

SCHEDULES

SCHEDULE 20

Article 38

FOR THE PROTECTION OF LEICESTERSHIRE COUNTY COUNCIL AS HIGHWAY AUTHORITY

Application

1. The provisions of this Schedule have effect.

Interpretation

2. In this Schedule—

“as built information” means the following information—

- (a) drawings showing the highway works as constructed;
- (b) list of supplies and materials, test results and CCTV drainage;
- (c) product data sheets, technical specifications for all materials to be used;
- (d) as built information for any utilities discovered or moved during the works and in relation to the over bridge;
- (e) method statements for works to be carried out;
- (f) road lighting, signs and traffic signals;
- (g) organisation and methods manuals for all products used;
- (h) as built programme;
- (i) drawings referred to in paragraphs (a), (k) and (l) in Auto CAD;
- (j) test results and records;
- (k) landscape drawings;
- (l) highway drainage drawings; and
- (m) plans identifying land which is highway maintainable at public expense;

“detailed design information” means the following drawings, specifications and other information which must be in accordance with the general arrangements shown on the relevant regulation 6(2) plans—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraint systems (vehicle and pedestrian);
- (d) drainage and ducting;
- (e) earthworks;
- (f) road pavements;
- (g) kerbs, footways and paved areas;
- (h) traffic signs, signals and road markings;

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- (i) road lighting (including columns and brackets);
- (j) CCTV masts and cantilever masts;
- (k) electrical work for road lighting and traffic signs;
- (l) motorway communications;
- (m) highway structures;
- (n) landscaping; and
- (o) utility diversions;

“director” means a director of Environment and Transportation of the highway authority or any successor post responsible for the highway authority function of Leicestershire County Council;

“final certificate” means the final certificate issued by the director for each phase of the highway works in accordance with paragraph 5;

“highway works” means that part of the authorised development to be carried out in the areas identified as iii, iv, v, vii, viii on the highway works component plans the general arrangement of which is shown on the relevant regulation 6(2) plans;

“highway authority” means Leicestershire County Council;

“maintenance period”, in relation to each phase of the highway works, means 12 months from the date of issue of the provisional certificate for that phase;

“phase” means that part of the highway works which is to be carried out as separate phases in the areas identified as iii, iv, v, vii and viii on the highways works components plans except that components vii and viii is a single phase or such other phasing arrangement as must be agreed with the highway authority;

“provisional certificate” means the provisional certificate of completion issued by the director for each phase of the highway works in accordance with paragraph 4;

“relevant regulation 6(2) plans” means Documents 2.4A, 2.4B, 2.4C, 2.4E, 2.4F, 2.4H, 2.4K, 2.4M and 2.4N;

“specification” means—

- (a) in relation to design—
 - (i) the 6C’s Design Guide; and
 - (ii) Design Manual for Roads and Bridges;
- (b) in relation to specification—
 - (i) Leicestershire County Council’s Specification for highway works for new developments; and
 - (ii) Leicestershire County Council’s Standard drawings;
- (c) in relation to street lighting—
 - (i) design in accordance with BS5489; and
 - (ii) Leicestershire County Council’s Street Lighting Specification; and
- (d) in relation to traffic signs—
 - (i) the Traffic Signs Regulations and General Directions 2002 and any modifications of them;
 - (ii) the Traffic Signs Manual (DOT); and
 - (iii) Leicestershire County Council’s Traffic Signs and Road Markings Specification;

“supervising officer” means the officer of the highway authority appointed by it to supervise the highway works on its behalf; and

“works fees” means the actual costs incurred by the highway authority (utilising its standard charge out rates) in relation to—

- (a) considering and approving the detailed design information;
- (b) the work carried out by the Supervising Officer including travel expenses to and from the highway works and all other expenses properly incurred by the Supervising Officer in connection with his duties; and
- (c) administration in relation to paragraphs (a) and (b) above.

Highway works

3. The undertaker must carry out and complete the highway works in accordance with—
 - (a) the detailed design information approved under paragraph 14; and
 - (b) the programme of works approved under paragraph 22 or as subsequently varied by agreement between the undertaker and the highway authority.

Provisional certificate and maintenance period

4. When and so soon as each phase of the highway works has been completed including such road safety audits as required in accordance with paragraph 27 to the reasonable satisfaction of the director, the director must issue a provisional certificate, such certificate not to be unreasonably withheld or delayed, and the undertaker at its own expense must maintain that phase of the highway works in a good state of repair and to the satisfaction of the director for the duration of the maintenance period and must carry out such routine maintenance as may be necessary or required by the director to facilitate use by the public; and for the avoidance of doubt the undertaker must undertake all other work and maintenance in respect of that work including but not limited to any damage until issue of the final certificate in respect of that phase under paragraph 5 and that phase of the highway works becomes highways maintainable at the public expense.

