



BATH & NORTH EAST SOMERSET



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Greater Bristol Bus Network Major Scheme Business Case

Appendix 4E

Draft Section 278 and Section 4 Agreements

JOB NUMBER: 5048504			DOCUMENT REF: 5048504.250.100.01.4E Rev1 Appendix 4E s278 & s4 Draft Agreements.doc			
1	First Draft	PC	TC	AC	AC	20/03/07
		Originated	Checked	Reviewed	Authorised	Date
Revision	Purpose Description	ATKINS				



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Dated _____ 200...

THE SECRETARY OF STATE FOR TRANSPORT

AND

Agreement under section 278 Highways Act 1980 for the execution of
highway works on the

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



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DRAFT DATED 200X SUBJECT TO CONTRACT

THIS AGREEMENT is made as a Deed this day of 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) (Company Registration Number) whose registered office is at (the "Developer")

WHEREAS

- (a) The Developer has been granted planning permission by under reference for ("the Development") on land in the vicinity of the ("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 the plan numbered attached to this Agreement ("the Plan") and subject to the terms of this Agreement he would be prepared to carry out those improvements;
- (c) This Agreement is made pursuant to section 278 of the Highways Act 1980;
- (d) The Secretary of State is satisfied that this Agreement will be of benefit to the public.
- (e) The Secretary of State proposes to enter into an agreement under section 4 of the Highways Act 1980 with to carry out the works therein described for one sign on an adjoining unclassified road in the vicinity of the Trunk



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Road;

NOW IT IS HEREBY AGREED AS FOLLOWS -

1. In this Agreement:

(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;

(2) a reference to “the Works” is a reference to the works described in the Schedule hereto and shown on the Plan (including where an associated agreement under section 4 of the Highways Act has been or will be entered into the works to which it relates) subject to any alterations which may be made pursuant to clause 2.

2. The Secretary of State may from time to time make such alterations to the Works as he may consider necessary. In so far as may be reasonably practicable the Secretary of State shall give the Developer an opportunity to comment on any such alterations which he proposes to make.

3. (1) The Developer shall make the following payments in respect of the Works:

(a) a sum equal to the whole of the costs which the Secretary of State incurs by, or in preparation for, the execution of the Works and in connection with the execution of the Works (including for the avoidance of doubt staff and other administrative costs);

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- (b) a sum equal to the whole of any expense to which the Secretary of State is put by reason of carrying out the Works including, without prejudice to the generality of the foregoing, all costs or expenses incurred in insulating buildings against noise or in satisfying claims made under Part I of the Land Compensation Act 1973 arising from the execution of the Works.
- (2) The sums referred to in subclause (1) above includes 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 Revenue and Customs.
4. The Developer will make the payments referred to in clause 3 (1) (a) as follows:
- (1) The Developer shall pay:
- (a) a sum equal to one half of the estimate by the Secretary of State as at the date of this Agreement of the costs payable by the Developer under clause 3 (1) (a) (“the Estimated Costs”) within 14 days of the date hereof;
- (b) a further sum equal to one half of the Estimated Costs within 14 days of the date on which the Secretary of State gives notice to the Developer that he is ready to enter into a contract for the execution of the Works after receipt of such further sum.
- (2) If, at any time or times after the payment referred to in subclause (1) (a) above has become payable, the Secretary of State estimates that the costs referred to in clause 3 (1) (a) will exceed the Estimated Costs he may give



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notice to the Developer of the amount by which he then estimates those costs will exceed the Estimated Costs (“the Excess”) and the Developer 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 subclause (1) above at the date of that notice if the Estimated Costs had included the Excess.

(3) As soon as may be after the Works have been completed the Secretary of State shall give the Developer a final account of the costs referred to in clause 3 (1) (a). 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 Developer 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.

(4) The Developer shall pay to the Secretary of State any sum mentioned in clause 3 (1) (b) within 14 days of the date of his making a demand for that sum.

5. When the Works have been completed, the Developer 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 14 days of the date on which it is demanded and shall satisfy any liability of the Developer in this respect.

6. The amounts of payments due under the provisions of this Agreement shall be



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certified on behalf of the Secretary of State. His decision as to the amounts shall be final, but he shall provide to the Developer any information relating to the amounts as the Developer may reasonably require.

