

DATED

12 December

2018

THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE

AND

KEYWEST NO THREE LIMITED

AGREEMENT

pursuant to Section 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to the carrying out of works on an existing highway at Long Row, South Shields

**MIKE HARDING
Head of Legal Services
Town Hall and Civic Offices
South Shields**

Ref: BB/L/14572

THIS AGREEMENT is made on

12th December

2018

PARTIES

- 1 **THE COUNCIL OF THE BOROUGH OF SOUTH TYNESIDE** of Town Hall and Civic Offices, Westoe Road, South Shields NE33 2RL (the "**Council**"); and
- 2 **KEY WEST NO THREE LIMITED** whose registered office is at 43 Maxwell Street, South Shields NE33 4PU, company registration no 10312524 (the "**Developer**" which expression shall include the Developer's successors in title and assigns)

BACKGROUND

- (A) The Developer has been granted planning permission by the Council under an application carrying reference ST/0429/17/FUL and dated 15 May 2017 for the development of land at 30-31 and 32 Long Row Market Dock South Shields NE33 1JA comprising the following building operations: window and door reconfigurations, works to west facing balconies, roof terraces, roller shutters to new ground floor garages to the east elevation, bin stores, 1.8 metre high railings and sliding gates to enclose the land, improvements to the existing car park with associated landscaping (the "**Development**"), all in the vicinity of that highway known as Long Row, South Shields (the "**Road**").
- (B) The Developer has requested the Council to execute the works described below for the benefit of the aforementioned land.
- (C) The Council is authorised by virtue of the Highways Act 1980 Part V to carry out improvements in relation to the Road (the "**Improvements**") as illustrated on the plan attached to this Agreement numbered carrying reference T0501 A206 S278 (no revision) (the "**Plan**") and engineering drawings numbered 529-101 revision A and 529-102 revision A copies of which have been deposited with and approved by the Council (the "**Specifications**"), and subject to the terms of this Agreement, are prepared to carry out the Improvements.
- (D) The Council has estimated the costs in carrying out the Improvements to be £24,827.00 as further detailed in the bill of quantities contained at the Schedule to this Agreement (the "**Bill of Quantities**").
- (E) This Agreement is made pursuant to the Highways Act 1980 section 278.

(F) The Council is satisfied that this Agreement will be of benefit to the public.

THE PARTIES AGREE:

1. Interpretation

1.1. In this Agreement:

1.1.1. a reference to a clause or recital followed by a number is a reference to the clause or (as the case may be) the recital of this Agreement bearing that number,

1.1.2. a reference to the "**Works**" is a reference to the works necessary to carry out the Improvements in accordance with the Plan and the Specifications subject to any alterations which may be made pursuant to clause 2.

2. Alterations to Specifications

2.1. The Council may from time to time make such alterations to the Specifications or the Plan as they may consider desirable or necessary.

2.2. In so far as may be reasonably practicable the Council shall give the Developer a chance to comment on any such alterations which they propose to make.

3. Payments to be made by Developer

3.1. The Developer shall make the following payments in respect of the Works:

3.1.1. a sum equal to the whole of the costs and expenses which the Council incurs by or in preparation for the execution of the Works and in connection with the execution of the Works; and

3.1.2. a sum equal to the whole of any expense to which the Council is put by reason of carrying out the Works including (without prejudice to the generality of the foregoing) all costs or expenses incurred in insulating buildings against noise or in satisfying claims made under the Land Compensation Act 1973 Part I arising from the execution of the Works.

3.2. The sums referred to in clause 3.1 above do not include any sums payable under clause 5.

4. Method of payment

As soon as may be after the Works have been completed the Council shall give the Developer an account of the costs and expenses referred to in clause 3 and within 28 days from the date of that account the Developer shall pay to them the sum shown due in that account.

