

DATED 11 JULY 2023

SUFFOLK COUNTY COUNCIL (1)

- and -

SIZEWELL C LIMITED (2)

AGREEMENT

made pursuant to Section 278 of the Highways Act 1980
and any other enabling power relating to
the development of the A1094 at Benhall, East Suffolk

Nigel Inniss
Head of Legal Services
Suffolk County Council
8 Russell Road Ipswich
Suffolk IP1 2BX

Ref: 73165/JL

**SECTION 278 AGREEMENT
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THIS AGREEMENT is made the 11 day of JULY 2023

BETWEEN the following parties:-

- (1) SUFFOLK COUNTY COUNCIL of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2BX ("the County Council")
- (2) SIZEWELL C LIMITED (company number 09284825) of 90 Whitfield Street, London, England, W1T 4EZ ("the Developer")

RECITALS AND DEFINITIONS

(A) In this Agreement unless the context otherwise requires the following words shall have the following meanings:-

"1980 Act"	Means the Highways Act 1980 (as amended)
"Approved Contractor"	Means the contractor(s) approved by the County Council for carrying out the Highway Works of the value and complexity proposed
"Approved Sub-Contractor"	Means the sub-contractor(s) approved by the County Council for carrying out the Highway Works of the value and complexity proposed
"CDM Regulations"	Means the Construction (Design and Management) Regulations 2015 (SI 2015/51)
"Certificate of Final Completion"	Means any of the certificates referred to in paragraph 15.3 of Schedule I
"Certificate of Substantial Completion"	Means any of the certificates referred to in paragraph 14.2 of Schedule I
"Code of Construction Practice"	Means the document certified as such by the Secretary of State under article 82 (certification of plans, etc) of the Permission as amended pursuant to Requirement 2 of the Permission
"Contract"	Means the contract or contracts in respect of each and all of the Highway Works

"Contractor"	Means the contractor or contractors who have been awarded the Contract to execute the Highway Works. For the avoidance of doubt the aforementioned definition does not include any Sub-contractor
"Development"	Means the development to be carried out pursuant to the Permission
"Director"	Means the County Council's Executive Director of Growth, Highways and Infrastructure or other officers of the County Council acting under their hand
"Dispute"	Means any dispute, issue, difference or claim as between the parties in respect of any matter contained in or arising from or relating to this Agreement or the parties' obligations and rights pursuant to it (other than in respect of any matter of law or construction of this Agreement)
"Expert"	means an independent person appointed in accordance with the provisions of clause 4 to determine a Dispute between the parties to this Agreement
"Highway Works"	Means the works collectively or individually as the context requires which are set out in Schedule III of this Agreement and shown in the Works Drawings
"Performance Bond"	Means the bond with the Performance Bond Surety for each and all of the Highway Works, such bond to be in the form set out in Schedule II.A, to the effect that should the Developer default in the execution of its obligations to carry out the Highway Works and to maintain the same in accordance with the provisions of this Agreement then the County Council will call upon the Performance Bond Surety to provide the full value of the Performance Bond (subject to the provisions hereinafter contained) to carry out the Highway Works and maintain the same as aforesaid
"Performance Figure"	Means the sum of £117,573.50 (One Hundred and Seventeen Thousand, Five Hundred and Seventy-Three Pounds and Fifty

Pence) being the Tender Sum plus 10 per cent in respect of the Highway Works and set out in each of the Contracts

"Performance Bond Surety"	Means BNP Paribas
"Permission"	Means the Development Consent Order granted with reference number SI: 2022 No. 853 Infrastructure Planning, The Sizewell C (Nuclear Generating Station) Order 2022
"Road Safety Audit"	Means the evaluation of each and all of the Highway Works during design and at the end of construction to identify potential road safety problems that may affect any users of the highway and to suggest measures to eliminate or mitigate those problems in accordance with Department for Transport standards or by the County Council as agreed by the Director
"Site"	Means (a) the proposed Benhall site access located on the A1094 approximately 200m to the east of the East Suffolk railway line and (b) the site of the temporary safety improvements to the A12/A1094 junction, as shown on drawing SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000013
"Specification"	The County Council's "Specification for Estate Roads" dated May 2007 (or later amendment current at the date of this Agreement) so far as this is consistent with the Works Drawings and description in Schedule III (subject to any variations agreed in writing by the Director)
"Sub-contractor"	Means the sub-contractor(s) working for the Contractor(s) who have been contracted to execute the Highway Works
"Substantial Completion"	Means complete to the reasonable satisfaction of the Director and so that the Highway Works can be used for the purpose and operate in the manner for which they were designed
"Technical Standards"	Means the standards necessary to ensure complete conformity with all UK primary and secondary legislation (including by-laws) all guidance standards and codes of practice issued by the Department for Transport the County Council statutory

undertakers and relevant professional institutes the Road Safety Audit and formal instructions issued by the Director from time to time during the design and implementation of the Highway Works and for the avoidance of doubt this shall include the Traffic Signs Regulations and General Directions 2016 and BS5489 in relation to the design of any street lighting

"Tender Sum" Means the sum of £106,885 (One Hundred and Six Thousand, Eight Hundred and Eighty Five Pounds) being the sum of (a) £69,000 for the Highway Works, (b) £4,500 for traffic management and (c) £33,385 for utilities agreed by the Director for carrying out the Contract by the Contractor

"Working Days" Means any day apart from Saturday, Sunday and any statutory Bank Holiday on which clearing banks are open in England for the transaction of ordinary business.

