

## AGREEMENT FOR THE COUNCIL TO UNDERTAKE ENVIRONMENTAL ENHANCEMENT WORKS ETC. ON HIGHWAY LAND

### 1. INTRODUCTION

- 1.1 In order for New Forest District Council to execute environmental enhancement works, works linked to the improvement of car parks etc. on the public highway at its own expense it needs to obtain the consent of Hampshire County Council (HCC).
- 1.2 In consultation with NFDC the County Council has drawn up an agreement (known as a Section 278 Agreement) that provides the New Forest District Council with the authority to execute works on the highway pursuant to Sections 38 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972. It is proposed that Cabinet approve the use of this agreement. (Copy agreement attached as Appendix 1).
- 1.3 HCC require separate Section 278 Agreements for each individual scheme which involves highway land. Schemes currently requiring agreements include:
- **A338 Slip Road, Fordingbridge Gateway** - This scheme is included in the approved expenditure plan (agreed capital programme scheme - Economy & Planning Job No 107105). There is strong local support for the scheme which includes extending the car park over a strip of highway verge and improving the appearance of the slip road.
  - **Totton Town Centre Environmental Enhancements** –This scheme is included in the approved expenditure plan (agreed capital programme scheme -Economy & Planning Job No 002202). This schemes includes landscaping as part of an environmental improvement in the vicinity of the Salisbury Road / Water Lane junction.
  - **St John's Car Park, Hythe** - This scheme is included in the approved expenditure plan (agreed capital programme scheme - Economy & Planning Job No 107101 for 2006/7). This is a car park improvement scheme which includes modifications to car park accesses although the value of the works on the highway may mean a Section 278 Agreement is not required. HCC are funding the adjacent highway works.
- 1.4 To avoid a succession of reports to Cabinet relating to schemes, most of which will have already be approved for inclusion in the New Forest District Council's capital programmes, it is suggested that Cabinet agree to:
- 1.4.1 The principle of the New Forest District Council undertaking environmental enhancement works etc. in their own right on HCC's land.
- 1.4.2 Section 278 Agreements (model agreement attached as Appendix 1) being entered into with HCC for individual schemes subject the agreement of the relevant Portfolio Holder.

- 1.5 For minor works (typically £10,000 or less) HCC have indicated that a Section 278 Agreement may not be required provided HCC are satisfied with the alternative arrangements to safeguard their interests. Likewise, the Head of Legal & Democratic Services of New Forest District Council would need to be satisfied as to those more informal arrangements from this Council's perspective.
- 1.6 Where HCC do not require a Section 278 agreement it is also proposed that, subject to certain conditions, delegated authority should be given to named officers of New Forest District Council to enter into alternative arrangements with Hampshire County Council to execute its own minor works on the highway.

## **2. SUMMARY OF THE SECTION 278 AGREEMENT**

- 2.1. For the purposes of the Highways Act 1980 the County Council is the local authority for highways (except trunk roads) in Hampshire.
- 2.2. If the County Council is satisfied that it will be of benefit to the public for the New Forest District Council to execute works on the public highway which the County Council is authorised to undertake using its powers under the Highways Act 1980, it will enter into a Section 278 Agreement that permits New Forest District Council to undertake those works, provided that the District Council agrees to pay for the construction and maintenance of the works as well as some associated administrative costs.
- 2.3. The Section 278 Agreement includes a number of obligations relating to, *inter alia*, Works, Payments, Indemnity, Public and Professional Liability Insurance and Land Compensation (although it is not proposed that the New Forest District Council will seek to progress schemes which incur any costs in this latter regard).
- 2.4 It is proposed that Cabinet approve the use of the Section 278 Agreement attached to this report as Appendix 1, to enable the New Forest District Council to execute its own improvement schemes on the highway pursuant to Sections 38 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972.

## **3. DELEGATIONS**

- 3.1 It is proposed that Portfolio Holders will be asked to approve individual works suitable for inclusion in Section 278 Agreements to avoid the need for Cabinet to authorise individual schemes, subject to compliance with the New Forest District Council's Financial Regulations.
- 3.2 It is proposed that delegated authority should be given to the Chief Executive, the Head of Legal and Democratic Services and Democratic Services Manager of New Forest District Council to enter into Section 278 Agreements, provided that the improvement works have been authorised by the relevant Portfolio Holder (subject to Financial Regulations)

- 3.3 It is proposed that for minor improvement works where HCC do not require a Section 278 Agreement the Principal Engineers may enter into alternative arrangements required by Hampshire County Council to enable the New Forest District Council to execute its own minor works on the highway, provided that the arrangements are to the satisfaction of the Head of Legal and Democratic Services.

