

www.nationalhighways.co.uk

National Highways Customer
Contact
Centre: 0300 123 5000

31 May 2023

Dear Mark Bradbury,

Lower Thames Crossing - Variation of Planning Performance Agreement

1. We refer to the Planning Performance Agreement dated 16 January 2019 (**the Agreement**) between National Highways (**NH**) and Thurrock Council (**the Council**), a copy of which is attached as Schedule 1 to this letter.
2. The Agreement was varied by the Parties in an email dated 1 December 2020. A copy of the letter of variation (First Variation) is attached as Schedule 2 to this letter.
3. In accordance with Clause 12.2 of the Agreement, NH and the Council have agreed to further amend the Agreement (as amended) as set out in this letter with effect from the date of this letter (**Variation Date**).
4. Clause 12.2 of the Agreement states:

“The Parties may at any time, including at the quarterly performance review meeting, review this Agreement and may amend or vary its terms by agreement between the Parties. Any such amendment or variation must be in writing signed by an authorised representative of both Parties”.
5. On 31 October 2022 NH submitted an application for development consent to the Planning Inspectorate in respect of the Lower Thames Crossing Project (**the Project**). Following recent discussions with the Council regarding the Examination of the application, NH has agreed to reimburse the Council its costs for certain activities during the Pre-Examination and Examination phases, which will require the Council to provide additional resources over and above their role as a statutory consultee and participant in the Examination process as expected by the Planning Inspectorate.
6. Accordingly, with effect from the Variation Date the Parties agree the following amendments to the Agreement (as amended):

a)	Clause 2	<p>This clause is amended to include the following:</p> <p>“Detailed Local Operating Agreement” means an agreement between the Parties setting out the roles and responsibilities for operational boundaries during construction of the Project.</p> <p>“Examination” means the examination of the DCO Application by the Planning Inspectorate under the Act and scheduled to commence on 20 June 2023 and conclude on 20 December 2023 (subject to change in the rule 8 letter).</p> <p>“Local Highways Side Agreement” means an agreement between the Parties on relevant issues relating to local highways as a result of the Project.</p> <p>“Local Impact Report” means a report prepared by the Council setting out the likely impact of the Project on the Council’s area.</p> <p>“Pre-Examination” means the period commencing 31 October 2022 and ending on 20 June 2023 (subject to change in eth rile 8 letter).</p> <p>“Principal Areas of Disagreement Summary” means the document to be agreed between National Highways and the Council recording principal issues of disagreement and to be updated throughout the Examination and submitted by the Council as per the Examination timetable.</p> <p>“Section 106 Agreement” means an agreement between the Parties pursuant to section 106 of the Town and Country Planning Act 1990.</p> <p>“Statement of Common Ground” means the document to be prepared jointly by National Highways and the Council setting out the areas on which both parties agree and to be updated throughout the Examination and submitted by the National Highways as per the Examination timetable.</p>
b)	Clause 4.5	<p>This clause is amended to read as follows:</p> <p>The use of Planning Performance Agreements by National Highways is considered on a project-by-project basis. National Highways and the Council have a duty to use public funds carefully and act lawfully, rationally and fairly in accordance with public law principles. National Highways will not therefore reimburse the Council for any activities that are statutory requirements. National Highways will reimburse the Council for activities carried out under this Agreement in accordance with a defined funding allocation that will be notified to the Council at the beginning of each financial year. Subject to the provision of Clause 9.2, the funding available under this Agreement for the Pre-Examination and Examination phases is as follows:</p>

OFFICIAL-SENSITIVE

		<p>a. For the period 1 January 2023 to 20 June 2023 the total funding is £706,250 (seven hundred and six thousand, two hundred and fifty pounds)</p> <p>b. For the period 21 June 2023 to the date the Examination concludes the total funding available is £1,250,000 (one million two hundred and fifty thousand pounds).</p> <p>For the avoidance of doubt, these sums may be varied with the written agreement of the Parties.</p>
c)	Clause 9.3A added	<p>This clause is inserted into the Agreement as follows:</p> <p>Where invoices are not raised and submitted to National Highways in accordance with clause 9.3, National Highways will convene a meeting to be attended by the named individuals under clause 20.2 to address the matter. If the invoice has not been submitted after 30 days of the date of the meeting, National Highways will refer the matter to dispute resolution pursuant to clause 20.3.</p>
d)	Clause 9.3 (e) added	<p>This clause is inserted into the Agreement as follows:</p> <p>Where National Highways has raised a query under sub-clause 9.3(d) the Council will respond within 14 days and subject to satisfactory resolution of the query, the invoice will be paid within 14 days</p>
e)	Clause 13.1	<p>This clause, as modified by the First Variation, is amended to read as follows:</p> <p>This Agreement will come into force on the date of this Agreement and shall remain in force until the earliest of:</p> <p>a. the date on which the DCO Examination concludes; or</p> <p>b. the date on which the DCO Application for the Project is withdrawn; or</p> <p>c. the date on which this Agreement is terminated in accordance with Clause 13.2</p>
f)	Clause 13.2	<p>This clause is amended to read as follows:</p> <p>If any Party commits any breach of its obligations under this Agreement and that breach is within the control of the Party in breach and is capable of being remedied; then the Party not in breach may notify the Party in breach of the breach and give the Party in breach not less than 5 working days from receipt of the notice to either remedy the breach or to agree with the Party not in breach a programme of actions to remedy the breach. Where the Party in breach does not remedy the breach with the period allowed in the notice served by the Party not in breach, or fails to carry out any programme of actions agreed in accordance with this clause, the Party not in breach may, at its sole discretion, terminate this Agreement by giving of a notice of termination to the Party in breach, which notice of termination will take effect on the next working day following the day of issue of the notice.</p>

