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Planning Obligation by Deed of Agreement under Section 106 of the Town and Country Planning Act 1990

relating to the development of Cambridge South Station

Dated 2022

- (1) Cambridge City Council**
(2) Network Rail Infrastructure Limited

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Section 106 Agreement

Dated

2022

Between

- (1) **CAMBRIDGE CITY COUNCIL** of The Guildhall, Market Square, Cambridge CB2 3BJ ("City Council"); and
- (2) **NETWORK RAIL INFRASTRUCTURE LIMITED** registered in England with number 02904587 whose registered office is at 1 Eversholt Street, London NW1 2DN ("**Developer**")

Recitals

- A The City Council is the local planning authority for the purposes of the Act for the area in which the Site is situated.
- B The Developer has submitted the Application to the Secretary of State to authorise the Development
- C The parties have agreed to enter into this Deed in order to secure the withdrawal of the City Council's objection to the Development and secure the planning obligations contained in this Deed.

NOW THIS DEED WITNESSES AS FOLLOWS:

OPERATIVE PART

1 DEFINITIONS

For the purpose of this Deed the following expressions shall have the following meanings:

1980 Act means the Highways Act 1980.

Adoption Notice means a notice served by the City Council confirming it will take on responsibility for the management and maintenance of the Access

Access means the new pedestrian and cycleway access to be constructed to the proposed Cambridge South Station comprised in Works No. 4 and Works No.5 (excluding that part of Works no. 5 comprised in the guided busway infrastructure)

Act means the Town and Country Planning Act 1990.

Application means the application submitted pursuant to the TWA 1992 for the Order submitted to the Secretary of State on 18 June 2021.

Commencement of Development means the date on which any material operation (as defined in Section 56(4) of the Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose) operations consisting of archaeological investigations, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, the temporary display of site notices or advertisements and "Commence Development" and "Commencement" shall be construed accordingly.

County Council means Cambridgeshire County Council.

Deemed Planning Permission means the planning permission granted for the Development pursuant to the Order

Deposited Plans means the deposited plans forming the certified documents to the Order and given reference NR09.01

Development means the authorised works permitted by the Order (once made).

Exchange Land means the exchange land to be provided by the Developer to replace the land taken from Hobson's Park pursuant to the Development comprising that land identified as plot [92] and shown for the purpose of identification only edged green on sheet 10 of 10 of the Deposited Plans or such alternative area of exchange land as shall be agreed by the City Council as being of equivalent size and suitability for the purpose of the intended use of the Exchange Land as the Developer may secure through private treaty for such purposes.

Expert means independent and suitable person holding appropriate professional qualifications and with not less than 10 (ten) years recent and relevant experience to be appointed (in the absence of an agreement) by or on behalf of the president for the time being of the professional body chiefly relevant in England with such matters as may be in dispute.

Exchange Land Maintenance Contribution means a contribution, to be calculated in accordance with the Ecology and Landscape Maintenance Plan to be submitted pursuant to condition 29 of the Deemed Planning Permission which shall include a schedule of maintenance rates based on the final design of the scheme to cover the maintenance of the Exchange Land for a twelve year period, such maintenance costs to also cover:

- (a) biodiversity, landscape and recreational features;
- (b) pedestrian, cycle and shared paths;
- (a) new footbridge across Hobson's Park into the Exchange Land;
- (b) maintenance for the new SUDS; and
- (c) lighting, bins, seating other appropriate street furniture, public art and signage.

Hobson's Park Maintenance Contribution means a contribution to be calculated in accordance with the Ecology and Landscape Maintenance Plan to be submitted pursuant to condition 29 of the Deemed Planning Permission and the Tree Mitigation Scheme which shall include a schedule of maintenance rates to cover the maintenance of the enhancements (only) to Hobson's Park for a twelve (12) year period including but not limited to:

- (a) biodiversity, landscape and recreational features;
- (b) pedestrian, cycle and shared paths (excluding Works No 4 and 5);
- (c) maintenance for any new SUDS; and
- (d) any additional lighting, bins, seating other appropriate street furniture, public art and signage.

