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Date: *9 December 2014*

NOTIFICATION OF PORTFOLIO HOLDER DECISION(S)

On 8 December 2014 Cllr Vickers, the Planning and Transportation Portfolio Holder, made the following decision(s). Any member of the Council, who is not a Portfolio Holder, who considers that this decision should be reviewed should give notice to the Monitoring Officer (Grainne O'Rourke) (in writing or by e-mail) to be received **ON OR BY TUESDAY 16 DECEMBER 2014**.

Details of the documents the Portfolio Holder considered are attached.

DECISION:

To allocate developers' contributions towards various transport proposals, as set out in Appendix 1 to the report considered by the Portfolio Holder, to give such undertakings to the County Council as may be necessary, and to enter into an Agreement with the County Council to secure the implementation of the proposals.

REASON(S):

As set out in the report considered by the Portfolio Holder.

ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED:

As set out in the report considered by the Portfolio Holder.

CONFLICTS OF INTEREST DECLARED:

None

For Further Information Please Contact:

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THE DESIGN AND IMPLEMENTATION OF TRANSPORT PROPOSALS USING DEVELOPERS' CONTRIBUTIONS AND AGREEMENT OF ENTERING INTO A SECTION 278 AGREEMENT

1. ITEMS FOR DECISION

- 1.1 The purpose of this report is to match developers' transport contributions that New Forest District Council (NFDC) has received, or are due to receive, to agreed transport proposals mitigate the impact of the contributing developments, in accordance with the National Planning Policy Framework (NPPF).
- # 1.2 The allocation of developers' transport contributions for design and implementation of the proposals set out in Appendix 1.
- 1.3 The inclusion of developer funded proposals to be implemented by NFDC as Hampshire County Council's (HCC) traffic management partner in NFDC's traffic management programme as set out in Appendix 1.
- 1.4 That the Head of Legal and Democratic Services, Chief Executive or Democratic Services Manager can enter into an agreement in accordance with Section 278 of the Highways Act 1980 relating to works at Christchurch Road, Ringwood.

2. POLICY FRAMEWORK, PRIORITIES & OBLIGATIONS

- 2.1 The Core Strategy for the District outside the National Park (CS) (link at http://www.newforest.gov.uk/media/adobe/o/t/FINAL_DOCUMENT.pdf) includes Policy CS24 (page 79) that states that "*Contributions will be sought to improve pedestrian and cycle routes and assist public transport to improve accessibility by non-car modes*".
- 2.2 Saved District Local Plan policies http://www.newforest.gov.uk/media/adobe/m/r/LIST_OF_NEW_FOREST_DISTRICT_LOCAL_PLAN_POLICIES_THAT_REMAIN_IN_OPERATION_FROM_26TH_OCTOBER_2009.pdf includes specific references to:
- New and improved footpaths and cycleways (Policy DW-T10, starts at page 103)
 - Safeguarding proposed footpaths and cycleways (Policy DW-T11, starts at page 105).
- 2.3 A list of transportation proposals was agreed in principle by NFDC and HCC and this has now been incorporated into HCC's Transport District Statement which can be accessed via HCC's website at: <http://www3.hants.gov.uk/transport-planning/transport-statements.htm>. This list, including revisions, has been agreed following widespread consultation, see Section 4 below.
- 2.4 NFDC is under a legal obligation to ensure the developers' contributions it has collected are spent in accordance with the NPPF. It is expected that the proposals the contributions are being used to fund will benefit the development. Also NFDC has to ensure that the use of contributions is consistent with the terms of:

- any unilateral undertakings given by developers, if that is how the contribution has been secured
- any Section 106 planning agreement which sets out in detail how the contribution should be used (generally the older agreements)

2.5 The factors that are taken into consideration, when allocating contributions to agreed transportation proposals include:

- **The inclusion of the scheme in a published programme** (e.g. traffic management, safer routes to schools or minor capital programmes).
- **How advanced is the proposal.** Has a deliverable proposal been identified? For larger schemes there may be a feasibility study that considered alternative options and identified a preferred option with cost estimates. For smaller schemes an outline proposal may have been prepared.
- **Support for the proposal** – For larger schemes a public consultation may have been arranged. For traffic management schemes informal discussions with Members and Town/Parish Councils may have taken place.
- **The impact that the available contribution(s) will have on enabling the scheme to be progressed.** May be better to allocate the larger contributions to the more expensive schemes. If a scheme is unlikely to benefit other developments then it may be best to use the available contributions for other schemes. The contribution may be sufficient to allow a partly funded scheme to be implemented.
- **Does the proposal allow the benefits of previous schemes to be enhanced?** If a scheme is being implemented in phases it is often the final phase that delivers the desired outcome.
- **Appeals** - If a scheme is to be implemented as it has been identified as a requirement for a development by an Inspector at an appeal.