OFFICIAL-SENSITIVE

OFFICIAL-SENSITIVE

g)	Clause 20.4 added	<p>This clause is inserted into the Agreement as follows:</p> <p>In the event that the Council is dissatisfied with any part of the responses provided by National Highways and escalation under clause 20.2 to the named individual has been carried out or is, in the view of the Council, inappropriate, the Council shall raise the concerns in writing addressed to National Highway's Eve Herrington, Project Manager who shall seek to resolve the issues and if the issues cannot be resolved then the Council shall use National Highway's internal complaints process.</p>
h)	Schedule 4 (as amended)	<p>In paragraph 1 of this Schedule the following is to be inserted after the words 'which will be capped and agreed in advance':</p> <p>Activity E - Examination meetings and negotiations</p> <p>With the exception of the activities listed in paragraphs (s) to (cc) below, activities that are not covered by this Agreement and in respect of which the Council's costs will not be reimbursed by National Highways include (but are not limited to) the following:</p> <ul style="list-style-type: none"> • Activities that form part of the statutory function of the Council and/or part of the Council's role as a statutory consultee and participant in the DCO process as expected by the Planning Inspectorate unless explicitly agreed within this or another variation. • Any fees and costs associated with the procurement, instruction or advice received from external legal advisors, which for the avoidance of doubt includes King's Counsel and junior Counsel throughout the Pre-Examination and Examination phases except in support of item y (Negotiation of Land) and z (Review and comment on the draft DCO and any legal agreements that are supplementary to the DCO application). • Attendance and participation at the Examination, including the preparation of expert witness submissions and responding to written questions raised by the Examining Authority during the Examination, including the review of National Highway's response to any of the written questions. <p>For the avoidance of doubt, National Highways has agreed to fund the following activities:</p> <p>s. Attendance at technical working groups, advisory and other Project Team meetings.</p> <p>t. Review and comment on meeting notes, following each agreed meeting.</p> <p>u. Engagement with other public bodies including neighbouring Councils and statutory bodies.</p>

		<p>v. Negotiation and agreement of a Statement of Common Ground – and at the direction of the Examining Authority, a Principal Areas of Disagreement Summary</p> <p>w. Review of the DCO application documentation.</p> <p>x. Preparation of the Council’s Local Impact Report.</p> <p>y. Negotiation of land access/acquisition by agreement, as necessary and as requested by National Highways.</p> <p>z. Review and comment on the draft DCO and any legal agreements that are supplementary to the DCO application, including but not limited to the Detailed Local Operating Agreement, Section 106 Agreement and Local Highways Side Agreement. Subject to Clause 9.4, specialist advice may be procured from external consultants to provide technical support as necessary.</p> <p>aa. Attendance at any stakeholder group that may have been established.</p> <p>bb. Engagement on any other issues raised by National Highways.</p> <p>cc. Subject to clause 9.5, procuring external consultants or specialist advice to inform the above activities.</p>																																									
i)	Schedule 4	<p>Paragraph 2 of this Schedule is amended as follows:</p> <p>The Parties have agreed the following hourly rates:</p> <p>Thurrock Officer Rates</p> <table border="1" data-bbox="518 1167 1066 1536"> <thead> <tr> <th>Grade</th> <th>Officer Level</th> <th>Per hour</th> </tr> </thead> <tbody> <tr> <td>E</td> <td>Assistant</td> <td>£ 30</td> </tr> <tr> <td>F</td> <td>Officer</td> <td>£ 42</td> </tr> <tr> <td>G</td> <td>Senior Officer</td> <td>£ 54</td> </tr> <tr> <td>H</td> <td>Principal Officer</td> <td>£ 72</td> </tr> <tr> <td>I</td> <td>Strategic Lead</td> <td>£ 120</td> </tr> <tr> <td>AD</td> <td>Assistant Director</td> <td>£ 141</td> </tr> <tr> <td>DIR</td> <td>Director</td> <td>£ 204</td> </tr> <tr> <td>CEO</td> <td>Chief Executive Officer</td> <td>£ 263</td> </tr> </tbody> </table> <p>CBRE</p> <table border="1" data-bbox="537 1610 1027 1924"> <thead> <tr> <th>Level</th> <th>Per hour</th> </tr> </thead> <tbody> <tr> <td>Senior Director</td> <td>£300</td> </tr> <tr> <td>Director</td> <td>£250</td> </tr> <tr> <td>Associate Director</td> <td>£215</td> </tr> <tr> <td>Senior Surveyor</td> <td>£185</td> </tr> <tr> <td>Surveyor</td> <td>£150</td> </tr> <tr> <td>Graduate/ Apprentice</td> <td>£90</td> </tr> </tbody> </table>	Grade	Officer Level	Per hour	E	Assistant	£ 30	F	Officer	£ 42	G	Senior Officer	£ 54	H	Principal Officer	£ 72	I	Strategic Lead	£ 120	AD	Assistant Director	£ 141	DIR	Director	£ 204	CEO	Chief Executive Officer	£ 263	Level	Per hour	Senior Director	£300	Director	£250	Associate Director	£215	Senior Surveyor	£185	Surveyor	£150	Graduate/ Apprentice	£90
Grade	Officer Level	Per hour																																									
E	Assistant	£ 30																																									
F	Officer	£ 42																																									
G	Senior Officer	£ 54																																									
H	Principal Officer	£ 72																																									
I	Strategic Lead	£ 120																																									
AD	Assistant Director	£ 141																																									
DIR	Director	£ 204																																									
CEO	Chief Executive Officer	£ 263																																									
Level	Per hour																																										
Senior Director	£300																																										
Director	£250																																										
Associate Director	£215																																										
Senior Surveyor	£185																																										
Surveyor	£150																																										
Graduate/ Apprentice	£90																																										

