

25th September 2025

F.A.O. BRENDAN HEARTY
Senior Legal Officer

Physical Infrastructure Group

Legal and Democratic Services
Manchester City Council
P O Box 532
Town Hall,
Manchester,
M60 2LA

Dear Brendan,

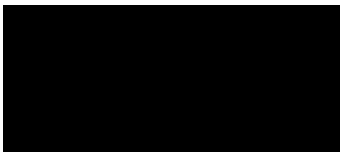
Re: S38 and 278 Section Agreement – Dowley Drive, Woodward Place, Kingham Drive and St Vincent Street Manchester

In connection with the above mentioned project please find enclosed the following documents which we have signed and require your attention: -

- Section 38 & 278 Agreement L/BH/HIG003/84043 x 2Nr

We look forward to receiving our copy in due course.
Please do not hesitate to contact me if you have any queries.

Your Sincerely



Steve Weir
Chief Operating Officer

Enc.
Cc'd - Sophie Emerson, Trowers & Hamlins (by email)

Rowlinson Constructions Limited

A: Gardale House, 118b Gatley Road, Gatley, Cheadle SK8 4AU
T: 0161 960 0033

DATED

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THE COUNCIL OF THE CITY OF MANCHESTER

- and -

ROWLINSON CONSTRUCTIONS LIMITED

A G R E E M E N T

made under Sections 38 and 278 of the Highways Act 1980
relating to the making up of new highway and highway works
on land at Downley Drive, Woodward Place, Woodward Street, Kingham Drive and
St Vincent Street, Manchester

City Solicitor
P O Box 532
Town Hall
Albert Square
Manchester M60 2LA
(acting on behalf of Salford City Council)
L/BH/HIG003/84043

THIS AGREEMENT is made the

day of

20

BETWEEN:

- (1) THE COUNCIL OF THE CITY OF MANCHESTER of PO Box 532, Town Hall, Albert Square, Manchester M60 2LA (the "Council");
- (2) ROWLINSON CONSTRUCTIONS LIMITED (Company registration number 02596893) with a registered office address of Gardale House, 118b Gatley Road, Gatley, Cheadle, SK8 4AU ("the Developer"); and

Recitals

- A The Council is the local highway authority with statutory responsibility for all public highways within its jurisdiction including the Public Highway.
- B The Council is the registered proprietor of the freehold of the Land registered at the Land Registry with Title Absolute under Title Numbers GM902370 and GM900745 (the "Title Numbers") together with but subject to all matters contained or referred to in the Title Registers thereunder.
- C The Developer proposes to undertake the Development in accordance with the Planning Permission and undertake the Highway Works as agent of the Council as far as this agreement is concerned for the purpose of section 278 of the Act and will also undertake and complete the Road Works for the purpose of Section 38 of the Act as agent for the Council.
- D The Council is satisfied that the carrying out of Highway Works and Road Works will be of benefit to the public.
- E The Council is willing to dedicate the Roads for public use and shall adopt the Roads as highway maintainable at the public expense subject to the terms and conditions of this agreement.

- F The Developer has paid to the Council the Cash Bond to be held and used by the Council in accordance with Clauses 19, 20 and 21 of this Agreement.

INTERPRETATION

- 1.1 In this agreement unless the context otherwise requires or admits the following terms and expressions shall have the meanings specified:

- 1.1.1 "Act" means the Highways Act 1980 (as amended) and any statutory modification on re-enactment of the same;

- 1.1.2 "Advance Warning Signs" means public information signs that give advance notice to highway users of the commencement of the Highway Works (or any part) or that communicates other relevant information

- 1.1.3 "Agreement Plan" means the plan numbered A1/19.B.12490/100 Rev C referred to in the Drawing Schedule and attached to this agreement and signed by or on behalf of the parties or such other plan as may be approved from time to time by the Council either as an amendment to the Agreement Plan or as part of the detailed design for the Works

- 1.1.4 "Cash Bond" means the sum of £116,370 (one hundred and sixteen thousand three hundred and seventy pounds) being the amount which in the opinion of the Proper Officer represents the Council's Cost, excluding the Engineer's Fee, and the cost of carrying out the Works within the period specified in Clause 6.3

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

- 1.1.6 "Client" means the client as defined by the CDM Regulations

- 1.1.7 "Contractor" means the contractor appointed by the Developer (as applicable) as the principal contractor under the CDM Regulations to carry out the Works

1.1.8 "Council's Cost" means all administrative and other reasonable fees or establishment charges of the Council in connection with the Works incurred or to be incurred up until the issue of the Final Certificate including, but not limited to:

1.1.8.1 the Engineer's Fee;

1.1.8.2 all legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new, or revocation and amendment of existing, Traffic Regulation Orders arising as a consequence of the Works;

1.1.8.3 all costs or expenses incurred in complying with the CDM Regulations insulating buildings against noise or in satisfying claims made under the noise abatement legislation and/or the Land Compensation Act 1973 Part 1 in connection with the Works in accordance with Clause 17.2.

1.1.9 "Deposit" means the sum of three thousand pounds (£3,000) paid by the Developer to the Council as an advance contribution towards the Engineer's Fee

1.1.10 "Design Works" means undertaking a feasibility study and preparing the detailed highway design (including (if appropriate) the lighting design) and the Specification all such work to be undertaken by the Developer and approved separately by the Proper Officer prior to commencement of the Works

1.1.11 "Development" means planning permission for the erection of 23, 3 storey dwellinghouses (Use Class C3a) and the erection of a 4 storey building to form 45 residential apartments (Use Class C3a) (68 new homes in total) with associated car and cycle parking provision, hard and soft landscaping, access,

servicing, and other associated works as permitted by the Planning Permission as varied

1.1.12 "Drawing Schedule" means the schedule of detailed drawings relating to the Works as more particularly itemised in Schedule 2 of this agreement

1.1.13 "Due Date" is the date when a payment is due in accordance with the terms and conditions of this agreement

1.1.14 "Engineer's Fee" means the gross sum of £14,262 (fourteen thousand two hundred and sixty two pounds) which after taking account of the Deposit received is the net sum of £11,262 (eleven thousand two hundred and sixty two pounds)

1.1.15 "Final Certificate" means the certificate issued by the Proper Officer to the Developer following the expiry of the Maintenance Period in accordance with clause 8

1.1.16 "Further Works" means those works as may be specified in accordance with clause 8.2.2 prior to issue of the Final Certificate

1.1.17 "Health and Safety file" means the file or other permanent record containing the information required by the CDM Regulations