2.6 The report at <http://www.newforest.gov.uk/committeedocs/p-tphd/CDD09000.pdf> sets out the policies, priorities etc. for proposals to be implemented by NFDC as Hampshire County Council's traffic management partner.

3. FINANCIAL IMPLICATIONS

3.1 Developers' contributions have been received for the sole purpose of progressing transport proposals and can only be used for that purpose. Details of the legal agreements which indicate that a contribution is to be used for a specific purpose are set out in Appendix 2. Unspent contributions normally have to be returned to developers subject to the terms of the agreement if the contribution is for a specific proposal that is no longer going to be progressed. If an agreement requires that unspent contributions be spent by a stated date (otherwise the contribution has to be returned) this is also referred to in Appendix 2.

3.3 Subject to Portfolio Holder approval:

- The developers' contributions that NFDC has received will be allocated to the transport proposals as set out in Appendix 1.
- Where indicated the whole contribution or a part of the contribution will be passed to Hampshire County Council (HCC) so as to enable them to design and implement either all or part of the scheme subject to work on the contributing development having started on site (see below).

3.4 The sum to be allocated is not always sufficient to fund the total cost of the proposals. Therefore, where indicated, some proposals will be implemented in phases.

- 3.5 Expenditure of individual contributions will not be committed if there are known circumstances where a contribution has been received by the Council but development may not go ahead (e.g. if the contribution has been received but the issue of a planning permission is subject to an outstanding planning appeal).
- 3.6 The inclusion of developer funded proposals in NFDC's traffic management programme as a reserve scheme will not have any direct financial implications as the proposal will only be progressed as and when the existing allocations and/or developers' contributions are sufficient to cover NFDC's costs.
- 3.7 Funding towards the implementation of the scheme at Christchurch Road, Ringwood was formally agreed via a cabinet report in February 2014 and a subsequent Portfolio Holder decision in June 2014.

4. CONSULTATION INPUT

- 4.1 Consultation on the District Local Plan and Core Strategy has been undertaken on a very wide basis including with local members and the respective Town Councils.
- 4.2 Local Members, Town & Parish Councils and Members of the New Forest Transport Community Action Network were consulted on the list of transport proposals, and revisions to it, please see 2.3 above.
- 4.3 Local Members, Town & Parish Councils are involved in the preparation of NFDC's traffic management programmes which are subsequently agreed by NFDC's Planning & Transportation Portfolio Holder and HCC. Likewise NFDC Councillors are invited to meetings to discuss the allocation of developers' contributions in their respective parishes.
- 4.4 Officers of HCC's Environment Department have been consulted and have agreed to the allocation of contributions set out in this report. NFDC Ward Councillors and local County Councillors have been consulted and their comments, together with details of consultations on any specific public consultations, are set out in Appendix 3.
- # 4.5 Prior to a Traffic Management scheme being implemented further consultations will be undertaken (and consents from HCC/Local HCC Member is sought if a requirement of the HCC/NFDC TM Partnership Agreement) including:
- Local HCC and NFDC Members
 - HCC Environment Department Officers
 - Town/Parish Councils
- 4.6 In addition to the developers' contributions meetings held for all areas of the New Forest District (referred to in paragraph 4.3) separate meetings were held with District and County members for both Lymington and Fawley. These were held to further discuss and agree the allocation of developers' contributions in these parishes. The decisions made at those meetings are reflected in the allocations set out below.
- 4.7 The scheme comprising a shared use (pedestrian and cycle) footway, new parking bays and associated landscaping at Christchurch Road, Ringwood has been consulted on widely and is included in the New Forest District Statement schemes list. A public meeting was held to discuss the scheme in 2012 and a follow up meeting with interested parties was held in 2014. This scheme is supported by Cllr Steve Rippon-Swaine (Hampshire County Council, New Forest District Council & Ringwood Town Council) and Cllr Jeremy Heron (New Forest District Council).

5. ENVIRONMENTAL IMPLICATIONS

- 5.1 The identified proposals have environmental benefits of encouraging walking, cycling and the use of public transport.