Stantec Rates		
Level	Per hour	
Partner	£	165
Managing Consultant	£	115
Principal Consultant	£	68.75
Senior Consultant	£	56.25
Consultant	£	50
Junior Consultant	£	45

Browne Jacobson		
Level	Per hour	
Partner	£	350
Senior solicitor	£	270
Solicitor	£	245
Junior solicitors	£	215
Trainee	£	160

Other Consultants		
Organisation	Level	Per hour
AECOM	Director	£ 176
Aether	Director	£ 165
Aether	Managing Consultant	£ 115
Aether	Consultant	£ 50
Aether	Director	£ 165
Essex County Council	Consultant	£ 49
Essex County Council	Managing Consultant	£ 133
Highbury Planning	Director	£ 150.94
KMC Planning Ltd	Managing Consultant	£ 115
Phil Goodwin	Managing Consultant	£ 115
University of Leeds	Director	£ 165
Wisher Consulting	Managing Consultant	£ 115

7. In this letter, expressions defined in the Agreement and used in this letter have the same meaning as set out in the Agreement.
8. Except as set out in paragraph 6, the Agreement shall continue in full force and effect.

9. Please sign and return the enclosed copy of this letter to acknowledge your agreement to the variation of the Agreement. We will then keep this with the original Agreement.

Yours sincerely

.....
Signed for and on behalf of **NATIONAL HIGHWAYS LIMITED**

We agree to the variation of the Agreement with effect from the Variation Date on the terms set out above.

.....
Signature
For and on behalf of **NATIONAL HIGHWAYS LIMITED**

.....
Print Name

.....
Position

Signed for on behalf of **THURROCK COUNCIL**

.....
Authorised Signatory

.....
Print Name

.....
Position

Schedule 1 - Planning Performance Agreement dated 16 January 2019

Planning Performance Agreement (PPA)

Relating to the Lower Thames Crossing Project

Development Consent Order Application

This agreement is made on the

Between:

Highways England

and

Thurrock Council



1. PARTIES

(1) **Highways England Company Limited** (No. 9346363) whose registered office is at Bridge House, 1 Walnut Tree Close, Guildford, GUI 4LZ ("**Highways England**")

(2) **Thurrock Council of Civic Offices, New Road, Grays, RM17 6SL** ("**the Council**")

each a "**Party**" and together "**the Parties**"

2. DEFINITIONS

"Act"	means the Planning Act 2008
"Agreement"	means this Planning Performance Agreement
"Council Project Team"	means the Council Project Team set out in Schedule 2 to this Agreement
"DCO Application"	means the development consent order application in respect to the Project to be submitted by Highways England
"Draft Estimate"	means a proposed and draft estimate not agreed between the Parties for a Work Package in accordance with the rates set out in Schedule 4
"Draft Work Package"	means the proposed work to be undertaken each calendar month comprising any of the activities in Schedule 4 not agreed by the Parties in advance of the activities being carried out
"EIRs"	means the Environmental Information Regulations 2004
"Estimate"	means an estimate agreed by the Parties in accordance with Clause 6.5(d) for a Work Package in accordance with the rates set out in Schedule 4
"Examination"	means the examination of the DCO Application by the Planning Inspectorate under the Act
"Excess"	means an amount in excess of an Estimate for works carried out by the Council in respect of a Work Package in accordance with the rates in Schedule 4
"FOIA"	means the Freedom of Information Act 2000 and any subordinate legislation made under that act, together with any guidance and/or codes of practice issued by the Information Commissioner or relevant body in relation to such legislation
"Highways England Project Team"	means the Highways Project Team set out in Schedule 1 to this Agreement
"Information"	means all information of whatever nature, however conveyed and in whatever form, including in writing, orally, by demonstration, electronically and in a tangible, visual or machine-readable medium (including CD-ROM, magnetic and

	digital form)
"NSIP"	means a Nationally Significant Infrastructure Project
"Project"	means the project envisioned by Highways England in Section 3.1
"Project Milestones"	means the project milestones set out in Schedule 3 to this Agreement
"Project Programme"	means the project programme set out in Schedule 3 to this Agreement
"Reasonable Endeavours"	means all reasonable actions which can be taken and which are within the vires of the Party concerned and which do not involve the incurrence of disproportionate cost or the taking of actions which would not be commercially prudent if undertaken by an informed private entity acting reasonably
"Request for Information"	has the meaning set out in the FOIA or any apparent request for information under the FOIA or the EIRs
"Requirements"	means conditions which are imposed in the body of the development consent order in connection with the development for which it is granted
"Schedule of Works"	means the schedule of works and costs set out in Schedule 4 to this Agreement
"Stakeholder Advisory Panel"	means the working group comprising certain affected local authorities and other key stakeholders
"Time Sheet Report"	means the time sheet report provided at annex 1 to this Agreement
"Work Package"	means the work to be undertaken each calendar month comprising any of the activities in Schedule 4 agreed by the Parties in accordance with Clause 6.5(d) in advance of the activities being carried out. The Work Package will include the scope and duration of the work required
"Written"	means communications by email provided that these are sent to email addresses specified by the receiving party in Schedule 1 or Schedule 2 of this Agreement as appropriate

3. PROJECT DESCRIPTION

- 3.1 The Project is a highway construction NSIP which will create a new road and tunnel that would connect Kent, Thurrock and Essex.
- 3.2 The Project will be the subject of a development consent order application to be submitted by Highways England to the Planning Inspectorate.
- 3.3 The Council is the local authority for the area within which a significant part of the Project is situated.

