THIS AGREEMENT is made the day of Two Thousand and Thirteen

BETWEEN

(1) **BIRMINGHAM CITY COUNCIL** of the Council House Victoria Square Birmingham B1 1BB ("the Council") and

(2) _ whose registered office is at _ (Company Registration Number _) ("the Developer")

(3) _ whose registered office is at _ (Company Registration Number _) ("the Landowner")

WHEREAS

(A) The Council is the Highway Authority for the purposes of the Highways Act 1980 for the City of Birmingham

(B) The Council and the Developer wish to improve the Highway by the carrying out of the Highway Works

(C) The improvements of the Highway can be achieved by way of financial assistance from the Developer to the Council

(D) The Council is satisfied that the Highway Works will be of benefit to the public

NOW IT IS HEREBY AGREED as follows:-

1 **Words and Expressions**

1.1 In this Agreement the following words and expressions shall where the context so requires or admits have the following meanings:

The Act

The Highways Act 1980

Amey LG

Amey LG Limited company number 03612746 whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ.

Amey Birmingham

Amey Birmingham Highways Limited company number 7064140 whose registered office is at The Sherard Building, Edmund Halley Road, Oxford, OX4 4DQ.

Approved Contractor List

A list of contractors compiled by the Council a copy of which may be obtained from [_]

The Council

Birmingham City Council and its successors in title

Design Approval Fee

A sum of four thousand pounds (£4,000)

The Developer

[_] and its successors in title and assigns

The Development Site

Land edged red on the attached plan no. _

The Director

The Director of Sustainability Transportation and Partnerships of the Council or such other officer from time to time performing this function

The Engineer

A chartered civil engineer or other suitably qualified person acting independently of the Council and appointed by the Developer

The Highway

_ Birmingham

The Highway Works

The works described in the First Schedule hereto

ICE Conditions of Contract

The Conditions of Contract issued by the Institution of Civil Engineers, the Association of Consulting Engineers and the Civil Engineering Contractors 7th Association Edition

Inspection/Contract Administration Fee

A sum of three thousand three hundred and thirty five pounds £3,335

The Maintenance Period

The period of twelve months commencing with the date of notification by the Director under Clause 4

The Method Statement

A written statement detailing the individual construction processes to be employed to implement the Highway Works as approved by the Director

Stage 2 Safety Audit

A safety audit of completed contract drawings

Stage 3 Safety Audit

A safety audit of the Highway Works prior to the commencement of the Maintenance Period

The Traffic Regulation Orders

All temporary experimental or permanent traffic regulation/parking places orders required to be made as a consequence of the Highway Works

The Traffic Regulation Order Fees

The fees incurred by the Council in consultation making, publishing and dealing with objections to the Traffic Regulation Orders

1.2 In this Agreement where the context so requires:-

1.2.1 The singular includes the plural and vice versa

1.2.2 References to Clauses and Schedules are references to Clauses and Schedules in this Agreement

1.2.3 References to a paragraph in a Schedule are references to a paragraph in the same Schedule

1.2.4 References to any statute or statutory instrument shall include references to any statutory modification or re-enactment thereof for the time being in force

1.2.5 The Council may at any time prior to the expiration of the Maintenance Period at the Developer's expense make such alterations to the Highway Works as it may consider desirable or necessary. Insofar as may be reasonably practicable the Council shall give the Developer an opportunity to comment on any alterations it proposes to make

2 **Statutory Provision**

2.1 This Agreement is made pursuant to Section 278 of the Act

2.2 The Council agrees pursuant to the said Section 278 to carry out the Highway Works at the expense of the Developer and for the purpose of executing the Highway Works hereby appoints the Developer as its agent to carry out the Highway Works in accordance with the following provisions

3 **Highway Works**

3.1 The Developer shall prior to the occupation of the Development Site (pursuant to planning application reference) complete the Highway Works (including all works ancillary or incidental thereto) in accordance with the stipulations requirements and conditions laid down in this Agreement

3.2 The Developer shall once having commenced the Highway Works proceed with them conscientiously and expeditiously and with all due diligence and in accordance with the Method Statement

3.3 Subject to the provisions of this Agreement and as soon as the Highway Works have been completed the Developer/Owner shall dedicate as highway (and the Council shall forthwith accept) all such land as is within its ownership and is required for the construction of the Highway Works which does not already form part of the public highway or is already maintained as if it were a public highway

