

DATED _____ **2013**

LONDON BOROUGH OF CROYDON

-and-

TRANSPORT FOR LONDON

**TRANSPORT INFRASTRUCTURE AGREEMENT
RELATING TO
PROPOSED NEW INFRASTRUCTURE PROJECTS WITHIN
THE LONDON BOROUGH OF CROYDON**

**Lewis Silkin LLP
5 Chancery Lane
Clifford's Inn
London EC4A 1BL
(Ref: BJH8312/106503.2)**

PARTICULARS

DATE OF THIS DEED	2013
COUNCIL	THE MAYOR AND BURGESSES of THE LONDON BOROUGH OF CROYDON of Bernard Wetherill House, 8 Mint Walk, Croydon CR0 1EA
TFL	TRANSPORT FOR LONDON of Windsor House, Victoria Street, London SW1 0TL

THIS DEED is made on the date and between the parties stated in the Particulars

RECITALS

1. The OAPF was adopted by the Mayor of London as supplementary planning guidance to the London Plan in January 2013 and by the Council as a supplementary planning document to the Croydon Local Plan in April 2013. The OAPF sets out the Mayor's strategic priorities for the Croydon area over the next 20 years.
2. The OAPF identifies that the highway network is approaching capacity both within the COA and at key junctions on the A23 and congestion is forecast to continue to occur in the future. The importance of implementing improvements to the A23 is highlighted due to the increased demand forecast as a result of growth within the COA. Further localised modelling work and analysis is recommended in order to understand the improvement measures that are needed.
3. TfL and the Council have agreed to enter into this Deed in order to make provision for funding and implementation of new infrastructure projects in order to assist in accommodating growth in the COA.

AGREED TERMS

1 DEFINITIONS

- 1.1 In this Deed, the following definitions apply:

"Agreed Scope of Works Specification" as defined in Clause 5

"the Council's Contribution" £20,000,000.00 (twenty million pounds) subject always to clauses 3.4 and 3.5 of this Deed

"COA" the Croydon Opportunity Area as identified in the OAPF

"Excess Works Cost" the amount by which the cost of the Works exceeds a sum equal to the aggregate of the TfL's Contribution and the Council's Contribution

"Expenditure Certificate" as defined in clause 3.7

"Feasibility Works" the initial feasibility and/or design works and/or consultation and/or any other matters required in order to identify the Potential Infrastructure Projects required in respect of the A23 Corridor and to finalise the extent and/or to enable the implementation of the same

"Feasibility Works Target Commencement Date" the date hereof or as soon as reasonably practicable after the date hereof

"Feasibility Works Target Completion Date" means 1st November 2014

"GLA" the Greater London Authority

"OAPF" the Croydon Opportunity Area Planning Framework adopted by the Mayor of London in January 2013

"Potential Infrastructure Projects" any one or more project(s) that deliver(s) any one or more of the following outcomes on or in the vicinity of the Relevant Council Roads and/or the Relevant GLA Roads:

- Reducing congestion and associated queuing and/or environmental impact;
- Reducing travel delays including in particular, but not limited to, bus routes;
- Reducing segregation and improving road safety;
- Improving provision for cyclists and pedestrians;
- Improving local ambience and environment

"the Reduced Council Contribution" a sum equal to 44.44% of the actual expenditure properly incurred by TfL in respect of the Works but subject always to the Reduced Council Contribution not exceeding £20,000,000.00

"the Reduced TfL Contribution" a sum equal to 55.56% of the actual expenditure properly incurred by TfL in respect of the Works but subject always to the Reduced TfL's Contribution not exceeding £25,000,000.00

"the Relevant Council Roads" the roads and highways within the A23 Corridor operated by the Council which will be affected by the Works

"the Relevant Expenditure Information" as defined in Clause 3.7

"the Relevant GLA Roads" the roads and highways within the A23 Corridor operated by TfL which will be affected by the Works

"the A23 Corridor" that part of the A23 between (and including) the junctions at Purley Cross roundabouts and the junction at the Thornton Heath Pond roundabout

"TfL's Contribution" £25,000,000.00 (twenty five million pounds) subject always to clause 3.5 of this Deed

"Working Days" means any Monday to Friday (other than Bank or public holidays)

"Works" the Potential Infrastructure Projects identified as a result of the Feasibility Works and set out in the Agreed Scope of Works Specification