#### **4. FINANCIAL IMPLICATIONS**

- 4.1 If the Section 278 Agreement is not entered into (or alternative arrangements made for minor environmental improvement works etc. on highway land where HCC do not require a Section 278 Agreement) then either:
- it will not be possible to implement the scheme, or
  - the scheme, if practical, will need to be redesigned to avoid highway land.
- This will result in either abortive design work and/or additional design work to modify the original proposal.
- 4.2 Some schemes generate income, e.g. car parks, and the loss of spaces could result in less income.
- 4.3 It is envisaged that funding (may include developers' contributions) for the works will have been secured prior to a Section 278 Agreement being entered into. Where HCC require a Section 278 agreement the failure to complete one could mean the scheme has to be abandoned. This could give rise to reduced capital expenditure.
- 4.4 Where developers contributions have been collected for a specific proposal that subsequently does not go ahead then the New Forest District Council would normally be under an obligation to return any unspent contributions to the developer unless the developer agreed otherwise.

#### **5. ENVIRONMENTAL IMPLICATIONS**

- 5.1 Section 278 Agreements will allow the New Forest District Council to undertake, at its own expense, environmental enhancement works, works linked to the improvement of car parks etc. on the public highway within the District that would not otherwise qualify for inclusion in HCC's programme. These works could not be progressed if the Section 278 agreements that HCC require are not entered into. Opportunities to improve the environment would therefore be lost.

#### **6. CRIME AND DISORDER IMPLICATIONS**

- 6.1 There are no crime and disorder implications associated with this report.

#### **7. PORTFOLIO HOLDER'S COMMENTS**

- 7.1 The Portfolio Holder supports the recommendations.

## 8. RECOMMENDATIONS

- 8.1 It is recommended that Cabinet should:
- 8.1.1 approve the principle of the New Forest District Council undertaking environmental enhancement works, works linked to the improvement of car parks etc. in their own right on HCC's land and approve the use of the Section 278 Agreement shown in Appendix 1 (subject to any future amendments being agreed by the New Forest District Council's Head of Legal & Democratic Services) to enable the District Council to execute its own improvement schemes on the public highway,
  - 8.1.2 note that New Forest District Council's Portfolio Holders will be asked to approve future individual works for inclusion in specific Section 278 Agreements (subject to Financial Regulations),
  - 8.1.3 to approve the entering into of Section 278 Agreements for the schemes listed at paragraph 1.3,
  - 8.1.4 delegate to New Forest District Council's Chief Executive, Head of Legal and Democratic Services and Democratic Services Manager authority to enter into Section 278 Agreements, provided that the improvement works have been authorised by the relevant New Forest District Council Portfolio Holder,
  - 8.1.5 authorise New Forest District Council's Principal Engineers to enter into alternative arrangements with Hampshire County Council for minor improvement works where HCC does not require a Section 278 Agreement, provided that the arrangements are to the satisfaction of the District Council's Head of Legal and Democratic Services.

### Further Information:

Doug Wright  
Principal Engineer  
Commercial Services  
Tel: 023 8028 5908  
E-mail: [doug.wright@nfdc.gov.uk](mailto:doug.wright@nfdc.gov.uk)

Nick Hunt  
Principal Engineer (Transportation)  
Community Services  
Tel: 023 8028  
E-mail: [nick.hunt@nfdc.gov.uk](mailto:nick.hunt@nfdc.gov.uk)

### Background Papers:

Agency Agreement

Draft Agreement

**DRAFT-1.8.05**

DATED

HAMPSHIRE COUNTY COUNCIL

-and-

NEW FOREST DISTRICT COUNCIL

Agreement for Highway Works at  
pursuant to S.278 Highways Act 1980

HCC File Ref: FT31/AF/8/DK

J A Pattison  
Head of Corporate & Legal Services  
Hampshire County Council  
The Castle  
Winchester  
Hampshire SO23 8UJ

**HAMPSHIRE COUNTY COUNCIL**  
**DRAFT SECTION 278 AGREEMENT**

Date:

**PARTIES:**

1. HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire  
SO23 8UJ ("the County Council")
2. [ ] of [ ] ("the Council")

