

Appendix G-107-1

Attachment to email reference G-107 sent 2nd July 2021 at 15:57

Proposed Agreement for Objector T&L Crawley No.2 LLP

Dated

20--

and

West Sussex County Council

An agreement relating to the carrying out of works and re-instatement of land held by -(landowner)----- in conjunction with the West Sussex County Council (-----) Lyminster Bypass (North) Compulsory Purchase Order 20--

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Completion	The day following a period of --- months from commencement of the Scheme, unless otherwise agreed in writing
Contractor	means a contractor(s) appointed by the Council with the relevant skills and qualifications to carry out the Works to the Land
CPO Compensation Code	means the body of statute (including secondary legislation) and case law applicable to the assessment and/or determination of compensation as a result of the compulsory purchase of land in accordance with the Land Compensation Act 1961, Land Compensation Act 1973, Compulsory Purchase Act 1965, the Planning and Compensation Act 1992 and the Planning and Compulsory Purchase Act 2004 (and any other applicable legislation)
Land	means Plots 10a and 10b shaded pink on Plan 1 --
Plan 1	means drawing number -----
Record of Condition	of means a detailed record of the Land produced by the Council and agreed in writing by the Council and the Landowner as being a fair representation of the condition of the Land [The record of condition requirement is described at Section 3]
Working Days	means days (other than Saturdays Sundays or public holidays in England) when banks in London are open for business
Works	means the Re-instatement Works to be carried out on the Landowner's Land pursuant to Schedule 1

2. In this Agreement unless the context requires otherwise:
 - 2.1 Reference to a Clause or Schedule are to a clause of, or schedule to this Agreement
 - 2.2 Reference to this Agreement or any other document are to this Agreement or that document as amended from time to time
 - 2.3 Words denoting the singular include the plural and vice versa

- 2.4 Words denoting any gender include every gender
- 2.5 Reference to a person includes any corporate or unincorporated body
- 2.6 Headings in this Agreement do not affect its interpretation
- 2.7 Writing or written does not include email or any other form of electronic communication
- 2.8 The terms "including" and "include" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 2.9 Unless otherwise specified, a reference to a statutory provision is a reference to that provision as amended, consolidated, extended or re-enacted from time to time
- 2.10 References to the Landowner include its successors in title and references to the Council include its statutory successors

3. Record of Condition

- 3.1 Prior to commencement of the Scheme the Council shall access the Land to undertake surveys and inspections of the Land for the purpose of preparing a Record of Condition [the Record of Condition will comprise the following documents (TBC) e.g. services test/inspection, ground condition survey investigation, etc]
- 3.2 Within ---Working Days of the Council's access onto the Land the Council shall provide the Landowner with a copy of the Record of Condition.
- 3.3 The Landowner shall within ---Working Days confirm to the Council in writing whether the Record of Condition is approved, such approval to not be unreasonably withheld or delayed.
- 3.4 If the Landowner gives notice to the Council in accordance with Clause 3.3 that the Record of Condition is not approved the parties shall use their reasonable endeavours to agree any amendments to the Record of Condition within ----- days.
- 3.5 If the Landowner does not respond to the Record of Condition in accordance with Clause 3.3 the Record of Condition will be deemed to be approved.
- 3.6 During occupation of the land the Council will provide the following information to the Landowner on at agreed intervals (TBC)

4. Temporary Works

The Council covenants that prior to commencement of the Scheme it will:

- 4.1 [Temporary works to be discussed and agreed e.g. protection terram layer, services protection, commence mobilisation of site e.g. installation of utilities meters etc]

5. The Works

The Council covenants:

- 5.1 prior to commencement of the Works, submit to the Landowner further detail (including a timetable) in relation to the Works for the Landowner's information.
- 5.2 to carry out or to appoint a Contract to carry out the Works as soon as reasonably practicable following completion of the Scheme in a good and workmanlike manner and in accordance with recognised practice
- 5.3 to make good or procure the making good of any damage to the Land arising out of or incidental to the Works to the reasonable satisfaction of the Landowner

6 The Landowner's Covenants

The Landowner covenants to withdraw its objection dated ---- within five (5) Working Days of completion of this Agreement