"Works Drawings" Means the attached drawings bearing the numbers referred to in Schedule IV or any subsequent revision of them which has been approved or requested by the Director and which relate to the Highway Works

(B) In this Agreement unless the context otherwise requires:-

- (i) Words importing the singular meaning where the context so admits include the plural meaning and vice versa; and
- (ii) Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeably in that manner; and
- (iii) "party" or "parties" means a party or parties to this Agreement; and
- (iv) references to any party shall include the successors in title and assigns of that party; and in the case of the County Council the successors to its statutory functions; and
- (v) where a party includes more than one person any obligations of that party can be enforced against all of them jointly and severally unless there is an express provision otherwise; and
- (vi) the headings and contents list in this Agreement shall not form part of or affect its construction; and

- (vii) references to clauses schedules and paragraphs are references to clauses in and schedules to this Agreement and paragraphs in schedules to this Agreement; and
 - (viii) where a party or any officer or employee is required to give its consent approval or agreement to any specific provision in this Agreement such consent approval or agreement shall not be unreasonably withheld or delayed; and
 - (ix) any mention herein of any act or of any section regulation or statutory instrument shall be deemed to refer to the same source as at any time amended and where such act section regulation or statutory instrument has been replaced consolidated or re-enacted with or without amendment such mention shall be deemed to refer to the relevant provision of the updating consolidating or re-enacting act or section or regulation or statutory instrument.
- (C) The County Council is the highway authority (except for trunk roads) for the purposes of the 1980 Act for the area within which the Site is situated and the Highway Works will be carried out.
- (D) The Developer has the benefit of the Permission.
- (E) The Developer has the benefit of a licence dated 22 March 2023 granting rights permitting the Developer to carry out the Highway Works on the Site in so far as it is registered at the Land Registry under Title Number SK149559.
- (F) Having regard to the Permission the County Council considers it expedient in the interests of the proper planning of their area that the Highway Works need to be carried out to facilitate the Development and that entering into this Agreement will be of benefit to the public.

NOW THIS DEED WITNESSES as follows:-

1 LEGAL EFFECT

- 1.1. This Agreement and the covenants that appear hereinafter are made pursuant to Sections 72 and 278 of the 1980 Act, Section 111 of the Local Government Act 1972, Section 1 of the Localism Act 2011 and all other enabling powers to the intent that the

provisions of this Agreement shall bind the Site and the parties hereto and all persons deriving title through or under them.

- 1.2. This Agreement is a Deed. Any financial default under this Agreement will be registered as a Local Land Charge under section 278(5)(c) of the 1980 Act.
- 1.3. No waiver (whether express or implied) by the County Council of any breach or default by the Developer in the performance or observance of any of the covenants, terms or obligations in this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the covenants, terms or obligations or from acting upon any subsequent breach or default in respect thereof.
- 1.4. Any provision of this Agreement which is or may be unlawful void or unenforceable shall to the extent of such unlawfulness invalidity or unenforceability be deemed severable and shall not affect any other provision of this Agreement.
- 1.5. This Agreement is governed by and interpreted in accordance with English law and shall be determined in the Courts of England.

2 NOTICES

- 2.1. Any notices or other written communication to be served or given by one party upon or to any other party under the terms of this Agreement shall be deemed to have been validly served or given if delivered by hand or sent by recorded delivery post to the party upon whom it is to be served or to whom it is to be given or as otherwise notified for the purpose by notice in writing provided that the notice or other written communication is addressed and delivered by hand or by recorded delivery post or by email to the address of the party concerned as nominated in sub-clause 2.2. below
- 2.2. The address for any notice or other written communication in the case of each party to this Agreement shall be as follows:-

The County Council	Suffolk County Council, Endeavour House 8 Russell Road Ipswich IP1 2BX marked for the attention of the Assistant Director of Governance, Legal and Assurance (or where the context requires the Executive Director of Growth,
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The Developer

Highways and Infrastructure, Endeavour House 8
Russell Road Ipswich IP1 2BX)
Sizwell C Limited, 90 Whitfield Street, London
W1T 4EZ, marked for the attention of the
Advanced Works and DCO Lead or emailed to:
Richard.Bull@sizwellc.com

3 GENERAL

- 3.1. All works and activities to be carried out under the terms of this Agreement (including for the avoidance of doubt such works as are of a preparatory ancillary or of a maintenance nature) are (save where expressly provided otherwise) to be at the sole expense of the Developer and at no cost to the County Council.
- 3.2. All consideration given and payments made in accordance with the provisions of this Agreement shall be exclusive of any VAT properly payable in respect thereof and in the event of VAT becoming chargeable at any time in respect of any supply made in accordance with the terms of this Agreement then to the extent that VAT had not previously been charged in respect of that supply the person making the supply shall raise a VAT invoice to the person to whom the supply was made and the VAT shall be paid accordingly.
- 3.3. The County Council and their respectively duly authorised officers and agents may enter upon the land on which the Highway Works are being carried out at any reasonable time to ascertain whether the terms of the Agreement are being or have been complied with.

4 EXPERT DETERMINATION

- 4.1. In the event of any Dispute arising between the parties then the parties will attempt to resolve that Dispute amicably including holding a meeting attended by at least one representative from each party.
- 4.2. If the parties are unable to resolve the Dispute amicably pursuant to clause 4.1, one party shall, unless otherwise agreed between the parties, by serving notice on all the other parties (the "Notice") refer the Dispute to an Expert for determination.
- 4.3. The Notice must specify:
 - 4.6.3 the nature, basis and brief description of the Dispute;

4.6.3 the clause of this Agreement pursuant to which the Dispute has arisen; and

4.6.3 the proposed Expert.

4.4. In the event that the parties are unable to agree who should be appointed as the Expert within ten (10) Working Days after the date of the Notice then either party may request the President of the Institution of Civil Engineers to nominate the Expert at their joint expense, and the parties shall request that such nomination shall be made within ten (10) Working Days of the request, and any failure for such nomination to be made within ten (10) Working Days shall entitle any party to withdraw from the process of appointing an Expert and to refer the Dispute to the courts of England instead.

4.5. The Expert shall act as an expert and not as an arbitrator and his decision will (in the absence of manifest error) be final and binding on the parties hereto and at whose cost shall be at his discretion or in the event that he makes no determination, such costs will be borne by the parties to the Dispute in equal shares.

4.6. The Expert will be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty-eight (28) Working Days from the date of his appointment to act.

