DATED 8TH JULY **2011**

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

LAING O'ROURKE CONSTRUCTION LIMITED

AGREEMENT

under Section 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at Bradberry Balk Lane, Wombwell, Barnsley, South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Borough Secretary
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the 8th day of July Two thousand and eleven

BETWEEN

1. **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of the Town Hall Barnsley South Yorkshire S70 2TA **("the Council")**

2. **LAING O'ROURKE CONSTRUCTION LIMITED** (Company number 4309402) whose registered office is at Bridge Place Anchor Boulevarde, Admirals Park Crossways, Dartford Kent DA2 6SN **("the Company")**

INTERPRETATION

In this Agreement:-

"the Company" includes the successors in title of the Company

"the Site" means the Advanced Learning Centre off Bradberry Balk Lane Wombwell Barnsley

"the Highway" means the highway called Bradberry Balk Lane Wombwell Barnsley

"the Works" means the works described generally in the Schedule hereto and indicated in outline on drawing number TR/KQ/3347 attached hereto **("the Drawings")** and includes any amended or additional works as provided for herein

"the Act" means the Highways Act 1980 as amended by the New Roads and Street Works Act 1991

"the Highways Officer" means the Assistant Director - Highways Engineering and Waste for the time being of the Council and includes any professional officer appointed by him for the purpose of the supervision or inspection of the Works

"the Certificate of Completion" means the certificate to be issued by the Highways Officer upon the satisfactory completion of the Works

"the Conditions of Contract" means the Institution of Civil Engineers - Conditions of Contract (etc) with such additions or amendments thereto as may be approved by the Highways Officer

"the Supervision Fee" means the sum of £5,000.00 (five thousand pounds) being the fees which are estimated will be incurred by the Council in checking and approving the drawings and construction quality checking

"the Specification" means the Specification for Highway Works published by HMSO with all amendments up to the date hereof with such additions or amendments thereto as may be approved by the Highways Officer

Clause headings are for ease of reference only and shall not form part of this Agreement for the purposes of its construction or interpretation

WHEREAS

(1) The Council is the Highway Authority for the purposes of the Act

(2) The Company is developing an advanced learning centre on land situate off the highway pursuant to a grant of planning permission

(3) The Company has requested the Council to carry out works of improvement to the highway for the purposes of controlling traffic movements thereon to facilitate access to and egress from the Site

(4) The Council is satisfied the Works will be of benefit to the public. It will enable traffic movements on the narrow highway to be directed in a more controlled manner and thus improve highway safety and will improve access to the Site

(5) The Company has agreed to execute or procure the execution of the Works as agent for and on behalf of the Council

(6) This Agreement is made pursuant to Section 278 of the Act and Section 111 of the Local Government Act 1972 and the Council is satisfied that it will be of benefit to the public

(7) Nothing herein contained shall operate to restrict or prejudice the powers duties and rights of the Council under the Highways Act 1980 and the New Roads and Street Works Act 1991

NOW IT IS HEREBY AGREED by and between the parties as follows:-

COVENANTS BY THE COMPANY

1. **EXECUTION OF THE WORKS**

1.1 The Company shall at its own expense for the purpose of carrying out the Works:-

(a) carry out surveys as required by the Highways Officer of the Highway and the Site

(b) carry out site investigation works

(c) appoint a designer approved by the Highways Officer to design a scheme for the Works (including all necessary drawings and documents to be approved by the Council) **("the Approved Documents")**

(d) appoint a contractor approved by the Highways Officer for the construction of the Works in accordance with a form of contract which shall be approved by the Highways Officer **("the Contract")**

(e) appoint an engineer approved by the Highways Officer to supervise the Contract for the Works

1.2 The Company shall:

(a) procure the provision in writing of a programme and timetable for the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof **("the Approved Programme")**

(b) upon the request of the Highways Officer procure the provision of a written programme and timetable for any temporary traffic arrangements or any other measures which may be necessary or required in connection with the carrying out of the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof and shall comply with any further requests of the Highways Officer at any time during the carrying out of the Works

