

DentonWildeSapte... **Appendix B**

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Kent Thameside Transport Partnership Agreement

Dated

Kent County Council

Dartford Borough Council

Gravesham Borough Council

Department for Transport

Communities and Local Government

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Kent Thameside Transport Partnership Agreement

Dated

Between

- (1) Kent County Council (**Kent**)
- (2) Dartford Borough Council (**Dartford**)
- (3) Gravesham Borough Council (**Gravesham**)
- (4) The Secretary of State for the Department for Transport (**DfT**)
- (5) The Secretary of State for the Department of Communities and Local Government (**CLG**)

Recitals

- A The purpose of this Agreement is to secure the delivery of a programme of transport projects which will support the sustainable development of the Kent Thameside area in accordance with the South East Plan and other statutory plans.
- B The Kent Thameside area comprises parts of the Boroughs of Dartford and Gravesham, as shown on Plan A. Within this area, the South East Plan proposes development in the period up to 2025 in the order of 25,000 homes and 50-60,000 jobs. This development is required in order to meet the aims of the Government's Thames Gateway Interim Plan. The Local Development Frameworks for Dartford and Gravesham will determine the details of this development.
- C The Parties acknowledge that this level of development can only be sustained by an integrated approach to land use and transport planning which is designed to minimise the need to travel, and to encourage the most sustainable transport choices.
- D This integrated approach will be incorporated in the policies and proposals of the Local Development Frameworks as they apply to Kent Thameside, and in the Kent Thameside Transport Strategy (which is expected to be adopted by the three local authorities in 200[8])
- E The Kent Thameside Transport Strategy defines performance standards and objectives for the transport network, to which all the Parties subscribe.
- F Kent County Council has commissioned analysis of the transport impacts of the proposed development. This demonstrates that in order to meet the performance standards and objectives of the Kent Thameside Transport Strategy a package of transport schemes will need to be delivered in sequence with the proposed development.
- G An initial package of schemes has been identified and costed, and is listed in Schedule 1 in the form of a programme. Further analysis and monitoring may reveal the need for amendments to the programme. However any such amendments must be directed towards meeting the performance standards and objectives of the Kent Thameside Transport Strategy.
- H The delivery of the programme requires the co-ordinated effort of the parties to this Agreement, including the co-ordination of funding and commissioning decisions. The purpose of this Agreement is to secure the necessary commitment of the parties to the arrangements needed to fully deliver the programme.

It is agreed:**1 Definitions and interpretation****1.1 Definitions**

In this Agreement, the following definitions apply unless otherwise stated.

A document is in the **agreed form** if it is in [substantially] the form of a draft agreed between and initialled by or for the parties on or before the date of this Agreement.

Authority Project means any individual scheme of transport infrastructure works as detailed in the Annual Programme to be undertaken within the boundaries of the Borough Councils for which Kent is to be responsible for carrying out.

Bean Junction Works means the works at the [location] to include [three roundabouts, an overbridge over the A2 and the A2 slip roads] so as to meet the objectives set out in the Strategy.

Borough Councils means Dartford Borough Council and Gravesham Borough Council or either of them (as the case requires).

Business Day means a day (other than a Saturday or a Sunday) on which banks are open in London for the transaction of general business.

Business Plan means the business plan dated [x] in the agreed form.

Developer Contributions means the money paid by developers as a result of the Interim Tariff Policy or the Tariff Policy as a result of obligations imposed by way of Section 106 of the Town and Country Planning Act 1990.

DfT Project means any individual scheme of transport infrastructure works set out in the Annual Programme for which DfT is to be responsible for carrying out.

Draft Annual Local Programme means the draft programme to be prepared in accordance with clause 4.4.1 by Kent in respect of the following Year.

Draft Annual Regional Programme means the draft programme to be prepared in accordance with clause 5.4.1 by DfT in respect of the following Year.

First Programme means the programme of works in the agreed form dated [xxxxx].

Grant Letter means the letter dated [x] addressed to Kent from CLG.

Interim Tariff Policy means the Borough Parties' tariff policies in the agreed form.

Kent Thameside Transport Strategy or the **Strategy** means the policy document in the agreed form which defines the performance standards and objectives for the transport network, as may from time to time be amended with the agreement of the parties

Kent Thameside Strategic Transport Programme or the **Annual Programme** means the First Programme and each subsequent programme agreed (or determined) in accordance with clause [x.x.x] for the design and construction of the Works as amended from time to time in accordance with this Agreement.

Local Programme means those elements of the Annual Programme which are not part of the Regional Programme.

Outline Specification means [] in respect of any proposed Authority Project or DfT Project.

Party means a party to this Agreement and **Parties** shall be construed accordingly.

Person includes each of the following, even if they have no separate legal personality: an individual, firm, partnership, trust, joint venture, body corporate, unincorporated body, association, organisation or any government, state or local body or authority.