4.7. The Expert will be required to give notice to each of the said parties inviting each of them to submit to him within ten (10) Working Days written submissions and supporting material and will afford to each of the said parties an opportunity to make counter submissions within a further five (5) Working Days in respect of any such submission and material.

5 COVENANTS

5.1. The Developer covenants and warrants to the County Council that they have full power to enter into this Agreement and there is no other person having a charge over or any other interest in the Site whose consent is necessary for the Developer to enter into this Agreement.

5.2. The Developer hereby covenants and undertakes with the County Council that from the date of this Agreement it will (unless otherwise agreed by the County

Council) carry out and comply with the obligations set out in Schedule I and the details set out in Schedules III and IV hereto.

- 5.3. The County Council without prejudice to its statutory powers and duties hereby appoints the Developer to act as its agent and gives to the Developer licence (in so far as is reasonably necessary for the Developer to perform the obligations under the terms of this Agreement) to enter into and upon and remain upon the highway to carry out the construction of the Highway Works within the timescales referred to in Schedule III hereto or such other period as may be agreed in writing by the Director, provided that this licence shall not extend to the Developer's successors in title or assigns unless otherwise agreed in writing by the Director prior to that successor or assignee commencing work in the public highway.
- 5.4. The Developer covenants with the County Council not to commence the Highway Works set out in Schedule III unless road space has first been booked with the County Council.
- 5.5. The Developer covenants with the County Council as highway authority to give written notice not less than three (3) calendar months prior to works commencing, in order that the County Council as highway authority has sufficient time to ensure that the commencement of works will cause the least disruption possible to road users and the County Council reserves the right to refuse consent and/or to stop or require the stopping of works under the terms of this Agreement and relevant legislation where the aforesaid notice period is not complied with.
- 5.6. The Developer covenants with the County Council as highway authority to comply with the provisions of the New Roads and Street Works Act 1991, the Traffic Management Act 2004 and any amendments thereof.

6 THIRD PARTY RIGHTS

- 6.1. It is hereby agreed and declared that the provisions of Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement.

7 LAPSE

- 7.1. If the Highway Works have not been commenced within one (1) year from the date of this Agreement, save as this period is otherwise extended in writing by the Director at his discretion, then this Agreement shall lapse and be of no further effect

(save to the extent already complied with) and the Developer agrees to pay to the County Council any costs properly incurred by the County Council prior to the lapse of this Agreement (which have not already been paid).

- 7.2. Where, in accordance with clause 7.1 above the Director, at his discretion, agrees in writing to an extension to the period of one (1) year after which this Agreement shall lapse, this Agreement shall lapse at the end of such period as agreed in writing by the Director where the Highway Works have not been commenced by the expiry of that extension period.

8 COUNTERPARTS

- 8.1. This Agreement may be executed in any number of counterparts, and this has the same effect as if the signatures on the counterparts were on a single copy of the Agreement.

In witness whereof this Agreement has been executed and delivered as a Deed on the date first written above

65845

The COMMON SEAL of)
SUFFOLK COUNTY COUNCIL)
was hereunto affixed)
in the presence of)



EMILY SPAINLAND

.....
A Duly Authorised Officer

EXECUTED AS A DEED by
SIZEWELL C LIMITED

acting by
in the presence of

.....
Director

.....
(Name of witness)

.....

.....

.....
(Address of witness)

.....
(Signature of witness)

SCHEDULE I

1 THE DESIGN OF THE HIGHWAY WORKS

- 1.1 The design of the Highway Works shall be to the satisfaction of the Director with due consideration of the Technical Standards.
- 1.2 No work on any of the Highway Works shall commence and no Contract for their construction shall be let until:
 - 1.2.1 full details of the design of the Highway Works to be commenced in the form of plans, drawings, specifications and other materials have been submitted to the Director together with the name of the principal designer (whom the Developer shall appoint for the full duration of the design and construction of each and all of the Highway Works) in accordance with the CDM Regulations and any codes of practice referred to therein; and
 - 1.2.2 the Director has given their written approval for the Highway Works to be commenced and such approval shall not be given if the said plans, drawings, specifications and other documentation have not adequately addressed the issues raised in the pre-construction stages of the Road Safety Audit process and if given shall lapse if the Highway Works are not commenced within twelve (12) months of the date of the said Director's approval.
- 1.3 If the Director does not propose to give their approval in relation to those matters referred to in paragraph 1.2 of this Schedule they shall in each case as soon as possible in writing inform the Developer and if the Director requires amendments or additions to the plans, drawings specifications and other materials referred to in paragraph 1.2 of this Schedule these amendments shall be undertaken by the Developer at its own expense and a revised set of updated documents shall be re-submitted to the Director for their approval.
- 1.4 The Highway Works at all times shall be carried out in accordance with the plans, drawings, specifications and other materials which have received the Director's approval referred to in paragraph 1.2 of this Schedule and the Developer shall in the execution of the Highway Works comply or ensure that the Contractor complies with the Technical Standards.

2 LETTING OF THE CONTRACT

- 2.1 No Contract shall be let until all traffic management measures have been prepared by the Developer and approved in writing by the Director ("the approved programme") and thereafter each of the Contracts will be offered to an Approved Contractor.
- 2.2 The Contract to be let under paragraph 2.1 of this Schedule shall be let under NEC3 suite of contracts (and any amendments thereto shall be approved by the Director) and the Developer shall obtain the agreement of the Contractor to be bound by the agreed drawings in Schedule IV in delivering the Highway Works.
- 2.3 The Contract shall be awarded by the Developer subject to the Director having first given their written approval to the proposed chartered engineer(s) or other suitably qualified person(s) who shall be independent of the Contractor and will supervise the execution of the Highway Works by the Contractor.
- 2.4 The Developer shall not award the Contract unless the Approved Contractor and the Approved Sub-Contractor(s) concerned are insured throughout the period of the Contract (such period to include the maintenance period detailed in paragraph 15.1 of this Schedule) for public liability risks in the sum of at least ten million pounds (£10,000,000) in respect of any single claim and the Developer shall ensure that the Contractor remains so insured throughout the period of the Contract and prior to the commencement of each or all of the Highway Works or any maintenance works carried out in accordance with paragraph 15.1 of this Schedule the Developer shall produce to the Director insurance policies fully covering the Developer's liability in respect of the matters set out in this Agreement.
- 2.5 The Developer shall not sub-contract or assign the Contract without the written approval of the Director and any sub-contractor shall be an Approved Sub-Contractor.