7 Step-In

- 7.1 If the Council fails to complete the Works within the time period set out in Schedule 1 the Landowner may re-enter the Land and carry out the works and recover from the Council any costs and expenses incurred by the Landowner in carrying out the Works on an indemnity basis
- 7.2 The Council shall pay the Landowner for any costs and expenses incurred in exercising its rights under this Clause 8 within twenty-eight (28) days of receipt of written notice from the Landowner confirming the costs and expenses incurred and enclosing receipts

8 Bond

- 8.1 Terms of Bond to be discussed and agreed, WSCC are seeking further advice on this provision

9 Landowner's Costs

The Council agrees to pay the Landowner's reasonable solicitors, surveyors and other fees in dealing with this matter and to indemnify the Landowner in respect of any costs arising out of or in connection with or incidental to the carrying out of the Works or Scheme other than those arising out of or in consequence of any act or default of the Landowner or their tenants. [NB – the Council will want to confirm appointment and level of costs before they are incurred, and evidence that costs have been reasonably incurred will be required prior to reimbursement]

10 Compensation

- 10.1 Nothing in this Agreement is intended to preclude the Landowner's right to compensation in relation to the acquisition of rights over the Land and acquisition of the land shaded pink on Plan 1 and Plan 2 pursuant to the CPO Compensation Code.
- 10.2 The Council shall pay compensation to the Landowner for the use of the Land and acquisition of the land shaded pink on Plan 1 and 2, such Compensation to be payable in accordance with the CPO Compensation Code and for the avoidance of doubt compensation will include any reasonable costs incurred and losses sustained as a result of the Works
- 10.3 If compensation is not agreed within 6 months' of negotiations regarding the same commencing, either party may refer the matter of compensation to the Upper Tribunal (Lands Chamber) for determination.

11 Dispute Resolution

- 11.1 In the event of any dispute arising between the parties in respect of this Agreement (except as relates to the amount of compensation payable in respect of the CPO pursuant to Clause 10) the dispute shall be referred:-
- (a) in the case of a dispute regarding the interpretation or meaning of any provision in this Agreement to leading planning counsel to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Law Society; or
 - (b) in the case of any other dispute regarding this Agreement to a member of the Royal Institution of Chartered Surveyors to be agreed between the parties or failing agreement to be appointed by the President for the time being of such Institution.
- 11.2 Any referral pursuant to Clause 11.1 may be made on the joint application of the parties or on the application of any party.
- 11.3 The decision of any expert appointed pursuant to Clause 11.1 (the "Expert") shall be final and binding on the parties save in the case of manifest error and whose costs shall be in his award.

11.4 The Expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties to the dispute within the minimum practical timescales allowing for the nature and complexity of the dispute and in any event not more than twenty (20) Working Days from the date of his appointment to act.

12 Indemnities

12.1 The Council shall indemnify the Landowner against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or reasonably incurred by the Landowner as a result of the carrying out of the Works or any act or omission of the Council or their Contractor(s) whilst engaged upon the Works.

12.2 The Landowner shall be responsible for taking or causing to be taken all reasonable steps to mitigate its losses upon and after becoming aware of any event that could reasonably be expected to give rise to losses that may be indemnifiable under this Agreement.

13 Third Parties

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

14 Variations

Any variation of the conditions in this agreement must be agreed in writing between the parties.

15 Governing Law and Jurisdiction

This Agreement shall be governed by, and construed in accordance with, the law of England and Wales. Any dispute arising out of or in connection with, or concerning the carrying out of this Agreement shall be subject to the exclusive jurisdiction of the courts of England and Wales, and the parties hereby submit to the exclusive jurisdiction of those courts for these purposes.

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In witness whereof the parties hereto have executed this Deed on the day and year first before written

EXECUTION

Signed as a deed by

-----)
acting by two directors or one director)
and its secretary:-)

Director

Director/Secretary

Executed as a deed by affixing)
the common seal of)
WEST SUSSEX COUNTY COUNCIL)
)
in the presence of:)

Authorised Signatory

Schedule 1 – The Works

- 1 To reinstate the Land to a condition equal to or better than that shown in the Record of Condition at the Council's own cost prior to or on Completion of the Scheme
- 2 [Timeframe to be defined included provisions to trigger Section 7 'Step-in' rights]