**WHEREAS:**

- 1 The County Council is the Highway Authority for Hampshire
- 2 The Council is desirous of entering into this Agreement for the purposes of securing the carrying out of highway works described in Schedule I hereto ("the Works") and the Council has agreed that it will pay the cost of construction and maintenance of the Works
- 3 The County Council agrees to accept the dedication for that part of the Land upon which the Works are to be constructed which does not currently form part of the public highway and to adopt that part of the Land and the works as highway maintainable at public expense on the terms and conditions hereinafter contained

- 4 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 Council which Works the County Council is authorised to execute pursuant to the Highways Act 1980 (as amended) or are the subject of planning permission reference ("the Planning Permission")

NOW THIS AGREEMENT WTTNESSETH as follows:

1. This Agreement is made pursuant to Sections 38 and 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972
2. Unless otherwise specified where any agreement certificate or approval is to be given by the County Council under the terms of this Deed then the same shall not be unreasonably withheld or delayed

### **Council's Covenants**

3. The Council hereby covenants with the County Council as follows:

**(a) The Works**

To carry out at its own expense and at no cost to the County Council the Works comprising a number of schemes 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 and to complete the Works within 24 months of the date hereof

**(b) Payments**

To pay to the County Council:

- (i) Prior to the issue of the Certificate of Completion referred to in Clause 4(b) and in respect of the future maintenance of;-
  - (a) highway structures (if any); and
  - (b) traffic signal installations (if any) (including any variable message signs and bus passenger information systems) the sum of £[ ] or 20% of the final cost of the construction of those works
  - (c) hydrobrakes (if any) a commuted sum of [ ] per hydrobrake
  - (d) soakaways (if any) - a commuted sum of £3,500.00 per soakaway PROVIDED THAT should any soakaway have a cubic capacity exceeding 5 cubic metres including any nibble drains terminal soakaways or linear ditch soakaways an additional sum will be payable calculated pro rata in respect of any cubic capacity in excess of 5 cubic metres
  
- (ii) on the date hereof the whole of the reasonable costs incurred by the County Council's Head of Corporate and Legal

Services ("the Head of Corporate and Legal Services") and the County Council's Director of Environment ("the Director") in the preparation of this Agreement which includes preliminary design costs

(iii) on demand the reasonable cost to the County Council of approving the -detailed contract drawings for the Works including structural approvals road safety audits and also the cost of the road safety audits referred to in Schedule 2 as set out in Schedule 1 against individual schemes

(iv) on demand the full cost to the County Council of any road traffic orders required to facilitate the Works

(v) on demand the full cost to the County Council of any permanent traffic regulation orders or road hump notices

(vi) on demand the full cost to the County Council of registration of any easement(s) referred to in Schedule 2 Clause 1(g)

(vii) on demand the reasonable cost to the County Council in inspecting the Works referred to in Schedule 2, Clause 3

**(c) Indemnity**

That it hereby indemnifies the County Council in respect of all actions claims demands 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 other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of (e) below shall apply

**(d) Public Liability Insurance and Professional Indemnity Insurance**

The Council shall without prejudice to its liability under (c) and (e) 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 Professional Indemnity Insurance in the sum of £5,000,000

**(e) Land Compensation Act Claims**

The Council hereby indemnifies the County Council against all costs associated with its responsibilities and all claims pursuant to Part I and Part II of the Land Compensation Act 1973 (as amended) and regulations made thereunder (including claims the County Council determine should be met under the provisions of Regulation 4 of the Noise Insulation Regulations 1975 (as amended by the Noise Insulation (Amendment) Regulations 1988) arising out of the use of the Works and for the purposes

of this indemnity the Council is deemed to carry out the Works as agent for the County Council

**County Council's Covenants**

4. The County Council hereby covenants with the Council as follows:
  - (a) That it hereby authorises the Council's contractor approved by the Director in accordance with Schedule 2 paragraph 8(b) to carry out the Works within the public highway subject to and strictly in accordance with the terms conditions and stipulations set out in Schedule 2
  
  - (b) That upon completion to the satisfaction of the Director of each Scheme of Works detailed in Schedule 1 the County Council will issue a certificate of completion ("the Certificate of Completion") (PROVIDED THAT the Director shall be at liberty to delay the issue of the Certificate of Completion in respect of any Scheme if in his opinion the Works in respect of that Scheme are likely to be used by heavy vehicles driven by or on behalf of the Council 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) and as from the date of the Certificate of Completion that part of the Works as are at the date of this Deed within the public highway or which are on that part of the Land which will become public highway pursuant to Schedule 2, Clause 1(f) of this Deed shall become maintainable at public expense SAVE THAT for the first twelve months thereafter ("the Maintenance Period") the Council 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 during the Maintenance Period have been made good and all sums due under this Agreement have been paid the Director shall thereupon issue a certificate of maintenance of the Works ("the Certificate of Maintenance")