3 INSPECTION OF THE HIGHWAY WORKS

- 3.1 The Developer shall provide the Director with not less than twenty-four (24) hours' nor more than seventy-two (72) hours' notice (excluding weekends and bank holidays) of any intended execution of the Highway Works specifying the tasks to be carried out in accordance with the approved programme referred to in paragraph 2.1 of this Schedule.

- 3.2 Without prejudice to the approved programme the Developer shall notify the Director in writing at least twenty-eight (28) days prior to the commencement of any work connected with statutory undertaker's equipment.
- 3.3 The Developer shall during the progress of each and all of the Highway Works give to or procure for the Director and any person or persons duly authorised by them free access to every part of the Highway Works and the Site and permit them to inspect the same as they proceed and all materials used or intended to be used therein and shall give effect to any reasonable and proper requirements made or reasonable and proper directions given by the Director to conform to the approved detailed plans, drawings and specification referred to in paragraph 1.2 of this Schedule.
- 3.4 The Developer shall not cover up or put out of view any works forming part of the Highway Works without the approval of the Director and shall afford full opportunity for the Director to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon and shall give at least seventy-two (72) hours' notice to the Director whenever any such work or foundations is or are ready or about to be ready for examination.
- 3.5 The Director shall without unreasonable delay, unless they consider it unnecessary and advise the Developer accordingly, attend when required by the Developer for the purpose of examining such works or of examining such foundations.
- 3.6 The Director shall for the purposes of paragraphs 3.1 to 3.5 be allowed reasonable access and admission to the Highway Works or the places where materials or plant for the Highway Works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the Developer).

4 TESTING OF MATERIALS

- 4.1 The Developer shall reimburse the County Council for all reasonable costs and expenses whatsoever arising from the operation of paragraphs 4.2 to 4.5.
- 4.2 The Director shall require the testing of materials plant and workmanship used or proposed to be used in the Highway Works and in their reasonable discretion has the power to reject any materials plant or workmanship so tested which they may reasonably and properly find to be not in accordance with the relevant approved detailed plans, drawings and specification referred to in paragraph 1.2 of this Schedule.

- 4.3 The Developer shall, as soon as is reasonably practicable, replace or repair any materials plant or workmanship which have been found to be not in accordance with the relevant approved detailed plans, drawings and specification referred to in paragraph 1.2 of this Schedule.
- 4.4 The Director shall, for the purposes of paragraphs 4.2 to 4.5, be allowed reasonable access and admission to the Highway Works or the places where materials or plant for the Highway Works may be stored or in the course of preparation manufacture or use (unless such access or admission is refused due to circumstances beyond the control of the Developer).
- 4.5 The Developer shall, as soon as is reasonably practicable, remove such materials and plant as are rejected by the Director pursuant to paragraph 4.2 of this Schedule which are not capable of repair or remedy from the Site and if the Developer shall wish to continue to store such rejected materials and plant on the Site they shall be stored separately from those materials and plant which have not been so rejected or which the Developer shall wish in future to use in execution of the Highway Works.

5 OPENING OF THE HIGHWAY WORKS

- 5.1 During the construction of each and all of the Highway Works and prior to the issue of the Certificate of Substantial Completion in respect of the Highway Works:
- (a) the Director may issue instructions to the Developer to open or expose any of the Highway Works which has been covered up without previously being inspected by the Director; and
 - (b) should the Developer fail to comply with any such instructions the County Council may so take up or expose the relevant part of the Highway Works causing as little damage or inconvenience as is possible in respect of any other part or parts of the Highway Works the reasonable and proper cost of such taking up or exposure and reinstatement to be met by the Developer,

PROVIDED THAT if the Highway Works or any part or parts thereof are covered up by the Developer after giving the notice referred to in paragraph 3.5 of this Schedule and the Director shall have failed to inspect in the period therein referred to and the Director shall subsequently require the Highway Works or any part of them to be uncovered for the purposes of inspection:-

- (a) if inspection reveals the relevant part or parts of the Highway Works or to have been completed in accordance with the relevant approved detailed plans, drawings and specification referred to in paragraph 1.2 of this Schedule all costs in respect of such uncovering and inspection and of reinstating the part or parts of the Highway Works uncovered shall be borne by the County Council; or
- (b) if inspection reveals the relevant part or parts of the Highway Works have not been completed in accordance with the relevant approved detailed plans, drawings and specifications referred to in paragraph 1.2 of this Schedule all reasonable and proper costs in respect of uncovering and inspection and of reinstating the part or parts of the Highway Works or uncovered shall be borne by the Developer.

6 UNDERTAKERS

6.1 Insofar as the County Council as highway authority is required by any legislation, regulation, direction or code of practice (including in particular but without prejudice to the generality of the foregoing the New Roads and Street Works Act 1991) to serve a notice or notices in respect of the Highway Works on undertakers or other persons the Developer shall comply with such requirement on behalf of the County Council before the Highway Works commence and shall thereafter assume on behalf of the County Council such responsibilities as follow on therefrom in particular during the construction of the Highway Works and prior to the issue of the Certificate of Substantial Completion the Developer shall also:-

- (a) carry out or procure the carrying out of such works and activities in regard to the plant and equipment of undertakers as are required by undertakers in accordance with their statutory powers under the New Roads and Street Works Act 1991 as a result of the construction or intended construction of each and all of the Highway Works;
- (b) cause all public sewers, highway drains gas and water mains electric cables and telecommunications ducts or other apparatus which are to be laid by the Developer under the Highway Works together with all necessary connections from them to the boundary of the Highway Works to be laid so far as is practicable under the Highway Works before the foundation of the Highway Works are laid and shall also in so far as is practicable cause the connections from electric cables to any street lamp to be laid before the paving of the footways comprised in the Highway Works is carried out;

- (c) cause all trench works within the highway to be backfilled and reinstated in accordance with the Specification for the Reinstatement of Openings in the Highway as determined from time to time under the New Roads and Street Works Act 1991; or
- (d) not at any time give consent to the erection by any telecommunications operator of telegraph poles or telephone poles or to the erection by any statutory undertaker or public or private company firm or individual of any over ground or underground equipment without the consent in writing of the Director.

