DATED 14TH SEPTEMBER **2017**

BARNSLEY METROPOLITAN BOROUGH COUNCIL

and

RELIANT BUILDING CONTRACTORS LIMITED

AGREEMENT

under Section 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at St. Mary's Street Penistone Barnsley South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Executive Director of Core Services & Solicitor to the Council
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the 14th day of September Two thousand and seventeen

BETWEEN

1. **BARNSLEY METROPOLITAN BOROUGH COUNCIL** of the Town Hall Barnsley South Yorkshire S70 2TA **("the Council")**
2. **RELIANT BUILDING CONTRACTORS LIMITED** (Registered Company number 4226221) whose registered office is at 25 Leith Mansions Grantully Road London W9 1LQ **("the Company")**

INTERPRETATION

In this Agreement:-

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

"the 1990 Act" means the Town and Country Planning Act 1990

"Blue Land" means the land shown edged in blue on Drawing number 1151-1007-CIV-S278 revision D attached at Schedule 1 hereto which is intended to become highway maintainable at public expense as provided herein

"CDM Regulations" means the Construction (Design and Management) Regulations 2015

"Certificate of Completion" means the certificate to be issued by the Highways Officer upon the satisfactory completion of the Works pursuant to the provisions of clause 4.1

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

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

"Development" means the residential development at the Site for which planning permission has been granted under Reference 2013/0544

"Drawings" means the drawings listed and attached at Schedule 1 hereof

"Final Certificate" means the certificate to be issued by the Highways Officer upon the satisfactory expiration of the Maintenance Period

"HMSO" means Her Majesty's Stationery Office

"Highway" means the highway called St. Mary's Street Penistone Barnsley

"Highways Officer" means the Head of Highways Engineering and Transportation 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

"Implementation" means the earliest date upon which a material operation as defined in section 56(4) of the 1990 Act shall be carried out in respect of the Development, save that for the purposes of this agreement the term shall not include works of demolition, surveys, site clearance, works of archaeological or ground investigation or remediation, the erection of fencing or hoardings, the provision of security measures or lighting, the erection of temporary buildings or structures associated with the Development, the laying, removal or diversion of services, the provision of construction compounds, the temporary display of site notices or advertisements or piling works, and the term 'Implement' shall be construed accordingly

"Maintenance Period" means a period of twelve calendar months from the date of the issue of the Certificate of Completion

"**Security Deposit**" means the sum of £20,000.00 (twenty thousand pounds) being the sum required to be deposited with the Council by the Company as security for the satisfactory completion of the Works

"Site" means the land known as 'the coal drops' off St. Mary's Street Penistone Barnsley

"Specification" means the Specification for Highway Works published by HMSO with all amendments up to the date hereof

"Supervision Fee" means the sum of £4,400.00 (four thousand four hundred pounds) being the fees which are estimated will be incurred by the Council in checking and approving the drawings site inspections and administration of the Works of which a sum of £3,000.00 (three thousand pounds) has already been paid to the Council receipt of which is hereby acknowledged

"Traffic Order Costs" means the costs which are estimated will be incurred by the Council in the preparation and publication of a traffic regulation order made pursuant to the Road Traffic Regulation Act 1980 to deal with required changes to the existing traffic restrictions at St. Mary's Street Penistone

"Works" means the works described generally in Schedule 2 hereof and indicated in outline on the Drawings and any amended or additional works as provided for herein

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

(ii) References to any party shall include successors in title to that party and any person deriving title through or under that party

WHEREAS

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

(2) The Company has the benefit of planning permission for the Development at the Site and the Council and the Company are desirous that the Works shall be carried out to facilitate the Development

(3) The Works are wholly required to improve access to the Site to a standard required for traffic safety and thus facilitate the Development and the Company will derive a special benefit if the Works are executed

(4) The Company is the freehold owner of the Site which is registered under title SYK554244 which includes the Blue Land and warrants that at the date hereof the Blue Land is free from any restrictions or incumbrances that might affect its dedication as highway maintainable at public expense and enters into this agreement with the intention that the Blue Land shall be dedicated as highway for use by the public as provided for herein

(5) The Company shall 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

(8) Subject to the Implementation of the Development by the Company, the Company has agreed to carry out the Works in accordance with this agreement

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

1. **CONSENT TO WORK IN THE HIGHWAY**

1.1 The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Company to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the carrying out of the Works

