

6.7. Prior to the issue of the Certificate of Completion and in respect of the future maintenance of:-

6.7.1. 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

6.7.2. unusual paving surfacing and high friction surfaces (if any) a commuted sum equal to the replacement cost

6.7.3. illuminated signs (if any) a commuted sum equal to the replacement cost

6.7.4. decorative (i.e. non standard) street lighting (if any) a commuted sum equal to the replacement cost

6.7.5. street furniture (if any) a commuted sum equal to the replacement cost

6.7.6. bus shelters (including any variable message signs traffic travel and bus passenger information) (if any) a commuted sum equal to the replacement cost

6.7.7. landscape works (if any) a commuted sum of:

6.7.7.1. in respect of shrub planting £40 per square metre

6.7.7.2. in respect of any new trees £400 per tree

6.7.7.3. in respect of any retained trees £1,500 per tree

6.7.8. highway structures (including culverts over 900mm diameter head walls and retaining walls) (if any) the sum of 20% of the works cost of the construction of those works]

- 6.7.9. 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 20% of the works cost of the construction of those works including inter-alia ducts drawpits signal poles and any other costs incurred by the County Council in respect of loop cutting and installation
- 6.7.10. 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
- 6.7.11. 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 cost of the construction of those works such systems being solely for the disposal of highway water
- 6.8. 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
- 6.9. Prior to the issue of the Certificate of Completion any sums due pursuant to Schedule 2 paragraph 14

County Council's Covenants

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

7.1. That it hereby authorises the Developer's contractor approved by the County Council in accordance with Schedule 2 paragraph 7.2 to carry out the Works within the public highway subject to and strictly in accordance with the terms conditions and stipulations in Schedule 2

7.2. That upon completion of the Works 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 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

8. It is further agreed between the parties that:

8.1. 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

8.2. If the estimated value of the contract for the Works equals or exceeds the threshold identified in Regulation 8 (2) of the Public Contracts Regulations 2006 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 2006.

9. 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

Arbitration

10. 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 Institute of Chartered Surveyors and the Expert's decision shall be final and binding on the parties hereto and whose costs (including the reimbursement of the costs of any other experts' fees) shall be at his discretion

11. The Expert shall:

- 11.1. have at least ten years post qualification experience in the subject matter of the dispute
- 11.2. 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
- 11.3. 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

12. 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

13. The Owner hereby agrees that the Works are for the benefit of the Land
14. 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
15. 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
16. 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

17. 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

18. This Agreement shall be registered as a Local Land Charge

SCHEDULE 1

The Works referred to in Recital 4 of this Agreement and shown in principle on Drawing(s) 2014/2263/203 – P5 attached hereto shall comprise the provision of:-

1. Removal of existing accesses and provision of a bellmouth entrance and vehicle crossover exit

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 11 hereof the County Council shall not seek any amendments to the Works

CONSTRUCTION TREATMENT

THIS DRAWING SHALL BE READ IN CONJUNCTION WITH ALL RELEVANT ENGINEERING DRAWINGS. ANY DISCREPANCIES FOUND BETWEEN THIS DRAWING AND ANY OTHER DRAWING SHALL BE REPORTED TO THE ENGINEER IMMEDIATELY AND THE ENGINEER SHALL BE RESPONSIBLE FOR THE CORRECTION OF ANY DISCREPANCIES.

IT IS THE CONTRACTOR'S RESPONSIBILITY TO ENSURE THAT ALL SERVICES ARE LOCATED PRIOR TO ANY CONSTRUCTION WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL SERVICES AND FOR THE REPAIR OF ANY DAMAGE CAUSED BY THE CONSTRUCTION WORK. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL SERVICES AND FOR THE REPAIR OF ANY DAMAGE CAUSED BY THE CONSTRUCTION WORK.

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P Cycles
4 Spaces

Waste
Container

3615918

USE OF MATERIALS	USE OF MATERIALS
SECTION A	SECTION B
SECTION C	SECTION D
SECTION E	SECTION F
SECTION G	SECTION H
SECTION I	SECTION J
SECTION K	SECTION L
SECTION M	SECTION N
SECTION O	SECTION P
SECTION Q	SECTION R
SECTION S	SECTION T
SECTION U	SECTION V
SECTION W	SECTION X
SECTION Y	SECTION Z

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SECTION Q	SECTION R
SECTION S	SECTION T
SECTION U	SECTION V
SECTION W	SECTION X
SECTION Y	SECTION Z

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 identified in Regulation 8 (2) of the Public Contracts Regulations 2006 tenders have been invited in open competition and in compliance with the Public Contract Regulations 2006 and copies of the OJEU notices and an evaluation report justifying the appointment of the economic operator has been submitted to the County Council

- 1.5. Any necessary licences have been obtained and notices given pursuant to the New Roads and Street Works Act 1991
- 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
- 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 principal contractor
- 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 5.3 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
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 BD2/05 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 TAI or revision or replacement thereof the documents to be agreed as applicable

3. The Developer shall notify the County Council as follows:

3.8. 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

3.9. At least 10 clear Working Days prior to commencement of the Works of its intention to proceed with the Works

3.10. That the Works have commenced no later than the next Working Day following commencement of the Works

3.11. At least 24 hours prior to the commencement of each and every stage of excavation and concrete 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 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 a Programme prepared in accordance with the Practice Note
7. The Works shall be carried out:
 - 7.1. Unless agreed otherwise by the County Council under the terms of a construction contract incorporating the third edition of the Conditions of Contract approved by the Institution of Civil Engineers and commonly known as the NEC3 Suite of Contract approved by the County Council in accordance with paragraph 1.3 of this Schedule 2; and
 - 7.2. Under the direction of a Chartered Engineer who shall be a suitably and appropriately qualified (unless agreed otherwise by the County Council) civil engineer employed by the Developer be under the approved construction contract and approved by the County Council and who shall be independent of the roadworks contractor
 - 7.3. The Chartered Engineer 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 not in accordance with the detailed drawings and the Specification with such as are in accordance thereof
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. 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 South Coast Street Lighting Private Finance Initiative contract

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

16.2.1. 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

16.2.2. Health and Safety files

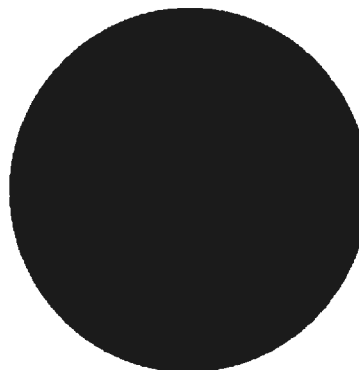
16.2.3. accurate 1:500 scale of "as built" drawings supplied electronically on a disc as an image file j-peg and as a CAD drawing in .dwg format and on paper as set of "as built drawings"

16.2.4. 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

16.2.5. 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:-)



36/5918

Executed as a deed by PORTFIELD)
ESTATE COMPANY LIMITED)
acting by a director and its secretary/)
two directors)

Signature of Director:

Signature of Secretary/D



JOHN HAZELWOOD