1.1.18 "Highway Works" mean the highway improvement works described generally in Schedule 1, as shown in principle on the Agreement Plan and any detailed design subsequently approved by the Council in accordance with this agreement

1.1.19 "Interest" means the interest at the rate of 4% per annum above the base rate from time to time of Barclays Bank PLC

1.1.20 "Land" means all the land bounded by Downley Drive, Woodward Place and St Vincent Street and registered under the Title Numbers upon which the Roads are to be constructed

1.1.21 "Latent Defect" means a defect in the Works which is not detectable prior to the issue of the Final Certificate

1.1.22 "Maintenance Period" means a minimum period of twenty four (24) calendar months starting on the Operative Date or, if the construction vehicles continue to travel along the Public Highway, such longer period as the Proper Officer may reasonably determine unless at the end of that period the Proper Officer forms the view that the Final Certificate cannot be issued on the basis that the Further Works have not been completed in accordance with this agreement in which case the Maintenance Period shall include such further period as shall elapse until the issue of the Final Certificate

1.1.23 "Occupation" shall mean the occupation of the Development for the purposes of the Planning Permission but not including occupation for the purposes of construction, fitting out or security and "Occupied" shall be construed accordingly

1.1.24 "Operative Date" means the date set out in the Part 2 Certificate as the Operative Date being the date upon which the Works are judged by the Proper Officer to have been satisfactorily completed and is the date upon which the Maintenance Period commences

1.1.25 "Part 1 Certificate" means the certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 6 of this agreement

1.1.26 "Part 1 Costs" means the sum of 64,003.50 pounds (sixty four thousand and three pound and fifty pence)

- 1.1.27 "Part 1 Works" means the works referred to in Schedule 1 and headed "PART 1 WORKS"
- 1.1.28 "Part 2 Certificate" means the Certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 6 of this agreement
- 1.1.29 "Part 2 Costs" means the sum of £29,092.50 (twenty nine thousand and ninety two pounds and fifty pence)
- 1.1.30 "Part 2 Works" means the works referred to in Part 2 of Schedule 1 and headed "PART 2 WORKS" and in addition including any works required to be carried out as a result of the RSA3 in accordance with clause 6.5
- 1.1.31 "Planning Permission" shall mean the planning permission issued by the Council on 30 July 2021 with the reference number 130390/FO/2021 as amended by the planning permission issued by the Council on 27 April 2022 with the reference number 133099/JO/2022
- 1.1.32 "Professional Negligence Indemnity Insurance Policy" shall mean an insurance policy in place for a minimum of six years from the date of this Agreement with an insurance company regulated and registered with the Association of British Insurers for a sum of not less than £5,000,000 in respect of any single claim, the number of claims being unlimited, in the Developer's own name to cover financial loss, personal injury, claims relating to the death of any person arising from the negligence of the Developer in the execution and use of the Highway Works
- 1.1.33 "Programme" means the period for completion of the Works as defined in clause 6.3
- 1.1.34 "Proper Officer" means the person for the time being appointed by the Council for the purposes of this agreement or of any provision contained herein

1.1.38 "Public Highway" means those parts of Downley Drive, Woodward Place, Woodward Street, Kingham Drive and St Vincent Street that are maintainable at public expense as more particularly shown coloured and hatched brown on the Agreement Plan on which the Highway Works are proposed to be carried out including all footpaths, Street Furniture, verges, service strips, service margins, vehicular crossings and road surface water drainage systems (if any) and all other things ancillary thereto

1.1.35 "Public Liability Insurance Policy" shall mean an insurance policy with an insurance company regulated and registered with the Association of British Insurers for a sum of not less than £10,000,000 in respect of any single claim, the number of claims being unlimited, in the Developer's own name to cover claims for injury to, or death, of any person or loss or damage to any real or personal property arising out of the execution and use of the Works

1.1.36 "Roads" means the roads and footways to be constructed on the Land as part of the Road Works and more specifically the carriageways and footways of the road or roads shown coloured pink and yellow on the Agreement Plan together with such proposed emergency accesses, cycle ways and footpaths (if any) including their carriageways and footways, street lighting and all verges including any grassed areas, service strips, service margins, vehicular crossings, road surface water drainage system (if any) and all other things ancillary thereto

1.1.37 "Road Safety Audits" shall mean the audits of the Works to be carried out in accordance with the Department for Transport Road Traffic Audit Standard DMRB GG 119 or any other modification or replacement of the same

- 1.1.38 "Road Safety Audit Report" shall mean the report to be prepared by the Safety Auditor following the carrying out of the Road Safety Audits
- 1.1.39 "Road Works" shall mean the works to construct new roads and footways as described generally in Schedule 1 and Schedule 2, as shown in principle on the Agreement Plan and any detailed design subsequently approved by the Council in accordance with this agreement
- 1.1.40 "RSA3" shall mean a Stage 3 Road Safety Audit Report relating to the completed Works to be carried out prior to issue of the Part 1 Certificate
- 1.1.41 "RSA4" shall mean a Stage 4 Road Safety Audit Report relating to the completed Works to be carried out 12 months following the issue of the Part 1 Certificate
- 1.1.42 "Safety Auditor" shall mean an independent and suitably qualified highway or traffic engineer appointed by the Developer at the Developer's expense to carry out the Road Safety Audits such appointment having been previously approved in writing by the Proper Officer
- 1.1.43 "Specification" shall mean the publication entitled "Specification for Highway Works" published by the Stationery Office as Volume 1 of the Manual of Contract Documents for Highway Works as modified and extended by the latest edition of the publication entitled "Roads for Adoption a Guide for Developers" and by the Council's Standard Detail Drawings and those drawings submitted by or on behalf of the Developer and subsequently approved in writing by the Proper Officer
- 1.1.44 "Standard Detail Drawings" shall mean the set of drawings prepared by the Council and available from the Council which detail how elements of the Highway Works are to be carried out and how any Road Works are to be carried

out if, in addition to complying with any other applicable requirements detailed or referred to in this agreement, those Road Works are to be capable of being adopted by the Council as the local highway authority

1.1.45 "Statutory Undertaker" shall mean public utility undertakers statutory undertakers and water undertakers as defined in section 329(1) of the Act and British Telecom PLC or other such similar organisations

1.1.46 "Street Furniture" shall mean all types of street furniture including (but not limited to) bollards, fencing, street lighting, traffic lights and illuminated traffic signs installed or to be installed as part of the Works

1.1.47 "Title Numbers" means GM902370 and GM900745

1.1.48 "Traffic Regulation Order" shall mean any temporary or permanent order required to commence and carry out the construction of the Works pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order

1.1.49 "VAT" shall mean the value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax.