2. **EXECUTION OF THE WORKS**

2.1 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")**

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

(g) procure that the Works are undertaken pursuant to the CDM Regulations

(h) 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

(i) at its own expense arrange for all materials and soils in connection with the Works to be tested by a UK Accreditation Service (NAMAS) accredited laboratory and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

2.3 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

3. FEES AND COSTS

3.1 The Company shall on the completion of this Agreement pay to the Council:

(i) the remaining balance of the Supervision Fee;

(ii) the sum of £1,000.00 being the Council's legal fees in the preparation and completion of this Agreement

(iii) the sum of £3,000.00 (three thousand pounds) in respect of the Traffic Order Costs

3.2 In the event the fees incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate of the sum of the increased fees and the Company shall pay the said sum of the increased fees to the Council within 28 days of receiving a written request therefor

4. CERTIFICATES AND MAINTENANCE PERIOD

4.1 The Company may at any time when it believes the Works have been completed notify the Highways Officer in writing whereupon the Highways Officer shall make arrangements to inspect the Works as soon as possible and in any event within 14 days days of the receipt of the notice from the Company that the Works have been completed and if the Works have been completed to his satisfaction the Highways Officer shall issue the Certificate of Completion to the Company as soon as possible and in any event within 14 days of the Highways Officer's inspection of the Works or if the Works have not been completed in the reasonable opinion of the Highways Officer, the Highways Officer shall provide the Company with a definitive list of any outstanding items and/or remedial works and the Company shall provide the Highways Officer with a program for their completion and such remedial works shall be subject to the same inspection procedures and timescales as are detailed in this clause

4.2 The Company shall at its own expense maintain the Works throughout the Maintenance Period and shall make good any defects or damage arising or occurring in the Works during that period to the satisfaction of the Highways Officer

4.3 After the expiration of the Maintenance Period the Company shall submit to the Highways Officer in an electronic format 'as-built' drawings and the whole

of the Health and Safety file pursuant to the CDM Regulations and then provided the Company has made good any defects or damage which have been notified to the Company to the entire satisfaction of the Highways Officer and provided that all monies due to the Council hereunder have been paid the Highways Officer shall issue the Final Certificate to the Company within 5 working days of the expiration of the Maintenance Period

4.4 For the avoidance of doubt the covenants on the part of the Company contained in Clause 6 of this Agreement shall not be affected by the issue of the Final Certificate

5. DEDICATION AND ADOPTION OF THE BLUE LAND

5.1 The Company hereby acknowledges and agrees that upon the issue of the Certificate of Completion the Company shall be deemed to have dedicated the Blue Land as highway for use by the public and the Company shall not grant any wayleave licence easement or right in respect of any part or parts of the Blue Land without the written consent of the Council

5.2 Upon the issue of the Final Certificate the Blue Land shall become highway maintainable at the public expense

6. COMPENSATION AND INDEMNITY

6.1 The Company will within 10 working days of written 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

6.2 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising directly 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

6.3 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising as a consequence of the discharge of water or any other substance or material whatsoever from the highway drainage system

6.4 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

7. DETERMINATION BY THE COUNCIL

7.1 In the event the Company materially fails to perform or observe any of the material 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 8 and 9 hereof) PROVIDED FURTHER that before being able to terminate this Agreement the Council will give the Company a 20 working day period in which to deal with the relevant breach and to agree a solution with the Council

8. **DEFAULT POWERS**

8.1 Without prejudice to clause 7 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 Security Deposit all of the 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 that intention has been given in writing to the Company

9. **SECURITY DEPOSIT**

9.1 The Company shall prior to the commencement of the Works pay the sum of the Security Deposit to the Council

9.2 The Security Deposit will be refunded to the Developer as follows:

(a) a sum of £18,000 upon the issue of the Completion Certificate referred to in clause 4.1 hereof; and

b) the reminder sum of £2000 upon the issue of the Final Certificate referred to in clause 4.3 hereof;

9.3 If at any time the Company fails to observe or perform any of the covenants on the Company's part herein contained or to pay any sums due from the Company to the Council under this Agreement or if circumstances shall arise which would entitle the Council to terminate this Agreement then without prejudice to any other rights and remedies of the Council against the Company under this Agreement or under statutory powers the Council shall be entitled to deduct the amount of any costs and expenditure which the Council may suffer or incur by reason thereof from the Security Deposit and the Council shall be entitled to retain any such sums so deducted and apply the same to discharge any such amounts or sums due from the Company to the Council