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Index Linked means increased in accordance with the following formula:

Amount payable = the payment specified in this Deed x (A/B) where:

A = the figure for the Retail Price Index published by the Office for National Statistics that applied immediately preceding the date the payment is due.

B = equals the figure for the Retail Price Index published by the Office for National Statistics that applied when the index was last published prior to the date of this Deed

Interest means interest at 4 per cent above the base lending rate of the Barclays Bank Plc from time to time.

Monitoring Contribution means a financial contribution of [two thousand five hundred pounds](#) [[£2500.00](#)] towards the City Council's costs incurred in relation to monitoring the developers performance of its obligations contained in this Deed

Order means the order made pursuant to the Application authorising the Development.

Phase Lease means the lease in the form attached to this Deed at Appendix [x]

Plan means the plan attached to this Deed.

Deemed Planning Permission means the permission to be granted by the Secretary of State pursuant to the Application subject to such planning conditions as the Secretary of State may specify.

Site means the land against which this Deed may be enforced as shown edged red on the [Plan](#).

SUDs means sustainable urban ditch(s)

Transfer means the grant of a long leasehold interest to the City Council in the form of the Phase Lease but subject to additional reservations and/or rights which the Developer may be required to grant pursuant to the Order

Tree Mitigation Scheme means a scheme for equivalent replacement planting to mitigate for the loss of any structural tree planting on the Anne McClaren Building site (as a consequence of the Development) which cannot be provided within the Order Limits (as defined in the Order) and therefore not included as the details submitted pursuant to planning condition 29 of the Deemed Planning Permission. Such tree mitigation scheme shall include planting and written specifications (including cultivation and other operations associated with plant establishment); schedules of plants noting species, plant sizes and proposed numbers with densities; a programme for implementation (if such scheme is to be implemented by the Developer); a management plan for 5 years and shall also include a schedule of costs [\(taking into account a reasonable sum for plant/tree replacements in the event of failure over the first 5 year period\)](#) representing the contribution to be payable to the City Council [subject to the requirements of paragraph 4.1 of schedule 4 in accordance with the Hobson's Park Maintenance Contribution](#).

TWA 1992 means the Transport and Works Act 1992.

Unchallenged means a period of six (6) weeks which shall have elapsed since the date of notice being published of the Order being made by the Secretary of State for Transport and

Commented [Dentons1]: Drafting Note: This is to be the form of Phase Lease annexed to the S106 Agreement dated 6 August 2010 relating to planning permissions 07/0620/OUT and 09/0272/FUL

Commented [Dentons2]: Drafting note: this is to be the land the new station building is to be provided on

either (a) no legal proceedings have been instituted in respect of that Order or (b) any legal proceedings which may have been instituted in respect of that Order have been exhausted (which shall occur on the withdrawal of such legal proceedings or when the time for appealing against the decision of any court has expired and no appeal has been lodged) with the Order being finally upheld.

Working Day means any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England

Works Maintenance Contribution means a contribution [to be agreed] to be paid by the Developer to the [City Council](#) to cover the maintenance of Works No.4 and Works No. 5 for a period of twelve (12) years.

Works No.3 means a new station (Cambridge South) located directly south of the Guided Busway overbridge consisting of four new platforms and associated railway lines, a station footbridge with stairs and lifts, high level concourse, eastern and western entrance buildings with ticketing and staffing facilities and associated forecourt areas and a secondary means of escape footbridge.

Works No.4 means a new [378-metre-long](#) path (pedestrian and cycling) commencing at the Guided Busway route on the west side of Hobson's Park and terminating at Work No.3 and shown on the Deposited Plans

Works No.5 means a new [96-metre-long](#) pedestrian path including an at grade crossing over the Guided Busway commencing at Work No.4 in Hobson's Park and terminating 96 metres on the north of its commencement on the north of the Guided Busway route within the Active Recreation Area and shown on the Deposited Plans.

2 CONSTRUCTION OF THE DEED

- 2.1 Where in this Deed reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Deed.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 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 interchangeable in that manner.
- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and severally unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permission and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the City Council the

successors to its respective statutory functions (and where appropriate includes any agent or other person appointed or nominated by the City Council for the purposes of this Deed).