7 PROTECTION OF THE PUBLIC

- 7.1 The Developer shall give due consideration to adjoining owners and occupiers at all times and shall organise activities relating to the Highway Works in such a manner as to cause the least practicable disruption.
- 7.2 Prominent notices shall be displayed and maintained around the perimeter of the site of each and all of the Highway Works to warn the public of the dangers of entering the Site.
- 7.3 The Developer shall nominate a member of the site management team as the contact point for the Director in the event of an emergency and shall advise a daytime and twenty-four (24) hour contact number to the Director for the same purpose.
- 7.4 The Developer shall take or procure the taking of all necessary steps to avoid creating a nuisance from noise and in particular:
 - 7.4.1 the Developer shall afford all reasonable facilities to enable the Director to carry out such site investigations as they may deem necessary in order to determine noise emission levels;
 - 7.4.2 all vehicles and plant including compressors shall be fitted with effective silencers and acoustic covers as appropriate and maintained in good working order and all static plant shall be located to minimise nuisance to persons living or working in the vicinity;
 - 7.4.3 all portable traffic signals and pumps shall be operated from mains electricity unless otherwise agreed with the Director; and
 - 7.4.4 noisy activities shall not be permitted on Sundays and Bank Holidays and except as agreed in writing by the Director shall not be permitted outside the

hours of 9.30 a.m. to 4.30 p.m. Monday to Friday and 9.30 a.m. to 1 p.m. on Saturdays,

PROVIDED THAT if in the reasonable opinion of the Director the Developer is not dealing adequately with the control of noise the Developer shall carry out or procure the carrying out of such additional measures as the Director considers necessary at the Developer's expense.

7.5 Compliance with the provisions of paragraph 7.4 shall not relieve the Developer of any of his obligations and liabilities under this Agreement, the Control of Pollution Act 1974 or the Environmental Protection Act 1990.

7.6 The Developer shall take or procure the taking of all necessary steps to avoid creating a nuisance from dust and as far as practicable works are to be carried out in such a way that dust is kept to a minimum PROVIDED THAT if in the reasonable opinion of the Director the Developer is not dealing adequately with the control of dust the Developer shall carry out or procure the carrying out of such additional measures as the Director considers necessary at the Developer's expense.

7.7 The Developer shall arrange the regular removal of refuse likely to encourage vermin and arrange for suitable secure storage containers to be provided for collection.

7.8 The Developer shall keep a log book on site to record all complaints received from the public and the action taken in response and the log book shall be available for inspection by the Director.

8 PREVENTION OF MUD BEING CARRIED ON THE PUBLIC HIGHWAY

8.1 Provision shall be made at the Site to limit in so far as is practicable the amount of mud, dust and other materials carried on to adjacent public highways by vehicles and plant leaving the Site.

8.2 The Developer shall keep or procure the keeping of all roads footpaths rights of way and other means of passage leading to or from or crossing the Site free from mud, slurry or other hazardous substances that are deposited through the construction of the Highway Works and any such substance so deposited on any such road, footpath, right of way or other means of passage shall be promptly removed by or at the direction of the Developer.

8.3 The Director may close any associated crossings, entrances and exits if such substances deposited are not promptly removed by the Developer and any losses or expenses incurred as a result shall be borne by the Developer and on removal of such substances the Director shall reopen such crossings, entrances and exits and the Developer shall bear the costs incurred.

9 TRAFFIC CONTROL

9.1 During the periods when the Highway Works are being executed the Developer shall institute at its own expense measures previously approved in writing by the Director to maintain the safe flow of traffic on the highways in the vicinity of the site of the Highway Works.

9.2 The Highway Works shall be signed and protected to at least the standards of Chapter 8 of the Traffic Signs Manual published by His Majesty's Stationery Office and the proposed arrangements shall be approved in writing by the Director before the Highway Works commence.

10 TIMING

10.1 No Highway Works within or affecting existing public highways or temporary diversions which could interfere with the traffic flow will be permitted within the morning and evening peak periods i.e. 7.30 - 9.30 a.m. and 4.30 - 6.30 p.m. Monday to Friday except as agreed in writing by the Director.

11 SAFETY

11.1 During the periods when the Highway Works are being carried out the Developer shall provide all watching and lighting as required and shall maintain all lights, guards, fencing, warning signs when and, where necessary, undertake such further measures as may be reasonably required by the Director.

12 ACCOMMODATION WORKS

12.1 The Developer shall carry out or ensure that there shall be carried out all related accommodation works associated with the Highway Works.

12.2 To the extent that any of the measures in paragraphs 7 to 12 of this Schedule would cause a breach of the measures in the Code of Construction Practice, the Code of Construction Practice shall prevail to the extent of any such inconsistency but where the measures in paragraphs 7 to 12 of this Schedule exceed the Code of Construction

Practice without causing a breach then (solely in respect of the Highway Works) the requirements of this Schedule shall take precedence.

13 CONSTRUCTION (DESIGN AND MANAGEMENT) REGULATIONS 2015

13.1 The Developer shall be the only client for the purpose of the CDM Regulations and the Developer agrees to undertake the obligations of a client under the CDM Regulations and to use all reasonable endeavours to ensure that the Highway Works or are carried out in accordance with the CDM Regulations.