4 **Maintenance Period**

4.1 When and so soon as the Highway Works have been completed and the Developer has notified the Council of this in writing the Director subject to being satisfied that the Highways Works have been completed shall so notify the Developer and the Developer shall then maintain the Highway Works for the Maintenance Period in like manner as if the Highway Works had been constructed by the Developer acting as contractor to the authority under the ICE Conditions of Contract

4.2 At the expiration of the Maintenance Period or on a date (whichever is the later) on which any defect or damage arising during the Maintenance Period is made good to the satisfaction of the Director he shall notify the Developer/Owner in writing and as from the date of such notification the Highway Works shall become maintainable at the public expense

5 **Indemnity**

The Developer shall indemnify the Council from and against all claims demands actions proceedings and costs arising out of or in connection with or ancillary to the carrying out of the Highway Works or any part or parts thereof including but without prejudice to the generality of the foregoing any liability of the Council as a result of the application of the provisions of the Highways Act 1980 Compulsory Purchase Act 1965 Land Compensation Act 1973 or by virtue of the Noise Insulation Regulations made thereunder including any liability falling upon the Council by virtue of it exercising its discretionary powers under the said Regulations save for any claims arising as a result of the negligence of the Council

6 **Security**

Without prejudice to any other remedies available to the Council if the Highway Works or any part or parts thereof are not carried out or completed to the satisfaction of the Director in accordance with the terms of this Agreement then the Council (after giving twenty-eight days written notice or in the event of there being a significant danger to users of the highway such lesser period as may in the circumstances be reasonable of its intention to the Developer) may execute or complete the relevant part or parts of the Highway Works in accordance with the provisions of this Agreement by its own employees or by contractors and recover its reasonable and proper costs as properly and reasonably certified by the Director from the Developer

7 **Notices etc**

7.1 Where under this Agreement the Council or the Director is required to agree to approve to express satisfaction with or to give notice of any matter such agreement approval satisfaction or notice shall be deemed to have not been given or expressed unless given or expressed in writing (and shall not be unreasonably withheld or delayed) and the Council agrees to use all reasonable endeavours to ensure that any agreement or approval which is required will be given or refused within 20 working days

7.2 The address for service of any such notice or consent or approval as aforesaid shall in the case of service upon the Council be upon the Council at its address aforesaid or such other address for service as shall have been previously notified to the Developer and in the case of service upon the Developer be upon the Developer at

its address aforesaid or such other address for service as shall have been previously notified to the Council

7.3 Any notice consent or approval under this Agreement shall be deemed to have been served as follows:-

7.3.1 if personally delivered at the time of delivery

7.3.2 if posted at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authority within the United Kingdom

7.3.3 if sent by tested telex or facsimile transmission at the time of successful transmission

and in proving such service it shall be sufficient to prove that personal delivery was made or that the envelope containing such notice consent or approval was properly addressed and delivered into the custody of the postal authority in a pre-paid first class recorded delivery envelope or that the telex or facsimile was successfully transmitted on a tested line as the case may be

8 **Arbitration**

Any dispute under or arising out of the operation of this Agreement may be referred to a single arbitrator if all parties to the dispute shall agree such arbitrator or in default of agreement to be nominated (upon the application of any party to the dispute) by the President for the time being of the Law Society in accordance with and subject to the provisions of the Arbitration Act 1996 or any statutory modification or re-enactment thereof for the time being in force

9 **Statutory Undertakers' Apparatus**

For the avoidance of doubt it is hereby expressly declared that the Developer in carrying out any works which it is required by this Agreement to execute shall at its own expense divert or protect all or any pipes wires cables or equipment belonging to any person or body having power to undertake street works under the New Roads and Street Works Act 1991 as may be necessary to enable such works properly to be carried out or may be reasonably directed by the Director and all alterations to existing services shall be carried out to the satisfaction of the appropriate authorities and undertakers

10 **Specification**

The following shall be the requirements and appropriate standards to be taken into account by the Developer in preparing any detailed drawings for submission to the Council and during the carrying out of the Highway Works:

Specification

Specification for Highway Works and the associated Notes for Guidance

Birmingham City Council's Guide to Siting and Specification of Street Furniture 2001

Design

Design Manual for Roads and Bridges

Traffic Advisory Leaflets

Lighting

Design in accordance with BS5489 Part 1: 2003 and BS EN 13201 as appropriate

Birmingham City Council Street Lighting Specification

Signing and Lining

The Traffic Signs Regulations and General Directions 2002

The Traffic Signs Manual (DOT)