4. BACKGROUND / INTRODUCTION

- 4.1 The Project is a NSIP for the purposes of the Act. The Act requires Highways England to submit an application for a development consent order to the Secretary of State for permission to construct the Project.
- 4.2 Whilst the Secretary of State is the main examining and decision-making authority, local authorities have an important role in the development of a development consent order application prior to its submission and determination. The Council is a statutory consultee in this process.
- 4.3 Highways England wishes to ensure the full and early participation of the Council in the DCO Application prior to submission of the DCO Application for Examination by the Secretary of State. The Council will undertake specific functions in the development of the DCO Application. These functions include (but are not limited or restricted to and may be amended from time to time with the agreement of the Parties in writing) the following:
 - a. Engaging with Highways England during the pre-application stage to advise and comment on issues relating to the Project;
 - b. Advising on community consultation and assisting with the development of the Statement of Community Consultation, including responding to consultation on it;
 - c. Making representations to the Planning Inspectorate on the adequacy of consultation undertaken by Highways England;
 - d. Contributing to the preparation of a Statement of Common Ground with Highways England for submission to the Planning Inspectorate;
 - e. Producing a Local Impact Report.
- 4.4 Highways England recognises that the Project is a large and complex project raising significant planning, environmental and socio-economic challenges and opportunities. In order for the Council to properly assess the issues arising from the project application and to ensure that capacity is created and available within the Council to timeously input to the process, the Parties have agreed to enter into this Agreement whereby Highways England has agreed to reimburse the Council its costs for certain activities which require the Council to provide additional resources over and above their statutory requirements.
- 4.5 The use of Planning Performance Agreements by Highways England is considered on a project by project basis. Highways England and the Council have a duty to use public funds carefully and ensure they achieve best value. Highways England will therefore not reimburse the Council for any activities that are statutory requirements. Highways England will reimburse the Council for activities carried out under this Agreement in accordance with a defined funding allocation that will be notified to the Council at the beginning of each financial year. For the financial year ending 5 April 2019 the total funding available under this Agreement is £70,000.00 (seventy thousand pounds). For the avoidance of doubt, this sum may be varied with the written agreement of the Parties.
- 4.6 This Agreement provides the framework for agreeing funding to support input from the Council and also identifying the tasks that need completing along with agreed resources and a timetable to complete them.

5. PURPOSE OF THE AGREEMENT

- 5.1 The purpose of the Agreement is to enable Highways England to deliver a high quality DCO Application which has been informed by the Council's views as an affected local authority and local planning authority. This will be achieved by using this Agreement to:
- a. Provide a framework for the management of additional demands on Council resources which may result from the Project;
 - b. Agree and record the programme of works that are required to be completed;
 - c. Set out performance standards for both Parties;
 - d. Set governance arrangements for the management of this Agreement;
 - e. Allow for more efficient project management, including dealing with any disputes and working toward common programme objectives;
 - f. Facilitate effective ongoing engagement between Highways England and the Council;
 - g. Identify a stable team of suitably qualified and experienced representatives to provide the interface between Highways England and the Council in relation to the Project;
 - h. Secure a charging mechanism for the work undertaken by the Council in support of the DCO Application outside of their statutory duties and which will be reimbursed by Highways England; and
 - i. Secure appropriate specialist internal and where necessary external resources required by the Council within the required programme to provide input into the development proposals and documentation for the Project.
- 5.2 This Agreement does not cover the management of discharging of Requirements.

6. RESPONSIBILITIES AND OBLIGATIONS OF THE PARTIES

- 6.1 The Parties shall act in good faith towards one another and shall seek to work jointly wherever appropriate to comply with this Agreement.
- 6.2 The Parties shall work collaboratively to ensure that the tasks required by the Schedule of Works are delivered in accordance with Schedule 4.
- 6.3 Both Parties undertake to meet and/or discuss matters by telephone or email in a spirit of cooperation and where necessary seek early resolution of any areas of misunderstanding or dispute.
- 6.4 Both Parties shall use Reasonable Endeavours to ensure that Parties meet the timetable and any deadlines in the Schedule of Works.
- 6.5 Both Parties shall carry out any action under this Agreement in accordance with the following agreed principles and objectives:
- a. To ensure robust, transparent and clear governance and project management arrangements are established to deliver the Schedule of Works and that these are maintained for the duration of the Agreement;

- b. To work cooperatively and collaboratively to ensure timely and robust delivery of the Schedule of Works;
- c. To ensure that workable response times and deadline for comment and input are agreed in a timely manner;
- d. The Council will submit the Draft Work Package and Draft Estimate in respect of the work it intends to undertake at the beginning of each calendar month, following discussions with Highways England. Highways England will agree or provide reasons for not agreeing to the Draft Work Package and Draft Estimate within 5 working days of receipt. If the Draft Work Package and Draft Estimate is not agreed by Highways England, the Council will not commence work until the Work Package and Estimate has been agreed;
- e. To ensure appropriate consultation with stakeholders and communities;
- f. To discharge statutory duties and not prejudice or fetter powers, duties and responsibilities in respect of the Project;
- g. To keep each other informed of issues which may result in a change to the Schedule of Works and agree as soon as reasonably practicable any necessary revisions to that schedule; and
- h. To agree a collaborative approach to the agreement of methodologies for any specialist study area relevant to the scope of the activity.

