

DATED

March 2020

**HIGHWAYS ENGLAND COMPANY LIMITED**

**AND**

**ESSEX COUNTY COUNCIL**

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**Agreement relating to the provision of a Grant contributing to the A120  
Braintree Millennium Way Slip Roads Improvement Scheme**  
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**Highways England Company Limited  
Bridge House  
1 Walnut Tree Close  
Guildford  
Surrey  
GU1 4LZ**

**THIS AGREEMENT** is made as a Deed this .....day of .....2020

**BETWEEN**

- (1) **HIGHWAYS ENGLAND COMPANY LIMITED** of Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ registered in England and Wales number 09346363 (“Highways England”); and
- (2) **ESSEX COUNTY COUNCIL** (“**the Local Authority**”) a Local Authority whose registered office is at 19 Market Road, Chelmsford, Essex, CM1 1QH.

**INTRODUCTION**

- (A) The Local Authority is proposing to undertake the Works using powers under the Highways Act 1980.
- (B) The purpose of the Works is to reduce congestion on the strategic road network close to Millennium Way, Braintree.
- (C) Highways England has agreed to provide partial funding for the Works through the Congestion Relief Programme which allows Highways England to provide funding to enable infrastructure improvements needed to tackle congestion.
- (D) The Local Authority has determined that the Works can be funded through the funding package set out in Schedule 2.
- (F) The Local Authority and Highways England have determined that the Grant provided for by this Agreement is reasonable and necessary to help to fund the Works and to make the Sites acceptable in planning terms. Highways England considers that the Works will provide suitable mitigation for the impact of the Sites on the Strategic Road Network.
- (G) Through the appraisal of the scheme under the Congestion Relief Programme process and following approval of the full business case by the Highways England Congestion Relief Programme Investment Decision Committee. Highways England is satisfied that this agreement will be of benefit to the public.
- (H) This Agreement is made under the powers granted to Highways England through section 17 of the Infrastructure Act 2015 and the terms of its License issued by the Secretary of State for Transport.

IT IS AGREED

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement including, for the avoidance of doubt, the recitals the following terms shall have the following meanings

Congestion Relief Programme	Programme of improvements to reduce congestion and improve safety at key bottlenecks on the strategic road network.
Completion of the Works	the date of issue of the certificate of practical completion under the provisions of the contract for the construction of the Works made by the Local Authority or, if later, the date that the Works are fully open to traffic, or, if later, when any further requirements for completion under the Section 6 agreement have been fulfilled;
Due Date	twenty eight calendar days after the receipt of a suitably evidenced Grant Claim by Highways England or in the event that a repayment is due, twenty eight calendar days after a written request for repayment is received by the Local Authority from Highways England;
Grant	the sum of up to [ <i>two million pounds</i> ] (£2,000,000.00 grant funding) (which shall not be subject to indexation) to be paid by Highways England to the Local Authority from its Congestion Relief Programme in accordance with the terms of this Agreement;
Grant Claims	the signed S151 Claim Form and supporting evidence for payment of instalments of the Grant to be issued by the Local Authority to Highways England;
Payment Programme	the programme for the payment of the Grant set out in Schedule 2;
Prohibited Act	means any of the following:  (a) to directly or indirectly offer, promise or give and person working for or engaged by Highways England a financial or other advantage to  (i) induce that person to perform improperly a relevant function or activity; or

(ii) reward that person for improper performance of a function or activity;

(b) to directly or indirectly request, agree to receive or accept any financial or other advantage as an inducement or a reward for improper performance of a relevant function or activity in connection with this Agreement;

(c) committing any offence under

(i) the Bribery Act 2010

(ii) legislation creating offences concerning fraudulent acts; or

(iii) at common law relating to fraudulent acts relating to this Agreement or any other contract with Highways England; or

(d) defrauding, attempting to defraud or conspiring to defraud Highways England;

Section 6 Agreement	the agreement under the Section 6 of the Highways Act 1980 that the parties intend to enter into for the carrying out of those parts of the Works that are on the Strategic Road Network;
Strategic Road Network	the network of motorways and major trunk roads that are managed and operated by Highways England; and.
Works	the highway works to the strategic & local road network described in Schedule 1.