2 INTERPRETATION

- 2.1 The rules of interpretation set out in this clause 2 apply in this Deed.
- 2.2 The clause headings in this Deed are for reference only and do not affect its construction or interpretation.
- 2.3 A reference to a person includes a reference to a firm, company, authority, board, department or other body and vice versa.
- 2.4 Words importing one gender include any other genders and words importing the singular include the plural and vice versa.
- 2.5 "Including" means including without limitation or prejudice to the generality of any preceding description defined term phrase or word(s) and "include" shall be construed accordingly.
- 2.6 References in this Deed to any statutes or statutory instruments shall include reference to any statute or statutory instrument amending consolidating or replacing them respectively from time to time and for the time being in force and all instruments, orders,

notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

- 2.7 Where by this Deed any action approval consent direction authority or agreement is required to be taken given or reached by any party hereto any such action approval consent direction authority or agreement shall not be unreasonable or unreasonably withheld or delayed.
- 2.8 All references in this Deed to the identification of any particular thing by colour delineations or colourings on a plan or drawing shall be for the purposes of identification only.
- 2.9 Where in this Deed reference is made to a clause paragraph schedule or recital such reference (unless the context otherwise requires) is a reference to a clause paragraph schedule or recital of (or in the case of a plan attached to) this Deed.
- 2.10 References in this Deed to the Council shall include references to any successor authority discharging the functions currently vested in the Council as highway authority under the Highways Act 1980 in respect of the Relevant Council Roads.
- 2.11 References in this Deed to TfL shall include references to any successor body discharging the functions currently vested in TfL as highway authority under the Highways Act 1980 in respect of the Relevant GLA Roads.
- 2.12 References to 'the parties' shall mean the parties to this Deed and 'party' shall be construed accordingly.
- 2.13 Insofar as any clause or clauses in this Deed are found (for whatever reason) to be invalid or unenforceable then such invalidity or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.

3 PROVISION OF FUNDING

- 3.1 Subject to Clause 3.5 and other provisions of this Deed, TfL agrees to allocate an amount equal to the TfL's Contribution in order to fund and/or otherwise to be applied towards the cost of the Feasibility Works and the Works.
- 3.2 The Council covenants that it will pay the Council's Contribution in accordance with Clauses 3.4 and 3.5 and other provisions of this Deed.
- 3.3 TfL agrees to fund and/or otherwise apply the sum of £5,000,000 (five million pounds) from the TfL's Contribution towards the cost of the Feasibility Works and the Works prior to payment by the Council of any part of the Council's Contribution.
- 3.4 Upon receipt of the Expenditure Certificate and Relevant Expenditure Information, the Council shall pay the Council's Contribution to TfL (such sums to be applied towards the cost of the Works) on a phased basis in instalments equivalent to 50% of the expenditure properly incurred by TfL in respect of each phase of the Works subject to a maximum annual cap of £10,000,000 (ten million pounds).
- 3.5 In the event that the cost of the Works is less than an amount equal to the aggregate of the Council Contribution and the TfL Contribution then for the purposes of this Deed the Council's Contribution shall be the Reduced Council Contribution and TfL's contribution shall be the Reduced TfL Contribution.

- 3.6 In the event that the whole or any part of such sums are not required to be applied by TfL towards the expenditure it incurs in respect of the Works TfL covenants with the Council that it will as soon as reasonably practicable (and in any event no later than 20 Working Days) return any unexpended part of the Council's Contribution that has been paid to TfL by the Council pursuant to this Deed.
- 3.7 TfL shall provide to the Council:
- (a) a certificate of the expenditure ("Expenditure") incurred by TfL in relation to the Feasibility Works and/or the Works ("an Expenditure Certificate"); together with
 - (b) such information ("Relevant Expenditure Information") as is reasonably necessary to evidence the Expenditure referred to in the relevant Expenditure Certificate.
- 3.8 The amount of Expenditure set out in the Expenditure Certificate and/or any Relevant Expenditure Information will be conclusive and binding on the parties save in the case of manifest error.
- 3.9 TfL will be responsible for any Excess Works Cost.

4 FEASIBILITY WORKS

- 4.1 The Feasibility Works are to be wholly funded by TfL (as set out in clause 3.1 of this Deed).
- 4.2 The Feasibility Works are to be undertaken by TfL unless otherwise agreed in writing between the parties.
- 4.3 TfL will use reasonable endeavours to:
- (a) commence the Feasibility Works on or as soon as reasonably practicable after the occurrence of the Feasibility Works Target Commencement Date; and
 - (b) complete the Feasibility Works by the Feasibility Works Target Completion Date or as soon as reasonably practicable after the occurrence of the same.