5. It is further agreed between the parties that:
  - (a) If the Works are subject to the Construction (Design and Management) Regulations 1994 ("the CDM Regulations") then the Council shall be the only Client for the purpose of the CDM Regulations and for the avoidance of doubt the County Council hereby appoints the Council as the only Client for any part of the Works as may be within the public highway
  - (b) Without prejudice to the terms hereof if the Council fails to complete the Works in accordance with its obligations hereunder the County Council shall after not less than fourteen days notice in writing to the Council be entitled to complete the Works or reinstate the highway or complete such alternative works as the Director considers appropriate in default with its own employees or by contract or otherwise and to recover the cost as certified by the Director

6. This Deed shall be registered as a Local Land Charge
  
7. If the Works have not commenced in accordance with the terms of this Agreement within 24 months of the date hereof this Agreement (save always for any outstanding liabilities on the part of. the Council) shall absolutely determine and cease to have any effect
  
8. Reference wherever it appears in this Deed to the Council the Head of Corporate and Legal Services and the Director shall include any successor in title thereto
  
9. Dispute Resolution
  - a) The County Council and the Council will use their best efforts to negotiate in good faith and settle any dispute that may arise out of or relate to this Agreement. If any dispute cannot be settled amicably through ordinary negotiations then it shall in the first instance be referred to the Project Manager for the County Council and Project Manager for the Council for discussion and resolution
  
  - b) If the dispute is not resolved through discussion between the County Council and Council the dispute will be referred to the Director of Environment for the County Council and the Director for the Council who shall meet within 7 days (or such other period as may be agreed) of the reference to attempt to resolve the dispute

c) The County Council and Council will use all reasonable endeavours to reach a negotiated resolution to the dispute through the above Dispute Resolution procedure. If the dispute is not resolved at the meeting referred to in (b) above, the dispute will be referred to the Adjudication in accordance with the Housing Grants, Construction and Regeneration Act 1996

10. Contract (Rights of Third Parties) Act 1999

10.1 None of these provisions of this Agreement are intended to or will operate to confer any benefit (pursuant to the Contracts (Rights of Third Parties) Act 1999) on a person who is not named as a party to this Agreement

## SCHEDULE 1

The Works referred to in Recital 4 of this Agreement are detailed below and are as shown on the Principal Drawings referred to and shall be completed within the timescales specified in each case

ie      Scheme name  
          Description  
          Drawing number  
          Scheme Estimate Fees chargeable under Clause 3(b)

TOGETHER WITH in ail cases such ancillary works as may be required by the Director 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 Director 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 Director and the Works are commenced within three months of the date of the written approval then the Director 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:
  - (a) Detailed contract drawings an independent safety audit a Designer's Safety Plan a programme of work ("the Programme") and traffic management measures have been prepared by the Council and approved by the Director in writing
  - (b) Any necessary licences have been obtained and notices given pursuant to the New Roads and Street Works Act 1991
  - (c) If the Works are subject to the Construction (Design and Management) Regulations 1994 ("the CDM Regulations") the Council as the only Client has provided to the Director :-
    - (i) written details of the Planning Supervisor and the Principal Contractor
    - (ii) a copy of the Health & Safety Executive's ("HSE") confirmation of receipt of a declaration by the Client pursuant to Regulation 4 of the CDM Regulations
    - (iii) a copy of the Notification of Project (form HSE10) to the HSE pursuant to Regulation 7 of the CDM Regulations

- (d) In the event the County Council considers it necessary the Council shall undertake a noise survey and assessment in respect of the Works by a noise expert approved by the Director in such a manner and at such times and locations approved by the Director and a copy of the survey and assessment has been submitted to the Director and any requirements arising therefrom have been undertaken by the Council at its own expense
  
- (e) The copy insurance policy and receipts referred to in Clause 3(d) have been produced
  
- (f) A duly executed Deed of Dedication in the form acceptable to the County Council has been delivered to the County Council for that part of the land upon which the Works are to be constructed which does not currently form part of the public highway and is in the opinion of the County Council required as public highway such dedication to take effect upon the issue of a Certificate of Completion in respect of such Works PROVIDED THAT on default of the Council of any of the terms of the Agreement the County Council shall have the right to enter such land to complete the works and in this case dedication shall be effective from the date of such entry
  