Programme Investment Fund means []

Programme Overheads means [properly incurred cost of Kent arising as a result of the administration of the Local Programme and its duties under this Agreement]

Prudential Code means Prudential Code for Capital Finance in Local Authorities as may from time to time be published by the Chartered Institute of Public Finance and Accountancy.

Regional Programme means those elements of the Annual Programme for which the DfT is responsible.

Reporting Date means [date 8/9 months from signature] and each anniversary thereof for the duration of the Term.

Residual Funds [means any funds held at the date of the completion of the Programme]

[RPI means the specific index as published by the Office for National Statistics on a monthly basis for RPIX, failing such publication or in the event of a fundamental change to the index, such other index as the parties may agree, or such adjustments to the index as the parties may agree (in each case with the intention of putting the parties in no better nor worse position than they would have been had the index not ceased to be published or the relevant fundamental change not been made) or in the event that no such agreement is reached, as may be determined in accordance with the Dispute Resolution Procedure.]

Tariff Contribution means the sum to be levied on each new development within the boundaries of the Borough Councils and paid by the developer responsible for such development to Gravesham or Dartford (as the case may be).

Tariff Policy means a replacement policy to the Interim Tariff Policy which has gained the approval of the Executive Committee of the relevant Borough Council.

Term means the period from the date of this Agreement until the earlier of:

- (a) the parties agree that the goals set out in the Strategy have been completed;
- (b) [any Party ends it by giving the others at least [2 years] written notice;] and/or
- (c) the agreement is ended earlier under Clause 13 (*Termination*).

The term **in writing** means any communication made [on paper or by fax].

Works means the construction of the transport infrastructure necessary for the delivery of the Strategy.

Year means []

1.2 Interpretation

In this Agreement the following interpretations apply:

- 1.2.1 **Headings:** Headings are for ease of reference only and to be ignored when interpreting this Agreement.
- 1.2.2 **This Agreement:** References to this Agreement [or **] [or any other document] are references to this Agreement [or **] [or that other document], as varied, novated, supplemented or replaced from time to time.
- 1.2.3 **Clause, paragraph, Schedule or recital:** References to any Clause, paragraph, Schedule or recital are to those contained in this Agreement. All the Schedules are an integral part of this Agreement.
- 1.2.4 **This Clause:** The expression **this Clause**, unless followed by the number of a specific part of the Clause, refers to the whole clause in which it occurs.
- 1.2.5 **Successors in title and transferees:** Reference to any person, including a party, includes that person's successors in title and transferees (unless the transfer to the successor in title or transferee was in breach of this Agreement).
- 1.2.6 **Gender:** Reference to any gender includes the others.
- 1.2.7 **Ejusdem Generis:** The Ejusdem Generis rule does not apply to the interpretation of this Agreement. The words **include, including** and **in particular** indicate examples only. They do not limit the general nature of any preceding words. A phrase starting with the words **or other** or **otherwise** is not limited by any preceding words where a wider interpretation is possible.
- 1.2.8 **Related words:** Where this Agreement defines a word or expression, related words and expressions have a consistent meaning.
- 1.2.9 **[References to Indexation:** References to amounts expressed to be **indexed** are references to such amounts multiplied by:

$$Index_1/Index_2$$

where $Index_1$ is the value of [RPIX]¹ most recently published prior to the relevant calculation date and $Index_2$ is the value of [RPIX] on the date of this Agreement].

1.3 Status of this Agreement

- 1.3.1 This Agreement does not create binding legal obligations as between DfT and CLG. The Crown is separately represented in this Agreement only for administrative purposes.
- 1.3.2 Clause 1.3 shall not operate so as to restrict the Crown (as represented by DfT and/or CLG) from bringing proceedings against any of Kent, Gravesham and/or Dartford. Clause 1.3 shall not operate so as to restrict Kent, Gravesham and/or Dartford from bringing proceedings against the Crown (as represented by DfT and/or CLG).

2 Commencement and expiry of this Agreement

This Agreement begins on the date of this Agreement and shall continue for the Term.

3 Co-operation

The Parties agree to co-operate in accordance with this Agreement so as to achieve the delivery of the Kent Thameside Transport Strategy.

¹ Project specific. See advice from financial advisors.

