

**SUBJECT TO CONTRACT**

**Dated 200..**

**(1) THE SECRETARY OF STATE FOR TRANSPORT**

**- and -**

**(2)**

**[THE COUNCIL]**

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**AGREEMENT BY DEED  
UNDER SECTION 274  
OF THE HIGHWAYS ACT 1980**  
relating to highway works at  
.....

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Highways Agency  
Legal Division  
Great Minster House  
76 Marsham Street  
LONDON SW1P 4DR

**THIS AGREEMENT** is made as a deed on

200...

**BETWEEN**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT** (the "**Secretary of State**") of Great Minster House 76 Marsham Street London SW1P 4DR and
- (2) (The "**Council**") of .....

**WHEREAS**

A The Council has agreed to (contribute towards the expenses/fund totally) .....  
 (the "**Works**") on the.....trunk road (the"**Trunk Road**").

B The Secretary of State is authorised by virtue of part V of the Highways Act 1980 to carry out improvements in relation to the Trunk Road as illustrated on plan numbered.....  
 .....attached to this agreement (the "**Plan[s]**") and as described in the schedule hereto (subject to any alterations which may be made pursuant to clause 2 or clause 3 and subject to the terms of this agreement he would be prepared to carry out the Works.

[The Secretary of State is authorised by virtue of the ..... Order ..... to construct new Highways [private means of access] and to improve existing Highways as shown on the Deposited Plan to that Order ("the Plan") and subject to the terms of this Agreement would be prepared to implement that authorisation];

C This agreement is made pursuant to section 274 of the Highways Act 1980.

D The Secretary of State and the Council are satisfied that this agreement will be of benefit to the public.

**NOW IT IS HEREBY AGREED** as follows

- 1. In this agreement:
  - 1.1 a reference to a clause or recital followed by a number is a reference to the clause or as the case may be the recital of this agreement bearing that number

- 1.2 a reference to the "Works" is a reference to the works described in the schedule and shown on the Plan[s] subject to any alterations which may be made pursuant to clause 2 or clause 3 hereof.
2. The Secretary of State may from time to time make such alterations to the Works as he may reasonably consider necessary. Insofar as may be practicable the Secretary of State shall give the Council the opportunity to comment on any such alterations which he proposes to make and shall take into account any relevant comments received from the Council before deciding to make such alterations.
3. The Council may from time to time request the Secretary of State to vary the Plan[s] or substitute a new plan or plans but any such variation or substitution will only be made with the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed).
4. The Council shall make the following payments in respect of the Works.
- 4.1 a sum equal to the whole of the costs in conjunction with the extents of the Works.
- 4.2 a sum equal to the whole of any costs and expenses which the Secretary of State may incur including costs and expenses for using external staff and resources as well as costs and expenses of using in house staff and resources in relation to this agreement and arising out of it and its implementation including without prejudice to the generality thereof: -
- (i) the carrying out of all or any design work relating to the Works or alterations thereto and / or the checking and approval of all such design work carried out by or on behalf of the Council ;
  - (ii) the carrying out of any supervision of the Works;
  - (iii) all staff and administrative costs;
  - (iv) all legal costs

- 4.3 all costs or expenses which he may incur in insulating buildings against noise or in satisfying claims made under Part 1 of the Land Compensation Act 1973 arising from the execution of the Works and any sum or sums payable to the Secretary of State under clause 4 shall be paid by the Council to the Secretary of State within 28 days of demand.
- 4.4 The sums referred to in sub clause (4.1, 4.2, 4.3) above include any value added tax which is payable by the Secretary of State in respect of such costs and expenses and for which he cannot obtain reimbursement from HM Customs and Excise.
5. The Council will make the payments referred to in clause 4 as follows:
- 5.1 The Council shall pay a sum equal to the estimate by the Secretary of State as at the date of this Agreement of the costs payable by the Council under clause 4 (“the Estimated Costs”) within 14 days of the date hereof;
- 5.2 If, at any time or times after the payment referred to in sub clause (1) above has become payable, the Secretary of State estimates that the costs referred to in clause 4 will exceed the Estimated Costs he may give notice to the Council of the amount by which he then estimates those costs will exceed the Estimated Costs (“the Excess”) and the Council shall pay to the Secretary of State within 14 days of the date of that notice a sum equal to such proportion of the Excess as would be due under sub clause (1) above at the date of that notice if the Estimated Costs had included the Excess.
- 5.3 As soon as may be after the Works have been completed the Secretary of State shall give the Council a final account of the costs referred to in clause 4. Within 28 days from the date of that account:
- (i) if the account shows a further sum as due to the Secretary of State the Council shall pay to the Secretary of State the sum shown due to him in that final account;
  - (ii) if the account shows that the payment or payments previously made have exceeded those costs, the Secretary of State shall refund that excess.