5. **Other costs and VAT**

- 5.1. In this clause "**Principal Sum**" means any sum payable under clauses 3 and 4 of this Agreement.
- 5.2. In addition to every Principal Sum the Developer shall pay to the Council:
 - 5.2.1. £1,500.00 in respect of the costs of administration of the Agreement by the Council as highway authority;
 - 5.2.2. £830.00 towards the Council's legal fees incurred in connection with this Agreement;
 - 5.2.3. £250.00 in respect of the costs in conducting a review of existing traffic restrictions within the vicinity of the Improvements, and
 - 5.2.4. a sum equal to the amount of VAT (if any) payable by the Council in respect of any work for which the Developer is liable to pay a Principal Sum or to make any payment under clause 5.2.1 above.
- 5.3. The Developer shall pay:
 - 5.3.1. the amounts due under clauses 5.2.1, 5.2.2 and 5.2.3 above on the date of this Agreement; and
 - 5.3.2. the amounts due under clause 5.2.4 above at the same time as paying the Principal Sum.

6. **Certification of payments**

The amounts of payments due under the provisions for this Agreement shall be certified on behalf of the Council by its Proper Officer. The Proper Officer's decision as to the amounts shall be final but he shall provide to the Developer any information relating to the amounts as the Developer may reasonably require.

7. **Notification of commencement of Works and termination**

- 7.1. The Council shall give to the Developer no less than 14 days' notice of its intention to commence the Works on the date specified in the notice (the "**Commencement Date**").

- 7.2. At any time before the Council gives notice as mentioned in clause 7.1 above, either party to this Agreement may terminate it at any time by giving notice to the other.
- 7.3. Where the Developer terminates the Agreement under clause 7.2 above the Council shall give the Developer an account of any abortive costs incurred by the Council in respect of this Agreement up to the date of termination, and within 28 days from the date of that account the Developer shall pay that sum to the Council.

8. **Non-assignability**

The rights and liabilities of the Developer under this Agreement are not assignable.

9. **Interest on overdue payments**

If any payment due under any of the provisions of this Agreement is not made on or before the date on which it is due (the "**Due Date**") the party from whom it was due shall at the same time as making the payment pay to the other party interest at 3% above the median base rate of Lloyds Bank PLC as at the Due Date for the period starting with the Due Date and ending with the date on which payment of the sum on which interest is payable is made.

10. **Execution of Works**

Provided that:

10.1. the Developer is not in default of any obligation under this Agreement;

10.2. this Agreement has not previously been terminated under clause 7

the Council will commence the Works on the Commencement Date and thereafter execute the Works and use their reasonable endeavours to complete them as soon as is reasonably practicable.

11. **Notice**

All notices to be given under this Agreement shall be:

11.1. in writing;

11.2. delivered personally or sent by pre-paid recorded delivery post addressed to the party to be served at the address set out in this Agreement (and in the case of the Council addressed for the attention of the Head of Legal Services) or such

other address as may from time to time be notified for the purpose, by notice in writing, and

- 11.3. deemed to have been served in the case of a notice delivered personally at the time of delivery or in the case of a notice sent by pre-paid recorded delivery post at the expiration of 48 hours after the notice was delivered into the custody of the postal authorities.

IN WITNESS whereof this Deed has been executed on the day and year first before mentioned

Schedule
Bill of Quantities

BILLS OF QUANTITIES**LONG ROW****SECTION 278 WORKS****Item Description****Grand Total****Qty****Unit****Rate****Sub Total****Bill Total****PRELIMINARIES****Temporary Accommodation**

Erection of offices, stores, and welfare facilities

1 Item £50.00 £50.00

Servicing of offices, stores, and welfare facilities

3 wks £200.00 £600.00

Dismantling of offices, stores, and welfare facilities

1 Item £50.00 £50.00

Temporary Diversion for Pedestrians and Vehicular Traffic

Construction of temporary diversion of pedestrians onto an existing carriageway: length of diversion 10-30m long

2 Item £24.16 £48.32

Maintenance of temporary diversion of pedestrians onto an existing carriageway: length of diversion 10-30m long

15 days £61.10 £916.50

Removal of temporary diversion of pedestrians onto an existing carriageway: length of diversion 10-30m long

2 Item £24.16 £48.32

Provide and deliver to contractor's compound "FOOTPATH CLOSED" signs (white on red background).

4 Nr £15.00 £60.00

Provide and deliver to contractor's compound "ROAD CLOSED PLEASE USE ALTERNATIVE ROUTE" signs (white on red background with arrow pointing in direction of new route).