Final certificate

5.—(1) The undertaker must apply to the director for issue of the final certificate in respect of each phase at the expiration of the maintenance period in respect of that phase or on a date (whichever is the later) on which any damage arising during the maintenance period is made good. to the reasonable satisfaction of the director or completion of all or any works identified by any road safety audit required in accordance with paragraph 27.

(2) Upon receipt of the as built information in respect of a phase and approval of the same, the director must issue a final certificate in respect of that phase and as from the date of such final certificate the highway works become highways maintainable at the public expense.

(3) If the undertaker does not apply for and receive a final certificate for a phase within two years of the issue of the provisional certificate in respect of that phase the undertaker must pay to the highway authority a further administration charge of five hundred pounds (£500.00).

Payment for supplemental maintenance

6.—(1) Where the period from commencement of a phase of the highway works to the issue of the final certificate in respect of that phase exceeds a period of two years the undertaker must pay to the highway authority the cost of carrying out a bulk clean and lamp change for all the street lighting provided as part of that phase of the highway works.

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(2) Prior to the issue of the final certificate of completion in respect of a phase the undertaker must pay to the highway authority the cost of a bulk clean and lamp change of all illuminated signs and bollards erected as part of that phase of the highway works.

Indemnity

7. The undertaker must indemnify the highway authority from and against all costs, expenses and liabilities arising from or in connection with or ancillary to any claim, demand, action or proceedings resulting from the design, carrying out and maintenance of the highway works including but without limitation on the scope of this paragraph any claim against the highway authority under the Land Compensation Act 1973(1) or by virtue of the application of the provisions of the Noise Insulation Regulations 1975(2), including any liability falling upon the highway authority by virtue of its exercising its discretionary powers under the said Regulations provided that—

- (a) the foregoing indemnity must not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the highway authority or its officers servants, agents or contractors or any person or body for whom the highway authority is responsible;
- (b) the highway authority must notify the undertaker straight away upon receipt of any claim;
- (c) the highway authority must not accept any such claim without first having given the undertaker details of such claim and having given the undertaker the opportunity to make representations to the highway authority as to the validity and quantum of such claim;
- (d) the highway authority must, in settling any such claim, give full and due regard to any representations made by the undertaker in respect of the claim;
- (e) the highway authority must, following the acceptance of any claim, notify the quantum of the claim to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the highway authority the amount specified as the quantum of such claim;
- (f) the undertaker must notify the highway authority of the intended date of opening of each phase of the highway works to public traffic not less than 14 days in advance of the intended date; and
- (g) the undertaker must notify the highway authority of the actual date that each phase of the highway works are open to public traffic on each occasion within 14 days of that occurrence.

Construction (Design and Management) Regulations 2015

8. The undertaker must comply with all aspects of the Construction (Design and Management) Regulations 2015(3) and in particular must ensure that all obligations imposed on the client (as defined in those Regulations) are satisfied and must indemnify the highway authority against all claims, liabilities and actions arising out of a failure to so do.

Security

9. Prior to the commencement of each phase of the highway works the undertaker must secure the cost of it by the deposit with the highway authority of a bond, drafted substantially as detailed in Form 2 contained in paragraph 10, in a sum equivalent to the director's reasonable estimate of the cost of that phase of the highway works (including any statutory undertakers works) or must provide some alternative form of security acceptable to the highway authority.

(1) 1973 c. 26.

(2) S.I. 1975/1763, amended by S.I. 1988/2000.

(3) S.I. 2015/ 51.

10. Form 2 as referred to in paragraph 9—

Form 2

Bond – Leicestershire County Council

BY THIS BOND WE [the undertaker] whose registered office is situate at [] (hereinafter called “the Undertaker”) and [the Surety] (Company Registration Number []) whose registered office is situated at [] (hereinafter called “the Surety”) are held and firmly bound unto

LEICESTERSHIRE COUNTY COUNCIL (hereinafter called “the Authority”) in the sum of [] (£[]) (“the Surety Sum”) the payment of which sum the Undertaker and the Surety bind themselves their successors and assigns jointly and severally by these presents

WHEREAS the Developer intends to carry out Phase [] of the highway works referred to in Schedule 20 in the East Midlands Gateway Rail Freight and Highway Order 2016 (“the DCO”)