7. (1) At any time before the Secretary of State gives notice as mentioned in clause 4 (1) (b)
 - (a) the Secretary of State may terminate this Agreement at any time by giving the Developer notice of his decision to terminate it; and
 - (b) the Developer may terminate this Agreement by giving notice to the Secretary of State that the Developer does not wish the Works to be carried out.
- (2) On any termination under this Clause the Secretary of State shall give the Developer 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:
 - (i) If that account shows that the payments made by the Developer under the foregoing provisions of this Agreement have exceeded those costs the Secretary of State shall refund that excess.
 - (ii) If that account shows that those costs exceed the payments made by the Developer under the foregoing provisions of this Agreement the Developer shall pay to the Secretary of State a sum equal to that excess.
8. The rights and liabilities of the Developer under this Agreement are not



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assignable.

9. 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 centum 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.

10. If and only if:

(a) the Secretary of State has entered into the section 4 agreement referred to in recital (e);

(b) the Developer is not in default of any obligation hereunder; and

(c) this Agreement has not previously been terminated under Clause 7;

the Secretary of State will execute the Works, and having started the same will use his reasonable endeavours to complete them as soon as is reasonably practicable.

11. 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 Temple Quay House 2 The Square Temple Quay Bristol BS1 6HA or such other



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address as he may notify in writing to the Developer. Similarly any notice shall be sufficiently served on the Developer if addressed to the Developer and left at or sent by registered or recorded delivery post to the usual or last known place of business in England and Wales of the Developer or the registered office of the Developer. 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.

12. The Works shall be constructed in accordance with the Manual of Contract Documents 1991 and the Design Manual for Roads and Bridges published by the Department of Transport and any amendment to or replacement thereof for the time being in force.
13. The land which is to be benefited by the Works is the land to which the planning permission referred to in Recital (a) relates.
14. English law is the law applicable to this Agreement.

IN WITNESS whereof the parties have delivered this Deed the day and year first above written

THE SCHEDULE

(Description of the Works)

To be advised



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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:

.....

Company Secretary / Director

.....

Director

Signed and Delivered
as a Deed by the said

.....

in the presence of:

.....

Witness' signature

.....

Witness' name in capitals

.....

.....

Witness' address

.....

Witness' occupation.



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- 5.0 The Secretary of State shall carry out the Works in full in accordance with the Schedule unless the prior written agreement of the Council to any change has been given and shall be completed to the satisfaction of the Council.
- 6.0 The Secretary of State shall take all reasonable action to ensure that the Works are carried out so as to minimise any damage to or interference with the Highway and the Highway shall be reinstated to the satisfaction of the Council.
- 7.0 The Secretary of State shall on receipt of a notice in writing from the Council specifying any works required for the full and satisfactory reinstatement of the Highway or for the remedying of any errors omissions or defects carry out those works in full accordance with the notice including the timetable specified for the carrying out of the works.
- 8.0 The cost of the Works and any works required in accordance with Clauses 6.0 and 7.0 shall be met in full by .
- 9.0 The Secretary of State shall indemnify and keep indemnified the Council in respect of all costs claims demands proceedings damages losses charges and expenses in relation to and arising from or in connection with the carrying out of the Works and any works referred to in Clauses 6 and 7 except for any arising through any act or default of the Council its employees or agents.
- 10.0 The Secretary of State shall maintain and keep the works installations and equipment carried out or provided in accordance with the Schedule in a state of good and proper repair and shall renew or replace any art or parts which become incapable of restoration or repair.
- 11.0 The Secretary of State shall meet the cost of or make arrangements to have carried out the replacement and installation of any of the Equipment which is necessary as a result of carrying out of works for the maintenance or repair of the Highway.



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12.0 The Parties shall use all reasonable endeavours to resolve any dispute which may arise between them in connection with this Agreement failing which the dispute shall be referred to a single arbitrator to be agreed between the parties or in the absence of agreement appointed on the application of either party after notice to the other by the President of the Institute of Civil Engineers and in the case of a matter of law by the President of the Law Society of England and Wales.

13.0 A person who is not a Party to this Agreement has no rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any of its terms.

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

THE COMMON SEAL of
Was hereunto affixed in the
presence of:-

.....

Authorised signatory

THE CORPORATE SEAL of
THE SECRETARY OF STATE
FOR TRANSPORT

Hereto affixed is authenticated by:-

.....

Authorised by the Secretary of State



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SCHEDULE

The Works

The works which are the subject of this agreement are works to be carried out in the
, within the areas edged red on the Plan comprising:

- (i) -
- (ii) -
- (iii) -
- (iv) -
- (v) -
- (vi) -

And which are shown on the Drawings attached to this agreement as follows:

Drawing Numbers:

XXXXXXXX - "The Plan"