6. CRIME AND DISORDER IMPLICATIONS

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

7. EQUALITY AND DIVERSITY IMPLICATIONS

- 7.1 There are no equality and diversity implications associated with the other proposals set out in this report.

8. PROPOSED DECISION

- # 8.1 That the developers' contributions, held and extant, be allocated toward the proposals as set out in Appendix 1.
- # 8.2 That where indicated, in Appendix 1, NFDC is to give HCC a binding commitment to pay the allocated developers' transport contributions to HCC for the costs reasonably incurred by HCC for the implementation of the proposals referred to as soon as practical after these works are substantially complete. Provided that both the sum to be paid to HCC does not exceed the developers' contributions sums now or previously allocated to the proposals and also provided that work on the contributing development has started.
- # 8.3 That where indicated in Appendix 1 NFDC is to give HCC a binding commitment to pay part of the allocated developers' transport contributions to HCC for the costs reasonably incurred by HCC for the design towards the proposals referred to provided that both the sum to be paid to HCC does not exceed the developers' contributions sums now or previously allocated to the proposals and also provided that work on the contributing development has started.
- 8.4 That Officers may enter into an agreement in accordance with Section 278 of the Highways Act 1980 relating to works comprising a shared use (pedestrian and cycle) footway, new parking bays and associated landscaping at Christchurch Road, Ringwood (as set out in Appendix 4).

9. REASONS

- 9.1 To utilise developers' contributions as set out in the legal agreements and to enable the identified schemes to be progressed.
- 9.2 To encourage walking and cycling, encourage the greater use of public transport and reduce the risk of personal injury accidents.

10. ANY ALTERNATIVE OPTIONS CONSIDERED AND REJECTED

10.1 Not to contribute towards the identified proposals. The schemes have been selected through joint working arrangements between HCC and NFDC officers taking account of proposals included in the NFDC Local Plan, informal Local Member meetings, New Forest Strategic Cycle Network and feasibility/access studies. If contributions are not allocated then the identified proposals will be delayed and possibly not implemented at all. This would be contrary to the Council’s transport related policies and this option is therefore not suggested.

11. CONFLICTS OF INTEREST DECLARED

11.1 No Councillors declared an interest.

12. PORTFOLIO HOLDER ENDORSEMENT

12.1 I have agreed to the recommendations of this report.

Signed: F P VICKERS Date:8.12.14

Cllr Paul Vickers
Portfolio Holder Planning & Transportation

FURTHER INFORMATION: Please contact Nick Hunt Principal Engineer (Transportation) Tel: 023 8028 5588 E-mail: nick.hunt@nfdc.gov.uk David Stannard Planning Policy Officer (Transportation) Tel: 023 8028 5588	BACKGROUND PAPERS Published papers E-mails in N Hunt’s IT Microsoft Office System S106 Files on Transportation Section shared IT Drive Section 106 Agreements, Lymington Town Hall

Date notification of this Decision given – 9 December 2014
Last date for call-in – 16 December 2014

APPENDIX 1

Please note that all the contributions referred to below in italics have not been paid to NFDC (as of 01.12.14). Therefore if/when these contributions are received they will be allocated accordingly.

Lymington					
Proposal	Cost Estimate	Sums Already Allocated	Suggested Further Allocation	Contribution Allocated For	Planning Application No
High Street pedestrian improvements (NFDC0198 LP/T/34) / Captains Row junction pedestrian improvements and speed reducing features (NFDC0207 LP/T/43)	£50,000	£0	£50,000.00	Design and phased implementation by NFDC	11/97849
Additional Fingerposts - pedestrian enhancements	£4,000	£0	£4,238.81	Design and phased implementation by NFDC	06/84176
South Street: proposed signalised junction including pedestrian crossing phase	£220,000	£0	£67,214.98	Design and phased implementation by NFDC/HCC	11/97849
			£147,660.00		13/11561
			£4,390.00		12/98817
			£2,500.00		12/98611
		TOTAL	£221,764.98		
Brook Road: conversion of Highways verge to pedestrian footway	£10,000	£0	£10,700.00	Design and phased implementation by NFDC/HCC	10/96556
Ramley Road: provision of traffic calming measures (speed tables) (NFDC0206 - LP/T/42)	£130,000	£9,000	£16,960.00	Design and phased implementation by NFDC/HCC	09/94314
			£3,745.00		09/94359
			£3,745.00		10/95967
			£3,745.00		10/96134
			£27,606.00		10/96153
			£36,386.46		11/97261
			£18,083.00		13/11239
			£3,745.00		14/10708
			£18,404.00		14/11138
		TOTAL	£132,419.46		
Highfield: footpath extensions	£20,000	£0	£5,557.00	Design and phased implementation by NFDC/HCC	13/11314
			£2,336.60		14/10237
			£11,235.00		14/10561
			£700.00		14/10429
			£19,828.60		
Any residual amounts of contributions following implementation of the above are to be reallocated to schemes with a funding shortfall to allow their implementation.					