1.2 In this Agreement a reference to a clause or recital followed by a number is a reference to the clause or the recital of this Agreement bearing that number; and

## **2. THE GRANT**

2.1 The Local Authority shall use the Grant only for the delivery of the Works and for no other purpose.

- 2.2 The Grant is a capped sum and Highways England shall have no liability for any further Grant in the event of any overspend on the Works by the Local Authority.
- 2.3 If any cost savings are achieved in respect to the total sum set out in the funding table in Clause 1.1 of Schedule 2, these savings will be shared on a reasonable pro rata basis to be agreed in writing by both parties.
- 2.4 The Local Authority shall promptly repay to Highways England any money incorrectly paid to it whether because of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or when Grant sums have been paid in error.

### **3. GRANT CLAIMS**

- 3.1 The Local Authority:
  - (a) may issue Grant Claims in arrears of expenditure being incurred and amounts claimed shall be payable by Highways England only if Highways England, acting reasonably, is satisfied that the Local Authority has supplied sufficient evidence that the amounts claimed have been properly incurred in the design and construction of the Works.
  - (b) may with the agreement of Highways England issue Grant Claims applying for advance payment of Grant in anticipation of designing and/or constructing any of the Works.
- 3.2 Notwithstanding the indicative funding structure set out in Schedule 2, the Local Authority may issue Grant Claims for any amount at any milestone, provided that the expenditure has been properly incurred (or where the expenditure is anticipated in accordance with clause 3.1(b) Highways England is satisfied that it will be properly incurred) and (where it has been incurred) is properly evidenced in accordance with the terms of this Agreement, and further provided that the cumulative amount invoiced by the Local Authority does not exceed the Grant.
- 3.3 The Local Authority shall issue Grant Claims as soon as reasonably practicable after reaching (or anticipating) the milestone dates set out in the Payment Programme. Each Grant Claim shall be issued with the following evidence:
  - (a) appropriate evidence appended of actual expenses incurred (or anticipated) in delivery of the Works, and;

- 3.4 Once the Local Authority has submitted invoices totalling the full amount of the Grant prior to the last milestone date set out in the Payment Programme being reached, no further Grant Claims may be submitted.
- 3.5 Highways England shall pay a Grant Claim within 28 days of the date of the relevant Grant Claim (or, in the event that Highways England, acting reasonably, is not satisfied with the evidence that has been supplied, within 28 days of the date of receipt of satisfactory evidence).
- 3.6 If any payment due under any of the provisions of this Agreement is not made on or before the Due Date, the party from whom it was due shall at the same time as making the payment pay to the other party interest at the rate of two percentage points above the Bank of England base rate for the period starting with the Due Date and ending with the date of payment of the sum on which interest is payable.

#### **4. DELIVERY OF THE WORKS**

- 4.1 The Local Authority covenants with Highways England to use reasonable endeavours to:
  - (a) carry and complete the Works without unreasonable delay;
  - (b) provide Highways England with quarterly updates in the form of the quarterly monitoring form attached as Schedule 5; and
  - (c) notify Highways England in writing as soon as reasonably practicable after Completion of the Works has occurred.
- 4.2 The Local Authority must secure the best value for money in all purchases of goods and services for the execution of the Works. The Local Authority must take all reasonable steps to comply with the requirements of the European Union procurement directives in relation to any expenditure made using the Grant. In relation to the supply of goods, services or works these requirements are implemented by the Public Contracts Regulations 2015 (SI 2015/102), the Utilities Contracts Regulations 2016 (SI 2016/274) and the Concession Contracts Regulations 2016 (SI 2016/273) and are subject to financial thresholds specified by reference to the value of the transaction.
- 4.3 The Local Authority may (acting properly) from time to time make such alterations to those part of the Works that are on the Local Authority's highways network as it may consider necessary provided that the Local Authority shall give Highways England the opportunity to comment on any material alterations which the Local Authority proposes to make and shall take into account any relevant comments received from Highways England before making such alterations. The Section 6 Agreement shall set out the

procedure for making alterations to those parts of the Works on the Strategic Road Network.

## **5. ACCOUNTS AND RECORDS**

- 5.1 The Local Authority shall prepare and maintain up to date project accounts and shall make available such records to Highways England at such times that Highways England shall reasonably require upon reasonable notice.
- 5.2 The Local Authority shall provide to Highways England with any such information, documents and evidence as Highways England may reasonably require in order to establish that the Grant is being properly used and that the expenditure included in a Grant Claim has been properly incurred in connection with the Works.