- 2.7 The heading and contents list are for reference only and shall not affect construction.

3 LEGAL BASIS

- 3.1 This Deed is made pursuant to Section 106 of the Act, Section 111 of the Local Government Act 1972 and Section 1 of the Localism Act 2011 and all other enabling powers.
- 3.2 The covenants, restrictions and requirements imposed upon the Developer under this Deed create planning obligations binding the Site pursuant to Section 106 of the Act and are enforceable by the City Council as local planning authority against the Developer.

4 CONDITIONALITY

- 4.1 This Deed is conditional upon:

- (a) the making of an Unchallenged Order by the Secretary of State for Transport; and
- (b) the Commencement of Development

Save for the provisions of Clauses 7.1, 11, 13, 14 and 15 which shall come into effect immediately upon completion of this Deed.

5 THE DEVELOPER'S COVENANTS

The Developer covenants with the City Council as set out in the First Schedule.

6 THE CITY COUNCIL'S COVENANTS

The City Council covenants with the Developer as set out in the Second Schedule.

7 INDEXATION

- 7.1 All financial contributions payable to the City Council shall be Index Linked
- 7.1 Where reference is made to an index and that index ceases to exist or is replaced or re-based then it shall include reference to any index which replaces it or any rebased index (applied in a fair and reasonable manner to the periods before and after rebasing under this Deed) or in the event the index is not replaced to an alternative reasonably comparable basis or index as the City Council shall advise the Developer in writing

8 MISCELLANEOUS

- 8.1 The Developer shall pay to the City Council on completion of this Deed the reasonable legal costs of the City Council properly incurred in the negotiation, preparation and execution of this Deed.
- 8.2 No provisions of this Deed shall be enforceable under the Contracts (Rights of Third Parties) Act 1999.
- 8.3 This Deed shall be registrable as a local land charge by the City .

- 8.4 Where the agreement, approval, consent or expression of satisfaction is required by the Developer from the City Council under the terms of this Deed such agreement, approval or consent or expression of satisfaction shall not be unreasonably withheld or delayed and any such agreement, consent, approval or expression of satisfaction shall be given on behalf of the City Council by the Joint Director of Planning and Economic Development, and for the avoidance of doubt no deemed agreement, approval, consent or expression of satisfaction shall be implied in the absence of a written paper and any notices shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant party.
- 8.5 Following the performance and satisfaction of all the obligations contained in this Deed the City Council shall forthwith effect the cancellation of all entries made in the Register of Local Land Charges in respect of this Deed.
- 8.6 Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 8.7 This Deed shall cease to have effect (insofar only as it has not already been complied with) if the Order shall be quashed, revoked or otherwise withdrawn or (without the consent of the Developer) or expires prior to the Commencement of Development.
- 8.8 No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Site but without prejudice to liability for any subsisting breach arising prior to parting with such interest.
- 8.9 This Deed shall not be enforceable against any statutory undertaker who acquires part of the Site for the purposes of the supply of gas, electricity, water, drainage, telecommunications or transport services.
- 8.10 Nothing in this Deed shall prohibit or limit the right to develop any part of the Site in accordance with a planning permission (other than the Deemed Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 8.11 Nothing contained or implied in this Deed shall prejudice or affect the rights discretions powers duties and obligations of the City Council under all statutes by-laws statutory instruments orders and regulations in the exercise of its functions as a local authority.

9 WAIVER

No waiver (whether expressed or implied) by the City Council of any breach or default in performing or observing any of the covenants terms or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the City Council from enforcing through any remedy available to it in respect of any of the relevant terms or conditions or for acting upon any subsequent breach or default.

10 INTEREST

If any payment due under this Deed is paid late, Interest will be payable from the date payment is due to the date of payment.

11 VAT

All consideration given in accordance with the terms of this Deed shall be exclusive of any value added tax properly payable.