FAWLEY					
Proposal	Cost Estimate	Sums Already Allocated	Suggested Further Allocation	Contribution Allocated For	Planning Application No
Rollestone Road / Long Copse / Newlands Road / Hampton Lane crossroads: addition of pedestrian crossing phase to the signalled junction	£25,000	£0	4,225.00	Design and phased implementation by HCC	99445*
			£3,774.90		95364
			£21,562.50		14/10592
		TOTAL	29,562.40		
Any residual amount following implementation of the above is to be reallocated to FA/T/33 – uncontrolled crossing on Fawley Road					
FA/T/33 - Uncontrolled crossing on Fawley Road (near Infants School)	£30,000	£0	£1,980.00	Design and phased implementation by NFDC/HCC	13/10640
			£1,980.00		13/10551
			£1,980.00		14/11149
			£964.00		11/97218
			£3,745.00		13/10145
			£3,745.00		13/10563
			£7,940.00		13/11196
			£11,235.00		13/11615
		£29,609.00	TOTAL		

* Contribution previously allocated to FA/T/01 – Long Lane to Cadland cycle route

TOTTON					
Proposal	Cost Estimate	Sums Already Allocated (and remaining)	Suggested Further Allocation	Contribution Allocated For	Planning Application No
Ringwood Road cycle scheme, Totton	£100,000	£30,789.89	£3,745.00	Design and phased implementation by HCC	12/98348
			£3,745.00		12/99517
			£1,980.00		13/11493
			£3,745.00		14/10031
			£20,545.09		13/10172
			£3,889.16		12/99412
			£77,802.27		12/99250
			£115,451.52		
Any residual amount following implementation of the above is to be reallocated to the World Stores Improvement scheme (Scheme ref NFDC0391 or TE/T/39)					

RINGWOOD		
<i>It is suggested to reallocate any residual amount following implementation of the Castleman Way to Hightown Road (via Victoria Gardens) cycle and pedestrian scheme (Scheme ref PC11) to provide further cycle enhancements along Castleman Way.</i>		
NFDC Codes/Refs:	Scheme previously allocated towards	Residual Amount
107443: PC11	Castleman Way to Hightown Road (via Victoria Gardens)	Approx. £14,000 (but subject to change)

SUMMARY OF RELEVANT LEGAL (SECTION 106) AGREEMENTS

PARISH REFERENCE	DEVELOPERS NAME(S) - LOCATION OF DEVELOPMENT	PLANNING APPLICATION NO	SUM CURRENTLY UNALLOCATED	DEVELOPMENT STARTED	Works referred to Legal Agreements / Remarks
LP	Redrow Homes (South West) Ltd - FORMER WEBBS FACTORY SITE, BRIDGE ROAD, LYMINGTON	97849	£117,214.98	Y	One or more of the measures in the seventh schedule (which includes improvements on High Street and Captain's Row) or any other measures which will mitigate the impact of the first development on the highway network in the vicinity of the first land

COMMENTS FROM NFDC/HCC MEMBERS**Consultees on Suggested Allocation of Developers' Contributions:**

Cllr Alexander Kilgour; Cllr Penny Jackman; Cllr Elizabeth Lewis; Cllr Anna Rostand; Cllr Tony Swain; (NFDC)
 Cllr Jacqui England (HCC)
 Cllr Alexis McEvoy, Cllr Bob Wappet, Cllr Alan Alvey, Cllr Allan Glass (NFDC)
 Cllr Philip Fawkes (HCC)

No objections made.

Christchurch Road, Ringwood**Consultation/Portfolio Holder Decisions**

22nd February 2010 – cycle route proposals agreed via a Portfolio Holder decision:

<http://www.newforest.gov.uk/committeedocs/p-tphd/CDD05714.pdf>

- Consultation included NFDC and HCC Councillors, HCC, NFDC and neighbouring authorities Technical Officers, New Forest Transport Community Action Network Members, Town and Parish Councils.
- No objections received.