- (g) A duly executed Deed of Easement in favour of the County Council in the form acceptable to the County Council has been delivered to the County Council in respect of the right to enter on any part of the Land required for the purpose of inspection maintenance repair or renewal of any part of the Works where such land does not form part of the public

highway such grant of easement to take effect from the issue of  
Certificate of Completion

2. Detailed contract drawings for highway structures shall be prepared by the Council and submitted for written approval to the Director in accordance with Department for Transport Document BD2/89 or any revision or replacement thereof and the structural design and checking procedure shall be carried out by a chartered engineer familiar with Department for Transport Codes of Practice who shall state on Form TA1 or revision or replacement thereof the documents to be agreed as applicable
3. The Council shall pay the County Council's reasonable costs incurred in inspecting the Works in respect only of those Schemes identified in the Schedule where the inspection fees payable within 28 days of receipt of an invoice from the County Council
4. Without prejudice to the Programme the Council shall notify the Director in writing at least 28 days prior to the commencement of any work connected with statutory undertakers equipment and shall further notify the Director in writing at least 28 days prior to the commencement of the Works of its intention to proceed with the Works and shall further notify the Director in writing at least 24 hours prior to the commencement of each and every stage of excavation and concrete operations associated with highway structures

5. Before commencing any part of the Works the Council 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 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 Director
  
6. The Works shall be signed and protected to at least the standards of Chapter 8 of the Traffic Signs Manual published by Her Majesty's Stationery Office and the proposed arrangements shall be approved in writing by the County Council and the Police before the Works commence
  
7. The Works shall be carried out in accordance with the Volume 1 of the Manual of Contract Documents for Highway Works published by Her Majesty's Stationery Office in 1991 as modified and extended by the Supplements and Revisions and further as modified and extended by Supplements issued by the Director all as in force at the date of commencement of the Works ("the Specification") and in accordance with the Programme
  
8. The Works shall be carried out:
  - (a) under the terms of a construction contract approved by the Institution of Civil Engineers jointly with the Association of Consulting Engineers and the Federation of Civil Engineering Contractors unless an alternative

contract is agreed by the County Council in writing in which case the Works will be carried out by such alternative contract; and

- (b) by a roadworks contractor approved by the Director; and
- (c) under the direction of an Engineer ('the Engineer') to be employed by the Council and approved by the Director and who shall be independent of the roads contractor

9. (a) The inspection and direction of the Director shall be accepted and the Works shall be carried out in accordance with the approved contract drawings and to a standard of workmanship and quality of materials approved by the Director

- (b) During the progress of the Works the Director 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 Council shall give effect to any reasonable requirements made or reasonable direction given by the Director to conform to the detailed plans drawings the Specification and the Programme

- (c) The Council shall afford full opportunity for the Director 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 Director whenever any such work or foundations is or are ready for examination

(d) The Director shall have power in his 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 he may reasonably find to be not in accordance with the detailed plans drawings and the Specification

(e) The Council 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

(f) Immediately prior to the issue of the Certificate of Completion and (also if required by the Director within four months of the date of the opening of the Works to traffic) on site road safety audits shall be carried out by the Engineer in the presence of the Director and arising therefrom the Director shall be at liberty to require such alterations to the approved detailed contract drawings and to the Works as may be reasonably required to ensure the safety of users of the highway

10. Without prejudice to the generality of clause 3(a) the Works shall be completed to the satisfaction of the Director in accordance with timescales specified in Schedule 1

11. The Council 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 Director
  
12. The Council 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
  
13. The Council shall provide the Director with the following within 3 months of issue of the Certificate of Completion:-  
in respect of highway structures:
  - (i) 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  
in respect of the Works generally:
  - (ii) Health and Safety files
  - (iii) accurate 1:500 scale electronic data sets negatives of "as built" drawings
  - (iv) 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

- (v) records of the sources of supply of all other manufactured materials (eg. drainage goods fencing materials traffic signs electrical components and cables etc)
  
- (vi) an 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 Director
  
- (vii) CCTV Drain Survey

IN WITNESS whereof the parties hereto have caused their respective Common Seals  
to be hereunto affixed to this Deed the day and year first before written

THE COMMON SEAL of HAMPSHIRE )  
COUNTY COUNCIL was hereunto affixed )  
in the presence of:- )

Authorised Signatory

THE COMMON SEAL of )  
was hereunto affixed )  
to this Deed in the presence of:- )

Authorised Signatory