12 DISPUTE PROVISIONS

- 12.1 In the event of any dispute or difference arising between the parties to this Deed which persists for six (6) weeks after any party raises it by way of a notice to the other in writing in respect of any matter contained in this Deed such dispute or difference shall be referred to an Expert and in the absence of agreement as to the appropriateness of the professional body then such question may be referred by any party to the dispute to the president for the time being of the Law Society for him to appoint a solicitor to determine the dispute and such person shall act as an expert whose decision shall be final and binding on the parties in the absence of manifest error and any costs shall be payable by the parties to the dispute in such proportion as the Expert shall determine and failing such determination shall be borne by the parties in equal shares.
- 12.2 The Expert shall be subject to the express requirement that a decision be reached and communicated to the relevant parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than twenty five (25) Working Days after the conclusion of any hearing that takes place and/or receipt of any file or written representation (as appropriate).
- 12.3 The Expert shall be required to give notice to each of the said parties requiring them to submit to him within ten (10) Working Days of notification of his appointment written submissions and supporting material and if the Expert considers it necessary he may convene a hearing.

13 JURISDICTION

This Deed is governed by and interpreted in accordance with the law of England and the parties submit to the non-exclusive jurisdiction of the courts of England.

14 DELIVERY

The provisions of this Deed (other than this clause which shall be of immediate effect) shall be of no effect until this Deed has been dated.

IN WITNESS whereof the parties hereto have executed this Deed on the day and year first before written.

Schedule 1

The Developer's covenants as follows

1 Maintenance Exchange Land Contribution

- 1.1 Following completion of and laying out the Exchange Land in accordance with the details approved pursuant to the Deemed Planning Permission to notify in writing the City Council to inspect the Exchange Land and certify that it is in a condition appropriate for the Transfer to be entered into.
- 1.2 To facilitate the Transfer of the Exchange Land to the City Council and to pay the Exchange Land Maintenance Contribution to the City Council simultaneously on completion of the Transfer.
- 1.3 To pay the City Council's reasonable and proper inspection fees for certifying the Exchange Land has been provided to an appropriate standard and in accordance with the approved scheme, such fees shall equate to the City Council's Band 6 hourly rates with an estimate first being provided to the Developer before such fees are incurred.

2 **Work No.4 and Works No.5**

- 2.1 To carry out and complete Works No.4 and Works No. 5 in accordance with details approved pursuant to the Deemed Planning Permission and to confirm the extent of the freehold boundaries of such works which are available for transfer to ~~either the City Council or County Council~~ (which for the avoidance of doubt shall exclude any part of the Guided Busway land comprised in Work No.5).

2.2 Subject to receipt of the Adoption Notice from the City Council to transfer the freehold title of land comprised in Works No. 4 and Works No. 5 to the City Council and to pay Works Maintenance Contribution to the City Council on completion of such transfer

3 **Tree Mitigation Scheme**

- 3.1 No later than following the laying out of the Exchange Land pursuant to paragraph 1.1 above, to submit the Tree Mitigation Scheme for the approval of the City Council together with such election as to whether the Developer will carry out the Tree Mitigation Scheme or will pay the contribution (approved as part of such Tree Mitigation Scheme to the City Council) (**Tree Mitigation Contribution**).
- 3.2 Subject to the option elected pursuant to paragraph 4.1 above to:
 - 3.2.1 carry out and complete the approved Tree Mitigation Scheme (subject to the City Council granting such licence and other consents as may be required to implement and if required maintain such approved scheme); or
 - 3.2.2 within twenty (20) Working Days of electing to nominate the City Council to implement the Tree Mitigation Scheme to pay the Tree Mitigation Contribution to the City Council as approved pursuant to the Tree Mitigation Scheme

4 Monitoring Contribution

- 4.1 The Developer covenants with City Council not to Commence Development or permit Commencement of Development until the Developer shall have paid the City Council the Monitoring Contribution
- 4.2 The Developer further covenants to give the City Council ten (10) Working Days prior written notice of the anticipated date for reaching the trigger specified in paragraph 4.1 above

5 Rights of Access

- 5.1 To invoke Article 31 of the Order to facilitate the granting of necessary rights of access to the City Council for the purposes of maintaining that relevant part of Work No. 5 as the Council shall be responsible for maintaining and to use reasonable endeavours to secure consent from the Secretary of State for the use of Article 31 in such manner.