1.1.50 "Working Day" shall mean any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England or Wales

1.1.51 "Works" means together the Highway Works and the Road Works

1.2 The First Schedule and Second Schedule form part of this agreement and shall have effect as if set out in full in the body of this agreement. Any reference to this agreement includes the First Schedule and Second Schedule.

1.3 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.

- 1.4 A reference to any party shall include that party's personal representatives and successors and in the case of the Council the successors to their respective statutory functions.
- 1.5 Unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time
- 1.6 Unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision.
- 1.7 Where any approval, consent or agreement of the Council is required or recommendation is made pursuant to this agreement, such approval, consent or agreement or recommendation shall be in writing.
- 1.8 A reference to this agreement or to any other agreement or document referred to in this agreement is a reference to this agreement or such other document or agreement as varied or novated (in each case, other than in breach of the provisions of this agreement) from time to time
- 1.9 References to clause numbers are to the relevant clauses of this agreement and references to paragraphs are to paragraphs of the relevant Schedule
- 1.10 Words in the singular include the plural and vice versa and words importing one gender include any gender
- 1.11 The clause headings are for reference only and shall not affect the construction hereof

2 STATUTORY PROVISION

- 2.1 This agreement is made as a deed under sections 38 and 278 of the Act, section 33 of the Local Government (Miscellaneous Provisions) Act 1982, section 111

of the Local Government Act 1972 and section 1 of the Localism Act 2011 and any other power or authority thereby enabling.

- 2.2 The Council gives the Developer and all those authorised by the Developer licence to enter the Public Highway with or without workmen, plant and machinery to enable the Developer to comply with its obligations in this agreement. Subject to the terms of this agreement, the Council agrees that the Developer is permitted to break open the surface of the Public Highway to the extent reasonably necessary for the carrying out of the Highway Works (subject to making good any damage).

3 DEVELOPER'S OBLIGATIONS

- 3.1 The Developer has paid the Deposit in advance of this agreement the receipt of which the Council hereby acknowledges.

Pre-commencement obligations

- 3.2 The Developer shall obtain the prior written approval of the Proper Officer for the detailed Design Works prior to undertaking the Works.
- 3.3 Prior to commencing the Works the Developer shall provide the Council with a copy of a Public Liability Insurance Policy in accordance with Clause 18.
- 3.4 The Developer shall install the Advance Warning Signs in such locations as the Proper Officer advises and to the Proper Officer's satisfaction.

Ongoing obligations

- 3.5 The Developer covenants with the Council to construct and complete the Works in accordance with the terms of this agreement and the Design Works.
- 3.6 The Developer covenants to pay to the Council within 10 Working Days of written demand:

- 3.6.1 Other than in respect of the Engineer's Fee referred to in clause 29 of this agreement any outstanding amount being part of the Council's Cost, on a monthly basis or as otherwise approved by the Proper Officer.
- 3.6.2 All legal, administrative and construction costs incurred by the Council in connection with any amendments required to existing Traffic Regulation Orders or the promotion of new Traffic Regulation Orders arising as a consequence of the Works.
- 3.6.3 Any costs associated with diversions or protection of Statutory Undertakers' equipment if necessary for the Works' completion.
- 3.7 The Developer covenants to pay to the Council on the date of this agreement:
- 3.7.1 the Engineer's Fee; and
- 3.7.2 the Council's legal costs and disbursements in connection with the preparation and completion of this agreement
- 3.8 Receipt by the Council being the highway authority of the Council's Cost or the legal costs or any other amounts (or any part thereof) referred to in clauses 3.6 and 3.7 shall not be deemed to create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon it by the terms of this agreement or by statute or at common law and the Council shall not be liable for any loss, damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the Works by the Proper Officer
- 3.9 The Developer shall not interfere with the free flow of traffic on the existing highway or in any way obstruct the Public Highway without the express written permission of the Proper Officer and the bringing into force of any necessary Traffic Regulation Order.

3.10 The Developer shall:

3.10.1 submit to the Council noise readings, supporting information, calculations and any other information or data that the Council may reasonably request for the purposes of ascertaining whether any properties are eligible for an offer of insulation works or a grant to cover the cost of such works pursuant to the Noise Insulation Regulations 1975;

3.10.2 consult with, place orders with and pay any costs to Statutory Undertakers in relation to any works to their mains, services, plant or equipment necessitated by the Works including works required by the Statutory Undertakers to divert the services to the satisfaction of the Proper Officer; and also consult with Statutory Undertakers about their maintenance schedule on the Road or Public Highway and ensure that this does not conflict with the Developer's Programme for the duration of the construction of the Works and the Maintenance Period to the satisfaction of the Proper Officer

3.10.3 provide the Proper Officer with the contact details of its representative for the duration of the construction of the Works and the Maintenance Period and a telephone number of such representative which number will be manned on a 24 hour basis in case of emergency; and

3.10.4 apply for any necessary Traffic Regulation Orders which may be required in order for the Works to commence.

4 ACCESS TO THE LAND

4.2 During construction of the Works, the Owner and the Developer shall give to the Proper Officer and any other Council officer free access to every part of the Works and Land for the purpose of inspecting the Works and all material used, or intended to be used, for the Works.

- 4.3 During construction of the Works, the Proper Officer may require the Developer to open up or expose any of the Works that have been covered up without having been previously inspected by the Proper Officer. If the Developer fails to comply with any such request, the Council may take up or expose the relevant part of the Works. The Developer shall pay the Council's costs of such taking up and exposure.

5 THE COUNCIL'S OBLIGATIONS

- 5.2 The Council covenants with the Developer that it will comply with its obligations contained in this agreement PROVIDED THAT in the event that the Developer fails to pay any of the monies due in this agreement at the time they are due, the Proper Officer will cease to inspect the site or works for the purpose of adopting the Works and shall be under no obligation to adopt the Works under this agreement.
- 5.3 Following a reasonable request from the Developer in writing and receipt of payment in accordance with clause 3.6.2 the Council shall, as soon as reasonably practicable, commence the statutory process relating to any Traffic Regulation Order required for the Development.
- 5.4 The Council shall disregard this agreement when considering any objections to any Traffic Regulation Order which they may propose to make. If any objections are made, the Council in its capacity as local highway authority shall have no duty or obligation to the Developer by reason of this agreement or otherwise to make the Traffic Regulation Order other than the duty it would have to all persons interested in the Traffic Regulation Order in its capacity as local highway authority.