13.2 The Highway Works shall not commence until the Developer as the only client has provided to the Director in respect of the relevant works:

13.2.1 an estimate of the number of working days and/or person days of construction work and the number of workers working on site simultaneously at any one point in the project which the Contract will entail;

13.2.2 written details of the principal designer and the principal contractor appointed for the project and also provide copies of the construction phase plan and Health and Safety File; and

13.2.3 a copy of the Notification of Project (form HSE F10) to the HSE pursuant to Regulation 6 of the CDM Regulations.

13.3 Throughout the Highway Works the Developer shall provide to the Director copies of the updates and revisions to the construction phase plan and Health and Safety File pursuant to Regulation 12.

13.4 Within twenty-eight (28) days of issue of the Certificate of Substantial Completion for any or all of the Highway Works the Developer shall provide to the Director:

13.4.1 a plan showing the land over which the Highway Works have been constructed; and

13.4.2 a Health and Safety file in respect of the relevant works conforming in all respects with the CDM Regulations and which shall accord with the current format used by the County Council.

13.5 The Director shall be at liberty to delay issue of the Certificate of Final Completion in respect of any of the Highway Works if the Developer fails to provide the Director with the documents referred to in 13.4.1 and 13.4.2 above within twenty-eight (28) days of issue of any Certificate of Substantial Completion for any of the Highway Works by a

period equivalent to the number of days after the twenty-eight (28) day period that the documents were submitted.

13.6 In respect of the Highway Works generally the Developer shall provide to the Director the final information in both paper and electronic format and shall at least comprise:

13.6.1 1:500 scale (or alternative scale as may be specified by the Director) "as built" drawings;

13.6.2 records of the earthworks showing sources of material used in areas of fill description of fill materials descriptions of sub-grades in cut areas copies of results of tests of material carried out as part of the supervision of the construction of the earthworks;

13.6.3 records of the sources of supply of all deliveries of road construction materials with details of the location of the Highway Works at which each load is placed; and

13.6.4 records of the sources of supply of all other manufactured materials (e.g. drainage goods, fencing materials, traffic signs, electrical components and cables etc).

13.7 The Developer shall indemnify and keep the County Council indemnified against any breach of the Developer's obligations under this paragraph 13.

14 SITE CLEARANCE AND CERTIFICATE(S) OF SUBSTANTIAL COMPLETION

14.1 On Substantial Completion of the Highway Works to the satisfaction of the Director, the Developer shall:-

14.1.1 clear away and remove from the Site all constructional plant and temporary works of every kind and leave the Site in a neat and tidy condition to the satisfaction of the Director; and

14.1.2 carry out stage 3 of the Road Safety Audit process and comply to the satisfaction of the Director with recommendations arising thereunder prior to the opening of the Highway Works to the public.

14.2. Upon Substantial Completion of the Highway Works, including any additional work resulting from stage 3 of the Road Safety Audit process to the satisfaction in all respects of the Director, the Director shall issue a Certificate of Substantial Completion in respect of those Highway Works to the Developer provided that all

costs and expenses owing to the County Council have been paid in respect of those Highway Works.

- 14.3. After the issue of the Certificate of Substantial Completion the County Council shall approve a reduction of 50% in the Performance Figure in respect of the Highway Works and the County Council shall release the Developer and the Performance Bond Surety from their obligations under the Performance Bond in respect of the Highway Works to such extent.

15 DEFECTS CORRECTION PERIOD AND CERTIFICATE OF FINAL COMPLETION

- 15.1 The Developer shall maintain each and all of the Highway Works for a period of twenty-four (24) months (unless the Director agrees in writing a lesser period having considered paragraph 15.2) from the issue of the related Certificate of Substantial Completion and prior to the expiration of this period the Developer shall reinstate and make good any damage or defect which may have arisen from any cause whatsoever or be discovered during the said period of twenty-four (24) months (including any defect in or damage to the surface water drainage system) so as to place the highway and the Highway Works in a condition satisfactory to the Director.
- 15.2 After the expiration of the period of twelve (12) months from Substantial Completion or the date the Development becomes operational (whichever is the latter) the Developer shall (unless the Director writes to the Developer informing them that it is to be carried out sooner or that he does not need to do so) carry out stage 4 of the Safety Audit and comply to the satisfaction of the Director with any recommendations arising thereunder.
- 15.3 After completion of the Highway Works and after any defects have been made good to the satisfaction of the Director and after the provisions of paragraph 13.4 and paragraph 19.2 of this Schedule have been fulfilled the Director shall issue forthwith to the Developer the Certificate of Final Completion in respect of the Highway Works provided that the Certificate of Final Completion shall in the case of road gullies extend only as far as their points of entry to the surface water sewers where those are not being adopted by the County Council as highway drains and upon the issue of the Certificate of Final Completion the County Council shall release the Developer and the Performance Bond Surety and each of them from all subsisting obligations under the Performance Bond in respect of those Highway Works.

16 INDEMNITY

provided by the Developer and (if applicable) the Performance Bond Surety for a sum not less than the amount of the Performance Figure as at that date (excluding any interest accrued) PROVIDED THAT (for the avoidance of doubt) upon the issue by the County Council of the Certificate of Final Completion pursuant to paragraph 15.3 no such replacement Performance Bond or alternative form of security shall be required and this paragraph 17.2 shall cease to have effect.

17.3 Should the Developer default in the execution of its obligations to carry out any or all of the Highway Works and to maintain the same in accordance with the provisions of this Agreement then the County Council may (subject to the provisions hereinafter contained) itself carry out the Highway Works maintain the same as aforesaid having first called upon the Performance Bond Surety for the cost to be expended in so doing:

17.3.1 unless there is a danger to users of the highway the County Council shall give twenty (20) Working Days prior written notice (or lesser period as may in the circumstances be reasonable) of its intention to commence work under paragraph 17.3;

17.3.2 any notice served under this paragraph shall specify the period of the notice ("the Notice Period") the extent of the work which the County Council proposes to carry out and full details of all matters in respect of which the Director considers that the Highway Works have not been carried out in accordance with the terms of this Agreement; and

17.3.3 if before the expiry of the Notice Period the Developer serves written notice upon the County Council that the Developer intends diligently to execute the works specified in the notice in accordance with the terms of this Agreement and specifies a time to complete that the County Council considers reasonable in the circumstances the County Council shall not be entitled to execute the relevant part or parts of the Highway Works specified in the notice served under this paragraph unless the Developer then fails to execute those works within the agreed time scale.