4 Kent's responsibilities

4.1 Commissioning

- 4.1.1 Kent shall use its reasonable endeavours to procure the delivery of the Authority Projects in accordance with the Annual Programme during the Term of this Agreement provided that:
- (a) CLG meets its obligations in the Grant Letter;
 - (b) Kent is able to secure sufficient funding from the Programme Investment Fund or prudential borrowings (subject to Clause 4.1.3) so as to enable it to undertake the Authority Projects;
 - (c) the Borough Councils comply with their obligations in this Agreement;
 - (d) the Borough Councils have a Tariff Policy approved by their respective Executive Committees which will in the reasonable opinion of Kent provide Tariff Contributions of an amount at least equivalent to those forecast in the [Business Plan] to be due under the Interim Tariff Policy ;
 - (e) [the Borough Councils provide match funding as required by the Grant Letter]
 - (f) [DfT is in compliance with its obligations in this Agreement].
- 4.1.2 Kent may discharge its obligations to procure the Authority Projects by means of a contract with a third party [or an administrative arrangement with the Borough Council within which the Authority Project is to be undertaken].
- 4.1.3 Kent shall use prudential borrowings to fund an Authority Project where there is a shortfall between the projected costs of the proposed Authority Project and the monies available in the Programme Investment Fund provided that it shall be under no obligations to do so where:
- (a) such borrowing costs are in the opinion of Kent's [Chief Financial Officer] unreasonable; and
 - (b) such borrowings will cause Kent to breach the Prudential Code;
 - (c) it is in the all circumstances reasonable to do so.

In this sub-clause it shall not be reasonable for Kent to use prudential borrowings to fund Authority Projects where [].

4.2 Specification of the Authority Projects

- 4.2.1 Kent shall consult and seek to agree the Outline Specification for any Authority Project with the Borough Council within whose boundaries the Authority Project is to be undertaken.
- 4.2.2 When preparing the Outline Specification for any Authority Project, Kent shall have regard to the following factors:
- (a) whether, in its reasonable opinion, the proposed specification for the Authority Project will meet the goals of the Strategy;
 - (b) whether the proposed specification of the Authority Project represents value for money;
 - (c) the cost of the specification of the Project and the amount of money remaining in the Programme Investment Fund for the delivery of the Annual Programme; and

- (d) [the extent and amount of the contributions made by the Borough Council to the Programme Investment Fund within whose boundaries the Authority Project in question are to be undertaken].

- 4.2.3 On completion of the Outline Specification for any Authority Project Kent shall issue the Outline Specification to the Parties.
- 4.2.4 [Any Party which considers that the Outline Specification does not sufficiently take account of any of the factors in clause 4.2.2 shall notify Kent within 5 Business Day of the issue of the Outline Specification and the dispute shall be referred to the Dispute Resolution Procedure. Parties which do not notify Kent with 5 Business Days of the receipt of the Outline Specification shall be deemed to agree to accept its contents.]
- 4.2.5 [If after the matter has been referred to the Dispute Resolution Procedure in accordance with clause 4.2.4 the Borough Council in which the Authority Project is to be carried out remains unsatisfied with the Outline Specification it may issue Kent with a notice requiring the discontinuance of the Authority Project in question. On receipt of the such notice by Kent the Authority Project in question shall be deemed to be removed from the Annual Programme.]
- 4.2.6 Where the Parties have agreed the form of the Outline Specification (or have been deemed to agree) or where the matter has been determined by the Expert in accordance with Clause 24. Kent shall prepare the final specification for the Authority Project in question based on the Outline Specification.

4.3 Monitoring and Reporting

- 4.3.1 Kent shall measure its progress against the Authority Projects identified in the Local Programme and shall undertake such analysis of the development and transport data as is necessary to ensure that the Annual Programme will deliver the performance standards set out in the Strategy.
- 4.3.2 Kent shall prepare an annual report and shall issue it to the other Parties on the Reporting Date. The annual report shall:
 - (a) state Kent's progress against the Authority Projects identified in the Annual Programme;
 - (b) set out any variations which Kent considers necessary to the Annual Programme required to meet the standards and objectives set out in the Strategy;
 - (c) set out Kent's proposal for the use of the Programme Investment Fund for the following Year
 - (d) provide a forecast of the Programme Investment Funds income and expenditure for the following Year.

4.4 New Local Programmes

- 4.4.1 Kent shall prepare and submit to the other Parties a Draft Annual Local Programme 20 Business Days prior to Reporting Date. The Draft Annual Local Programme shall (among other things) address:
 - (a) the requirements of the Strategy;
 - (b) any issues arising from the Annual Report; and
 - (c) shall be subject to consultation with major developers that Kent or the Borough Councils consider to have a substantial development interest in the area.
- 4.4.2 Kent shall consult with the other Parties prior to preparing the Draft Annual Local Programme.

5 Department for Transport's responsibilities

5.1 Commissioning

- 5.1.1 The DfT shall use its reasonable endeavours to procure the delivery of the DfT Projects in accordance with Annual Programme, provided that:
- (a) [Kent is in compliance with its obligations under this Agreement];
 - (b) [the Borough Councils have a Tariff Policy approved by their respective Executive Committees which will in the reasonable opinion of DfT provide Tariff Contributions of an amount at least equivalent to those forecast in the [Business Plan] to be due under the Interim Tariff Policy]
 - (c) [the Borough Councils provide match funding as required by the Grant Letter]
 - (d) [The Borough Councils comply with their obligations under this Agreement].
- 5.1.2 DfT may discharge its obligations to procure any DfT Project by means of a contract with a third party [or an administrative arrangement with the Highway Agency].