- 5.5 If there are no objections to any Traffic Regulation Order and the Council resolves to make one or all of the Traffic Regulation Orders, any Traffic Regulation Order shall be made and the statutory formalities completed as soon as reasonably practicable.

6 CONSTRUCTION OF THE WORKS – PART 1 AND PART 2 CERTIFICATE

6.1 The Developer shall in accordance with the Design Works, at its own cost, carry out and complete the Works:

- 6.1.1 in a good and workmanlike manner;
- 6.1.2 using only good quality materials approved by the Proper Officer; and
- 6.1.3 in accordance with the details approved by the Proper Officer prior to commencement of the Works.

6.2 During the carrying out of the Works the Developer shall comply with:

- 6.2.1 the Traffic Signs Regulations and General Directions 2016 and any statutory modification or re-enactment of the same;
- 6.2.2 any directions of the Police and the Proper Officer in respect of lighting and signing of the Works and any diversion routes; and
- 6.2.3 if requested by the Proper Officer, the Developer shall remove any existing Street Furniture (if applicable) and relocate or deliver it for local storage.

6.3

- 6.3.1 The Developer shall complete the Part 1 Works to the satisfaction of the Proper Officer within six months of the date of this agreement
- 6.3.2 The Developer shall complete the Part 2 Works to the satisfaction of the Proper Officer within twelve months of the date of this agreement

6.4 On completion of the Part 1 Works the Developer shall provide the Proper Officer with suitable evidence to verify the completion of any highway drainage pipelines and any works to the other drainage and culverted watercourses contained within the Roads and (without prejudice to the generality of the above) the Proper Officer may require that such evidence will be required to be in the form of any audio visual recordings and/or reports compiled following CCTV surveys of all or any such highway drainage pipelines and of any such works to other drainage and culverted watercourses and upon receipt of the above evidence Provided That the Proper Officer is satisfied that the Part 1 Works (including any highway drainage) have been completed in accordance with the Specification and Agreement Plan the Proper Officer shall issue the Part 1 Certificate to the Developer. If the Proper Officer is not satisfied that the Part 1 Works (including any highway drainage) have been completed in accordance with the Specification and Agreement Plan they will notify the Developer in writing of any additional works, alterations or amendments required to be carried out by the Developer and will only issue the Part 1 Certificate when satisfied that the Works have been completed to their satisfaction

6.5

6.5.1 Unless 6.5.2 applies and consent to postponement of the RSA3 has been given by the Proper Officer or 6.5.3 applies then before applying for the Part 2 Certificate the Developer shall commission the preparation and completion of an RSA3 in relation to the Works and after providing the result of such RSA3 to the Proper Officer within the timetable provided in clause 6.3.2 for completion of the Part 2 Works the Developer shall fully address, remedy and resolve any

issues that are identified by the RSA3 to the entire satisfaction of the Proper Officer and will provide such evidence within the said timetable as the Proper Officer may require in order to prove that the Developer has complied with all and any recommendations referred to in the RSA3 to the satisfaction of the Proper Officer;

6.5.2 the Developer may apply to the Proper Officer for their consent to the postponing of the RSA3 until after the issue of the Part 2 Certificate and if consent is given will carry out the RSA3 within eight (8) weeks of the date of issue of the Part 2 Certificate so that the Safety Auditor can record the movement of traffic following completion of the construction of the Works. The RSA3 will be subject to scrutiny by the Proper Officer at every stage in accordance with the conditions contained in this agreement and the Developer shall fully address, remedy and resolve any issues that are identified by the RSA3 to the entire satisfaction of the Proper Officer and will provide such evidence within eight (8) weeks of the date of the RSA3 as the Proper Officer may require in order to prove that the Developer has complied with all and any recommendations referred to in the RSA3 to the satisfaction of the Proper Officer;

6.5.3 if the Proper Officer prior to the Developer applying for the Part 2 Certificate recommends to the Developer that the said RSA3 be postponed until after issue of the Part 2 Certificate then the Developer shall carry out the RSA3 within eight (8) weeks of the date of issue of the Part 2 Certificate so that the Safety Auditor can record the movement of traffic following completion of the construction of the Works. The RSA3 will be subject to scrutiny by the Proper Officer at every stage in accordance with the conditions contained in this agreement and the

Developer shall fully address, remedy and resolve any issues that are identified by the RSA3 to the entire satisfaction of the Proper Officer and will provide such evidence within eight (8) weeks of the date of the RSA3 as the Proper Officer may require in order to prove that the Developer has complied with all and any recommendations referred to in the RSA3 to the satisfaction of the Proper Officer

6.6 On completion of the Works to the absolute satisfaction of the Proper Officer in all respects the Proper Officer (having regard to any additional works, alterations or amendments which may be required by virtue of clause 6.4) shall issue the Part 2 Certificate to the Developer PROVIDED THAT (i) verification has been provided to the Proper Officer that any sewers constructed on or under the Roads have been adopted by a sewer authority and that the Statutory Undertaker responsible for such sewers has certified all sewers constructed under the Roads as being or having been on maintenance and (ii) an RSA3 has been carried out (unless the Developer has applied for consent to postpone the RSA3 in accordance with clause 6.5.2 and consent has been given by the Proper Officer or the provisions of 6.5.3 have been applied by the Proper Officer)

and from the Operative Date

6.6.1 the Maintenance Period shall commence to run;

6.6.2 the Roads shall become highways open for use by the public at large, but shall not be regarded as highways maintainable at the public expense;

6.6.3 the Developer, in so far as the Road Works are concerned, shall remain the street manager for the purposes of Section 49(4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Roads are formally adopted as highways maintainable at public expense in accordance with clause 8.6.

7 MAINTENANCE

7.1 Throughout the Maintenance Period the Developer at its own expense and to the satisfaction of the Proper Officer shall:

7.1.1 maintain the Works;

7.1.2 be responsible for the supply of energy and all associated costs for the Street Furniture; and

7.1.3 carry out routine maintenance of the Roads including (but not limited to) sweeping, gully emptying and snow clearance, and clear all abandoned vehicles, rubbish or other unauthorised materials from the Roads.