Trees

National Joint Utilities Group (NJUG) 10 and BS 5837:2005 'Trees in relation to construction'

11 **Approval of Design etc**

The Highway Works shall not commence until detailed design, specifications and Method Statement have been submitted to each of the Director, Amey LG and Amey Birmingham and approved by the Director. If any of the Director, Amey LG or Amey Birmingham shall reasonably request further documentation or information in order to properly understand the design of the Highway Works and the effect of their incorporation into the Council's highway network the Developer shall arrange for the provision of such documentation and information to each of the Director, Amey LG and Amey Birmingham within 5 days of such request

In approving the design, specifications and Method Statement the Director shall not be held responsible for the correctness thereof

12 **Workmanship**

The Developer shall use all reasonable endeavours to diligently carry out and complete the Highway Works at no cost to the Council in a good and workmanlike manner with good quality materials of their respective kinds and in accordance in all respects with the specification the drawings and the Developer's obligations hereunder and for that purpose shall procure that the design of the Highway Works including the selection of any specification for any kinds and standards of materials and goods and workmanship to be used in the construction of the Highway Works so far as not described or stated herein are all carried out with reasonable care and skill

13 **Traffic and Safety Control**

In carrying out work in or adjoining the public highway the Developer shall comply in all respects with Chapter 8 of the Traffic Signs Manual and Safety at Street Works and Road Works – A Code of Practice and all written instructions of the Director (and for the avoidance of doubt this shall include a site specific traffic survey and site specific risk assessment unless otherwise notified by the Director)

14 **Approved Contractor**

The Developer shall only engage a contractor or permit the engagement of any sub-contractor to execute the Highway Works or any part thereof that at the time of such engagement is an Approved Contractor

15 **Supervision and Inspection**

15.1 The Developer shall ensure that the Highway Works shall be supervised by The Engineer

15.2 The Developer shall permit and shall require any contractor or sub-contractor engaged on the Highway Works to permit at all reasonable times persons authorised by the Council including Amey LG and Amey Birmingham to gain access to the site of the Highway Works to ensure compliance with the provisions of this Agreement and the Developer shall allow persons authorised by the Council including Amey LG and Amey Birmingham to inspect the Highway Works including all traffic signal equipment and all works which relate to the Council's urban traffic control and management system

15.3 The Developer shall invite both Amey LG and Amey Birmingham to attend any pre-start site meeting in respect of the Highway Works in order for Amey LG and Amey Birmingham to familiarise themselves with the details and issues concerning such Highway Works (including the materials and method of construction)

16 **Insurance**

Prior to the commencement of the Highway Works arrangements shall be made at the expense of the Developer to effect insurance with an insurer in terms and for such amounts as may be reasonably required by the Council for such insurance to cover the same risks as would be required to be covered by Clauses 21 22 and 23 of the ICE Conditions of Contract

17 **Notification of Start of Highway Works**

The Developer shall prior to the commencement of the Highway Works give the Council at least 28 days' notice in writing of the proposed date on which the Highway Works will start PROVIDED THAT

(i) the Highway Works shall not commence before the design and specification shall have been approved by the Director under Clause 12 and

(ii) the Developer shall comply with all statutory procedures under the New Roads and Street Works Act 1991 for the notification of the start of the Highway Works

18 **Safety Audit**

18.1 At the Developer's expense and prior to the approval of the detailed design a Stage 2 Safety Audit carried out by an independent safety auditor approved by the Council in

accordance with Department of Transport Standard HD 19/03 shall be submitted to the Director and any recommendations made in the safety audit report shall be implemented to the satisfaction of the Director

18.2 At the Developer's expense and prior to the commencement of the Maintenance Period a Stage 3 Safety Audit carried out by an independent safety auditor approved by the Council in accordance with the Department of Transport Standard HD 19/03 shall be submitted to the Director and any recommendations made in the safety report shall be implemented to the satisfaction of the Director

19 **Fees**

The Developer shall pay to the Council:-

19.1 Upon completion of this Agreement the Council's reasonable legal costs in respect of the preparation and completion of this Agreement