5.2 Reporting

DfT shall prepare an annual report and shall issue it to the other Parties on the Reporting Date. The annual report shall:

- (a) state DfT's progress against the Authority Projects identified in the Annual Programme;
- (b) set out any variations which DfT considers necessary to the Annual Programme required to meet the standards and objectives set out in the Strategy;
- (c) provide a report of the monies expended in the previous Year;
- (d) provide a forecast for the expenditure of on DfT Projects for the forthcoming Year.

5.3 Specification of the DfT Projects

DfT shall consult and seek to agree the Outline Specification for any DfT Project with Kent.

5.4 New Regional Programme

- 5.4.1 DfT shall prepare and submit to the other Parties a Draft Annual Regional Programme 20 Business Days prior to Reporting Date. The Draft Annual Regional Programme shall (among other things) address:
- (a) the requirements of the Strategy;
 - (b) any issues arising from the Annual Report; and
 - (c) shall be subject to consultation with major developers that DfT, Kent or the Borough Councils consider to have a substantial development interest in the area.
- 5.4.2 DfT shall consult with the other Parties prior to preparing the Draft Annual Regional Programme.

5.5 Funding the Regional Programme

- 5.5.1 During the [first five years of the] Term of this Agreement DfT shall expend £26,000,000.00 (indexed)² on DfT Projects (in addition to the cost of completing the Bean Junction Works).
- 5.5.2 In undertaking any evaluation of a DfT Projects eligibility for funding from the sum referred to in Clause 5.5.1 DfT shall [appraise projects in such a manner so as to give due weight to the achievement of the performance standards and objects in the Strategy]

5.6 Bean Junction

- 5.6.1 DfT shall use its reasonable endeavours to prepare and develop and outline specification for the carrying out of the Bean Junction Works within [6] months of the date of this Agreement. On completion of the outline specification for the Bean Junction Works DfT shall circulate the outline specification to Kent and the Borough Councils.
- 5.6.2 When preparing the final specification for the Bean Junction Works DfT shall consider the incorporation of any amendment or variation proposed by Kent or the Borough Councils. DfT shall ensure that the final specification is consistent with the aims and objectives set out in the Strategy.
- 5.6.3 DfT shall procure that the Bean Junction Works are completed by [31 December] 2014.

6 Programme and Strategy

6.1 Agreeing the Kent Thameside Strategic Transport Programme

- 6.1.1 On the Reporting Date Kent shall issue to the other Parties a draft annual programme incorporating the Draft Local Annual Programme and [at Kent's discretion] the Draft Regional Annual Programme (the **Draft Annual Programme**). Kent shall ensure that the Draft Annual Programme reflects the Strategy [and Kent may make such amendments to the proposed DfT Projects set out in the Draft Regional Annual Programme as it considers reasonably necessary to meet the requirements of the Strategy].
- 6.1.2 Within 20 Business Days the Reporting Date the Parties shall meet to consider the Draft Annual Programme and shall use their reasonable endeavours to agree the Annual Programme for the following Year.
- 6.1.3 At the point at which the Parties agree (or are deemed to agree) the Draft Annual Programme then the Draft Annual Programme shall be the Annual Programme for the following Year.
- 6.1.4 If the Parties do not agree the Draft Annual Programme then Kent may within 10 Business Days of the meeting held pursuant to clause 6.1.2 issue a revised Draft Annual Programme.
- 6.1.5 If any of the Parties in receipt of Draft Annual Programme (or the revised Draft Annual Programme) disputes any part of the Draft Annual Programme (each a **Disputing Party**) they shall notify Kent within 15 Business Days of the meeting held pursuant to clause 6.1.2. Parties that do not dispute the Draft Annual Programme in accordance with this Clause 6.1.5 shall be deemed by Kent to agree the Draft Annual Report.
- 6.1.6 Within 10 Business Days of its receipt of a notification pursuant to Clause 6.1.5 or 6.1.8 Kent shall consider the reasons and shall notify the Disputing Party and shall either:
- (a) inform the Disputing Party of its intention to disregard the notice issued pursuant to clause 6.1.5 or 6.1.8 (together with its reasons for so doing);

² Are sums to be indexed? If so by what measure?

- (b) revise the Draft Annual Programme (or, as the case may be, the revised Draft Annual Programme) and re-issue it to the other Parties.