NOW THE CONDITION of the above written bond is such that if the Undertaker well and truly performs and fulfils its obligations in Schedule 20 to the DCO or if on failure by the Undertaker so to do the Surety must pay to the Authority the Surety Sum then the above written Bond is null and void but otherwise it must be and remain in full force and the giving by the Authority of any extension of time for the performing of the obligations in Schedule 20 to the DCO on behalf of the Undertaker to be performed or fulfilled or any forbearance or forgiveness on the part of the Authority to the Undertaker in respect of any matter referred to in or concerning provisions of Schedule 20 to the DCO must not in any way release the Surety from the Surety’s liability under the above written Bond provided that upon the issue of the provisional certificate under Schedule 20 to the DCO the liability of the Undertaker and the Surety under this Bond is to be reduced to a sum equivalent to ten per cent of the cost of the phase of the highway works together with the value of the commuted sum for that phase as calculated in accordance with paragraph 21(2) of Schedule 20 to the DCO upon the issue of the provisional certificate in respect of that phase or a minimum sum of one thousand pounds (£1,000) whichever is the greater and upon the issue of the final certificate in respect of that phase the liability of the Undertaker and the Surety under this Bond must absolutely cease.

[Attestation]

Notices etc.

11. Where under the provisions of this Schedule the highway authority 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 is to be deemed to have not been given or expressed unless given or expressed in writing (and must not be unreasonably withheld or delayed) and the highway authority agrees to use its best endeavours to ensure that any agreement or approval which is required is given or refused (along with reasons for such refusal) within 20 working days.

Dispute resolution

12. Regardless of article 41 (arbitration) any dispute under or arising out of the operation of this Schedule may be referred to a single arbitrator if all parties to the dispute 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(4).

(4) 1996 c. 23.

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Privately and publicly owned apparatus

13. For the avoidance of doubt it is expressly declared that the undertaker in carrying out the highway works must at its own expense divert or protect all or any pipes, wires, cables or equipment belonging to any person having power or consent to undertake street works under the 1991 Act as may be necessary to enable such works to be properly carried out or may be reasonably directed by the director and all alterations to existing services must be carried out to the reasonable satisfaction of the appropriate persons, authorities and statutory undertakers.

Detailed design approval

14.—(1) The undertaker must take the specifications into account in preparing the detailed design information for submission to the highway authority.

(2) No phase of the highway works is to commence until the detailed design information has been submitted to and approved by the director and in the case of that part of component viii as shown on the highway works components plans comprising the bridge over the motorway, approval of the detailed design information is also required from Highways England prior to that phase of the highway works commencing.

Workmanship

15. All the highway work is to be carried out to the reasonable satisfaction of the director.

Traffic and safety control

16. In carrying out work in or adjoining the public highway the undertaker must comply in all respects with chapter 8 of the Traffic Signs Manual.

Site safety

17. The undertaker must in respect of each phase of the highway works keep that phase safe and in a good state of efficiency and repair including the fencing and lighting of all open trenches and must keep all building materials and plant clear of the carriageway and footways.

Approval of persons undertaking the highway works

18. The undertaker must not engage or permit the engagement of any person to carry out the highway works (or any part thereof including their design) unless that person has first been approved by the highway authority as suitable to carry out such works.

Inspection of the highway works

19. The undertaker must permit and must require any contractor or sub-contractor engaged on the highway works to permit at all reasonable times persons authorised by the highway authority whose identity has been previously notified to the undertaker to gain access to the site of the highway works for the purpose of inspection to verify compliance with the provisions of this Schedule in accordance with the highway authority's inspection policy.

Design and inspection payment

20.—(1) The undertaker must pay the highway authority works fees in response to monthly invoices issued by the highway authority to the undertaker itemising the works fees payable (including time records), the first of such invoices to be issued following the first submission of detailed design information for approval.

- (2) The undertaker must provide the following for the supervising officer—
- (a) workplace on site including welfare facilities;
 - (b) communication equipment;
 - (c) suitable transport at the site; and
 - (d) parking provisions.

Commuted sum

21.—(1) Immediately prior to the issue of the final certificate in respect of any phase the undertaker must pay to the highway authority any commuted sum payable in respect of that phase calculated as provided for in sub-paragraph (2).

(2) The rates to be applied in calculating the commuted sums payable must be based on those contained with the 6C's Design Guide (or any replacement of it) or in the absence of relevant rates within that Guide must be agreed between the undertaker and the highway authority at the date of calculation.

