

DATED _____ 2021

THE COUNCIL OF THE CITY OF MANCHESTER

and

TRAFFORD BOROUGH COUNCIL

Agreement

Section 8 Highways Act 1980

Chorlton to Manchester Walking and Cycling Route – Area 2

Upper Chorlton Road between its junctions with –Brooks Bar to Seymour Grove

Junctions, Whalley Range.

Now this Deed witnesseth as follows:

This Agreement is made pursuant to Section 8 of the Highways Act 1980, the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 and all other enabling powers.

It is agreed that:

1. Definitions

In this Agreement the following expressions shall unless the context otherwise requires have the following meanings:

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

Business Case means the Full Business Case to be submitted by Manchester GMCA and TfGM via the MCF fund;

Certificate of Practical Completion means a certificate of completion to be issued by Manchester and approved in writing by Trafford in accordance with clause 6.7 when the construction of the Works have been satisfactorily completed;

Chief Executives means the Chief Executive for Manchester and Chief Executive for Trafford;

Complementary and Mitigation Works means those measures outlined in the Business Case and to be agreed in writing by the Parties to complement the scheme and to mitigate the effect of the Works;

Completion Certificate means a certificate of completion to be issued by the NEC/ECC Project Manager when the construction of the Works have been satisfactorily completed and if the Project is completed in stages/part will include any such certificate as may be issued at satisfactory completion of the Works for that stage/part;

Construction Contract means any contract for the construction of the Highway Works or any relevant parts let by Manchester to the contractor in accordance with the terms of the NEC/ECC contract;

Consultation Strategy means the consultation strategy contained in the Business Case;

Defect Liability Period means a period of 12 months calculated from the date of service by Manchester on Trafford of the Completion Certificate unless at the end of that period they forms the view that the Final Certificate cannot be issued on the basis that the Remedial Works have not been completed in accordance with this agreement in which case the Defect Liability Period shall include such further period as shall elapse until the issue of the Final Certificate;

Design means the design of the Works as approved by both Parties in writing;

Delivery Agreement means the agreement of GMCA, TfGM and Manchester under which GMCA will make payments by way of grant to Manchester towards the costs incurred by Manchester in connection with the Works;

Final Certificate means the certificate issued by NEC/ECC Project Manager following the expiry of the Defect Liability Period and if the Project is completed in stages/part will include such certificate as may be issued at the expiry of the Defect Liability Period for that stage/part;

GMCA means Greater Manchester Combined Authority, which is the Local Transport Authority for the combined area of Manchester;

Health and Safety File has the same meaning as in the Construction (Design and Management) Regulations 2015;

Highways Land the area outlined in red on the Plan;

The Plan means the plan annexed at Schedule 1 hereto;

Project means the construction, completion and maintenance of the Works in accordance with this Agreement excluding the making of the Traffic Regulation Orders;

Project Board means the Manchester Project Board, comprising of senior officers from Manchester who have been appointed in accordance with the Project Board Protocol to oversee the quality assurance of the Project;

Project Board Protocol means the protocol to be agreed in writing by the Parties to arrange governance structure, communications and all other relevant matters in accordance with which the Project Board will operate for as long as it is necessary for the purposes of this Agreement or any provision contained herein;

Project Costs means the proper and reasonable costs incurred in carrying out the Project and shall include, but will not be limited to, all costs associated with the delivery and construction of the Project and to all reasonable professional fees and any other costs of the Parties in relation to the preparation and approval of this Agreement;

Proper Officer(s) means the officer for the time being appointed by either Trafford or Manchester for the purposes of this Agreement or of any provision contained herein;

NEC/ECC Project Manager means the manager appointed in accordance with the Construction Contract to oversee the whole of the Project;

Remedial Works means any defect in or damage to the Roads or the Works which may arise from any cause whatsoever or be discovered during the Maintenance Period and prior to issue of the Final Certificate (including any defect in or damage to the Road surface water drainage system) of which Manchester's Proper Officer shall have been notified in writing by Trafford's Proper Officer or Representative;

Road(s) means the roads to be improved as listed in Schedule 2;

Road Safety Audits shall mean the audits of the Works to be carried out in accordance with Highways England's Road Safety Audit Standard GG119;

Road Safety Audit report shall mean the report to be prepared by the Road Safety Auditor following the carrying out of the Road Safety Audits;

Road Safety Auditor shall mean an independent and suitably qualified highway or traffic engineer appointed by Manchester at the growth funds expense to carry out the Road Safety Audits;