6.1.7 If the Disputing Party disagrees with the reasons given to it pursuant to Clause 6.1.6 (a) it may refer the issue to the Dispute Resolution Procedure. In the event that the Expert appointed determines the issue in favour of the Disputing Party he may order Kent to revise and re-issue of the Draft Annual Programme (or further revise and reissue the revised Draft Annual Programme, as the case may be) so as to meet the concerns of the Disputing Party, either in whole or in part.

6.1.8 Where the Expert requires Kent to revise and reissue the Draft Annual Report to the other Parties. Any Disputing Party shall notify Kent within 5 Business Days of the date of receipt of the revised and reissued report held. Disputes shall be dealt with in accordance with Clauses 6.1.6, 6.1.7 and 6.1.8 until the Draft Annual Programme is agreed (or the Parties are deemed to agree). Parties that do not dispute the revised and reissued Draft Annual Programme in accordance with this Clause 6.1.8 shall be deemed by Kent to agree to the content of the Draft Annual Report.

6.2 Revising the Strategy

[The Parties may from time-to-time agree to the revision and updating of the Strategy.]

7 CLG's responsibilities

7.1 Grant letter

CLG shall provide grant funding to Kent in accordance with the terms of the Grant Letter.

7.2 Match funding

[CLG shall use its reasonable endeavours to assist with the collection of the match-funding]

7.3 Any other CLG obligations?

8 Borough Council responsibilities

8.1 Tariff contributions

8.1.1 [The Borough Councils shall use their reasonable endeavours to secure the payment to Kent of match funding sums specified as being required from the Borough Councils]

8.1.2 Within 10 Business Days of the receipt of any Tariff Contribution each Borough Council shall pay such money to Kent.

8.2 Alternate contributions

8.2.1 During the Term of this Agreement the Borough Councils shall apply the Interim Tariff Policy or the Tariff Policy so as to secure Tariff Contributions except for where a Borough Council is able to secure from a developer an alternate contribution which:

- (a) involves, in the reasonable opinion of the Borough Council, the carrying out of Works³; and

³ There may a risk that works procured in this manner could constitute a procurement to which the EU procurement rules would apply.

- (b) is, in the reasonable opinion of the Borough Council, of equivalent monetary value to that which the developer would be liable had the Interim Tariff Policy or the Tariff Policy been applied to the developer in question;

(an **Alternate Contribution**).

- 8.2.2 Before accepting an Alternate Contribution the Borough Council concerned shall consult with the Kent except and the other Borough Council, CLG and DfT and provide them with all necessary details of the works that are to form the Alternate Contribution (including without limitation the estimated cost of the procurement of the Alternate Contribution works [from a third party]).

8.3 Sustainable travel obligations

The Borough Councils shall use their reasonable endeavours to secure to secure by conditions and/or agreements attached to planning permissions arrangements to optimise sustainable travel so as to further the Strategy.

8.4 Tariff policy development

- 8.4.1 During the Term of this Agreement the Borough Councils shall keep under review the implementation and operation of the Interim Tariff Policy.
- 8.4.2 Where a Borough Councils wishes to implement with a replacement to the Interim Tariff Policy it shall, prior to seeking the approval for any replacement to the Interim Tariff Policy from its Executive Committees, the Borough Council shall consult with the Parties.

9 Programme funds

9.1 Programme fund

- 9.1.1 Kent shall hold and manage and the Programme Investment Fund and will only apply the Programme Investment Fund for the purpose of the Local Programme and for Programme Overheads subject to Clause 9.1.2
- 9.1.2 Kent may at the request of DfT and with the prior written agreement of both of the Borough Councils apply specified sums from the Programme Investment Fund to DfT Projects.
- 9.1.3 At any point during the Term Kent or either of the Borough Councils may make an additional contribution to the Programme Investment Fund.⁴

9.2 Programme fund Management

- 9.2.1 Within 1 Business Day of its receipt of any payment from a Borough Council pursuant to Clause 8.1.2 Kent shall credit the Programme Investment Fund with that money.
- 9.2.2 Kent shall use its reasonable endeavours to secure value for money when applying the Programme Fund Money to Works.
- 9.2.3 Kent may deduct Programme Overheads from the Programme Management Fund subject to a cap on the recovery of costs of [5%] of the Programme Investment Fund.^{5 6}

⁴ If a Council makes an additional contribution should they get their money out first (or some portion of it) prior to the Residual Funds being dispersed?

⁵ This would be better with an annual amount subject to inflation. Alternatively confirm whether it is 5% of the money held annually or over the term of the agreement. If the latter then the term would need to be finite.

⁶ Payment of Kent could give rise to procurement law issues.

9.3 Programme fund investment

- 9.3.1 Kent shall use its best endeavours to secure the best available interest rate on the Programme Investment Fund, subject to the requirement that the Programme Investment Fund shall not be invested in a manner which presents [an undue degree of risk to the capital]⁷⁸.
- 9.3.2 Kent shall add any interest accrued by Programme Investment Fund received net of tax⁹ to the Programme Investment Fund.