2 Nr £25.00 £50.00

Supervision

Supervision of site

3 wks £450.00 £1,350.00

BILL OF QUANTITIES

30/07/2018

BILLS OF QUANTITIES**LONG ROW****SECTION 278 WORKS****Health and Safety Work**

Provide and erect Heras fencing to protect works	3	wks	£175.00	£525.00
Carry out Cat scans to works as required	3	wks	£125.00	£375.00
Trial holes as required by Engineer	0	Nr	£812.00	£0.00
				£4,073.14

SITE CLEARANCE**Take up or down and set aside for re use or remove to store or tip off site**

Take up or down and dispose of off site 125 x 255mm precast concrete kerbs	17	m	£10.22	£173.74
Take up or down and set aside p.c.c. flags (450 x 450mm)	95	m2	£4.64	£440.80
Take up or down and dispose of off site 50 x 150mm precast concrete edging	11	m	£5.41	£59.51
Take up or down and set aside precast concrete beany blocks and store for re use	34	m	£25.20	£856.80
Take up or down and dispose of off site buff tactile precast concrete flags (450 x 450mm)	4	m2	£4.99	£19.96
Take up and set aside bollard and store for re use	4	Nr	£21.08	£84.32
Take up or down and set aside precast concrete titan kerbs and store for re use	15	m	£25.20	£378.00
				£2,013.13

DRAINAGE & SERVICE DUCTS**Drainage and Service Duct (excluding Filter Drains, Narrow Drains and Fin Drains**

BILL OF QUANTITIES

30/07/2018

BILLS OF QUANTITIES**LONG ROW****SECTION 278 WORKS**

2/100mm internal diameter plastic service ducts in trench depth to invert not exceeding 2 metres deep average depth to invert 0.75m in road areas.	7	m	£89.69	£627.83
Adjustment on last item for variation greater than 150mm above or below the average depth of 0.75m per 25mm of variation in excess of 150mm		m	£0.00	
2/100mm internal diameter plastic service ducts in trench depth to invert not exceeding 2 metres deep average depth to invert 0.50m in footway areas.	2	m	£41.97	£83.94
Adjustment on last item for variation greater than 150mm above or below the average depth of 0.50m per 25mm of variation in excess of 150mm		m	£0.00	
<u>Reinstatement of pavement</u>				
Extra over 100mm duct for reinstatement Type R1 40mm hot rolled asphalt wearing course on 250mm concrete type ST2	7	m	£53.44	£374.08
Extra over 100mm duct for reinstatement Type R5 relay existing paving flags on 25mm mortar bedding laid on 100mm concrete Type ST2	2	m	£55.41	£110.82
<u>Excavation in rock, reinforced concrete or existing pavement material</u>				
Extra over any item of ductwork for excavation in unreinforced concrete	1	m3	£148.63	£148.63
				£1,345.30

EXCAVATION AND EARTHWORKS**Excavation in Rock, Unreinforced Concrete and Existing Pavement Material**

BILL OF QUANTITIES

30/07/2018

BILLS OF QUANTITIES**LONG ROW****SECTION 278 WORKS**

Excavate rock or unreinforced concrete in carriageway	6	m3	£45.00	£270.00
Excavate existing pavement material in carriageway	2	m3	£40.00	£80.00
Excavate unsuitable material in footpaths and paved areas	27	m3	£15.00	£405.00
<u>Disposal of Excavated Material</u>				
Dispose off site of inactive material	35	m3	£23.50	£822.50
<u>Completion of Formation and Sub formation</u>				
Formation of suitable material	122	m2	£1.30	£158.60
<u>Mechanical saw Cutting</u>				
Saw cutting in unreinforced concrete over 100mm up to 200mm deep	45	m	£12.27	£552.15
<u>PAVEMENTS</u>				
<u>Pavements</u>				
Hot rolled asphalt wearing course HRA 30/14 surf 40/60des 40mm thick with 14mm precast chippings in carriageway areas	10	m2	£54.50	£545.00
<u>Regulating Course</u>				
HRA 50/14 reg 40/60 des regulating course	2	tonnes	£154.23	£308.46
<u>Tack Coat</u>				
Tack coat K1-40 applied at uniform rate of spread of 0.35 to				

BILLS OF QUANTITIES**LONG ROW****SECTION 278 WORKS**

0.55 /m2; in carriageway.