26th April 2012 – Public meeting to discuss the findings of the parking survey and proposals for a cycle route, improved visual appearance of the area including addressing the issue of verge parking.

31 July 2012 – Informal Members' and Officers' Scheme group meeting at Ringwood Gateway – the meeting was to discuss and agree an emerging proposal

September 2012 - The Executive Member for Economy, Transport and Environment at Hampshire County Council adopted the New Forest District Transport Statement (including this scheme):

<http://www3.hants.gov.uk/transport-schemes-index/transport-statements>

February 2014 – Cabinet Decision: Allocation of Developers' Contributions. £217,000 was agreed to be allocated towards the implementation of the scheme.

May 2014 – detailed scheme proposals consulted on (including letters delivered to residents adjacent to the proposals and site notices posted on site). Consultation included Ringwood Town Council, Cllr Barbara Woodfield (NFDC); Cllr Christine Ford (NFDC); Cllr Michael Thierry (NFDC); Cllr Jeremy Heron (NFDC); Cllr Steve Rippon-Swaine (HCC and NFDC); HCC and NFDC Technical Officers.

August 2014 – meeting with residents who had previously objected to the scheme. The scheme was amended to address concerns raised.

The scheme is included in the 2014/15 Traffic Management Programme (see Portfolio Holder decision <http://www.newforest.gov.uk/committeedocs/p-tphd/CDD09000.pdf>)

Section 278 Agreement for Highway Works at Christchurch Road, Willow Drive, Ringwood

DATED

2014

HAMPSHIRE COUNTY COUNCIL

- and -

NEW FOREST DISTRICT COUNCIL

Deed of Agreement for Highway Works at Christchurch Road, Willow Drive, Ringwood
pursuant to (inter alia) S.278 Highways Act 1980

HCC Legal File Ref:

HCC Dev. Con. File Ref:

Kevin Gardner LLB, Solicitor
Head of Legal Services
Hampshire County Council
The Castle
Winchester
Hampshire SO23 8UJ

HAMPSHIRE COUNTY COUNCIL
SECTION 278 DEED OF AGREEMENT

Date: 2014

PARTIES:

1. HAMPSHIRE COUNTY COUNCIL of The Castle Winchester Hampshire SO23 8UJ
("the County Council")
2. NEW FOREST DISTRICT COUNCIL of Appletree Court, Lyndhurst, Hampshire, SO43
7PA the ("District Council")

WHEREAS

- A. The County Council is the Highway Authority for Hampshire
- B. The District Council is desirous of entering into this Agreement for the purposes of securing the carrying out of the Works as described in Schedule 1 hereto and the District Council has agreed that it will pay the cost of construction and maintenance of the Works during the Maintenance Period
- C. 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 District Council which Works the County Council is authorised to execute pursuant to the Highways Act 1980

NOW THIS DEED OF AGREEMENT WITNESSETH as follows:

Definitions

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

“CDM Regulations”		Means the Construction (Design and Management) Regulations 2007
“Certificate of Completion”		Means a certificate issued by the County Council confirming the works have been executed to its satisfaction and can be placed on maintenance
“Certificate of Maintenance”		Means a certificate issued by the County Council pursuant to the provisions of Clause 7.2 of this Agreement following the expiry of the Maintenance Period
“Chartered Engineer”		Means a person registered as an engineer with the Engineering Council as having the technical knowledge and practical experience to satisfy its preferred requirements
“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

<p>“Head of Legal Services”</p>	<p>Means the County Council’s Head of Legal Services 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</p>
<p>“Land”</p>	<p>Means the land for the purposes of identification only showing the Works on Drawing R929</p>
<p>“Maintenance Period”</p>	<p>Means a period of 12 months following the date of the Certificate of Completion save where extended in accordance with the provisos in clause 7.2</p>
<p>“Management Plan”</p>	<p>Means a works management plan showing how in the course of planning and construction of the Works the District Council will:</p> <ul style="list-style-type: none"> (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

	<p>closures/diversions required by the Works;</p> <p>(iv) ensure that it takes into consideration the safety of all types of traffic that may be diverted or affected by the Works.</p>
“Programme”	<p>Means the programme for execution of the Works agreed in writing by the County Council pursuant to Schedule 2 paragraph 1.1</p>
“Specification”	<p>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</p>

“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 Section 278 of the Highways Act 1980 and if appropriate Section 111 of the Local Government Act 1972 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 under the terms of this Agreement shall be in writing

District Council's Covenants

5. The District Council 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

Indemnity

5.2 That it hereby indemnifies and shall keep indemnified 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 Clause 5.3 below shall apply, save that this indemnity shall not apply in respect of any actions claims demands expenses and proceedings directly caused by the negligence of the County Council.