9.4 Programme fund accounting

- 9.4.1 Kent shall publish annually on the Reporting Date detailed audited accounts of the Programme Investment Fund showing all income and expenditure in relation to the Authority Project on an open book basis.

9.5 Residual funds

- 9.5.1 Within 20 Business Days Kent shall at the expiry of the Term, however it occurs:
- (a) apportion any sums held in the Programme Investment Fund between Gravesham and Dartford in proportion to the sums Gravesham and Dartford have contributed to the Programme Investment Fund; and
 - (b) pay such sums into accounts nominated by Gravesham and Dartford.
- 9.5.2 Prior to undertaking the apportionment referred to clause 9.4.1(a) Kent shall deduct from the Programme Investment Fund:
- (a) any liabilities arising from the Grant Letter which are payable by Kent (including but not limited to any clawback provisions therein)
 - (b) any outstanding Programme Overheads;
 - (c) the costs of the completion of any Authority Project that Kent has entered into a binding agreement in respect of;
 - (d) any other liabilities reasonably and properly incurred from the carrying out of its obligations under this Agreement;

(the **Programme Investment Fund Liabilities**) save to the extent that the Programme Investment Fund Liabilities have arisen by reason of Kent's negligence and/or breach of this Agreement.

- 9.5.3 Gravesham and Dartford shall only use sums paid to them in accordance with clause 9.4.1(b) for the furtherance of the Strategy, or where the aims of the Strategy have been substantially achieved, for the purposes of the further development of sustainable transport within their respective borough boundaries.
- 9.5.4 Any dispute concerning the apportionment of the Programme Investment Fund or the calculation of the Programme Investment Fund Liabilities shall be determined through the Dispute Resolution Procedure.

⁷ To be reviewed to ensure compliance with FSA Regulations.

⁸ Clarification to be sought as to the degree of risk that would be acceptable. MOU refers to avoiding the capital being compromised, but all investment involves risk. Should reference be made to investment with a Bank regulated under the Banking Acts?

⁹ Does this scheme have any tax implications?

10 Governance and Consultation protocol

10.1 Governance

The Parties shall comply with Schedule 2 (Governance Structure) for the duration of the Term

10.2 Consultation process

Kent shall develop and administer on behalf of the Parties a informal consultation process that shall enable the Parties to consult major property developers within the area on the question of future transport infrastructure requirement. Any Party to this Agreement may nominate parties to participate in these consultations.

11 No partnership or agency

Nothing in this Agreement, and no action taken under this Agreement:

- (a) creates a legal partnership;
- (b) creates a relationship of principal and agent between any of the Parties; or
- (c) otherwise authorises any party to bind any other party.

12 Changing this Agreement

No party may amend, change or waive any term of this Agreement without the written consent of the other Parties to it.

13 Termination

13.1 Right to end the Agreement

This Clause sets out certain circumstances which give a party a right to end this Agreement (a **Right to End**). A Right to End will arise by reference to the circumstances of one party (the **Affected Party**) and gives the other [party][Parties] the right to end this Agreement by giving written notice to the Affected Party. That notice has immediate effect.

13.2 Right to End

A Right to End arises where:

13.2.1 Kent has not undertaken a Authority Project by reason of the occurrence of any of the events or circumstance is Clause 4.1.1 (a) to (f) (inclusive) for the period of [two] Years

13.2.2 DfT has not undertaken a DfT Project by reason of the occurrence of any of the events or circumstance is Clause 5.1.1 (a) to (d) (inclusive) for the period of [two] Years

13.2.3 there is a [Material] breach of this Agreement and these three conditions are all met:

- (a) one party (the Affected Party) commits a [material] breach of [any term of] [any of Clauses ** of] this Agreement;
- (b) [the other] [another] party gives written notice to the Affected Party stating the nature of the breach[]; and
- (c) the Affected Party does not put right the breach to the satisfaction of the other [party] [Parties], acting reasonably, within ** [Business Days] after the date of the notice. If the [party] [Parties] giving the notice consider[s], acting reasonably, it is not

possible for the Affected Party to put right the breach, this third condition is met automatically.]

A party serving a notice of breach under this Clause or the next clause may specify that the notice is also a notice exercising any Right to End arising from the breach. That notice exercising the Right to End takes effect automatically when the Right to End arises.

13.3 **Other rights to end this Agreement**

The rights to end the Agreement in this Clause are additional to any other rights a party may have to end this Agreement.

13.4 **Effect of ending this Agreement**

When this Agreement ends:

- (a) the rights and duties set out in Clauses ** continue to be effective and enforceable; and
- (b) the Parties may enforce rights and liabilities arising from breaches of this Agreement that took place before the Agreement ended.