Programme of works

22. The undertaker must, prior to the commencement of each phase of the highway works, submit to the director for his approval a programme of works setting out the undertaker's proposed timetables for executing those works and following such approval (which may be given with or without modification but which must not be unreasonably withheld or delayed) the undertaker must use all reasonable endeavours to ensure that the programme of works is complied with.

Power to execute works in default or emergency

23.—(1) If at any time the undertaker does not comply with any of the terms of this Schedule in respect of any phase of the highway works, having been given notice of an alleged breach and opportunity to remedy it by the director, the highway authority must on giving to the undertaker fourteen days' notice in writing to that effect be entitled to carry out and complete that phase of the highway works and any maintenance works on the undertaker's behalf and the undertaker must within 28 days pay to the highway authority the cost so incurred by the highway authority.

(2) Nothing in this Schedule prevents the highway authority from carrying out any work or taking such action as deemed appropriate forthwith without prior notice to the undertaker in the event of an emergency or danger to the public, the cost to the highway authority of such work or action being chargeable to and recoverable from the undertaker.

Insurance

24. The undertaker must, prior to commencement of the highway works, effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 for any one claim against any legal liability for damage, loss or injury to any property or any persons as a direct result of the execution and maintenance of the highway works or any part of them by the undertaker.

Notice of commencement of highway works

25. The undertaker must, prior to the commencement of each phase of the highway works, give the highway authority at least five weeks' notice in writing of the proposed date on which each phase of the highway works will start and such date must be subject to the agreement of the director.

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Approval of team undertaking Road Safety Audits

26. The undertaker must not engage or permit the engagement of any audit team unless that audit team has first been approved by the highway authority as suitable to undertake Road Safety Audits in accordance with the Highways Agency Standard HD 19/15 or any replacement or modification of that Standard.

Road Safety Audits

27.—(1) At any time during the detailed design stages the director may require that an interim Road Safety Audit be carried out in accordance with the Highways Agency Standard HD 19/15 and be submitted to the director and if so required by the director any recommendations in such interim report must be implemented to the director's satisfaction.

(2) Prior to the approval of the detailed design information for a phase, a Stage 2 Road Safety Audit must be carried out in respect of that phase in accordance with the Highways Agency Standard HD 19/15 or any replacement or modification of that Standard and must be submitted to the director and if so required by the director any recommendations made in the Stage 2 report must be implemented to the director's satisfaction.

(3) Prior to the issue of the provisional certificate in respect of a phase, a Stage 3 Road Safety Audit must be carried out for that phase in accordance with the Highways Agency Standard HD 19/15 and must be submitted to the director and if so required by the director any recommendations made in the Stage 3 report must be implemented to the director's satisfaction.

(4) A Stage 4 12-month monitoring Report ("the 12-month report") carried out in accordance with the Highways Agency Standard HD 19/15 in respect of each phase of the highway works must be submitted to the director no sooner than 8 weeks and no later than 12 weeks from the date when a complete year of accident data is available following the first anniversary of the opening of that phase for public use and if so required by the director any recommendations made in the 12-month report must be implemented to the director's satisfaction.

(5) Following receipt of the 12-month report in respect of a phase the director may require that a Stage 4 36-month monitoring report ("the 36-month report") be submitted for that phase in accordance with the Highways Agency Standard HD 19/15 no sooner than 8 weeks and no later than 12 weeks from the date when three complete years of accident data is available following the third anniversary of the opening of that phase of the highway works for public use and if so required by the director any recommendations in the 36-month report must be implemented to the satisfaction of the director and the undertaker must secure by the deposit of a bond with the highway authority a sum equivalent to the director's reasonable estimate of the cost of the potential liability of the undertaker in respect of works arising from the 36-month report prior to the issue of the final certificate.

Traffic signal equipment

28. The undertaker must permit the highway authority access at all reasonable times to any part of the site upon which the highway works are being carried out and in which cables, pipes, ducts or other apparatus associated with the traffic signal equipment is to be or are located to enable the highway authority to undertake works reasonably required for the maintenance of the said cables, pipes, ducts or other apparatus including any works which are undertaken to improve the performance of the traffic signals.

Use of sums paid

29. The Highway Authority must use such sums as are payable in accordance with the terms of this Schedule together with any interest which may accrue only for the purposes for which they are expressed to be paid.

Statutory procedures and orders

30. The undertaker must pay to the highway authority upon demand the total costs properly and reasonably incurred by the highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the highway works and whether or not such procedure or order is or are experimental, temporary or permanent provided that this paragraph does not apply to the making of any orders which duplicate the orders contained in this Order.