19.2 Upon completion of this Agreement the Inspection/Contract Administration Fee

19.3 Within 28 days of issue of an invoice(s) the whole or part (as appropriate) of the Traffic Regulation Order Fees

19.4 Upon completion of this Agreement the Design Approval Fee if not already paid by the Developer upon the submission of drawings for approval by the Council and the unexpended balance if any will be returned by the Council to the Developer prior to the commencement of the Highway Works

19.5 All fees to be paid under Clause 19 hereof shall be addressed to the Director of Sustainability Transportation and Partnerships P.O Box 14439 Birmingham B2 2JE marked for the attention of _

20 **Access**

20.1 The Council hereby permits the Developer acting through its employees contractors or agents to enter upon the public highway for the purposes of executing the Highway Works in accordance with its obligations under this Agreement

20.2 The Developer hereby permits the Council acting through its employees contractors or agents to enter upon the Development Site if required for the purposes of executing and maintaining the Highway Works

21 **Maintenance Costs**

21.1 In the event of the Highway Works being completed the Developer shall pay to the Council a commuted sum of Pounds (£) in respect of the future maintenance cost of the Highway Works. The payment shall be made within 28 days of the date on which it is demanded and shall satisfy any liability of the Developer in this respect

21.2 All costs to be paid under clause 21.1 hereof shall be addressed to the Director of Sustainability Transportation and Partnerships P.O Box 14439 Birmingham B2 2JE and marked for the attention of

22 **Termination of Agreement**

22.1 At any time 14 days prior to the physical commencement of the Highway Works

22.1.1 The Director may terminate this Agreement by giving the Developer written notice of his decision to terminate it; and

22.1.2 The Developer may terminate this Agreement by giving written notice to the Council that it does not wish the Highway Works to be carried out

22.2 On any termination under this clause the Council shall give the Developer an account of all abortive costs incurred by the Council in respect of this Agreement within 28 days from the date of that account

22.2.1 If that account shows that those costs exceed the payments made by the Developer under the foregoing provisions of this Agreement the Developer shall pay to the Council a sum equal to that excess

23 **Assignment**

The rights and liabilities of the Developer under this Agreement are not assignable

24 **Interest**

If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due ("the Due Date"), the party from whom it was due shall at the same time as making the payment pay interest to the other party at two per cent above the rate payable in respect of compensation under Section 32 of the Land Compensation Act 1961 as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made and for the avoidance of doubt this Clause shall not apply to any repayments which are delayed as a result of a late initial payment falling under this Clause

25 **Copyright**

The Developer hereby grants to the Council an irrevocable non exclusive royalty free licence to use and to reproduce all details plans specifications and calculations prepared or provided by the Developer in connection with the Highway Works (whether now or hereafter at any time in existence) and any works designs or inventions of the Developer incorporated in or referred to therein provided always that such licence is granted only for any legitimate purpose related to the Highway Works

26 **Benefit**

It is hereby agreed by the parties hereto that the land which is to be benefited by the Highway Works is the Development Site

27 **Contracts (Rights of Third Parties) Act 1999**

27.1 Subject to clause 27.2 except in relation to successor bodies and successors in title and assigns to the parties to this Agreement, it is agreed that nothing in this Agreement entitles a person who is not a party to this Agreement to enforce any of the terms of those agreements.

27.2 Both Amey LG and Amey Birmingham shall be entitled to enforce any of the obligations placed on the Developer under this Agreement and to have the benefit of all the indemnities given by the Developer under this Agreement to the Council

28 **Jurisdiction**

This Agreement is governed by and interpreted in accordance with the law of England and Wales

EXECUTED AS A DEED by the parties hereto the day and year first before written

FIRST SCHEDULE

THE HIGHWAY WORKS

The works shown generally on drawing numbers (or any revisions thereafter as certified by the Council) and comprising of:-

1.

2.

3.

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
BIRMINGHAM CITY COUNCIL)
in the presence of:-)

Authorised Signatory

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
_[DEVELOPER])
in the presence of:-)

Director

Secretary

EXECUTED AS A DEED by affixing)
THE COMMON SEAL of)
_[OWNER])
in the presence of:-)

Director

Secretary

DATED 2013

BIRMINGHAM CITY COUNCIL

-and-

_

-and-

_

Section 278 Highways Act 1980 relating to the carrying out of works to the highway known as _ Birmingham

Ref: STP/AD/SON/S278/DSP_

Birmingham City Council
Sustainability Transportation
and Partnerships
P.O Box 14439
Birmingham
B2 2JE