14 **No fetter of discretion**

Nothing in this Agreement shall be taken to fetter the ability of Kent, Dartford and Gravesham to carry out their respective statutory functions as local planning authorities or to restrict their the statutory rights or duties.

15 **Entire agreement**

15.1 **Entire agreement**

15.1.1 This Agreement sets out the entire agreement between the Parties. It supersedes all previous agreements between the Parties on the subject matter of this Agreement.

15.1.2 No other term, express or implied, forms part of this Agreement. No usage, custom or course of dealing forms part of or affects this Agreement.

15.2 **Representations and reliance**

15.2.1 The only claim, right or remedy available to a party for a representation expressly set out in this Agreement shall be damages for breach of contract.

15.2.2 Each party waives all claims, rights and remedies for all representations:

- (a) made to it by any person before entering into this Agreement; and
- (b) not set out in this Agreement.

Each party acknowledges that, in deciding to enter into this Agreement, it has not relied on any such representation.

15.2.3 This Clause does not exclude or restrict liability for fraudulent misrepresentation or fraudulent concealment.

16 Remedies and waivers

16.1 Waiver must be in writing

If a party breaches a term of this Agreement, the rights of each other party arising from that breach cannot be waived except:

- (a) with the express written consent of [the][that] other party; and
- (b) to the extent set out in that consent.

Waiver of one breach does not waive or imply waiver of any further or other breach.

16.2 Limited exercise is not a waiver

This Clause applies if a party becomes entitled to exercise any right or remedy under this Agreement or by law or regulation. No failure to exercise, no delay in exercise and no single or partial exercise of that right or remedy shall:

- (a) adversely affect that right or remedy;
 - (b) waive it; or
 - (c) prevent any further exercise of it or of any other right or remedy,
- except to the extent the Parties have expressly agreed otherwise in writing.

16.3 Rights and remedies are cumulative

The rights and remedies arising from this Agreement are cumulative. They are not exclusive of any other rights or remedies provided by law or otherwise [except to the extent this Agreement expressly states otherwise].

17 Payments

17.1 Time and manner of payment

17.1.1 When sums are due from either of the Borough Councils under this Agreement, they shall pay it:

- (a) for value on the due date;
- (b) to Kent's account at ** Bank plc of ** [insert address] (sort code **, account number **), or to any other account that Kent specifies;
- (c) in full, without, and free and clear of, any deduction for:
 - (i) set-off or counterclaim; and
 - (ii) any withholding for or on account of any tax, or any other deduction, unless law requires it.

17.1.2 If [Party A] must make a withholding or deduction referred to in Clause 17.1.1(c) because the law requires it, [Party A] shall:

- (a) ensure the withholding or deduction does not exceed the minimum amount the law requires; and
- (b) increase the amount payable so the net amount [Party B] receives and holds equals the amount it would have received and held if the law had not required the withholding or deduction.

17.2 Business Days

If any payment under this Agreement would become due on a day which is not a Business Day, it must be paid on the immediately preceding Business Day.

17.3 Interest on overdue amounts

17.3.1 If the either of the Borough Councils fails to pay any amount payable by it under this Agreement on its due date, interest shall accrue on the overdue amount:

- (a) daily;
- (b) from the due date until the date of payment (both before and after judgment);
- (c) at ** per cent per annum above the base rate from time to time of ** Bank [plc].

17.3.2 Any interest accruing under this Clause shall be compounded with the overdue amount on the last day of each month.

18 VAT

All amounts stated in this Agreement to be payable by one party (the Payer) to [another / the other] (the **Payee**) exclude VAT. If the Payee has to account for VAT on the supply for which the payment is the consideration:

- (a) when making the payment, the Payer must pay to the Payee, in addition to the amount stated, an amount equal to the VAT and
- (b) the Payee must provide a VAT invoice for the payment and VAT to the Payer.

[In this Clause, **VAT** means value added tax chargeable under the Value Added Tax Act 1994, and any similar or equivalent tax imposed in the United Kingdom or any other jurisdiction.]

19 Invalidity

[As long as the purpose of this Agreement is unaffected,]the invalidity, illegality or unenforceability of any provision of this Agreement [other than Clause **] under the law of any jurisdiction shall not affect the validity, legality or enforceability of:

- (a) any other provision of this Agreement under the law of that jurisdiction; or
- (b) any provision of this Agreement under the law of any other jurisdiction.

20 Third party rights

A person who is not party to this Agreement may not enforce any term of this Agreement under the Contracts (Rights of Third Parties) Act 1999. The Parties may rescind or change any term of this Agreement without the consent of a person who is not party to this Agreement.

21 Restrictions on transfer**21.1 Scope of restrictions**

This Clause applies to all rights, interests and duties under this Agreement or arising from it. In it, **transfer** means any form of transfer, including an assignment.