7.2 Before expiry of the Maintenance Period and if required by the Proper Officer, the Developer shall:

7.2.1 commission the preparation and completion of an RSA4 in relation to the Works and

7.2.2 after providing the result of such RSA4 to the Proper Officer the Developer shall fully address, remedy and resolve any issues that are identified by the RSA4 to the entire satisfaction of the Proper Officer and

7.2.3 provide such evidence as the Proper Officer may require in order to prove that the Developer has complied with all and any recommendations referred to in the RSA4 to the satisfaction of the Proper Officer

8 FINAL CERTIFICATE

- 8.1 After the expiry of the Maintenance Period and subject to the Developer having commissioned, prepared and submitted to the Proper Officer an RSA4 (if required) the Developer must apply to the Proper Officer in writing for a Final Certificate.
- 8.2 Within twenty eight (28) Working Days following receipt of a written application for the issue of a Final Certificate the Proper Officer shall:
- 8.2.1 inspect the Works to which the application relates, and
 - 8.2.2 provide the Developer (where necessary) with a definitive written list of any further works required to be carried out and a timetable for carrying out these works in order to remedy and make good any defect or damage to the Works or any necessary reinstatement works which may have arisen during the Maintenance Period (including any defect in, or damage to, the road surface water drainage system) or any other works reasonably required as a result of the RS3 and, if applicable, RSA4 ("Further Works").
- 8.3 The Developer shall carry out any Further Works without delay and at its own cost.
- 8.4 The Further Works shall be subject to the same inspection procedure detailed in clause 8.2 until such time as the Developer has remedied or made good any such defect or damage to the satisfaction of the Proper Officer
- 8.5 Within twenty eight (28) Working Days of a satisfactory inspection in accordance with clauses 8.2 and 8.4 the Proper Officer shall issue the Final Certificate to the Developer provided that:
- 8.5.1 the Developer has paid to the Council the balance of the Council's Cost;

8.5.2 any Further Works have been completed to the satisfaction in all respects of the Proper Officer;

8.5.3 the Developer has delivered to the Proper Officer and the Proper Officer has accepted:

8.5.3.1 1 set of drawings in PDF and in CAD format showing to a scale of no less than 1:500 the Highway Works as constructed; and

8.5.3.2 One copy of the Health and Safety File and the final Health and Safety Plan, both in electronic format; and

8.5.4 the Developer has at its own cost provided the Proper Officer with a written verification that any sewers constructed on or under the Road have been adopted by a sewer authority;

8.5.5 any works required by a Statutory Undertaker pursuant to clause 13 have been undertaken by the Developer and any costs incurred by the Council pursuant to clause 13 have been reimbursed by the Developer;

8.5.6 the Proper Officer has received audio visual evidence to the satisfaction of the Proper Officer and reports from CCTV surveys of any highway drainage pipelines and any works to other drainage and culverted watercourses contained within the Roads verifying that any required Further Works have been satisfactorily completed and/or that no defects have arisen during the Maintenance Period;

8.5.7 the provisions relating to the grant of easements in clause 15 have been complied with; and

8.5.8 all landscaping areas within the Roads including trees and grassed areas have been inspected and accepted by an officer of the Landscape section of the Council.

8.6 From the date of the issue of the Final Certificate the Council agrees to adopt the Works and the Works shall become part of the highway maintainable at the public expense.

8.7 Upon the issue of the Final Certificate the Developer shall be released from all liability hereunder **SAVE FOR** the Developer's obligation to remedy any Latent Defect and **SAVE FOR** the indemnity provisions as referred to in clause 17.

9 INTEREST ON PAYMENTS

9.1 If any payment due under any of the provisions of this agreement is not made on or before the Due Date the Developer shall pay to the Council the Interest as at the Due Date for the period starting with the Due Date and ending with the actual date of payment

9.2 The Council shall be under no obligation to place any sums paid to them by the Developer pursuant to this agreement in an account which bears interest on such sums and (without prejudice to Clause 9.1) any sums repaid to the Developer hereunder shall not carry the payment of any interest thereon

10 MINOR ALTERATIONS

10.1 If the Developer wishes to amend the design or revise the proposals for implementation of the Works, including the Programme, it shall submit details in writing to the Council. No amendments or revisions shall be implemented without the prior written approval of the Proper Officer.

10.2 If the Proper Officer considers it necessary and reasonable and notifies the Developer in writing the Developer may be required to incorporate minor alterations or additions to the design or construction of the Works and/or the Drawing Schedule.

- 10.3 The terms and provisions of this agreement shall apply to any such amended or revised works as they apply to the Works as originally designed.

11 MATERIALS SAMPLING AND TESTING

- 11.1 The Developer shall, if requested by the Proper Officer, make all necessary arrangements for an independent accredited testing facility, approved by the Proper Officer, to test the materials proposed to be used in connection with the Works. The Developer shall bear the full cost of such testing and give to the Proper Officer, at no expense to the Council, copies of all material testing certificates.

- 11.2 Any material rejected by the Proper Officer, acting reasonably, as a result of the tests carried out shall not be used by the Developer for any of the Works.

12 KEEPING THE HIGHWAY CLEAN AND TIDY

- 12.1 All roads, footpaths, rights of way and other means of passage that lead to, from or cross the site of the Works and are available for use by the public during the carrying out of the Works shall be kept free from mud or other substances deposited through the construction operations of the Works and any such substance deposited by the Developer shall be promptly removed at no cost to the Council.

- 12.2 If such substances are not promptly and adequately removed the Council may close any associated crossings, entrances and exits and in the event of there being a danger to highway users may arrange for the substances to be removed by its own employees or contractors and may recover its reasonable and proper costs from the Developer. On removal of the substances the Council shall allow such crossings, entrances and exits to be reopened. Any losses or expenses incurred as a result of these measures shall be borne by the Developer.

- 12.3 On completion of the Works the Developer shall clear away and remove from the Public Highway all construction plant, surplus material, rubbish and temporary works and leave the site of the Works in a good and workmanlike condition.

13 CONNECTING TO EXISTING SERVICES

- 13.1 Before connecting the Roads to the carriageway of a highway maintainable at the public expense, the Developer shall give notice to the relevant Statutory Undertaker of any service or services laid in, on or under the existing highway of the proposal to make such connection as if the connection were works for road purposes of major highway works as defined in section 86 of the New Roads and Street Works Act 1991.

- 13.2 The Developer shall:

- 13.2.1 carry out, at its own cost, any works or measures required by a Statutory Undertaker as a result of the Works which shall include any works or measures arising as a result of the Works that are required to be carried out by the Council in order to comply with any agreement or arrangement entered into by the Council with a Statutory Undertaker and the Developer shall request the Council provides details of such works and measures, if any, required by any such agreement or arrangement such request being sent to the Proper Officer in writing at the same time as the giving of the notice referred to in 13.1 of this clause 13; and

- 13.2.2 indemnify the Council for the cost of any works or measures carried out, as a result of the Works, by the Council at the request of the Statutory Undertaker.