17.4 If the Developer should default in the execution of its obligations to carry out any or all of the Highway Works and to maintain the same in accordance with the provisions of this Agreement then the County Council will call upon the Performance Bond Surety to provide the full Performance Figure (or such sum that remains following reduction of the Performance Bond in accordance with paragraph 14.3 of this Schedule) in accordance with this Agreement, save that the County Council after all works are

16.1 The Developer shall from the date of this Agreement indemnify the County Council against all claims, charges, costs, expenses, liability or loss whatsoever arising out of and incidental to any or all of the Highway Works including, but not limited to, those arising out of any legally sustainable claims for payments under Section 10 of the Compulsory Purchase Act 1965 and Part I of the Land Compensation Act 1973 (as amended) in connection with those Highway Works provided that the Developer's indemnity will not extend to any claims submitted to the County Council arising out of the negligence of the County Council's employees or arising out of any works of alteration carried out to any of the Highway Works by the County Council after the issue of the related Certificate of Final Completion.

16.2 The County Council shall notify the Developer forthwith upon receipt of any such claim or liability.

16.3 The County Council shall not accept or settle any claim without first having given the Developer the opportunity to provide the County Council with representations as to the validity of such claim.

16.4 The indemnification referred to in paragraph 16.1 includes:

16.4.1 all fees incurred by claimants which the County Council is obliged to pay, and those of the County Council or its agent or contractor, in negotiating any claims (together with VAT payable on the claimants' professional advisors' fees);

16.4.2 statutory interest payments to claimants and their professional advisors; and

16.4.3 the County Council's reasonable and proper legal costs in making the compensation, fees and interest payments.

17 PERFORMANCE BOND

17.1 Without expense to the County Council the Developer and the Performance Bond Surety shall on or before the date of this Agreement enter into the Performance Bond for each and all of the Highway Works and the Developer and Performance Bond Surety shall be bound to the County Council in the amount of the Performance Figure for the Highway Works.

17.2 Not less than three (3) months prior to the expiry of any Performance Bond or an alternative form of security as agreed between the parties (acting reasonably) provided pursuant to paragraph 17.1, a replacement Performance Bond shall be

completed and all contracts and any contract claims settled will return any Performance Bond sum unused with interest at the Bank of England Base Rate minus 2 basis points, compounding annually at financial year end on receipt of a written request to the Performance Bond Surety within one month of all the aforementioned completing and settling. If for any period the Bank of England Base Rate is at or below 0.02% then no interest shall be payable for that period by any party to this Agreement.

18 LEGAL AND ADMINISTRATIVE COSTS

18.1 The parties hereby agree that the following payments are suitably satisfied by other agreements between the parties:

18.1.1 the reasonably incurred legal costs of the County Council's Legal Services Department in connection with the preparation and completion of this Agreement;

18.1.2 £13,818.01 (Thirteen Thousand Eight Hundred and Eighteen Pounds and One Pence) towards the costs and expenses of the County Council of checking the design of each and all of the Highway Works and inspecting each and all of the Highway Works;

18.1.3 the reasonable cost to the County Council of undertaking Road Safety Audits and also the cost of the safety checks of details submitted which sum where the County Council undertakes such Road Safety Audits and checks;

18.1.4 where required, the cost of any temporary and permanent traffic regulation orders; and

18.1.5 where required, the cost of any other road traffic orders required to facilitate the Highway Works.

19 PARTS I AND II OF THE LAND COMPENSATION ACT 1973

Part I and II Claims

Part I Claims - Depreciation Caused By Public Works

19.1 The Developer hereby undertakes and agrees with the County Council that in the event of any claim for compensation or otherwise or costs or charges arising in connection with or incidental to or in consequence of the carrying out of the Highway Works whether mandatory or discretionary which may be incurred by virtue of any enactment or statutory instrument and otherwise hereby provided for he will hold the

County Council fully indemnified from and against all claims charges costs and expenses in connection therewith or arising therefrom.

Part II Claims

19.2 The Developer covenants with the County Council to comply with the requirements of the Noise Insulation Regulations 1975 (SI 1975/1763) as amended and to provide to the County Council such evidence as is required by the Director to demonstrate compliance with the Noise Insulation Regulations 1975 prior to the issuing by the County Council of the Certificate of Final Completion in accordance with paragraph 15.3 of this Schedule.

SCHEDULE II.A

Performance Bond Agreement

DATED 2023

SIZEWELL C LIMITED (1)

- and -

BNP PARIBAS (2)

PERFORMANCE BOND

relating to the development of
the A1094 at Benhall, East Suffolk

BY THIS BOND SIZEWELL C LIMITED of 90 Whitfield Street, London, England, W1T 4EZ ("the Developer") and **BNP PARIBAS** ("the Surety") are held and firmly bound to **SUFFOLK COUNTY COUNCIL** of Endeavour House 8 Russell Road Ipswich Suffolk IP1 2DH ("the County Council") in the sum of £117,573.50 (One Hundred and Seventeen Thousand, Five Hundred and Seventy-Three Pounds and Fifty Pence) (the "Bond Sum") to be paid to the County Council for the payment of which sum the Developer and the Surety bind themselves their successors and assigns jointly and severally.

IN WITNESS whereof the Developer and the Surety have hereunto executed and delivered the same on but not before this day of two thousand and twenty three.