Specification shall mean the Works Information as set out within the Construction Contract;

Stage 3 Road Safety Audit Report shall mean the Road Safety Audit Report relating to the completed Works to be carried out prior to issue of the Certificate of Practical Completion;

Stage 4 Road Safety Audit Report shall mean the Road Safety Audit Report relating to the completed Works to be carried out 12 months following the issue of the Certificate of Practical Completion;

Statutory Undertaker shall mean a statutory undertaker as defined in section 329(1) of the Highways Act;

Street Furniture shall mean the street lighting, traffic lights and illuminated and non-illuminated traffic signs installed or to be installed as part of the Works on the Highway Land all as more particularly detailed in the Specification;

TfGM means Transport for Greater Manchester and is the executive body of GMCA with responsibility for the delivery of the Project on GMCA's behalf;

The Traffic Management Measures means the measures required to ensure the proper management of traffic during the construction of the Works and following completion of the Works to be approved in writing by the Project Board;

Traffic Regulation Order(s) shall mean any temporary or permanent order required to commence and carry out the construction of the works and safe operation of the highway pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order;

Works means the Works specified in Schedule 2 to this Agreement;

1.2.1 any reference to a statute or statutory provision includes a reference to that statute or statutory provision as amended extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant statute or statutory provision;

1.2.2 words imparting one gender shall be read and construed to include any other gender;

1.2.3 words imparting the singular shall include the plural and vice versa;

1.2.4 any person includes any reference to a body corporate, unincorporated, association or a partnership and vice versa;

1.2.5 reference to any right exercisable by any Party shall be construed as including (where appropriate) the exercise of such right by all other persons having a like right;

1.2.6 reference to a statute or a provision of a statute include any statute or provision of a statute amending consolidating or replacing it for the time being in force;

1.2.7 words denoting an obligation on a Party to do any act, matter or thing shall include an obligation to procure that it be done and words placing a Party under a restriction shall include an obligation not to permit or to allow infringement of the same;

1.2.8 references to “liability” shall include claims, demands, proceedings, damages, losses, costs and expenses howsoever occurring.

2. STATUTORY PROVISION

This Agreement is made under Section 8 of the Act, Section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and any other power or authority thereby enabling.

3. Exercise of Functions

- 3.1 Trafford, subject to the provisions of this Agreement and subject to Schedule 3, hereby authorises Manchester to exercise all of its functions as Highway insofar as is required for the purposes of the carrying out of the Project in accordance with the Design and with the terms of reference agreed by the Project Board
- 3.2 Manchester agrees to carry out the Project in accordance with the terms of this Agreement and the Design and the terms of reference agreed by the Project Board and subject to Schedule 3.

4. Manchester’s Obligations

- 4.1 Manchester shall not commence nor allow the commencement of the Works before:
- a) It obtains the necessary approvals required in accordance with the terms of reference agreed by the Project Board.
 - b) it consults with and/or have placed 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 any works required by the Statutory Undertakers to divert the services to the satisfaction of the Project Board.

5. Trafford's Obligations

5.1 Trafford covenants with Manchester that it will comply with its obligations contained in this Agreement. More specifically:

a) Trafford shall, as soon as practicable, use its powers to obtain any Traffic Regulation Orders to enable the Works.

b) not to unreasonably delay in the carrying out of any works upon which the deliverability of the Project is dependant, but which do not form part of the Works comprising this agreement.

5.2 Trafford shall as the case may be (provided the Land is within its sole control) give Manchester, its servants, agents and contractors access to every part of the Land within their respective ownerships for the purpose of facilitating the delivery of the Works, including the provision of any compounds required by Manchester to facilitate the Works.

6. Construction of Works

6.1 Manchester will be responsible for the delivery and construction of the Works to the satisfaction and approval (not to be unreasonably withheld) of the Project Board.

6.2 Manchester shall provide Trafford's Proper Officer or Representative with reasonable notice of the commencement of any works to Statutory Undertakers' mains or services, plant or equipment necessitated by the Works and carry out or procure the carrying out of such works with the details approved by Trafford,

the provisions of the new Roads and Street Works Act 1991 and the Traffic Management Act 2004.

6.3 Manchester shall, as far as is practicable, lay under the Highway Land at no cost to Trafford:

(a) any new drains, sewers, gas mains, water mains, pipes, electric cables and telecommunication cables together with all necessary connections from them to the boundary of the Highway Land (where appropriate in ducting) before the foundations of the Works are laid;

(b) any connections from the electric cables to the street lamps before the paving of any footways comprised in the Works is carried out.