5 SCOPE OF WORKS AND PROGRAMME OF WORKS

- 5.1 As soon as reasonably practicable following the conclusion of the Feasibility Works TfL will submit to the Council for approval a proposal setting out the scope of Potential Infrastructure Projects identified as a result of the Feasibility Works (including within such proposal, as appropriate, all relevant specifications and/or drawings relating to such scope) ("the Scope of Works Proposal").
- 5.2 Following receipt of the same, the Council will indicate whether the Scope of Works Proposal is agreed and if so agreed (or if subsequently agreed pursuant to the terms of this Clause 5) the Scope of Works will be termed "the Agreed Scope of Works Specification".
- 5.3 In the event that the Council does not agree with any aspect of the Scope of Works Proposal the parties will seek to agree such variations to the same as are required to secure the Council's approval of the Scope of Works Proposal subject always to the provisions of Clause 12 of this Deed.
- 5.4 As soon as reasonably practicable following the Scope of Works Proposal being agreed by the Council in accordance with clause 5.2 of this Deed TfL will submit to the Council

for approval a draft programme of works in respect of the Infrastructure Projects identified within the Agreed Scope of Works Specification (“the Programme of Works Proposal”).

- 5.5 Following receipt of the same, the Council will indicate whether the Programme of Works Proposal is agreed (“the Agreed Programme of Works”).
- 5.6 In the event that the Council does not agree with any aspect of the Programme of Works Proposal the parties will seek to agree such variations to the same as are required to secure the Council’s approval of the Programme of Works Proposal subject always to the provisions of Clause 12 of this Deed.
- 5.7 The Agreed Scope of Works Specification and/or the Agreed Programme of Works may from time to time be varied by the parties in writing.
- 5.8 The Council’s Contribution shall be payable only in accordance with an Agreed Scope of Works Specification and an Agreed Programme of Works.

6 WORKS

- 6.1 The Works are to be funded in part by TfL and in part by the Council (as set out in Clause 3 of this Deed).
- 6.2 TfL will use reasonable endeavours to commence the Works and thereafter proceed to undertake the Works in accordance with the Agreed Scope of Works and Agreed Programme of Works.

7 CO-OPERATION

- 7.1 The parties shall co-operate with each other insofar as it is reasonably necessary in relation to the matters set out in this Deed, including, but without prejudice to the generality of the foregoing, in relation to:
 - (a) the nature scope and/or extent of the Feasibility Works and/or the Works;
 - (b) the timing and/or phasing of the carrying out of the Feasibility Works and/or the Works;
 - (c) the implementation and/or carrying out of the Feasibility Works and/or the Works; and
 - (d) the frequency with which TfL is to provide an Expenditure Certificate to the Council.
- 7.2 Where necessary, the parties will from time to time enter into, whether jointly or otherwise (as appropriate), such other agreements and/or do anything as may be reasonably necessary in order to:
 - (a) facilitate the implementation and/or carrying out of the Feasibility Works and/or the Works including, but not limited to, in respect of the Relevant Council Roads and/or the Relevant TfL Roads;
 - (b) recording which of the parties is to assume responsibility for all future maintenance of the Relevant Council Roads and/or the Relevant TfL Roads following the completion of the Works including, where relevant, the adoption of any new road(s) as highway(s) maintainable at public expense.

8 EFFECT OF THIS DEED

- 8.1 This Deed is entered into by the Council and by TfL under section 8 of the Highways Act 1980 and all other enabling powers including pursuant to paragraph 32 of Schedule 11 to the Greater London Authority Act 1999 (for TfL) and section 1 of the Localism Act 2011 (for the Council).
- 8.2 In accordance with section 8 of the Highways Act 1980 the functions of construction, reconstruction, alteration, improvement and/or maintenance exercisable by the Council in respect of the Relevant Council Roads shall be exercisable by TfL in respect of the same for the purpose of carrying out, completing and/or maintaining the Works in accordance with the terms of this Deed.
- 8.3 The obligations contained in this Deed shall come into effect on the date of this Deed.
- 8.4 Nothing contained in this Deed shall unlawfully fetter the exercise of TfL's statutory powers or otherwise restrict the proper discharge of its functions.
- 8.5 Nothing contained in this Deed shall unlawfully fetter the exercise of the Council's statutory powers or otherwise restrict the proper discharge of its functions.
- 8.6 Nothing contained in this Deed shall constitute a partnership or joint venture between the parties.
- 8.7 No party may assign or charge its rights obligations or interests under this Deed.

9 LEGAL COSTS

- 9.1 Each of the parties shall bear its own legal costs incurred in the preparation and negotiation and completion of this Deed.