## **6. SUSPENSION AND REPAYMENT OF GRANT**

- 6.1 Highways England's intention is that the Grant will be paid in full. However, Highways England may at its discretion withhold or suspend payment of the Grant and / or require repayment of all or part of the Grant if:
  - (a) The Local Authority uses the Grant for purposes other than that for which the Grant is intended;
  - (b) The Local Authority provides Highways England with materially misleading or inaccurate information;
  - (c) The Local Authority fails to comply with any terms or conditions of this Agreement or the Section 6 Agreement and fails to rectify any such failure within 30 days of having received written notice of the breach;
  - (d) The Local Authority makes a material changes to the Works without the consent of Highways England (whether consent is required under this agreement or the Section 6 Agreement) which in the reasonable view of Highways England would mean that the Works are no longer eligible for the Grant;
  - (e) The Local Authority commits a Prohibited Act;
  - (f) In the reasonable opinion of Highways England the Local Authority fails to make satisfactory progress with the Works;
  - (g) In the reasonable opinion of Highways England, the Local Authority is delivering the Works in a negligent manner;
  - (h) The Grant has not been drawn down in full by the Local Authority before 31st March 2020, or;



- (i) The Local Authority decides not to carry out the Works, or, having commenced the Works, decides not to continue to completion of the Works. In such circumstances the Grant may be used for those costs incurred by the Local Authority in reasonable design, surveying, planning, legal and other professional or technical works associated with preparation for and delivery of the Works detailed in Schedule 1 numbered clauses 1 and 2, which will be apportioned between the Parties on a reasonable pro-rata basis.

## **7. WARRANTIES**

7.1 The Local Authority warrants, undertakes and agrees that:

- (a) It has all necessary resources and expertise to deliver the Works;
- (b) It has not committed, nor shall it commit, a Prohibited Act;
- (c) It shall at all times comply with all relevant legislation and all applicable codes of practice and standards concerning the Works, and shall notify Highways England immediately of any significant departure from such legislation, codes or standards;
- (d) It shall comply with the requirements of the Health and Safety at Work etc. Act 1974 and any other acts, orders, regulations and codes of practice relating to health and safety, which may apply to employees and other persons delivering the Works;
- (e) It has and shall keep in place adequate procedures for dealing with any conflicts of interest;
- (f) It has and shall keep in place systems to deal with the prevention of fraud and/or administrative malfunction;
- (g) All financial and other information concerning the Local Authority which has been disclosed to Highways England is to the best of its knowledge and belief, true and accurate;
- (h) It is not subject to any contractual or other restriction imposed by its own or any other organisation's rules or regulations or otherwise which may prevent or materially impede it from meeting its obligations in connection with this Agreement; and
- (i) It is not aware of anything in its own affairs, which it has not disclosed to Highways England or any of Highways England's advisors, which might reasonably have influenced Highways England's decision to provide the Grant on the terms contained in this Agreement.

## **8. NOTICES**

- 8.1 Any notice or demand required by this Agreement to be given or made shall be in writing and shall be sufficiently served by being sent by registered or recorded delivery as follows:

(a) On Highways England to:

Andrew Rosamond, Highways England Company Limited, Operations  
East division, Woodlands, Manton Lane, Bedford, MK41 7LW.

(b) On the Local Authority to:

**ESSEX COUNTY COUNCIL** (“the Local Authority”) a Local Authority whose registered office is at 19 Market Road, Chelmsford, Essex, CM1 1QH.

- 8.2 Any notice so sent by post shall be deemed to be given and received two working days after the date of posting.

## **9. ACKNOWLEDGEMENT OF FUNDING**

- 9.1 Highways England and the Local Authority agree to acknowledge each other's contribution to the Works in accordance with generally accepted practice for grant aided schemes. This will include:

(a) Acknowledgement of each other's contributions in any press releases or publicity;

(b) Use of each other's logos (according to each other's latest corporate branding and visual identity guidelines) and the naming of the Highways England on any site boards, printed materials or websites; and

(c) Where possible and permitted by law and consideration of the general safety of the highway a permanent plaque will be designed and installed (to be absorbed within the overall scheme costs) recording the contributions of the respective parties to the scheme, and specifically stating that project was supported by the Highways England.

## **10. STATE AID**

- 10.1 The Local Authority has taken its own advice and provided reassurance that

(a) the Congestion Relief Programme grant will only be used for the improvement of road infrastructure available for free public use.

- (b) The funding is not considered to comprise State Aid in accordance with Article 107(1) of the Treaty on the Functioning of the European Union.

10.2 The Local Authority will be responsible for any risk of third party challenge of the scheme on the grounds of State Aid.