6.4 Manchester shall, carry out and complete the Works:

6.4.1 in a good and workmanlike manner and in accordance with the Specification and the Delivery Agreement;

6.4.2 using only materials approved in accordance with the Specification.

6.4.3 Co-operate with Trafford and:

6.4.3.1 permit Trafford's Proper Officer or Representative at all reasonable times and upon such notice as is reasonable in all circumstances to conduct onsite visits whilst the Works are being carried out to review the progress made;

6.4.3.2 Notify in writing at least 7 working days in advance and invite Trafford's Proper Officer or Representative to meetings held with TFGM or its appointed representatives to discuss progress; and

6.5 Manchester shall use all reasonable endeavours to Practically Complete the Works in accordance with the Delivery Agreement.

- 6.6 Before applying for the Certificate of Practical Completion Manchester shall commission the preparation and completion of a Stage 3 Road Safety Audit Report and will carry out and complete any additional works, alterations or amendments to the Works reasonably required by the Road Safety Audit.
- 6.7 The Completion Certificate will be issued in accordance with the Construction Contract and will commence the start of the Defect Liability Period.

7. Defect Liability

- 7.1 Throughout the Defect Liability Period Manchester shall in accordance with the terms of the Construction Contract reinstate and make good any defect (as defined in the Construction Contract) to the Works and all other works/ maintenance (save for those required by the Project Board) will be carried out by the local highway authority for the area in question.
- 7.2 Before applying for a Final Certificate Manchester shall commission the preparation and completion of a Stage 4 Road Safety Audit Report and complete any additional works, alterations or amendments to the Works reasonably required by the Road Safety Audit.

8. Funding

- 8.1 The Project will be funded by way of grant payments made by GMCA through TFGM in accordance with the terms of the Delivery Agreement.

9. Final Certificate

- 9.1 On completion of the Defect Liability Period the Final Certificate will be issued in accordance with the Construction Contract.

9.2 From the date of the issue of the Final Certificate in accordance with the Construction Contract the Works shall become part of the Highway Land maintainable at Public Expense and Trafford's Proper Officer or Representative shall release Manchester from all liability hereunder save for Manchester's obligation to remedy any latent defect which may arise in respect of the Highway Works as more particularly referred to in Clause 7.

10. STAGED COMPLETION OF THE WORKS

Trafford agrees that the Works may be completed in stages as set out in the Construction Agreement and that the provisions of this Agreement in relation to issue of Completion Certificate, Defects Liability Period and issue of Final Certificate will apply to any individual part of the Works when that part is completed as if this Agreement had been completed in respect of that individual part.

11. Communications

11.1 All communications between the Parties hereto shall be valid and effectual if given in writing or via email to the Authorised Representatives. Any formal notice to be served under this Agreement may be served by electronic email transmission to the Authorised Representatives.

11.2 The Authorised Representatives in respect of the Project for each Party shall be:

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Elaine Hendren – One Trafford Partnership

Chris Morris – Trafford Borough Council

Mark Stevenson – Manchester City Council

David Davies – Manchester City Council

11.3 The Authorised Representatives in respect of the Finance aspects of the Project for each Party shall be:-

Graeme Bentley – Trafford Borough Council

City Treasurer – Manchester City Council

11.4 The respective Monitoring Officers in respect of each Party shall be:-

**Jane Le Fever – Trafford Borough Council

Fiona Ledden – Manchester City Council

11.5 The Authorised Representatives specified in this Clause 11 shall also include their successors in title or such other authorised persons as may be specified by each Party.

12. Approvals

12.1 The Parties hereto confirm that each of them have passed appropriate resolutions through their constitutional decision making process to join into the Project.

12.2 Any approval required of the Parties in connection with any provision of this Agreement (including changes to any matter previously approved) shall be in writing and shall not be unreasonably withheld or delayed.

13. Disputes

13.1 In the event of any dispute or difference between the Parties arising out of this Agreement, resolution shall be sought between the respective Authorised

Representatives acting in relation to this matter on behalf of the Parties. If the issue and dispute cannot be resolved between the respective Authorised Representatives, then the matter shall be referred to the Chief Executives of the Parties for determination.

13.2 Any dispute or difference arising between the Parties which cannot be resolved by the Chief Executives of the Parties under Clause 15.1 above (other than where it is specifically provided by this Agreement to the contrary) shall be referred to and determined by an independent person (the "Expert") if so required by any Party by notice to the other Party.