6.6 Highways England responsibilities shall include (but are not limited to) the following:

- a. To reimburse the reasonably and properly incurred and invoiced costs of the Council in accordance with the terms of this Agreement;
- b. To provide the information and details required to allow the Council to respond as per the Schedule of Works;
- c. To respond substantively to all written communications including email, letters and reports and telephone calls with or from the Council within 10 working days from receipt or such other time as agreed;
- d. To provide not less than 10 working days notice of any meetings and a list of required attendees, wherever possible
- e. To circulate any documents and materials required for a meeting no less than 5 working days in advance of the meeting or such other time as agreed;
- f. To agree any actions arising from a meeting within 10 working days of the meeting or such other time as agreed; and
- g. To provide names, roles and contact details for the Highways England Project Team, identifying individuals and responsibilities and to keep these details up to date.

6.7 The Council responsibilities shall include (but are not limited to) the following:

- a. To ensure that the Council adopts a consistent, single approach to the Project across all Council disciplines;
- b. To set out how performance will be achieved through Council governance processes and confirm how items to be delivered in accordance with the Schedule of Works will be approved within the Council; to provide timescales and key dates for undertaking approval processes, including where relevant advising of committee and Council meeting dates; and ensuring appropriate delegations are in place to allow officers to agree

amendments with Highways England prior to submission of the DCO Application to the Secretary of State for Examination;

- c. To support communities so they can understand how and when they can engage in the DCO Application process;
- d. To provide constructive input into pre-application discussions with Highways England;
- e. To provide appropriate input into any relevant environmental impact assessment discussions;
- f. To make best use of the resources and expertise available within the Council;
- g. Subject to the charging principles, to provide designated officers and provide other appropriate resources to carry out actions needed to secure proper consideration of the Schedule of Works;
- h. To agree in advance the procurement of any external resources required with the recognition of need for probity and independence of advice, and in compliance with best value processes;
- i. To notify Highways England as soon as it is reasonably aware that the Estimate of completing any item in the Work Package is likely to exceed the agreed expenditure for that item;
- j. To respond substantively to all written communications including email, letters and reports and telephone calls with or from Highways England within 10 working days from receipt or such other time as agreed;
- k. To circulate any documents and materials required for a meeting no less than 5 working days in advance of the meeting or such other time as agreed;
- l. To agree any actions arising from a meeting within 10 working days of the meeting or such other time as agreed; and
- m. To provide names, roles and contact details for the Council Project Team, identifying individuals and responsibilities and to these details up to date.

7. PROJECT TEAM

- 7.1 The names and contact details for the members of the Highways England Project Team are set out in Schedule 1 to this Agreement.
- 7.2 The names and contact details for the members of the Council Project Team are set out in Schedule 2 to this Agreement.
- 7.3 In the event that membership of either the Highways England Project Team or the Council Project Team changes, the revised contact details shall be notified to the other Party as soon as practicable and the relevant Schedule of this Agreement updated at the earliest meeting where details of the change are known.

8. PROJECT PROGRAMME

- 8.1 Schedule 3 provides the key Project Milestones and Project Programme for this Agreement.

- 8.2 The Project Programme informs the Schedule of Works in Schedule 4 which will form the basis for the identification of tasks to be undertaken to achieve the required milestones associated with the Project.
- 8.3 Both Parties recognise that changes in circumstances and decisions taken by third parties may have an impact on the Project Programme. The Parties shall use all Reasonable Endeavours to ensure that the Project Milestones referred to in this Agreement are progressed in accordance with the Project Programme. However, should any delays be incurred, then the Parties shall meet and review the Project Programme to identify what Project Milestones and timescales may need to be changed.
- 8.4 The Project Programme will be reviewed at regular intervals (not less than quarterly) between both Parties and amended as necessary to take account of any relevant unforeseen matters that might arise.
- 8.5 Highways England and the Council agree that the technical meetings necessary to work through methodologies and assumptions in relation to specialist areas will take place between relevant parties as and when necessary outside of the normal project team meetings as set out in the Project Programme. Information shall be provided to Council to review not less than 5 working days in advance of meetings.
- 8.6 In some instances, it may be appropriate for Highways England to request from the Council written feedback on specific issues. In these circumstances, Highways England will submit to the Council a written request outlining the issues to be addressed together with sufficient plans and information to allow the Council to prepare a response. Where appropriate, and subject to resources/staff availability the Council will provide written feedback within 10 working days of receiving this written request, or shall advise Highways England when written feedback will be provided.

9. FEES AND CHARGES

- 9.1 Subject to Clause 9.2, in consideration of the undertaking by the Council of the work referred to in this Agreement, Highways England agrees to reimburse the Council's reasonable costs as approved in an Estimate or an approved Excess in accordance with Clause 9.2. This payment would cover the hourly costs (including overheads) of the Council's Project Team at the rates set out in Schedule 4 together with all disbursements reasonably incurred in connection with the completion of a Work Package.
- 9.2 If the Council consider that their undertaking of the Work Package is likely to exceed the Estimate and are able to evidence this, the Council will discuss with Highways England as soon as reasonably practicable the need to increase the said fee. Highways England, acting reasonably, will consider this Excess before it becomes payable provided these costs are reasonable and accord with the scope of the Work Package. Highways England will agree or provide reasons for not agreeing to the Excess within 5 working days of receipt of the Council's request.
- 9.3 The costs payable under Clause 9.1 shall be invoiced by the Council to Highways England monthly at the end of each calendar month. Each invoice shall:
- Be accompanied by a breakdown showing the time incurred, the work undertaken by each Council Project Team Member using the Time Sheet

Report provided at Annex 1 of this Agreement and all disbursements reasonably incurred in connection with the Work Package;

- b. State the following reference numbers: ;
- c. Relate to a period of one calendar month and be raised within 10 working days of the end of the calendar month to which it relates; and
- d. Be formally queried by Highways England within 14 days of receipt or paid in full within 28 days of receipt.