(c) procure that the Works are carried out at its own expense in a good and workmanlike manner with proper and suitable materials to the reasonable satisfaction of the Highways Officer in accordance with the Specification and the Approved Documents and once commenced to proceed diligently with the Works and to use reasonable endeavours to complete the Works in accordance with the Approved Programme

(d) before the commencement of the Works take whatever steps are necessary to locate and identify any services apparatus and equipment of any utility company Local Authority or other body which is situated

in on under or over the Highway or which may otherwise be affected by the Works and shall supply to the Highways Officer copies of all consultations which have been carried out copies of all consents and approvals obtained and details of any diversion or other works required to any services equipment or apparatus affected by the Works **("Apparatus Works")**

(e) carry out and complete the Apparatus Works at its own expense and in the same manner as the Works

(f) procure compliance with all conditions and requirements imposed by any utility company local authority or other body in respect of any services equipment or apparatus affected by the Works

(g) give the Highways Officer free access to the Site as is reasonably necessary for the proper inspection of the Works

(h) procure that the Works are undertaken pursuant to the Construction (Design and Management) Regulations 2007 ("the CDM Regulations")

(i) ensure the Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport

(j) at its own expense arrange for all materials and soils in connection with the Works to be tested by South Yorkshire Laboratory or successor and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

1.3 In the event the Highways Officer determines that any variations to the Works are required the Highways Officer shall notify the Company as soon as

reasonably practicable of any revised or additional works which may be necessary and the Company shall carry out and complete the revised or additional works at its own expense and in the same manner as the Works

1.4 The Company shall not assign its rights and obligations arising under this Agreement without the prior written consent of the Council (such consent not to be unreasonably withheld or delayed)

2. FEES AND COSTS IN RESPECT OF THE WORKS

2.1 The Company shall upon completion of this Agreement pay the sum of the Supervision Fee to the Council

2.2 In the event the fees incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate of the increased fees **("the Excess Supervision Fee")** and the Company shall pay the sum of the Excess Supervision Fee to the Council within 28 days of receiving a written request therefor

2.3 The Company shall upon completion of this Agreement pay to the Council its reasonable and proper legal fees for the preparation and completion of this Agreement in the sum of £1,000.00

3. CERTIFICATES

3.1 In consideration of the covenants on the part of the Company herein contained the Council covenants with the Company as follows:-

3.1.1 as the relevant Highway Authority that it shall inspect the Works

3.1.2 during such hours of working as may be agreed in advance with the Highways Officer to permit the Company or its approved contractor

(hereinbefore referred to) to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the Works

3.2 The Company may at any time when it believes the Works have been substantially completed notify the Highways Officer in writing whereupon the Highways Officer shall inspect the Works and the Highways Officer shall if the Works have been completed to his satisfaction issue the Certificate of Completion within 21 days of request

3.3 If during a period of 12 months **("the Maintenance Period")** after the date of issue of the Certificate of Completion any defects or damage shall arise or occur in the Works the Company shall if given 14 days notice in writing specifying such defect or damage by the Highways Officer at its own expense make good the same to the satisfaction of the Highways Officer

3.4 During the Maintenance Period the Company shall maintain the works to the satisfaction of the Highways Officer

3.5 After the expiration of the Maintenance Period and after the Company has made good any defects or damage to the entire satisfaction of the Highways Officer the Highways Officer shall issue a further certificate **("the Final Certificate")**

4. **IT IS HEREBY AGREED AND DECLARED** as follows:-

4.1 That for the purpose of carrying out its obligations under this Agreement but for no other purpose whatsoever the Company will act as agent for and on behalf of the Council

4.2 Barnsley Local Education Partnership Limited is elected to act as the only client in respect of the Works pursuant to the CDM Regulations and the Company is the principal contractor