## **11. CONFIDENTIALITY**

11.1 Subject to clause 12 (Freedom of Information), each party shall during the term of this Agreement and thereafter keep secret and confidential all business, technical or commercial information disclosed to it by the other as a result of the Agreement and shall not disclose the same to any person save to the extent necessary to perform its obligations in accordance with the terms of this Agreement or save as expressly authorised in writing by the other party.

11.2 The obligation of confidentiality contained in this clause shall not apply or shall cease to apply to any business, technical or commercial information which:

- (a) at the time of its disclosure by the disclosing party is already in the public domain or which subsequently enters the public domain other than by breach of the terms of this Agreement by the receiving party;
- (b) is already known to the receiving party as evidenced by written records at the time of its disclosure by the disclosing party and was not otherwise acquired by the receiving party from the disclosing party under any obligations of confidence; or
- (c) is at any time after the date of this Agreement acquired by the receiving party from a third party having the right to disclose the same to the receiving party without breach of the obligations owed by that party to the disclosing party.

11.3 Subject to the provisions of clauses 11.1 and 11.2 either party may disclose the other's confidential information to the minimum extent required by:

- (a) an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction;
- (b) the rules of any listing authority or stock exchange on which its shares are listed or traded; or
- (c) the laws or regulations of any country to which its affairs are subject.

- 11.4 Before making a disclosure clause 11.1 the party wishing to disclose shall, to the extent permitted by law, give the other as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given in accordance with this clause 11.2, the party wishing to disclose shall take into account the other party's requests in relation to the content of this disclosure.
- 11.5 If the party wishing to disclose is unable to inform the other before the other's confidential information is disclosed pursuant to clause 11.3 it shall, to the extent permitted by law, inform the other party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.

## **12. FREEDOM OF INFORMATION**

- 12.1 The Local Authority and Highways England are subject to the requirements of the Freedom of Information Act 2000 (FOIA) and the Environmental Information Regulations 2004 (EIRs).
- 12.2 Either Party shall:
- (a) provide all necessary assistance and cooperation as reasonably requested by the other to enable them to comply with their obligations under the FOIA and EIRs;
  - (b) transfer to the other all requests for information relating to this agreement that it receives as soon as practicable and in any event within 2 working days of receipt;
  - (c) provide the other with a copy of all information belonging to the other requested in the request for information which is in its possession or control in the form that the other requires within 5 working days (or such other period as either party may reasonably specify) of the others request for such information; and
  - (d) not respond directly to a request for information unless authorised in writing to do so by the other party.
- 12.3 Either party acknowledges that the other may be required under the FOIA and EIRs to disclose information without consulting or obtaining consent from the other. Either party shall take reasonable steps to notify the other of a request for information (in accordance with the Secretary of State's section 45 Code of Practice on the Discharge of the Functions of Public Authorities under Part 1 of the FOIA) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in this agreement) either party shall be responsible for determining in its

absolute discretion whether any information is exempt from disclosure in accordance with the FOIA and/or the EIRs.

### **13. DATA PROTECTION**

- 13.1 The Local Authority and Highways England (and any of their staff involved in connection with the activities under the Agreement shall) comply with any notification requirements under the Data Protection Act 2018 (DPA) (or such updated requirements contained in the General Data Protection Regulations (GDPR) or such act of parliament that incorporates the GDPR into UK law) and both parties will duly observe all their obligations under the legislation, which arise in connection with this Agreement.

### **14. CONGESTION RELIEF PROGRAMME SPECIFIC CONDITIONS**

- 14.1 The Local Authority and Highways England agree to comply with the Congestion Relief Programme Specific Conditions set out in Schedule 4.

### **15. VAT AND TAX**

- 15.1 Grant Claims shall be exclusive of VAT and all management and liability for VAT shall be the responsibility of the Local Authority.

### **16. MISCELLANEOUS**

- 16.1 This Agreement shall be governed by and construed in accordance with the law of England and the parties irrevocably submit to the exclusive jurisdiction of the English Courts.
- 16.2 This Agreement shall not create any partnership or joint venture between the parties to this Agreement, nor any relationship of principle and agent, nor authorise any party to make or enter into any commitments for on behalf of the other party.
- 16.3 The Local Authority may not, without the prior written consent of Highways England, assign, transfer, sub-contract or in any way make over to any third party the benefit and/or burden of this Agreement, or, except as contemplated as part of the Works, transfer or pay to any other person any part of the Grant.
- 16.4 This Agreement does not and is not intended to confer any contractual benefit on any person pursuant to the Contracts (Rights of Third Parties) Act 1999.