14 OCCUPATION OF BUILDINGS

14.1 No building erected by or on behalf of the Developer that fronts, adjoins, abuts or has access to the Roads shall be Occupied until:

14.1.1 the Proper Officer has issued the Part 1 Certificate in respect of the Roads or such part of the Roads as will provide the purchaser/occupier of such premises with access to an adopted vehicular highway; and

14.1.2 a base course pedestrian access (where applicable) to the Roads has been provided;

14.1.3 the Roads have operational street lighting columns erected in accordance with the Specification and Agreement Plan; and

14.1.4 the Roads have street name plates erected as agreed with the Proper Officer.

15 GRANT OF EASEMENTS

15.1 Before the Proper Officer issues a Final Certificate, the Developer shall (at no cost to the Council) execute and complete, or procure the execution and completion of:

15.1.1 any deeds of easement that are, in the opinion of the Council, necessary to secure for the Council full drainage rights to such parts of the surface water drainage system of the Roads that are not within the Land; and

15.1.2 any other deeds of easement required by the Council for the future maintenance of the Council of any Street Furniture not within the Land.

15.2 The Developer shall pay the Council's proper and reasonable legal costs and disbursements in connection with the grant of any deeds of easement.

- 15.3 The Council shall not be liable for the payment of compensation or any other costs or fees arising on account of the completion of any deeds of easement referred to in this clause, or due to the subsequent use of the easement.

16 CDM REGULATIONS

- 16.1 The Developer agrees to undertake all the obligations of a Client and to ensure that the Works are carried out in accordance with the CDM Regulations.
- 16.2 The Developer shall ensure that the Health and Safety File is maintained correctly and is available for inspection in accordance with the CDM Regulations.
- 16.3 The Developer warrants it has taken or shall take all reasonable steps to be satisfied that all contractors (including the Contractor, if applicable) engaged on the Works have the skills, knowledge and experience in undertaking the Works and in respect of the CDM Regulations.
- 16.4 The Developer shall indemnify and keep the Council indemnified against any breach of the Developer's obligations under this clause 16.

17 INDEMNITIES

- 17.1 The Developer shall indemnify the Council against any actions, charges, claims, costs, expenses, losses, damages, demands, liabilities and proceedings arising out of any breach or non-observance by the Developer of its obligations in this agreement or at any time in connection with or incidental to the carrying out or use of the Works (including without limitation any negligent or defective design or construction of the Works).
- 17.2 The Developer shall indemnify the Council in respect of any claims under Section 10 of the Compulsory Purchase Act 1965, Part I of the Land Compensation Act 1973 and any claims for compensation under the Noise

Insulation Regulations 1975 arising out of, in connection with or incidental to, the carrying out of the Works and their subsequent use.

17.3 The indemnity contained in this clause 17 includes:

17.3.1 all fees incurred by claimants which the Council is obliged to pay, and those of the Council or agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);

17.3.2 statutory interest payments to claimants and their professional advisors; and

17.3.3 the Council's reasonable and proper legal costs in making the compensation, fees and interest payments.

18 INSURANCE

18.1 Before commencing the Works or before completing this agreement, whichever is earlier, the Developer shall provide the Council with a copy of a Public Liability Insurance Policy together with proof that it is in force and any such other information relating to the policy as the Council shall reasonably require

18.2 From and including the date applicable under clause 18.1 above until the date of issue of the Final Certificate, the Developer shall maintain the Public Liability Insurance Policy

18.3 The Developer shall ensure that the Council's interests under this agreement as the local highway authority are endorsed on the Public Liability Insurance Policy

18.4 Before commencing the Works or before completing this Agreement, whichever is earlier, the Developer shall provide the Council with a copy of a Professional Negligence Indemnity Insurance Policy together with proof that it is in force and

any such other information relating to the policy as the Council shall reasonably require.

- 18.5 For a period of at least six years from and including the date that the Works commence the Developer shall maintain the Professional Negligence Indemnity Insurance Policy.

19 SECURITY FOR PERFORMANCE OF THE DEVELOPER'S OBLIGATIONS

- 19.1 The Developer has paid the Cash Bond to the Council.

- 19.2 On the issue of the:

- 19.2.1 Part 1 Certificate, the amount of the Cash Bond to be retained by the Council shall be reduced to 20% of the Cash Bond and any surplus shall be repaid to the Developer provided that the amount of any surplus may be reduced or extinguished by the operation of the provisions of clauses 20 and 21 of this agreement;

- 19.2.2 Final Certificate, any remaining balance, if any, shall be repaid to the Developer.

20 ADDITIONAL BOND

It is hereby agreed between the Council and the Developer that in the event of the Developer being unable to undertake the Works in accordance with the Programme or any longer period agreed by the Council the Developer shall:

- 20.1 deposit with the Council forthwith when required to do so by the Council an additional bond for an amount to be specified conclusively by the Council as representing the excess of the revised estimated cost of the outstanding works to be carried out under this Agreement over the Cash Bond; and

- 20.2 pay forthwith to the Council when required to do so any increase in the Council's Cost resulting directly from the Developer's non-compliance with the Programme.

21 POWER TO EXECUTE WORKS IN DEFAULT

Without prejudice to Clauses 19 and 20 if the Developer fails to execute or complete the Works in accordance with the Developer's obligations hereunder the Council shall after giving not less than twenty eight (28) Working Days' notice in writing to the Developer be entitled to execute or complete the Works in default by its own employees, servants, workmen, contractors or other duly authorised personnel or otherwise and to recover from the Cash Bond all fees costs and expenses associated with undertaking any such default works as certified by the Proper Officer.

22 ARBITRATION

In the event of any dispute arising out of this agreement the same shall be referred to an expert to be appointed by agreement between the parties or failing agreement:

- 22.1 where the dispute involves the interpretation of the terms of this agreement in the matter of the parties' rights, liabilities or obligations, by a suitably qualified barrister nominated by the President for the time being of the Law Society;
- 22.2 where the dispute involves an issue not covered by clause 22.1 by a suitably qualified expert nominated by the President for the time being of the Institution of Civil Engineers

AND in this respect this agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Act 1996 or any statutory modification or re-enactment thereof and each party shall bear its own costs of

such arbitration (subject to any direction as to or award of costs made by the arbitrator).