9.5 If the Council gives notice pursuant to clause 8 hereof and the amount as certified by the Highways Officer to be the estimated cost of carrying out and completing the Works or any part thereof or otherwise remedying any breach by the Company of the provisions hereof shall exceed the sum of the Security Deposit being held at that time the Company shall within 10 working days of written demand pay the difference between the estimated cost and the sum of the Security Deposit to the Council and the same shall be held by the Council as part of the Security Deposit

9.6 The amount of the costs and expenditure estimated to be incurred by the Council shall be that certified by the Highways Officer in writing and such certificate shall be final and binding on the parties hereto

10. <u>COUNCIL'S COVENANTS</u>

10.1 The Council hereby covenants with the Company that it will, at the request and cost of the Company and subject to its statutory duties from time to time

and then as expeditiously as possible, use such powers as are reasonably available to the Council to assist the carrying out of the Works (including highway drainage).

10.2 The Council covenants to use reasonable endeavours to obtain all necessary consents to publish the Traffic Regulation Orders as soon as possible

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

11.1 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

11.2 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

11.3 The Company is to act as the only client in respect of the Works pursuant to the CDM Regulations

11.4 None of the residential dwellings constructed in the Development pursuant to the planning permission shall be occupied and used for habitable purposes until the Completion Certificate has been issued by the Highways Officer

11.5 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 Barclays Bank Plc for the time being such interest being payable from the due date to the date of payment

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

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

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

11.9 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates

11.10 This Agreement will be of benefit to the public

11.11 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

SCHEDULE 1

THE DRAWINGS

1151-1007-CIV-S278 revision D

SCHEDULE 2

THE WORKS

a) Carriageway and footway resurfacing

b) Re kerbing

c) Road markings

d) Street lighting

e) Any works ancillary to the above.

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

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:-)

Executive Director of Core Services & Solicitor to the Council/Authorised Signatory

No. 585
IN REGISTER

EXECUTED AS A DEED by)

RELIANT BUILDING CONTRACTORS)

LIMITED acting by a Director)

In the presence of :)

Signature of Director

Marwan Shibl

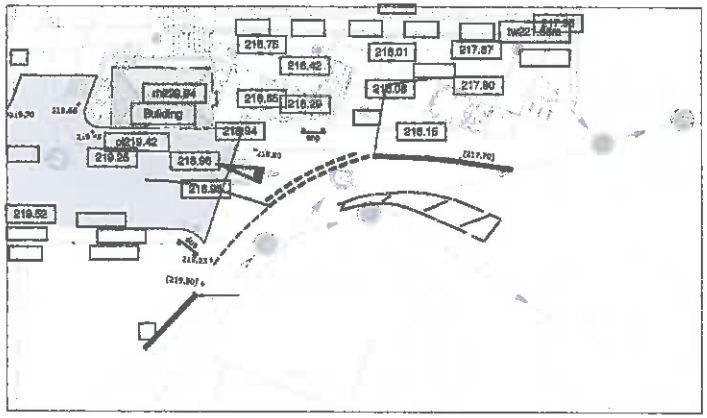
(*please print name beneath signature)

Signature of Witness:

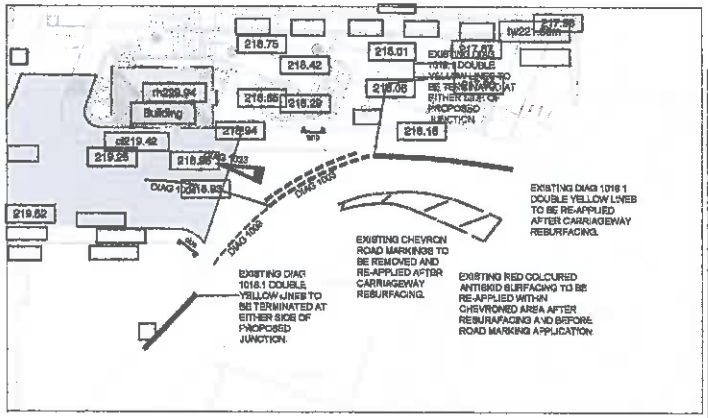
(*please print name beneath signature) AMMAISA IYOH