13.3 The Expert shall be appointed by agreement between the Parties, or failing such agreement within ten working days of the notice referred to in Clause 15.2, shall be appointed on the application of any of the Parties by such one of the following persons as the Parties shall agree to be appropriate having regard to the nature of the dispute or difference in question:

15.3.1 the President for the time being of the Law Society

15.3.2 the President of the Institute of Civil Engineers

15.3.3 the President for the time being of the Royal Institution of Chartered Surveyors; or

15.3.4 the President for the time being of the Institute of Chartered Accountants in England and Wales

or, in any such case, his duly appointed deputy or any other person

authorised by him to make appointments on his behalf.

13.4 If within fifteen working days after service of the notice referred to in Clause 15.2 the Parties have been unable to agree which of the persons referred to in Clause 15.3 is appropriate to appoint the Expert, the Expert will be appointed, on the

application of any of the Parties by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf.

13.5 Whenever the Expert is to be appointed under this Clause he shall act as an expert and not as an arbitrator and the following provisions shall have effect:

13.5.1 the Expert's decision shall (in the absence of fraud or manifest error) be final and binding upon the Parties;

13.5.2 the Expert shall consider, inter alia, but shall not be bound by, any written representations on behalf of the Parties made within such time limits as he shall specify, which time limits shall be as short as he shall consider practicable in the circumstances;

13.5.3 the Expert shall make available to each Party copies of the other Party's representations and allow the other Party to make further written representations thereon to which Clause 15.5.2 shall apply;

13.5.4 upon receipt of any such representations the Expert shall forthwith inspect the site of the works if necessary and give notice of his instructions, if any, to the Parties and, if he shall so require, invite them or their advisers to attend his inspection and to make oral representations thereat;

13.5.5 the Expert shall as quickly as possible thereafter notify the Parties in writing of his determination of the dispute or difference referred to him;

13.5.6 the Parties shall use all reasonable endeavours to procure that the Expert shall give his decision with reasons as speedily as possible;

13.5.7 the costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall not be a Project Cost but shall be

shared between the Parties in such proportions as the Expert shall determine or in the absence of such determination equally between them;

13.6 If the Expert shall die or be or become unwilling or incapable of acting or in the reasonable opinion of any Party shall delay his determination avoidably or if for any other reason he shall not deliver his decision, any party shall be entitled to apply to the President for the time being of the relevant professional institution to discharge the expert and appoint another in his place.

14. Third party rights

14.1 For the purposes of the Contracts (Rights of Third Parties) Act 1999 it is agreed and declared that nothing herein shall confer any third party rights.

15. Value Added Tax

15.1 Any payments to be made for services to be supplied between the Parties hereto shall be deemed to be exclusive of any Value Added Tax chargeable in respect thereof.

16. Severability of Agreement Provisions

16.1 The invalidity or unenforceability of any right or term of this Agreement shall not in any way affect the remaining rights or terms of the same.

17. Alienation

17.1 This Agreement is strictly personal to each Party who shall not be entitled to part with or assign in any way with its interest and obligations under this Agreement.

18. Freedom of Information

18.1 The Parties hereto agree that all matters relating to this Project are obliged to comply with the Freedom of Information Act 2000 and where appropriate the Environmental Information Regulations. Any Party receiving a Request for Information shall notify the other Parties of such request. The Party receiving the

request will deal with that request and all other Parties will cooperate as appropriate in meeting the request.

19. General Provisions

It is hereby further agreed and declared that:-

- 19.1 Manchester and Trafford shall not use any of the powers herein in such a manner as to breach any funding agreements or conditions;
- 19.2 Manchester shall comply with the public procurement regulations in the procurement of any contractors;
- 19.3 Manchester shall exercise all functions herein with reasonable skill and care;
- 19.4 Manchester shall keep Trafford regularly updated of the progress of the Project
- 19.5 Each Party hereto shall notify the others immediately upon receipt of any notice served on that Party which might give rise to a claim for compensation. In such circumstances all Parties shall comply with any reasonable requirements of the others in respect of the conduct of any such potential claim. Should any Party fail to comply with such reasonable requirements of any other Party and as a result of that failure any such claim is increased in value the Party responsible for such failure shall be liable for that increase in costs provided such increase is reasonable.
- 19.6 This Agreement shall constitute a binding contract between the Parties for the performance of the obligations and stipulations herein contained and shall be enforceable as such and the provisions of this Agreement shall continue to have effect in respect of anything remaining to be done performed or observed under this Agreement.
- 19.7 No consent or approval, modification, alteration or waiver of any of the provisions of this Agreement except as otherwise herein provided for shall be effective

unless the same is in writing and signed on behalf of all the Parties hereto and annexed to this Agreement.