21.2 Restrictions on transferring a right or interest

No party may deal with a right or interest [except as allowed by this Clause,] whether by:

- (a) transfer;
- (b) charge or other encumbrance;
- (c) trust; or
- (d) in any other way.

22 Costs

Each party shall pay its own costs for the negotiation, preparation, execution and implementation of this Agreement.

23 Notices**23.1 All notices**

This Clause applies to all notices and other communications (except formal notices in legal proceedings) between the Parties under this Agreement (**Notices**). Notices must be in writing.

23.2 Delivery

Notices must be delivered by one of these methods:

- (a) by hand;
- (b) prepaid first class [Recorded Signed For] post;
- (c) [prepaid International Signed For post for an address outside the United Kingdom];
[or
- (d) fax].

23.3 Address for Notices

Notices must be addressed to the party to be served at one of the following:

- (a) if addressed to a company, at its registered office at that time;
- (b) if addressed to an individual, at the address given at the beginning of this Agreement or, if the party to be served has notified the other [party / Parties] of any replacement address [in the United Kingdom] for service of Notice, at the replacement address; or
- (c) at the fax number given at the beginning of this Agreement or, if the party to be served has notified the other [party / Parties] of any replacement fax number for Notices, at the replacement fax number].

23.4 When Notices take effect

A Notice delivered by hand is effective at delivery. A Notice sent by fax is effective on the next Business Day after the fax was sent. A Notice sent by post is effective

- (a) (for national mail) on the [second] Business Day after posting; and
- (b) (for international mail) on the [fifth] Business Day after posting.

24 Dispute Resolution Procedure

24.1 Appointment of the expert

- 24.1.1 In the event of there being any dispute between the Parties in respect of any matter pursuant to this Agreement such dispute shall be determined in accordance with this clause 20 and any party may at any time require by notice in writing to the other party an independent expert ("the Expert") to be appointed to resolve the dispute.
- 24.1.2 The Expert (who shall be a person having not less than ten (10) years experience of the type of dispute in question) may be agreed upon by the Parties and in default of such agreement within one (1) month of a requirement being made pursuant to clause 24.1 shall be appointed by the Director of *[insert body to make nomination]* on the application of any party made at any time after the said period of one (1) month.
- 24.1.3 If such dispute shall relate to matters concerning the construction, interpretation and/or the application of this Agreement the Expert shall be a barrister or a solicitor as agreed between the relevant Parties (or failing such agreement as determined by the Director of *[insert body to make nomination]*) and in any other circumstance shall be a member of such profession as the Parties may agree (or failing such agreement as determined by the Director of *[insert body to make nomination]*) is appropriate.
- 24.1.4 If the Expert nominated pursuant to such application shall die or decline to act or fail to make a decision as set out below another Expert may be appointed in his place as agreed between the relevant Parties.

24.2 Procedure

- 24.2.1 Notice in writing of his appointment shall be given by the Expert to the Parties and he shall invite each party to submit within a specified period (which will not exceed three (3) weeks) any written representations each wishes to make to him and any such submissions shall be provided to the other Parties with an invitation to respond within a specified period (not exceeding one (1) week).
- 24.2.2 The Expert shall act as an expert and not as an arbitrator and he shall consider any written representation submitted to him within the said specified period and shall not be in any way limited or fettered thereby and shall determine the dispute in accordance with his own judgement.
- 24.2.3 The Expert shall give notice in writing of his decision with reasons therefore to the Parties within one (1) month of his appointment or within such extended period as the Parties may together allow.
- 24.2.4 The decision of the Expert shall be final on all matters referred to him and in the absence of manifest error shall be binding on the Parties.

24.3 Costs

Each party shall bear their own costs of any dispute put before the Expert, save that the Expert shall have the power to award costs to one party if he decides that the other party has acted unreasonably. The fees of the Expert and of the Director of *[insert body to make nomination]* shall be at the award of the Expert.

25 Governing law

English law governs this Agreement and its interpretation.

26 Jurisdiction

The Parties irrevocably agree that the English courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Each party agrees to waive any objection to the English courts, whether on the grounds of venue or that the forum is not appropriate.

27 Execution of different copies

The Parties may execute this Agreement in any number of copies and on separate copies. Each executed copy counts as an original of this Agreement and all the executed copies form one [instrument].

[Signed by the parties or their authorised representatives

Signed by ** [name of)
signatory] authorised for)
** [name of company]

Signed by ** [name of)
individual])

][Executed as a deed and delivered on the date appearing at the beginning of this Deed.

The common seal of **)
[name of company] was affixed in)
the presence of:)

Director

Director/Secretary

Signed as a deed by **)
[name of party] in the presence of:)

Signature of witness:

Name of witness:

Address:

.....

.....

Schedule 1

[insert details of the programme]

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