Occupation of Witness: HOUSE KEEPER

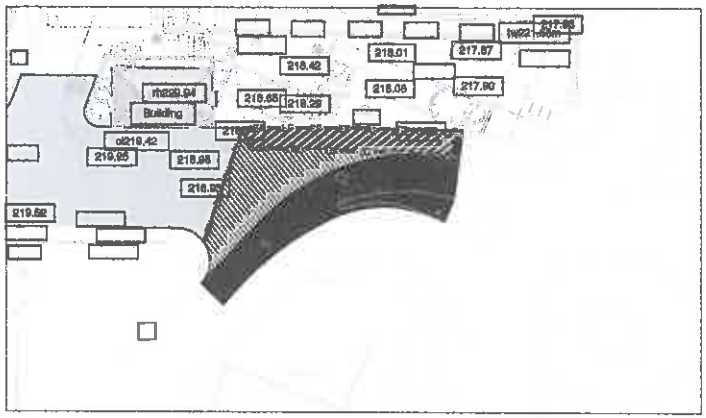
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London NW8 9JX



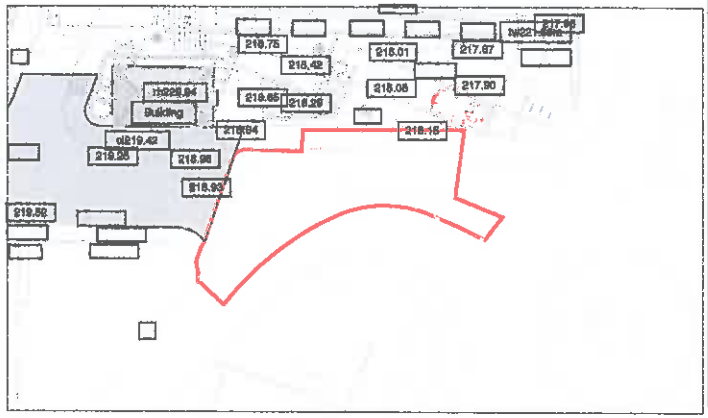
SECTION 278 GENERAL ARRANGEMENT.



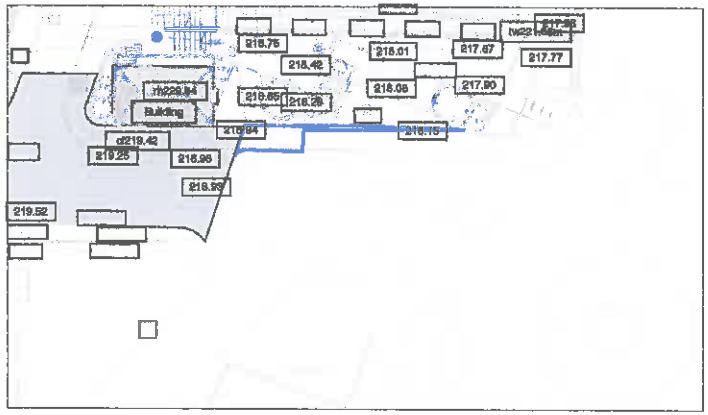
SECTION 278 ROAD MARKINGS AND SIGNS.



SECTION 278 KERBS AND SURFACE FINISHES.



SECTION 278 EXISTING HIGHWAY LEGAL PLAN.



SECTION 278 AREA TO BE DEDICATED AS HIGHWAY LEGAL PLAN.

Marwan Shibl
Director
Marwan Shibl

DRAWING LEGEND

SURFACE WATER DRAINAGE	
	PCC MANHOLE
	PPIC INSPECTION CHAMBER
	450x900 ROAD GULLY
	SURFACE WATER SEWER
FOUL WATER DRAINAGE	
	PCC MANHOLE
	PPIC INSPECTION CHAMBER
	FOUL WATER SEWER
S278 WORKS	
(113.09)*	EXISTING LEVELS
113.09*	PROPOSED LEVELS
	STREET NAME PLATE
	FULL DEPTH ASPHALT CARRIAGEWAY CONSTRUCTION.
	AREA OF CARRIAGEWAY RESURFACING TO INCLUDE A 600mm TIE-IN AREA BETWEEN NEW AND EXISTING ROADS.
	FULL DEPTH ASPHALT FOOTWAY CONSTRUCTION.
	600mm WIDE ASPHALT FOOTWAY TIE-IN CONSTRUCTION.
	SHADING SHOWING PROPOSED METALING OF EXISTING PRIVATE ROAD.
	EXTENT OF AREA OF EXISTING HIGHWAY
	EXTENT OF AREA TO BE DEDICATED AS HIGHWAY.
-HB2-	125x255 HALF BATTERED KERB WITH 125mm KERB FACE.
-BN-	125x255 BULL NOSED KERB WITH 25mm KERB FACE.
-EF-	50x150 EDGING KERB.