6 The Council shall indemnify the Secretary of State in respect of any value added tax which is payable by the Secretary of State in respect of the Works and other matters referred to in this agreement and which he cannot recover

7 The amounts of payments due to the Secretary of State under the provisions of this Agreement shall be certified on behalf of the Secretary of State. His decision as to the amounts shall be final save in the case of manifest error but he shall provide to the Council any information relating to the amounts as the Council may reasonably request in writing.

8 Following completion of the Works the Council shall pay to the Secretary of State a commuted lump sum in respect of the future maintenance costs of the Works. The payment shall be made within 28 days of the date on which it is demanded by the Secretary of State and such payment shall satisfy any liability of the Council in this respect.

9 The rights and liabilities of the Council under this agreement are not assignable save with the prior written consent of the Secretary of State which consent shall not be unreasonably withheld or delayed

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10.1 At any time before the Secretary of State gives notice

10.1.1 the Secretary of State may terminate this Agreement at any time by giving the Council notice of his decision to terminate it; and

10.1.2 the Council may terminate this Agreement by giving notice to the Secretary of State that the Council does not wish the Works to be carried out.

10.2 On any termination under this clause the Secretary of State shall give the Council an account of all abortive costs incurred by the Secretary of State in respect of this Agreement. Within 28 days from the date of that account: -

10.2.1 If that account shows that the payments made by the Council under the foregoing provisions of this Agreement have exceeded those costs the Secretary of State shall refund that excess.

10.2.2 If that account shows that those costs exceed the payments made by the Council under the foregoing provisions of this Agreement the Council shall pay to the Secretary of State a sum equal to that excess.

- 11 If any payment due under any of the provisions of this agreement is not made on or before the date on which it is due (the "**Due Date**") the party from whom it was due shall at the same time as making the payment pay to the other party interest at one per cent above the rate payable in respect of compensation under section 32 of the Land Compensation Act 1961 for the period starting with the Due Date and ending with the date of payment of the sum on which interest is payable together with that interest
  
- 12 Without prejudice to the application of the Crown Proceedings Act 1947 any notice or demand required by this agreement to be given or made shall be in writing and shall be sufficiently served on the Secretary of State by being forwarded by registered or recorded delivery post to him at the Highways Agency, .....or such other address as he may notify in writing to the Council. Similarly any notice shall be sufficiently served on the Council if addressed to the Council and left at or sent by registered or recorded delivery post to the address set out above of the Council or such other address as the Council may notify in writing to the Secretary of State from time to time and any notice so sent by post shall be deemed to be given at the time when it ought in due course of post to be delivered at the address to which it is sent
  
- 13 The Works shall be constructed in accordance with Volume 0, Part 7 of the Manual of Contract Documents for Highway Works 1999 and the Design Manual for Roads and Bridges published by The Stationery Office and any amendment to or replacement thereof for the time being in force
  
- 14 English law is the law applicable to this agreement

## **SCHEDULE**

**( Description of the Works)**

**IN WITNESS** whereof the parties have delivered this deed the day and year first above written.

The Corporate Seal of **THE** )  
**SECRETARY OF STATE FOR** )  
**TRANSPORT** hereunto affixed is )  
authenticated by )  
)

Authorised by the Secretary of State

The Common Seal of  
.....  
.....was  
hereunto affixed in the presence of

Authorised Signatory