6. Hobson's Park

- 6.1 Following completion of any works on Hobson's Park undertaken pursuant to the Deemed Planning Permission and any details approved thereunder to notify in writing the City Council to inspect those works and certify that they have been completed to the City Council's satisfaction
- 6.2 To pay the City Council's reasonable and proper inspection fees for certifying any works on Hobson's Park have been provided to an appropriate standard and in accordance with any approved scheme such fees shall equate to the City Council's Band 6 hourly rates with an estimate first being provided to the Developer before such fees are incurred.
- 6.3 Within one (1) month of the Developer giving the City Council possession of the works to Hobson's Park to pay to the City Council the Hobson's Park Maintenance Contribution

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Schedule 2

The City Council's Covenants

1 WORKS NO. 4 and 5

- 1.1 In the event the City Council is to permanently manage and maintain the Access to serve the Adoption Notice on the Developer within twenty (20) Working Days of being notified by the Developer that such works have been completed.
- 1.2 The City Council covenants to maintain the Access in perpetuity or until Cambridge South Station is decommissioned and to use the Works Maintenance Contribution towards the costs of managing and maintaining the Access.
- 1.3 The City Council covenants to make the Access available for use by the public at all times save that the City Council shall provide the Developer and the operator of Cambridge South Station with no less than twenty (20) Working Days prior written notice of any closure of the Access (i) in the interests of public safety and/or(ii) for management and maintenance and/or (iii) of emergency purposes.
- 1.4 The City Council covenants to provide an alternative safe route to Cambridge South Station for the duration of any closure of the Access pursuant to paragraph 1.3 of Schedule 2.

2 MAINTENANCE OF WORKS NO.4 AND WORKS NO.5

- 2.1 The City Council covenants (subject to the Developer complying with its related obligations herein and accepting a written invitation to take ownership) to liaise with the Developer and the County Council using all reasonable endeavours to agree whether the City Council or County Council shall take on the permanent maintenance of the cycle and pedestrian paths comprised in Works No.4 and Works No.5 (but excluding any part of the footpath comprised in the guided busway infrastructure).
- 2.2 In the event that the City Council agrees to be responsible for maintenance of the Works No.4 and Works No.5, it shall serve the Adoption Notice on the Developer as soon as reasonably practicable confirming the City Council's responsibility for maintenance.
- 2.3 On completion of Works No.4 and Works No.5, the City Council covenants to enter into and accept a freehold transfer of the completed Works No.4 and Works No.5 paths and shall maintain Works No.4 and Works No.5 in perpetuity using the Works Maintenance Contribution

3 EXCHANGE LAND

- 3.1 To inspect the Exchange Land within twenty (20) Working Days of being notified by the Developer that the Exchange Land has been completed and on being satisfied to certify the Exchange Land has been constructed and laid out to an appropriate condition.
- 3.2 Within three (3) months of certifying in writing that the Exchange Land has been completed pursuant to paragraph 3.1 above to complete the Transfer
- 3.3 Following completion of the Transfer to manage and maintain the Exchange Land and to use the Exchange Land Maintenance Contribution only for that purpose.

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4 TREE MITIGATION SCHEME

4.1 Subject to the election of the Developer pursuant to paragraph 4.1 of Schedule 1 to either:

- (a) grant to the Developer on written request such necessary licence (at nil consideration) and subject to reasonable terms as the Developer requires to implement the approved Tree Mitigation Scheme on land designated by the City Council within Hobson's Park which the City Council has a long leasehold interest in; or
- (b) to use the Tree Mitigation Contribution only for the purposes of implementing the Tree Mitigation Scheme

DRAFT

THE COMMON SEAL OF
CAMBRIDGE CITY COUNCIL)
was affixed in the presence of:)

Authorised Signatory:

EXECUTED AS A DEED by
NETWORK RAIL INFRASTRUCTURE LIMITED)
in the presence of:)

Director:

Director/Secretary:

DRAFT