1. The Developer has entered into an Agreement with the County Council of even date made under Section 278 of the 1980 Act whereby the Developer undertook at its own expense to carry out works as set out in Schedule III of the said Agreement and shown in the works drawings annexed to the said Agreement in Schedule IV ("the Highway Works").
2. It is intended that this Bond shall be construed as one with the said Agreement.
3. This Bond shall expire on the earlier of:
 - a. the Developer procuring a replacement restoration bond on terms mutatis mutandis with this Bond; or
 - b. the Surety receiving a copy of the Certificate of Final Completion; or
 - c. the date one (1) year from the date of last execution of this Bond by the Surety subject to the Surety having given six (6) months advance notice to the County Council and the Developer that this Bond will not be renewed in accordance with the terms of paragraph 4 (the "Expiry Date"); or
 - d. the date the Developer places an amount equal to the Bond Sum into escrow for the benefit of the County Council and enters into an escrow agreement with the County Council (to be agreed between the Parties acting reasonably)

relating to the governance of such escrow arrangements (the "Escrow Arrangement"); or

- e. the annual anniversary of the date of this Agreement for the next ten (10) anniversaries,

FOLLOWING WHICH this Bond shall be null and void and all obligations under this Bond shall cease, whether or not returned to us for cancellation, in relation to any demand which remains unsatisfied at such time.

4. In the event that this Bond has not expired under the terms of paragraph 3(e) then this Bond shall be extended automatically for further successive periods of one (1) year (and so that each subsequent anniversary of the signing of this Bond shall become the Expiry Date for the purpose of paragraph 3) unless the Surety notifies the County Council and Developer at least six (6) months prior to any Expiry Date that the Surety elects not to renew this Bond.

NOW THE CONDITION of the above-written Bond is such that if the Developer shall duly perform and observe all the terms provisions conditions and stipulations of the said Agreement (in so far as they relate to the Highway Works) on the Developer's part to be performed and observed according to the true intent and meaning thereof or if on default by the Developer the Surety shall duly satisfy and discharge the damages sustained by the County Council up to the amount of the above-written Bond then the above-written Bond shall be null and void but otherwise shall remain in full force and effect **PROVIDED ALWAYS** that the giving by the County Council of any extension of time for performing the said Agreement or any stipulations therein contained and on the part of the Developer to be performed or any other forgiveness or forbearance on the part of the County Council or its successors or assigns shall not in any way release the Surety from any liability under the above-written Bond.

EXECUTED AS A DEED by
SIZEWELL C LIMITED

acting by
in the presence of

.....
Director

.....
(Name of witness)

.....

.....

.....
(Address of witness)

.....
(Signature of witness)

EXECUTED AS A DEED by
BNP PARIBAS
acting by two of its duly authorised
signatories

.....
Authorised signatory

.....
Authorised signatory

SCHEDULE III

The Highway Works

The Highway Works comprising the following works:

<u>Location</u>	<u>Works</u>
<p>The proposed Benhall site access is located on the A1094 approximately 200m to the east of the East Suffolk railway line.</p>	<p><u>Benhall access</u></p> <ul style="list-style-type: none"> • Provision of temporary traffic management • Vegetation clearance to improve visibility splays • Excavation of material to depth specified in drawings • Protection of statutory utilities and subsequent diversion • Filling and compaction of excavated area with specified capping materials up to the underside of sub-base • Construction of new carriageway above capping level and installation of kerbing
<p>The S278 works include temporary safety improvements to the A12/A1094 junction.</p>	<p><u>Temporary road safety improvements to A12/A1094 junction</u></p> <ul style="list-style-type: none"> • Installation of traffic signs in accordance with drawing

SCHEDULE IV

Approved List of Highway Works Drawings

	Drawing Number	Title	Revision
1.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-CIV-000025	FEN MEADOWS SITE ACCESS SIGNAGE DETAILS BENHALL	P06
2.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-CIV-000030	FEN MEADOWS SITE ACCESS FENCING GENERAL ARRANGEMENT BENHALL	P08
3.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-CIV-000037	FEN MEADOWS S278 DRAWING NOTE REGISTER BENHALL	P05
4.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-CIV-000040	A12 FRIDAY STREET JUNCTION SAFETY IMPROVEMENTS TEMPORARY WORKS BENHALL	P02
5.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-CZS-000002	FEN MEADOWS SITE ACCESS HAZARD PLAN BENHALL	P07
6.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000001	FEN MEADOWS SITE ACCESS GENERAL ARRANGEMENT - BENHALL	P15
7.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000002	FEN MEADOWS SITE ACCESS VEHICLE TRACKING - BENHALL	P08
8.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000003	FEN MEADOWS SITE ACCESS VISIBILITY SPLAYS - BENHALL	P10
9.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000004	FEN MEADOWS SITE ACCESS SETTING OUT PLAN AND LONGSECTION -BENHALL	P08
10.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000005	FEN MEADOWS SITE ACCESS CROSS SECTIONS - BENHALL	P04
11.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000006	FEN MEADOWS SITE ACCESS SIGNAGE AND ROAD MARKINGS - BENHALL	P09
12.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000007	FEN MEADOWS SITE ACCESS PROPOSED DRAINAGE - BENHALL	P07
13.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000008	FEN MEADOWS SITE ACCESS CLEARANCE PLAN - BENHALL	P08
14.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000009	FEN MEADOWS SITE ACCESS EXISTING UTILITIES - BENHALL	P07
15.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000011	FEN MEADOWS SITE ACCESS HIGHWAY CONSTRUCTION DETAILS - BENHALL	P06
16.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000013	FEN MEADOW SITE LOCATION PLAN - BENHALL	P05
17.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000014	FEN MEADOWS SITE ACCESS VEGETATION CLEARANCE OWNERSHIP BOUNDARIES - BENHALL	P08
18.	SZC-AW0151-WOO-OF-000-82XXXX-DRW-HGN-000015	FEN MEADOWS SITE ACCESS TEMPORARY TRAFFIC MANAGEMENT PLAN - BENHALL	P07