NOTES

CONTRACTORS MUST VERIFY ALL DIMENSIONS ON SITE BEFORE COMMENCING ANY WORK OR SHOP DRAWINGS

DO NOT SCALE FROM THIS Drawing

RCD CONSULTANTS LTD COPYRIGHT

1. ALL DIMENSIONS IN MILLIMETERS UNLESS NOTED OTHERWISE.
2. THIS DRAWING TO BE READ IN CONJUNCTION WITH ALL OTHER ENGINEERING DRAWINGS AND CALCULATIONS ASSOCIATED WITH THIS PROJECT.
3. ALL ADOPTABLE HIGHWAY WORKS ARE TO BE CARRIED OUT TO THE REQUIREMENTS AND FULL SATISFACTION OF BARNSLEY METROPOLITAN BOROUGH COUNCIL AND SOUTH YORKSHIRE COUNTY COUNCIL.
4. ALL COMPONENTS AND MATERIALS ARE TO BE MANUFACTURED AND SUPPLIED IN ACCORDANCE WITH THE RELEVANT BRITISH STANDARDS, AND LAID AND BACKFILLED IN ACCORDANCE WITH MANUFACTURERS INSTRUCTIONS AND THE RELEVANT BRITISH STANDARDS.
5. THE CONTRACTOR SHALL, BEFORE COMMENCING THE WORKS, VERIFY ALL SITE AND SETTING OUT DIMENSIONS. THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE TRUE AND PROPER SETTING-OUT OF THE WORKS AND FOR THE CORRECTNESS OF THE POSITION, LEVELS, DIMENSIONS, AND ALIGNMENT OF ALL PARTS OF THE WORKS.
6. ALL ROAD MARKINGS TO BE IN ACCORDANCE WITH THE TRAFFIC SIGNS REGULATIONS AND GENERAL DIRECTIONS 2016.
7. STREET LIGHTING WORKS TO BE AGREED WITH BMBC PRIOR TO WORKS STARTING ON SITE. ALL COSTS TO BE PAID BY THE DEVELOPER.
8. TRAFFIC REGULATION ORDER TO BE AGREED WITH BMBC . ALL COSTS TO BE PAID BY THE DEVELOPER.

SURFACE COURSE	40mm THICK - HRA 50/10 DF SURF 100/150 MIN PSV 55 TO TABLE 12A OF FD881:2007 AND CLAUSE 911 OF DT SHW
BINDER COURSE	70mm THICK - ACD DENSE BIN 100/150 DES TO TABLE 911 OF FD881:2007 AND CLAUSE 929 OF DT SHW
BASE	120mm THICK - ACD DENSE BASE 100/150 DES TO TABLE 911 OF FD881:2007 AND CLAUSE 929 OF DT SHW
SUB BASE	470mm THICK - TYPE 1 TO CLAUSE 803 OF DT SHW THICKNESS MAY BE REDUCED SUBJECT TO SITE CONDITIONS AND AGREEMENT OF CLERK OF WORKS.

30mm SURFACE - ACD DENSE SURF 100/150 TO TABLE 9/8 OF FD881:2007

60mm BASE - ACD DENSE BIN 100/150 TO TABLE 9.11 OF FD881:2007

150mm SUB-BASE - TYPE 1 TO CLAUSE 805 OF DT SHW

REV	AMENDMENT	DATE	CHKD
D	NOTE 7 AND 8 ADDED. PATH ADDED TO FRONT OF RESIDENCY HOUSE.	30.08.17	RAC
C	AMENDED TO SUIT HIGHWAY COMMENTS.	30.07.17	RAC
B	AMENDED TO SUIT HIGHWAY COMMENTS.	26.07.17	RAC
A	FOR APPROVAL	28.06.17	RAC

PURPOSE OF ISSUE: FOR APPROVAL

RCD

RCD CONSULTANTS LTD
23 HASTINGS ROAD ROAD, MAIDSTONE, KENT, ME16 7EH
MOBILE: 07702 092 137
EMAIL: roy@rcd-uk.com

CLIENT: RELIANT BUILDING CONTRACTORS LTD

PROJECT: PROPOSED RESIDENTIAL DEVELOPMENT
FORMER COAL DROPS
PENISTONE

DRAWING TITLE: SECTION 278 LAYOUT

CIVILS

SCALE	DRAWN BY	CHECKED	DATE
1:200 1:400	RAC	MGC	JUNE 2017

DRAWING NUMBER: 1151-1007-CIV-S278

REVISION: D