport Document BD2/12 or any revision or replacement thereof and the structural design and checking procedure shall be carried out by a chartered engineer familiar with Department of Transport Codes of Practice who shall state on Form TA1 or revision or replacement thereof the documents to be agreed as applicable

3. The Developer shall notify the County Council as follows:
 - 3.1. Without prejudice to the Programme following approval of detailed contract drawings the Programme and traffic management measures at least 3 months prior to the commencement of the Works of its intention to proceed with the Works
 - 3.2. At least 10 clear Working Days prior to commencement of the Works of its intention to proceed with the Works
 - 3.3. That the Works have commenced no later than the next Working Day following commencement of the Works
 - 3.4. 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 March 2009 and the Safety at Street Works and Road Work A Code of Practice published by Department of Transport in June 2014 and the proposed arrangements shall be approved in writing by the County Council before the Works commence

6. The Works shall be carried out in accordance with the Specification and Programme prepared in accordance with the Guidance notes
7. The Works shall be carried out:
 - 7.1. Unless agreed otherwise by the County Council under the terms of a Construction Contract; and
 - 7.2. Under the direction and instructions of a Chartered Engineer (or where agreed by the County Council a nominated person approved by the County Council) who shall be authorised to issue instructions to the Contractor in the normal execution of duties under the Construction Contract
 - 7.3. The Chartered Engineer (or where agreed by the County Council a nominated person approved by the County Council) shall further be responsible for negotiating and implementing any design changes to the Works that might be agreed during the course of construction of the Works by the County Council
 - 7.4. The inspection and direction of the County Council shall be accepted and the Works shall be carried out in accordance with the approved detailed contract drawings the Specification and the Programme and to a standard of workmanship and quality of materials approved by the County Council
8. 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

9. 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 working days notice to the County Council whenever any such work or foundations is or are ready for examination
10. 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
11. 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 detailed drawings and the Specification
12. 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 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

13. The Works shall be completed to the satisfaction of the County Council in accordance with the timescale specified in the Programme or any variation thereof agreed by the County Council

14. 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 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 which the County Council shall apply towards the purpose of developing policies for the promotion and encouragement of safe integrated and economic transport facilities and services to from and within its area

15. 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

16. 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

17. The Developer shall provide the County Council with the following

17.1. Prior to issue of the Certificate of Completion

17.1.1. CCTV Drain Survey together with details of gully manhole and catchpit locations in an agreed GPS format; and

17.1.2. 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

17.1.3. written confirmation from the Developer that the street lighting apparatus complies with the 'Accrual Required Standards' issued by the County Council pursuant to the South Coast Street Lighting Private Finance Initiative contract

17.2. Within 3 months of issue of the Certificate of Completion

17.2.1. in respect of highway structures a maintenance manual to include suitable scale electronic data sets and paper sets of "as built" drawings soil reports records of materials tested Health and Safety file and revised forms AIP and associated certificates

17.2.2. Health and Safety files

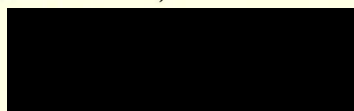
17.2.3. accurate 1:500 scale of “as built” drawings supplied electronically on a disc as an image file j-peg and as a CAD drawing in .dwg format and on paper as set of “as built drawings”

17.2.4. 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

17.2.5. records of the sources of supply of all other manufactured materials (eg. drainage goods fencing materials traffic signs electrical components and cables etc)

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



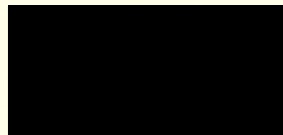
EXECUTED as a DEED by affixing the)
COMMON SEAL of BDW TRADING)
LIMITED in the presence of:-)



Gary Webster

Director

Director/Secretary



Glen O'Nion