10 m2 £0.80 £8.00

Cold Milling (Planing)

Milling flexible pavements; 40mm deep in carriageway areas

10 m2 £25.00 £250.00 £1,111.46

KERBS FOOTWAYS AND PAVED AREAS**Kerbs, Channels, Edgings and Combined Drainage and Kerb Blocks on new foundation**

Precast concrete kerb on new foundation laid straight or curved exceeding 12m radius; 255 x 125mm; half battered

33 m £31.64 £1,044.12

Precast concrete kerb on new foundation laid straight or curved exceeding 12m radius; 125 x 150mm; bullnose crossing kerb

11 m £29.01 £319.11

Precast concrete kerb on new foundation laid straight or curved exceeding 12m radius; 125 x 255mm; half battered to bullnose; left hand dropper

3 Nr £35.48 £106.44

Precast concrete kerb on new foundation laid straight or curved exceeding 12m radius; 125 x 255mm; half battered to bullnose; right hand dropper

3 Nr £35.48 £106.44

Precast concrete edging kerb on new foundation laid straight or curved exceeding 12m radius; 50 x 150mm.

11 m £15.18 £166.98

Provide and lay Beany cover plate to standard beany block 500mm long x 500mm wide

35 m £93.89 £3,286.15

Provide and lay Beany transition kerbs to standard beany block 500mm long x 500mm wide

2 Nr £69.11 £138.22

BILL OF QUANTITIES

30/07/2018

BILLS OF QUANTITIES**LONG ROW****SECTION 278 WORKS**

Provide and lay Beany Access units standard beany block 500mm long x 500mm wide	2	Nr	£425.36	£850.72
Remove from store and relay Beany block top standard beany block 500mm long x 500mm wide	7	m	£54.30	£380.10
Remove from store and relay Titan kerb on new 600mm wide x 300mm deep concrete foundation including haunching	15	m	£42.50	£637.50
<u>Extra over any item of kerbing, channelling or edging for Excavation in rock, reinforced concrete or existing pavement material</u>				
Extra over any item of kerbing, channelling or edging for excavation in rock	2	m3	£148.63	£297.26
<u>Footways and Paved Areas</u>				
65mm thick tactile precast concrete paving flags colour Buff; in footpath areas; 400 x 400mm square; laid on 25mm thick sharp sand bedding; surfaces sloping at 10 degrees or less to the horizontal	3	m2	£44.99	£134.97
70mm thick precast concrete paving flags colour Natural Grey; in footpath areas; 450 x 450mm square; laid on 25mm thick mortar bedding; laid on CBM3 100mm thick to surfaces sloping at 10 degrees or less to the horizontal	3	m2	£39.91	£119.73
<u>Remove from Store and Relay Paving Flags or Blocks</u>				
70mm precast concrete 450 x 450mm flags; laid on 25mm mortar bedding; laid on 100mm CBM3 concrete surfaces sloping at 10 degrees or less to the horizontal	102	m2	£34.24	£3,492.48
				£11,080.22

TRAFFIC SIGNS AND ROADMARKINGS

BILLS OF QUANTITIES

LONG ROW

SECTION 278 WORKS

Remove from Store and Re-erect Bollards

Remove from store and re-erect bollards in new locations as per Engineer's drawing

4 Nr £68.87 £275.48

Road Markings

Continuous line in yellow thermoplastic screed with applied solid glass beads 100mm wide to diagram 1001

30 m £4.00 £120.00

Intermittant line in white thermoplastic screed with applied solid glass beads 100mm wide to diagram 1004

10 m £2.00 £20.00 £415.48

PRIME COST AND PROVISIONAL SUMS

Provisional Sums

Contingencies (Street Lighting Work)

1 Item £2,500.00 £2,500.00 £24,826.98

EXECUTED as a DEED)
by affixing the **COMMON**)
SEAL of THE COUNCIL)
OF THE BOROUGH OF)
SOUTH TYNESIDE)
in the presence of:)



[Redacted signature]

Mayor / Authorised Signatory

[Redacted signature]

Head of Legal Services / Authorised Signatory

EXECUTED AS A DEED BY
KEYWEST NO THREE LIMITED
BY NORMAN FADA a director
in the presence of

[Redacted signature]

[Redacted signature]

B. A. WALKERSON
COMMISSIONER FOR DATAS
1718 WEST SUNNYSIDE
V. THE CITY OF SOUTHERN BAY COY. 10