- 9.4 In the event that the Council requires specialist advice from external consultants or specialists, it shall submit the anticipated scope, duration and costs of the required specialist advice for agreement with Highways England before appointing or instructing such external consultants. Once agreed, the costs of the additional external consultants shall then be met by Highways England, and shall be payable within 30 days of the date of receipt by Highways England of an invoice for the agreed costs.

10. PAYMENT OF THE COUNCIL'S LEGAL COSTS

- 10.1 Highways England shall on the date of this Agreement pay the Council's reasonable legal costs in connection with the preparation, negotiation and completion of this Agreement up to a limit of £3,000 (three thousand pounds) plus VAT.

11. FREEDOM OF INFORMATION REQUEST / ENVIRONMENTAL INFORMATION REQUESTS

- 11.1 The Parties acknowledge that as public bodies Highways England and the Council may be required under the FOIA or the EIRs to disclose information and agree to assist and cooperate with the other Party to enable the other Party to comply with its obligations under the FOIA and the EIRs.
- 11.2 Highways England acknowledges that the Council may be required under the FIOA or the EIRs to disclose information belonging to Highways England and provided to the Council under the terms of this Agreement. The Council agrees that it shall not disclose the information without notifying Highways England of a Request for Information (in accordance with the Secretary of State for Constitutional Affairs' 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.
- 11.3 The Council acknowledges that Highways England may be required under the FIOA or the EIRs to disclose information belonging to the Council and provided to Highways England under the terms of this Agreement. Highways England agrees that it shall not disclose the information without notifying the Council of a Request for Information (in accordance with the Secretary of State for Constitutional Affairs' 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.
- 11.4 Each Party shall have regard to any comments made by the other Party in respect of the disclosure of any information for the purposes of the FOIA or the EIRs.
- 11.5 The Parties acknowledge that they shall disclose information where required to do so by law and/or as directed by the Information Commissioner.

CLASSIFICATION: CONFIDENTIAL

12. REVIEW AND VARIATION OF THE AGREEMENT

- 12.1 A performance review meeting will be held with both Parties every quarter to assess the performance under this Agreement.
- 12.2 The Parties may at any time, including at the quarterly performance review meeting, review this Agreement and may amend or vary its terms by agreement between the Parties. Any such amendment or variation must be in writing signed by an authorised representative of both Parties.
- 12.3 Amendment to the Agreement and revision of timescales within the Project Programme shall be subject to review as may be agreed between the Parties, acting reasonably to take account of any relevant unforeseen matters that might arise.
- 12.4 In the event of a delay in the Project Programme, the Parties will meet and discuss whether the programme is still realistic or whether the Project Programme will need to be revised.

13. TERM AND TERMINATION OF THIS AGREEMENT

- 13.1 This Agreement will come into force on the date of this Agreement and shall remain in force until the earliest of:
 - a. submission of the DCO Application to the Planning Inspectorate; or
 - b. the date on which the DCO Application for the Project is withdrawn; or
 - c. the date on which this Agreement is terminated in accordance with Clause 13.2
- 13.2 Either Party may, at its sole discretion, terminate this Agreement by giving notice of termination to the other Party, which notice of termination will take effect on the next working day following the day of issue of the notice.
- 13.3 Highways England's obligation to reimburse the Council will cease on the date of termination of this Agreement. The Council shall not be entitled to recover any costs incurred after the date on which the termination takes effect.
- 13.4 Following the service of a notice of termination under Clause 13.2 above the Council shall not act or make any commitment that would have the effect of incurring further costs to Highways England.
- 13.5 Following the service of a notice of termination by either Party, Highways England will reimburse all of the Council's reasonable costs in respect of activities approved in the Schedule of Works which have been incurred in accordance with the provisions of this Agreement before the date of termination.

14. NOTICES

- 14.1 Notices for the attention of Highways England shall be sent to:
Bridge House, 1 Walnut Tree Close, Guildford, Surrey, GU1
4LZ
Attention: Company Secretary
- 14.2 Notices for the attention of the Council shall be sent to:
The Chief Executive, Civic Offices, New Road, Grays, RM17

- 14.3 Notices for the attention of the Council's Assistant Director, Lower Thames Crossing under Clause 20.3 shall be sent to:

Civic Offices, New Road, Grays, RM17

15. ENTIRE AGREEMENT

- 15.1 This Agreement, including its Schedule, constitutes the entire agreement between and understanding of the Parties, and supersedes any previous agreement or understanding between them relating to the subject matter of this Agreement. Nothing in this Clause will operate to limit or exclude any liability for fraud.

16. ACTING REASONABLY

- 16.1 The Parties will at all times act reasonably and in particular (without prejudice to generality) where any approval or expression of satisfaction is required by this Agreement it will not be unreasonably withheld or delayed.

17. COUNTERPARTS

- 17.1 This Agreement may be executed in any number of counterparts, which shall each constitute an original and together constitute one Agreement.

18. INTELLECTUAL PROPERTY

- 18.1 All intellectual property created or generated by the Council or Highways England (including any of their consultants, employees or advisers) is to remain with the creator of the intellectual property.