4.3 Any monies due to be paid under the provisions of this Agreement shall be paid within twenty one days of the due date or if not paid within that period shall bear interest at 3% above the Base Rate of Co-operative Bank Plc for the time being such interest being payable from the due date to the date of payment

4.4 Once executed the Contract shall be deemed incorporated in this Agreement insofar as it is applicable and does not conflict with the provisions herein

4.5 Subject to the provisions of Clause 1.4 the rights and liabilities of the Company under this Agreement are not assignable

5. COMPENSATION AND INDEMNITY

5.1 The Company will on demand reimburse the Council with all expenditure it may properly incur in relation to any valid and proper claims made pursuant to the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 arising from the use of the Highway as altered by the Works and the Roads constructed by the Works together with the reasonable legal costs and surveyor's fees incurred either by the Council or any third party whose costs the Council is legally obliged to pay in connection with the processing and settlement of any such claims provided that no such claim shall be settled without the Council first liaising with the Company as to the nature and quantum of such claim

5.2 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising out of the non-observance non-performance or other breach of the Company's obligations under this Agreement and all claims demands damages and losses of whatever nature which may be suffered by the Council due to any reason connected with the carrying out of the Works

5.3 The Company shall insure or shall procure that the Contractor carrying out the Works shall insure against any damage loss or injury which may occur to any property or person arising by or out of the execution of the Works otherwise than due to any act or omission of the Council and such insurance shall be effected prior to the commencement of the Works with an insurer on terms approved by the Council (such approval not to be unreasonably withheld or delayed) for at least the sum of £10,000,000 for each and every claim

6. DETERMINATION BY THE COUNCIL

6.1 In the event the Company fails to perform or observe any of the covenants or obligations herein contained or if a receiving order in bankruptcy is made against the Company or if the Company is wound up or enters into a composition or arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Company for such non-performance or non-observance determine this Agreement by notice in writing to the Company sent to the address stated in this Agreement Subject always to the provisions of clauses 7 and 8 hereof

7. DEFAULT POWERS

7.1 Without prejudice to clause 8 hereof if the Company fails to execute or complete the Works in accordance with the Company's obligations hereunder the Council shall be entitled to execute or complete the Works in default by its own employees contractors or otherwise and to recover from the Company the reasonable and proper costs incurred by the Council thereby as certified in writing by the Highways Officer Provided that this default power shall only be exercisable by the Council after at least twenty eight days notice of intention has been given in writing to the Company and the Company has not commenced action to remedy any breach non-observance or non-performance of the contract during that time

8. COVENANTS BY THE COMPANY AND THE COUNCIL

8.1 If at any time prior to the commencement of the Works the Company wishes to terminate this Agreement it may do so by giving notice to the Council and the Council shall give the Company an account of all abortive costs reasonably and properly incurred by the Council in respect of this Agreement Within 28 days from the date of that account if that account shows that the payments made by the Company under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess and if that account shows that those costs exceed the payment made by the Company under the foregoing provisions of this Agreement the Company shall pay to the Council a sum equal to that excess

9. NOTICES

9.1 Any notice or demand required by this Agreement to be given or made shall be in writing

10. ARBITRATION

10.1 The Company hereby further agrees with the Council in the event of any dispute or difference between the parties hereto arising as to the construction of this Agreement or any of the provisions hereof such dispute or difference shall be referred to the President for the time being of the Institution of Civil Engineers whose decision shall be final and binding on the parties hereto Provided that nothing in this clause shall authorise the reference to arbitration of any question as to whether the whole or any part of the Works has been carried out and completed to the satisfaction of the Highways Officer

EXECUTED by the parties hereto as a Deed the day and year first before written

THE SCHEDULE hereinbefore referred to

The Works

(a) Provision of Traffic signals and ancillary works

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:-CR)

SW

Borough Secretary/ Authorised Signatory

No. 1699
IN REGISTER

EXECUTED as a DEED by
Laing O'Rourke Construction Limited by :-

~~THE COMMON SEAL of Laing O'Rourke~~)