23 NOTICES

Any written notice to be served on the Council shall be delivered or posted to the Proper Officer and any notices to be served on the Developer, Surety or the Mortgagees may be delivered or posted to their registered office.

24 ASSIGNMENT

This agreement shall not be assigned by the Developer and the assignment of this agreement is hereby expressly prohibited PROVIDED THAT the Council being the highway authority agree to consider any request from a proposed assignee of the site of the Roads for the execution by the proposed assignee (and its surety (if required by the Council) of an agreement with the Council on similar terms and conditions to this agreement.

25 EXCLUSION OF THIRD PARTIES

No person other than a party to this agreement and their respective successors shall have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

26 HIGHWAY AUTHORITY'S STATUTORY POWERS

Nothing in this agreement shall:

- 26.1 Prevent or restrict the exercise by the Council being the highway authority of its powers under Part XI of the Act or any other statutory powers except that this agreement is intended to be such an agreement as is mentioned in Section 219 sub-section (1) of the Act
- 26.2 Imply any obligation on the part of the Council to the Developer or to any person to ensure that the Works are properly constructed

28.3 Affect the Council's rights powers duties and obligations in the exercise of its functions as a local authority planning authority or highway authority or in any other capacity whatsoever nor relieve the Developer from the necessity to obtain all such approvals or consents as may from time to time be requisite from the Council in any such capacity as aforesaid.

29 ENGINEER'S FEE

29.1 The Engineer's Fee represents an estimate of the Council's highway engineer's costs that will be incurred in respect of the Highway Works.

29.2 The Developer will pay the Engineer's Fee to the Council on the date of this agreement.

29.3 It is hereby agreed between the parties that:-

29.3.1 should the Engineer's Fee be expended before the issue of the Final Certificate then the Developer will pay to the Council within ten (10) Working Days following receipt of a written demand from the Council any supplemental Engineer's Fee representing any costs over and above the Engineer's Fee detailed herein that have been reasonably and properly incurred by the Council; and

29.3.2 the Council will refund to the Developer any unexpended balance of the Engineer's Fee it retains on the date that the Final Certificate is issued within twenty (20) Working Days following the date of the issue of the Final Certificate.

SCHEDULE 1

DESCRIPTION OF WORKS

1. New areas of highway for adoption off Downley Drive/Woodward Place and St Vincent Street
2. Alterations of existing highway including the creation of new vehicular access points, dropped kerbs and tactile paving to Woodward Place, Woodward Street, Kingham Drive, Downley Drive and St Vincent Street
3. Uncontrolled crossing points at Downley Drive junction with the new road and at St Vincent Street
4. Resurfacing of existing carriageway and footway including the introduction of tactile paving to crossing points
5. Double yellow lines waiting restrictions to St Vincent Street and the introduction of No Waiting at Any Time restrictions for the east side of St Vincent Street in its entirety including the turning head and a section of the west side of St Vincent Street
6. No Waiting at Any Time restrictions to the Downley Drive turning head; and
-Waiting restrictions at the following junctions:-

Downley Drive/Woodward Street

St Vincent Street/Woodward Street

Woodward Place/Woodward Street

Kingham Drive/Woodward Street
7. All associated civil works for the proposed S38/S278 highway works shown on the agreement drawings detailed in the Drawing Schedule.

PART 1 WORKS

1. All highways drainage complete and operational including any flow control features
2. All other drainage contained within the Works
3. Carriageway constructed up to and including base and binder
4. All footpaths constructed up to and including base and kerbing
5. All services/utilities apparatus contained within the Public Highway
6. Creation of sight lines and clearance of visibility splays
7. Street lighting
8. Street nameplates (temporary where appropriate and agree with the Proper Officer)

PART 2 WORKS

1. Any kerbing not completed in Part 1
2. Carriageway surface course completed

3. Road markings & signage completed and installed
4. All ancillary assets completed installed and energised
5. Completed Traffic Regulation Orders
6. Adoption of sewers under Section 104 of the Water Industry Act 1991
7. All other works described in the Specification and shown in the Agreement Plan and the drawings referenced in the Drawing Schedule