19. THIRD PARTIES

- 19.1 The Contracts (Rights of Third Parties) Act 1999 shall not apply and no person other than the Parties (and any successors in title, assigns or successor bodies) shall have any rights under or be able to enforce the provisions of this Agreement.

20. DISPUTES AND GOVERNANCE

- 20.1 This Agreement will not fetter the Council in exercising its statutory duties powers or responsibilities as the local planning and highway authority and nothing in this Agreement or any written representation shall bind the Council to make any decision, take any action or otherwise pre-determine any future decision of the Council.
- 20.2 Each Party shall nominate one named individual within its Project Team to act as the key point of contact for the governance of this Agreement. The named individuals shall be responsible for ensuring compliance by their Project Team with this Agreement and shall raise any issue, concern or disputes with the other named individual in the first instance.

- 20.3 In the event that Highways England is dissatisfied with any part of the responses or work provided by the Council and escalation under Clause 20.2 to the named individual has been carried out or is, in the view of Highways England, inappropriate, Highways England shall in raise the concerns in writing addressed to the Council's Corporate Director, Place who shall seek to resolve the issues and if the issues cannot be resolved then Highways England shall use the Council's internal complaints process.

21. GOVERNING LAW

- 21.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of England and Wales. The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

SCHEDULE 1 – HIGHWAYS ENGLAND PROJECT TEAM AND CONTACTS

Project member	Team	Role	Contact details
Tim Jones		Project Director	Tel: 07860 406145 tim.jones@lowerthamescrossing.co.uk
David Manning		Development Director	Tel: 07714 292468 david.manning@lowerthamescrossing.co.uk
Phil Stanier		Local Authority Lead	Tel: 07962 081913 phil.stanier@lowerthamescrossing.co.uk
Chris Stratford KEY CONTACT		Stakeholder Engagement Advisor	Tel: 07747 474337 chris.stratford@lowerthamescrossing.co.uk
Helen Bowkett		Traffic and Economics Lead	helen.bowkett@lowerthamescrossing.co.uk
Malcolm Orford		Head of Consents	malcolm.orford@lowerthamescrossing.co.uk
Tim Wright		DCO and Planning Lead	tim.wright@lowerthamescrossing.co.uk
Gary Hodge		Technical Lead	gary.hodge@lowerthamescrossing.co.uk
Emma Long		Deputy Environmental and Ecology Lead	emma.long@lowerthamescrossing.co.uk
Ben Green		Construction Development & GI Lead	ben.green@lowerthamescrossing.co.uk
Anne Richards		Land and Property Manager	anne.richards@lowerthamescrossing.co.uk
Bev Waugh		Delivery Director (including Procurement)	bev.waugh@lowerthamescrossing.co.uk

All emails sent to Highways England by the Council should be copied to either Phil Stanier or Chris Stratford.

SCHEDULE 2 – THE COUNCIL PROJECT TEAM AND CONTACTS

Project Team member	Role	Contact details
Steve Cox	Corporate Director, Place	scox@thurrock.gov.uk
Anna Eastgate	Assistant Director, Lower Thames Crossing	Tel: 07864 969628 aeastgate@thurrock.gov.uk
Mat Kiely	Transport Development Manager	mkiely@thurrock.gov.uk
Helen Forster	Strategic Lead- Place, Environment and Community Public Health, AHH2- Thurrock Public Health	hforster@thurrock.gov.uk
Paula Watts	Projects Leader – Public Rights of Way	pwatts@thurrock.gov.uk
Andy Millard	Assistant Director, Planning Transportation and Public Protection	amilard@thurrock.gov.uk
Sean Nethercott	Strategic Lead, Strategic Services	snethercott@thurrock.gov.uk
Matt Ford	Principal Engineer, Transport Development	mford@thurrock.gov.uk
Steve Smith	Traveler Liaison Officer	steasm@thurrock.gov.uk
Mary Patricia Flynn	Strategic Lead, Communications	mpflynn@thurrock.gov.uk
Lucy Tricker	Democratic Services Officer	ltricker@thurrock.gov.uk
Natalie Warren	Strategic Lead, Community Development and Equalities	nwarren@thurrock.gov.uk
Luke Tyson	Directorate Business Manager	ltyson@thurrock.gov.uk

All emails sent to the Council by Highways England should be copied to ltcadmin@thurrock.gov.uk and where possible aeastgate@thurrock.gov.uk

SCHEDULE 3 – KEY PROJECT MILESTONES AND PROJECT PROGRAMME

Stage	Action	Start date / completion date
Statutory Consultation	Highways England to hold pre-application consultation on Project proposals	10 October 2018 to 20 December 2018
Submission of DCO Application	Highways England to submit DCO Application to the Planning Inspectorate	Estimated autumn 2019
Examination of DCO Application		Estimated start early 2020 Estimated finish summer 2020
Secretary of State decision on DCO Application		Estimated decision early 2021

SCHEDULE 4 – SCHEDULE OF WORKS

1. A Work Package can comprise any of the following activities:

Activity A – meetings and negotiations

- a. Attendance at technical working groups, advisory and other Project Team meetings, as requested by Highways England.
- b. Review and comments on meeting notes, following each agreed meeting.
- c. Engagement with other public bodies as requested by Highways England, including neighbouring councils and statutory bodies.
- d. Attendance at community engagement events that are not part of statutory consultation, as requested by Highways England.
- e. Negotiation and agreement of a Statement of Common Ground.
- f. Negotiation of land access/acquisition by agreement, as necessary and as requested by Highways England.
- g. Attendance at the Stakeholder Advisory Panel.