- 19.8 The failure of any of the Parties hereto at any time to require the performance by any other Party of any provision of this Agreement shall in no way affect the right of that Party to require performance of that provision save in respect of any actual variation or waiver.
- 19.9 English law shall govern this Agreement and the parties hereto submit to the non-exclusive jurisdiction of the English Courts.
- 19.10 Manchester and Trafford shall develop and deliver a communications strategy, the details of which will have been agreed and approved in writing by Trafford and Manchester prior to commencing of the Works.
- 19.11 Manchester shall be responsible for the coordination and management of all diversions and other works involving the statutory undertakers and TfGM Urban Traffic Control.

20. Indemnities

Manchester shall hereby:

- 20.1 Indemnify Trafford and keep Trafford so indemnified against all actions, costs, claims, demands, charges and expenses, taxes, proceedings, loss or damage arising out of, in connection with or incidental to the carrying out of the functions referred to in Clauses 3.1 and 3.2 respectively above, or other obligations of Manchester (including any breach or non-observance thereof) under this Agreement including but not limited to:
- 20.1.1 Third party claims for death, personal injury or damage to property during the period of the Works;

20.1.2 Statutory or other liability for safety or securing of the Land, working methods, employment practices, protection of the environment and control of pollution during the period of the Works but excluding any claims arising from any negligent act or omission of Trafford or their employees, contractors, or agents

21. Termination

21.1 This Agreement will automatically terminate at the issue of Final Certificate by NEC/ECC Project Manager following expiration of the Defect Liability Period for the final stage or part of the Works forming the whole of the Project.

22. Good Faith

22.1 The Parties declare it to be their intention that this Agreement shall operate between them with fairness and without detriment to the interest of any of them and if in the course of the performance of this Agreement unfairness to any other Party is disclosed or anticipated then the Parties hereto shall use their best endeavours to agree upon such course of action as may be necessary and equitable to remove the cause or causes of the same and shall act in utmost good faith towards each other.

23. Counterparts

This Agreement may be executed in any number of counterparts and by the different Parties in different counterparts each of which when executed and delivered shall be deemed to constitute one and the same instrument. Each Party agrees that the delivery of this Agreement by electronic transmission, including copies of the executed signature pages via pdf, shall have the same force and effect as delivery of original signatures and that each Party may use such copies of the executed signature pages as evidence of the execution and delivery of this Agreement by all Parties.

IN WITNESS whereof the Parties hereto have caused their COMMON SEALS to be hereunto affixed the day and year first before written

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

THE COMMON SEAL of

TRAFFORD BOROUGH COUNCIL

Was hereunto affixed in the presence of:

Authorised Signatory

SCHEDULE 1

The Plan

SCHEDULE 2

The Works

The construction and improvement of the Roads affected by the Works and all works pursuant and reasonably incidental thereto including landscaping works, works of alteration or improvement to adjacent highways and the Complementary and Mitigation Measures as shown on the Plan to be agreed between Manchester and Trafford including:-

- (i) Improvements to the walking and cycling infrastructure along the Upper Chorlton Road between its junctions with –Brooks Bar to Seymour Grove Junctions, Whalley Range.
- (ii) Works are to be completed in accordance with the following drawings. Any proposed zebra crossings on the cycle track must be agreed by both parties before an on-site instruction is issued to layout markings;

Drawing Number	Description
210102H-CH-0100-DE-001 Rev 4	Sheet 1 of 6
210102H-CH-0100-DE-002 Rev 4	Sheet 2 of 6
210102H-CH-0100-DE-003 Rev 4	Sheet 3 of 6
210102H-CH-0100-DE-004 Rev 4	Sheet 4 of 6
210102H-CH-0100-DE-005 Rev 4	Sheet 5 of 6
210102H-CH-0100-DE-006 Rev 4	Sheet 6 of 6

SCHEDULE 3

Powers which are not delegated to Manchester

For avoidance of any doubt, Trafford only delegates Manchester the power to enter Trafford's land and complete the construction of the Works, in accordance with clauses 3.1 and 3.2 of this Agreement. Trafford will remain the Highway and Traffic Authority for all other functions, including, inter alia:

- a) all Traffic Management Measures required in connection with the Project;
- b) all TROs that will be required during the construction and after the completion of the Works;
- c) any other permits or licences required during construction or after completion of works.