10 RIGHTS OF THIRD PARTIES

A person who is not a party to this Deed shall not have any rights to enforce any of its terms by virtue of the Contracts (Rights of Third Parties) Act 1999, but this does not affect any right or remedy of such a person which exists or is available apart from that Act.

11 NOTICES

- 11.1 Unless otherwise agreed by the parties, any notice demand or other communication served under this Deed will be effective only if delivered by hand or sent by first class post, pre-paid or recorded delivery.
- 11.2 Unless otherwise indicated by the parties to each other from time to time, any notice demand or other communication served under this Deed shall be sent to the address of the relevant party set out in Clause 10.4 below.
- 11.3 Unless the time of actual receipt is proved, a notice, demand or communication sent by the following means shall be treated as having been served:-
- (a) if delivered by hand, at the time of delivery;
 - (b) if sent by post, on the second working day after posting; or
 - (c) if sent by recorded delivery, at the time delivery was signed for.
 - (d) If a notice demand or any other communication is served after 4.00pm on any day it shall be treated as having been served on the next working day.

- 11.4 All notices served pursuant to this Deed shall be in writing and shall be delivered or sent:-
- (a) In the case of a notice to be served on the Council to the Director of Development, London Borough of Croydon, Bernard Weatherill House, 8 Mint Walk, Croydon CR0 1EA and
 - (b) in the case of a notice to be served on TfL marked for the attention of the Managing Director of Surface Transport at Transport for London, Palestra, 197 Blackfriars Road, London SE1 8NJ.

12 DISPUTES

- 12.1 Without prejudice to any of the parties' right to seek redress through the courts the parties hereby agree that any differences and questions which arise between the parties in connection with this Deed which it is not possible to resolve through discussion between the parties' nominated representatives shall be referred for determination by an independent person (whose decision shall be binding in respect of the matters referred to him) in accordance with the following provisions:-
- (a) where such dispute relates to the construction of this or any other deed or document it shall be referred to a solicitor or barrister agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Law Society; and
 - (b) where such dispute relates to engineering construction or highway works it shall be referred to a Chartered Civil Engineer agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Institution of Civil Engineers; and
 - (c) where such dispute relates to the valuation of property it shall be referred to a Chartered Surveyor agreed upon by the parties or in default of agreement appointed on the application of either party by or at the direction of the President for the time being of the Royal Institution of Chartered Surveyors;
 - (d) in any reference to an independent person under this clause such person shall unless the parties otherwise agree act as expert and not as arbitrator and the following provisions shall apply to their appointment:-
 - (i) the independent person shall allow the parties to make representations and to comment on each other's representations;
 - (ii) the independent person shall give written notice as to their decision within 30 Working Days of his appointment or within such longer period as the parties shall agree;
 - (iii) the costs of the independent person shall be borne by the parties in such proportion as he directs or in the absence of any direction equally. If one party shall pay more than their due proportion they shall be entitled to recover the excess from the other on demand;
 - (iv) if the independent person refuses to act, is incapable of acting, dies or fails to give notice of his decision within the required period, then the procedure referred to in Clause 12.1 may be repeated.

13 VARIATIONS

13.1 Unless the parties otherwise agree, the covenants undertakings and restrictions contained in this Deed shall only be capable of being varied by a subsequent deed of variation.

14 FREEDOM OF INFORMATION

14.1 If any party receives a request for the disclosure of information relating to this Deed under the Freedom of Information Act 2000, Environmental Information Regulations 2010 and/or any other similar Act or authority it shall comply with such request in accordance with the relevant Act or authority to the extent that it is obliged to do so and provided that no exemption from disclosure applies. Prior to making any such disclosure it shall give to the other party reasonable opportunity to make representations as to why the disclosure should not be made (including but not limited to any exemptions from disclosure that may apply) and shall inform the other party of any disclosure actually made.

15 GOVERNING LAW

15.1 Governing Law

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England.

15.2 Jurisdiction

The parties irrevocably agree that the courts of England shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Deed or its subject matter or formation (including non-contractual disputes or claims).

This document has been executed as a deed and is delivered and takes effect on the date appearing as the date of this Deed.

Executed as a deed (but not delivered until dated) by affixing the common seal of

THE MAYOR OF THE LONDON BOROUGH OF CROYDON

in the presence of:

.....
Authorised Signatory

Seal Register No:

Executed as a deed (but not delivered until dated) by affixing the common seal of

TRANSPORT FOR LONDON

in the presence of:

.....
Authorised Signatory