Activity B – technical reviews

- h. Reviewing technical papers/reports where requested by Highways England, such as for open space and green infrastructure.
- i. Reviewing a draft of the development consent order where requested by Highways England.
- j. Reviewing draft DCO Application documents where requested by Highways England.
- k. Discussing Project design and various mitigation proposals following the commencement of statutory consultation.
- l. Discussing and providing data input into the traffic modelling process where requested by Highways England.
- m. Discussions, review and comments on construction compounds, construction traffic routes, excavated materials disposal and road, public rights of way and other route closures, diversions and alternative route proposals.
- n. Advising Highways England of any issue or concern, requesting any information required to resolve such issue or concern or meeting with Highways England to try to resolve any issue or concern.
- o. Use of technical consultants/specialists in accordance with Clause 9.4 of this Agreement.
- p. Assistance in identifying environmental, open space and other mitigation options for Highways England's consideration during Project and mitigation design.

Activity C – provision of information

- q. Provision of data to inform the Environmental Statement (and its associated documents), traffic data and other DCO Application documentation, as requested by Highways England.

Activity D – project management of this Agreement

- r. Overall project management costs associated with coordinated engagement under this Agreement, which will be capped and agreed in advance.

2. The Parties have agreed the following hourly rates:

	Administrator/Junior	Senior	Principal	Team Leader	Assistant Director	Corporate Director	Chief Executive
Hourly rate (£) (exc VAT)	£21.50	£26.45	£32.50	48.65	£75.50	£96.88	£125.38

PBA	Technician	Graduate	Consultant	Senior	Principal	Director
Hourly rate (£) (exc VAT)	£43.75	£46.88	£56.25	£65.63	£84.38	£121.88

The specific charging schedule is for use in providing a form of estimate against the Project Programme (Schedule 3). Where work is to be carried out by consultants appointed by the Council under Clause 9.4 of this Agreement this should be included within the cost schedule, including any assumptions made by the consultant, the hourly rate and the estimated number of hours necessary for the tasks to be undertaken.

TIME SHEET REPORT

Time Spent (in hours)	Officer Name	Activity No.	Explanation of Activities undertaken	Officer Rate	Total Cost

Highways England and the Council hereby agree to the content of this Agreement.

Executed by HIGHWAYS ENGLAND acting by
TIM JONES, a director, in the presence of:


SIGNATURE OF DIRECTOR


SIGNATURE OF WITNESS

C. STRATFORD
NAME OF WITNESS

Beaufort House, 15 St. Botolph Street, London EC3A 7DT
ADDRESS OF WITNESS

Signed:



on behalf of THURROCK COUNCIL

Date: 16 January 2019

Schedule 2 – First Variation email dated 1 December

LTC Update - Sharing DCO application documents



Poulomee Basu

To: Eastgate, Anna; Chris Stratford; Sorrin, Claire; Scanlon, Dermot; 'LTCAdmin'; LTC-Stantec

Cc: LocalGov



Reply

Reply All

Forward



Tue 01/12/2020 17:34

Hi Anna

Hope you are well. Please find a link to all our application documents which were submitted to the Planning Inspectorate as part of our DCO Application on the 23 October 2020.

<https://teams.microsoft.com/#/files/General?threadid=19%3Af00e9e4f172a493b9b3c6d27467badf5%40thread.tacv2&ctx=channel&context=General&rootfolder=%252Fsites%252FDCODocuments-ExternalStakeholders%252FShared%2520Documents%252FGeneral>

These documents are confidential.

Following the withdrawal of our application, and as we consider the Planning Inspectorate's feedback and prepare for our re-submission, we plan to make changes to some of the documents shared with you today. The extent of the changes will vary, but initially we shall of course plan to thoroughly review the documents and appendices that are particularly relevant to the Planning Inspectorate's feedback they provided to us in November, including:

- Application Document 4.2 Book of Reference – this will be updated with up to date Land Registry at the time of re-submission
- Application Document 6.1 Environmental Statement
- Application Document 6.5 Habitats Regulations Assessment
- Application Document 7.3 Summary of SoCG
- Application Documents 7.11 Code of Construction Practice

The above documents may be updated following our review. That is not to say the other documents in our application may not be updated but we wanted to highlight our current thinking to you as you start reviewing the application materials from the 23 October 2020.

We may also amend other submission documents following consideration of early comments from the Planning Inspectorate and will be in touch about this.

Some other points to note.

- Please note that generic accounts such as LTC Admin and LTC Stantec cannot be given access in teams, so I have kept it to the people in this email chain.
- We would appreciate receiving your comments on the application documents that have yet to be seen/reviewed (such as appendices to relevant ES chapters or the Transport Assessment)
- It would be preferred if comments on the Transport Assessment could be prioritised. If achievable, we request comments on the Transport Assessment to be provided by the 8th Jan 2021. We would appreciate comments on any other documents that you wish to review by the end of January 2021.
- We will also be in touch in the next couple of weeks with more details regarding future technical engagement including a 'Summary of Technical Engagement V5' (the last version, V4 was sent on the 31st July 2020). We hope this would be useful in planning your resources as we gear up for a re-submission.
- It should be noted that the PPA with Thurrock Council will remain valid till the re-submission of the DCO application and can be used to facilitate review of our documents and offer feedback.

Any questions, or issues with accessing these documents free to let me know

Regards

Poulomee

Poulomee Basu MRTP!

Lower Thames Crossing – Stakeholder Engagement (Local Authorities)

Tel: +44 7824831311