**IN WITNESS whereof the parties have delivered this Deed the day and year first above written**



## **SCHEDULE 1 -THE WORKS**

Construction of: A120 Millennium Way Slip Road Improvement, Braintree, Essex.

### **Scheme Description:**

The grade separated section of the A120, leading from the M11 eastbound, passes under Millennium Way and terminates at Galley's Corner Roundabout. At present there is no direct access from the A120 to Millennium Way, with all traffic to Freeport Braintree shopping village (Freeport) and Retail Park, along with access into Braintree via the B1018 'Millennium Way' being via Galley's Corner Roundabout. Delays are regularly experienced at the roundabout, with substantial queuing on the A120 southbound in the morning peak and eastbound in the evening peak. It is recognised that growth potential is limited by capacity at Galley's Corner Roundabout and on the A120 in general. The proposed west facing slip roads connect the A120 eastbound carriageway to Millennium Way northbound and Millennium Way northbound to the A120 westbound and will significantly relieve pressure on Galley's Corner by providing direct access on and off the A120 to / from the west to Freeport, the Retail Park and Braintree.

### **Drawing References:**

B3553T69-01-001F – A120 Millennium Way Slips – General Arrangement Plan (see next page)





## SCHEDULE 2 –THE GRANT

### CONTRIBUTIONS

The indicative funding package for the Works in scope of this agreement is as follows:

Period Source↓	Previous Years	19/20	20/21	Total
HE (GHF) (The Grant)		2,000,000		2,000,000
Other Public Contributions				
Total				

### PAYMENT OF THE GRANT

Milestone	<i>Prior to 31/03/2020</i>
Amount to be paid	<i>£2,000,000.00</i>

## **SCHEDULE 4 -THE CONGESTION RELIEF PROGRAMME SPECIFIC CONDITIONS**

### **EVALUATION**

The Local Authority agrees to provide reasonable support and cooperation to Highways England or its appointed consultants in the formal evaluation of the impact of the works in supporting of the delivery of journey time improvements on the SRN and other appropriate aspects of the Fund for a period of ten years following Completion of the Works.

## SCHEDULE 5 - CONGESTION RELIEF PROGRAMME QUARTERLY MONITORING FORM

Quarterly monitoring form to be sent to Adam Bones via email  
(Adam.Bones@highwaysengland.co.uk)

<b>A: Applicant Details</b>			
<b>Project Name:</b>			
<b>Project Postcode:</b>		<b>HE PIN Number:</b>	
<b>Applicant Name:</b>			
<b>Applicant Contact Address:</b>			
<b>Applicant Contact Email:</b>		<b>Applicant Contact Number:</b>	
<b>Reporting Period:</b>		<b>Date report submitted to HE:</b>	
<b>Brief Project Description:</b>			

B: Financial Information Overview				
Total Project Costs:		Total CRF Contribution:		
Total Spend to Date:		Total Claimed from CRF to Date:		

C: Summary of activities completed this period	

D: Forecast Project Annual Expenditure						
Funding Source	17/18	18/19	19/20	20/21	21/22	Total
HE CRF						
Other Public						
Total Forecast Expenditure:						

E: Actual Project Expenditure to Date						
Funding Source	17/18	18/19	19/20	20/21	21/22	Total
HE CRF						
Other Public						
	Total Actual Expenditure:					

F: Project Milestones				
Date work on site started:			Date work on site completed:	

Contracted Milestone (from current funding agreement)	Target Date		Achieved? (Y/N)	Revised Target Date (if slipped)

H: Summary of Key Risks (TO BE ACCOMPANIED BY RISK REGISTER)	
1	

I: Declaration
<p>Supporting evidence of the information included in this return is readily available and can be provided to Highways England as and when Highways England deems necessary.</p> <p>All the funds received have been or will be spent on this project in line with the funding agreement.</p>

The outputs included have been achieved and are directly attributable to the delivery of the project.  
The Applicant continues to comply with its obligations and terms and conditions outlined in the Funding Agreement. I recognise that if this is not the case Highways England reserves the right to enact the claw back mechanism outlined in the Funding Agreement.

Report Completed  
By:

Report Signed By:

Date:

EXECUTED as a DEED  
by affixing of the COMMON SEAL of  
HIGHWAYS ENGLAND COMPANY LIMITED  
in the presence of:

.....  
Authorised Signatory

.....  
Authorised Signatory

EXECUTED as a DEED  
by affixing of the COMMON SEAL of  
ESSEX COUNTY COUNCIL  
In the presence of

.....  
Authorised Signatory

.....  
Authorised Signatory