~~Construction Limited was hereunto~~)

~~affixed in the presence of:-~~)

Director

Director/~~Secretary~~

TRAFFIC SIGNALS KEY (NOT TO SCALE)

Standard base swan necked pole in black. No stub – for use with NAL sockets

Standard base straight pole in black. No stub – for use with NAL sockets

Signal pole number

VEHICLE SIGNAL HEADS

ELV LED RAG Primary signal head

ELV LED RAG Secondary signal head

DUCTING & CHAMBERS

New 1 No. Polythylene 100mm duct (PC1/F)

New 3 No. Polyethylene 100mm duct (PC3/F)/ road crossing PC3

New access chamber 450mm×450mm (AC/1/450)

New access chamber 300mm×300mm (AC/1/300)

OTHER ITEMS

New Siemens ST900 controller to be raised to prevent flooding to include Siemens RMS pack with GSM modem

New Haldo 210

Microwave vehicle detector.

Solar cell

Presence loop

GENERAL ITEMS

Existing kerbline

Possible new kerbline

LC Existing lamp column

BT Existing BT chamber

C Existing unknown chamber to be investigated

Existing gully to be relocated – drainage to be investigated fully

LINING

White line to Diagram No. 1004 100 mm thick

White line to Diagram No. 1001 200mm thick

All lining to be in accordance with Traffic Signs Regulations and General Directions 2002

GENERAL NOTES

1. All Signal equipment and associated works to be supplied and installed in accordance with Barnsley MBC Standard Details & Specifications.
2. All poles to be installed using the NAL retention socket model No. RS115DFx600.
3. See key for traffic signal details.
4. New poles to be slotless and black to suit NAL sockets
5. All LED ELV equipment to be fully monitored by signal controller
6. All street furniture to be black in colour
7. New GSM Gemini RMS unit to be supplied and configured. BMBC to supply Sim card Laing O'Rourke.
8. This drawing is feasibility only, detailed design and investigation needs to be carried out before any work can commence.
9. Duct up to back of kerb for loop connections – see standard details

A topographical survey has not been used for this drawing and therefore is not accurate. A topographical survey needs to be used for any works to commence. Drawing is feasibility only.

N

BRADBERRY BALK LANE

Drain

3.5m

3.5m

Siemens ST900 ELV controller to be used – as total power consumption less than 500W may be able to use unmetered power supply. Would need to speak to BMBC Street Lighting, Martin Keeling

Controller to be raised on small rectangular plinth due to flooding issues (if Haldo pillar used also needs to be raised) – approximately 300mm off the ground

Stainless steel conduits needed for ducting over bridge (fastened to wall and tied into a chamber either end of the bridge)

Footpath and fence arrangement needs re-designing to a suitable arrangement where affected by works

Lamp column to be relocated

If footpath is impeded by the works this needs rectifying to an acceptable standard.

Services and gullies affected by widening of verge area

Conduit Installation

As conduit is near to ground level and in reach of pedestrians extra conduit fasteners must be used to prevent vandalism.

Conduit must be capable of taking primary and secondary RAG traffic phase (including spare cores), loop and MVD detection and solar cell cables, and also allow for replacement/retrofit of cable in future.

Conduit to be stainless steel anti vandalism material and fixings (no galvanised products to be used–see website for example http://www.electrix.co.uk/view_products.php?id=39) final product to be approved by Signals Engineer.

SCALE 1:200

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BARNSLEY Metropolitan Borough Council Highways & Engineering

BRADBERRY BALK LANE, WOMBWELL

FEASIBILITY DRAWING

Scale	Drawn	Checked	Date
H	KQ		JAN '11
V			

Drawing No. TR/KQ/3347

File

Rev.	By	Amendments	Date

D. A. Richardson BSc., M.C.I.O.B., M.C.I.H.T., Assistant Director, Highways & Engineering, PO Box 601, Barnsley, S70 9FA. Tel. (01226) 773555 Fax. (01226) 772110