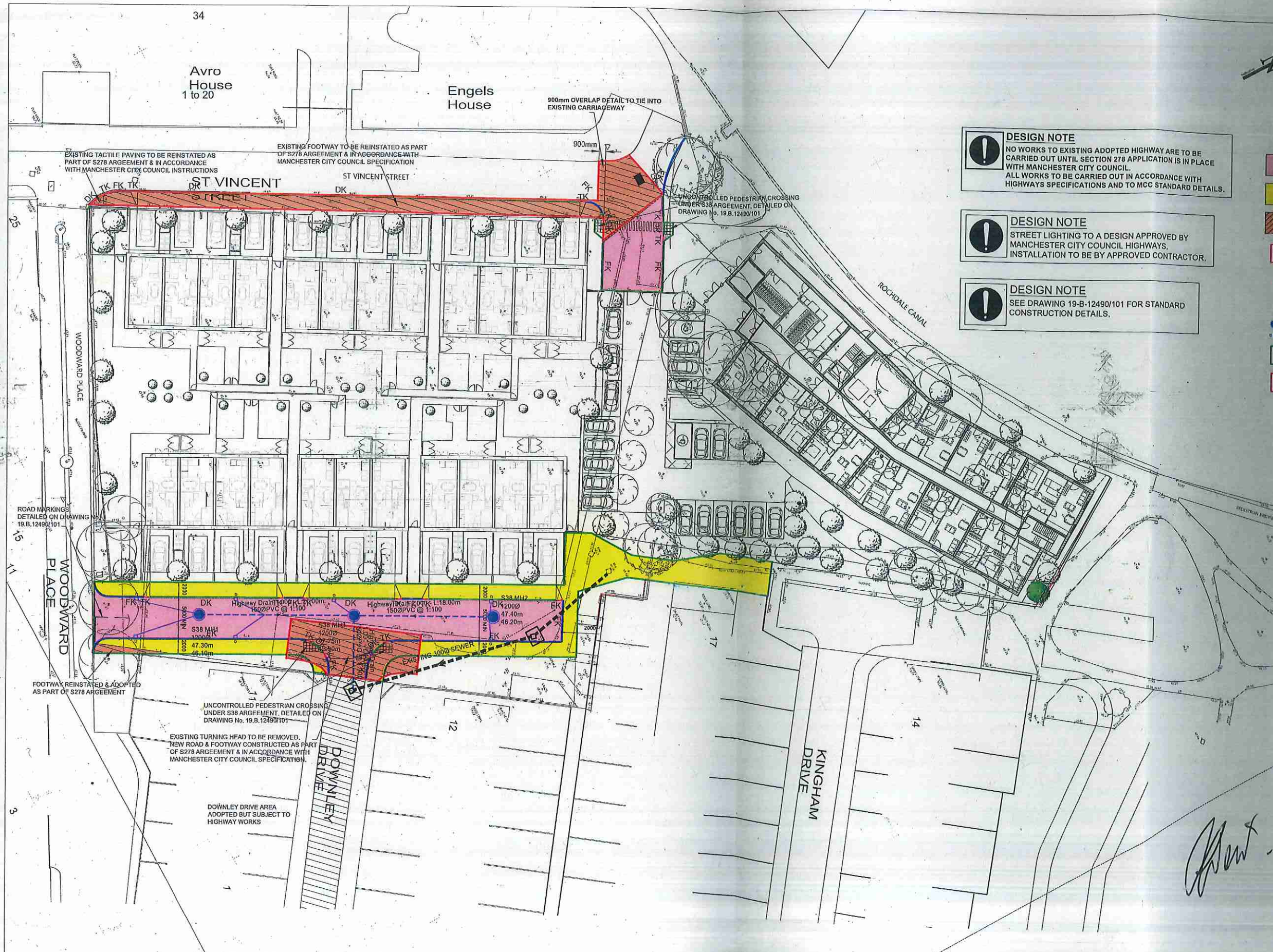
SCHEDULE 2

DRAWING SCHEDULE

S38/S278 Agreement – Downley Drive

Drawing Title	Drawing No.	Revision
Section 38/278 Site Plan	A1/19.B.1240/100	C
Proposed Drainage Strategy	A1/20-B-12490-200	K
S38 & S278 Details	19.B.12490/101	D

IN WITNESS whereof the parties have executed this document as their Deed the day and year first above written



SITE LOCATION
DOWNLEY DRIVE,
ANCOATS,
MANCHESTER.
M4 7JY.
EASTINGS: 385350;
NORTHINGS: 398720.

DESIGN NOTE
NO WORKS TO EXISTING ADOPTED HIGHWAY ARE TO BE CARRIED OUT UNTIL SECTION 278 APPLICATION IS IN PLACE WITH MANCHESTER CITY COUNCIL.
ALL WORKS TO BE CARRIED OUT IN ACCORDANCE WITH HIGHWAYS SPECIFICATIONS AND TO MCC STANDARD DETAILS.

DESIGN NOTE
STREET LIGHTING TO A DESIGN APPROVED BY MANCHESTER CITY COUNCIL HIGHWAYS.
INSTALLATION TO BE BY APPROVED CONTRACTOR.

DESIGN NOTE
SEE DRAWING 19-B-12490/101 FOR STANDARD CONSTRUCTION DETAILS.

- NEW ADOPTED CARRIAGEWAY (S38)
- NEW ADOPTED FOOTWAY (S38)
- AREA ADOPTED BUT SUBJECT TO NEW S278 WORKS (AMENDMENT TO EXISTING HIGHWAYS)
- SITE BOUNDARY
- FK FULL KERB
- TK TRANSITION KERB
- DK DROPPED KERB
- PROPOSED TACTILE PAVING SLABS
- PROPOSED HIGHWAY DRAIN AND MANHOLE FOR ADOPTION
- PROPOSED ROAD GULLIES AND LEADS FOR ADOPTION
- EXTENT OF S38 WORKS
- EXTENT OF S278 WORKS

FOR CONSTRUCTION

C	14.04.23	NOTES & BOUNDARIES REVISED
B	28.09.22	SITE NOTES ADDED
A	02.09.22	CONSTRUCTION ISSUE
REV.	DATE	DESCRIPTION
CLIENT		
GREAT PLACES BUTTRESS ARCHITECTS		
Carley Daines and Partners Limited Consulting Civil and Structural Engineers 11 Bridgewater Road Walkden Worsley Manchester M28 3JE Tel 0161 799 2720 Fax 0161 790 3474 E-mail mail@carleydaines.co.uk		
TITLE		
DOWNLEY DRIVE ANCOATS, MANCHESTER		
S38/S278 SITE PLAN		
Drawn	M.HOLE	Checked
Date	APRIL 2022	Date
Scale	1:250 @ A1	
Drawing No.	19.B.12490/100	C

EXECUTED AS A DEED by ROWLINSON CONSTRUCTIONS LIMITED

acting by a director

DIRECTOR

Signature:

Name: (in block capital)

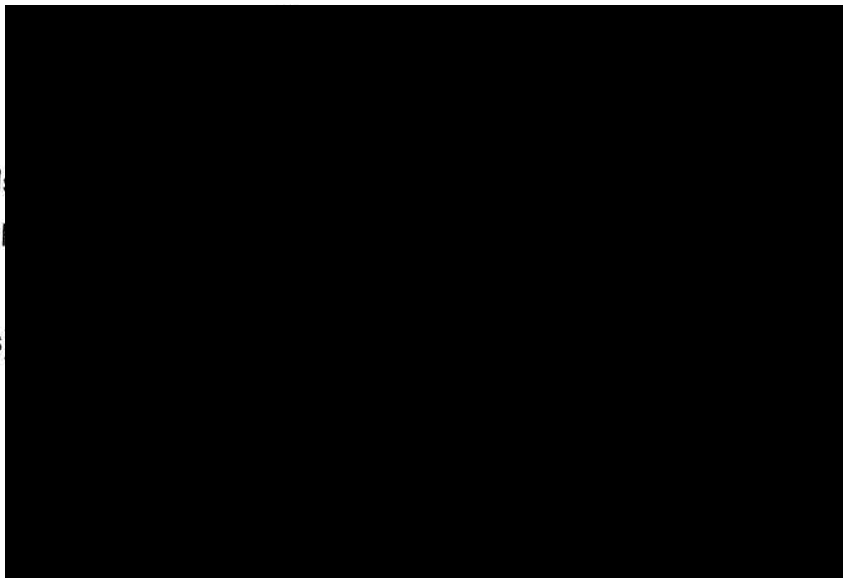
IN THE PRESENCE OF

Signature:

Name (in block capitals)

Address

Occupation



THE COMMON SEAL of **THE COUNCIL**
OF THE CITY OF MANCHESTER was

hereunto affixed in pursuance of

an Order of the Council of

the said City:

Authorised Signatory