Public Liability

5.3 That it shall without prejudice to its liability under Clause 5.2 and 5.4 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 District Council or any person authorised by it to carry out the Works shall (without prejudice to the requirements of Schedule 2 paragraph 1.8 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

5.4 That it 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 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

Payments

6. The District Council further covenants with the County Council to pay to the County Council:

Prior to commencement of the Works

- 6.1 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
- 6.2 Prior to commencement of the Works the full cost to the County Council of any road traffic orders required to facilitate the Works
- 6.3 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

- 6.4 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

County Council's Covenants

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

7.1 That it hereby authorises the District Council'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 and conditions 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 shall become maintainable at public expense SAVE THAT for the Maintenance Period the District Council shall maintain the Works and after the expiry of the Maintenance Period and PROVIDED ALWAYS that the Works have been maintained as aforesaid during the Maintenance Period 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 District 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 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 8 of the CDM Regulations the District Council 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 5(1)(b) 10(1) 15 and 17 of the CDM Regulations insofar as those duties relate to health and safety information in the County Council's possession

- 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 District Council 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 District Council 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 District Council (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 its reasonable costs of so doing

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 re-imbursment 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 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 10 and 11 shall be taken to fetter the ability of either party to seek legal redress of any breach of the obligations entered into by the other party to this Agreement

Miscellaneous

13. The District Council 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 District Council) shall absolutely determine and cease to have any effect

15. For the avoidance of doubt reference wherever it appears in this Agreement to the District Council shall not include any successor in title thereto in respect of the authority granted to the District Council to carry out the Works pursuant to Clause 5.1

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

SCHEDULE 1

1. The Works referred to in Clause 5 of this Agreement and shown in principle on Drawing R929 attached hereto shall comprise the provision of:-

- the widening and improvement of the footway and verge on the Eastern side of Christchurch Road and the provision of new parking bays and all associated environmental enhancement works including soft landscaping and provision of new street furniture.

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 District Council and approved by the County Council in writing

- 1.2. The District Council 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 2(3) of the CDM Regulations the Works are notifiable the District Council as the only client has provided to the County Council:-
 - 1.6.1 written details of the CDM co-ordinator and the principal contractor
 - 1.6.2 a copy of the Notification of Project (form HSE10) to the HSE pursuant to Regulation 21 of the CDM Regulations
 - 1.6.3 confirmation that a construction phase plan has been provided to the CDM co-ordinator and the CDM co-ordinator has advised that such plan is suitable for the Works
- 1.7. Paid all sums due prior to commencement of the Works pursuant to Clause 6
- 1.8. The original insurance policy and receipts referred to in Clause 5.3 or copies thereof certified by a solicitor have been produced
2. Detailed contract drawings for highway structures (if any) shall be prepared by the District Council 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 TA1 or revision or replacement thereof the documents to be agreed as applicable

3. The District Council 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 concrete operations associated with highway structures

4. At least 3 months prior to commencement of the Works the District 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 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 the Programme

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 provisions of the SE7 Sub-Regional Highways Framework Agreement, approved by the County Council in accordance with paragraph 1.3 of this Schedule 2; and

7.2 By a roadworks contractor approved by the County Council; and

7.3 Under the direction of a Chartered Engineer employed by the District Council who shall be (unless agreed otherwise by the County Council) a civil engineer and in all cases a suitable and appropriately qualified person under the approved construction contract and approved by the County Council and who shall be independent of the roadworks contractor

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 District Council 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 District Council 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 District 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 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 District Council in the presence of the County Council and arising therefrom the County Council shall be at liberty to require such alterations to the Works at the expense of the District Council as may be reasonably required to ensure the safety of users of the highway
13. The Works shall be completed to the reasonable 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 District 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 County Council

15. The District 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

16. The District Council 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

17.2 Within 3 months of issue of the Certificate of Completion

17.2.1 in respect of the Works 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

18.1 Health and Safety files

18.1.1 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”

18.1.2 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

18.1.3 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 NEW FOREST)
DISTRICT COUNCIL)
in the presence of:-)

Authorised Signatory