

**KENT COUNTY COUNCIL AND OTHER STAKEHOLDERS
SUMMARY REPORT OF CONTRACTUAL TERMS SET OUT IN THE
OVERARCHING AGREEMENT FOR FASTRACK TUNNELS WORKS**

NOTES

- (1) The following is not intended to be a substitute for reading / referring to the executed Overarching Agreement (“OA”) and should be read in conjunction with the same.
- (2) This document is intended to be a high-level summary of the key provisions of the OA and is not intended to cover the legal, financial or technical aspects of the OA.
- (3) The terms of the OA reflect the agreed positions as negotiated between the parties.
- (4) The OA is bespoke to the requirements of Kent County Council (“KCC”) Ebbsfleet Development Corporation, (“EDC”), Blueco Limited (“Blueco”) and Bluewater Outer Area Limited (“BOAL”) and is not based on an "industry standard" form of contract.

The authorised officers of KCC, EDC and Blueco/Bluewater have had several project meetings to negotiate and agree the terms of the Overarching Agreement. Graham Killick, Shane Hymers, Adeola Sonola (Invicta Law) acted on behalf of KCC.

1. Parties to the Overarching Agreement (“OA”)

- 1.1 The Kent County Council (“KCC”), Ebbsfleet Development Corporation (“EDC”), BLUECO LIMITED (“Blueco”) and Bluewater Outer Area Limited (“BOAL”); (the “Parties”)
- 1.2 The Parties have entered into the OA to agree the terms and provisions relevant for the construction and delivery of the works for a new bus, pedestrian and cycle connection between Eastern Quarry and Bluewater by means of constructing a new fastrack tunnel under the B255 (the “Works”).
- 1.3 KCC will receive funding from EDC and Blueco to construct and deliver the Works. Blueco and BOAL own the land where the tunnel will be constructed.

2. Duration

- 2.1 KCC will commence constructions of the Works on the Effective Date. In the OA, the Effective Date is defined as the date on which all conditions precedent have been satisfied or waived by the Party for whose benefit the relevant condition precedent has been inserted. The condition precedents are set out in clause 2 of the OA.
- 2.2 The Works are to be delivered by 31 August 2021 (Target Date).
- 2.3 The Target Date is subject to an extended period of two years, defined in the OA as the “Long Stop Date”. If KCC fails to deliver the fastrack tunnel by the Longstop Date, then it will be in breach of the OA. Please see paragraph 8 below.

3. Construction of the Works

- 3.1 KCC is to follow a duly compliant tender process under the Public Contracts Regulations 2015 to appoint a construction company to construct and deliver the Works ("Works Contractor").
- 3.2 KCC will procure Balfour Beatty under the SCAPE Framework Agreement to construct the fastrack tunnel. The industry standard NEC 4 form of contract (including additional KCC clauses and other stakeholder requirements) will form the executed Works contract between KCC and Balfour Beatty ("Works Contract").
- 3.3 KCC will apply to register title to the land within which the new tunnel is to be constructed and, as owner, will charge bus operators for the use of the new tunnel.

4. Funding

- 4.1 The Funding available to KCC for the construction of the tunnel is in the sum of £14,080,000.00 in total.
- 4.2 The Parties have entered into a separate funding agreement to deal with the relevant details associated with the funding for the Works.

5. Property Documents

- 5.1 A few property arrangements are required, and legal documents will be executed between the Parties to formalise these. The property documents include leases, mutual deeds, registration of titles, access, planning permission and other required consents.
- 5.2 Diane Hayes (property lawyer at Invicta Law) with client's instructions is acting for KCC in relation to formalise these documents.

6. Contract Management

- 6.1 KCC is in-charge of appointing the Works Contractor to construct the tunnels. KCC will apply for planning permissions and other required consents necessary for the construction of the tunnels/delivery of the Works.
- 6.2 The Works will be supervised by KCC and other professional teams appointed by KCC and nominated by the other Parties.
- 6.3 KCC will procure that the Works Contractor comply with Blueco's requirements attached to the Works Contract as additional provisions.
- 6.4 The Parties shall meet regularly and through other governance arrangements set up to discuss the progress of the construction and deal with any related issues.
- 6.5 The OA provides for Step-In Rights, if KCC fails to perform or deliver the tunnels. This is dealt with in clause 16 of the OA.

7. Dispute Resolution

- 7.1 By agreement of the Parties, all disputes shall be referred to any independent person set out in clause 34.2 of the OA.
- 7.2 All disputes shall be governed in accordance with English Law.

8. Termination

- 8.1 KCC can terminate the OA if EDC and Blueco fail to provide the funding required to construct the tunnel and deliver the Works.
- 8.2 The consequences of termination by KCC are (i) to reinstate the tunnel/land and (ii) to refund to EDC and Blueco all the funding received up to the date of the termination, including legal costs paid by EDC and Blue in entering the OA. This is covered in particular by clause 16.10 of the OA.
- 8.3 The Parties can terminate the OA if by the Long Stop Date, KCC fails to finish the construction of the fastrack tunnel as set out in clause 13 of the OA.
- 8.4 The consequences of the termination in paragraph 8.3 shall be the same as those set out in paragraph 8.2 above. These are set out in clause 13.10 of the OA.
- 8.5 The mitigation for KCC in relation to the consequences of termination in the OA is to ensure that there are back to back provisions in the Works Contracts to pass on these liabilities to the Works Contractor (Balfour Beatty).

9. Interest

- 9.1 If KCC fails to perform, KCC shall be liable to pay Interest on the funding in accordance with clause 13.2.1 until such time that all the funding (including any interest payable thereon) has been paid back to EDC and Blueco.
- 5.2 Interest will be charged at the rate of 4% over the base rate of the Bank of England from time to time (as well after as before judgment), or such other comparable rate as Blueco may reasonably designate if the base rate ceases to be published, compounded at quarterly rests on 31 March, 30 June, 30 September and 31 December in each year.
- 5.3 The mitigation for KCC in relation to this interest rate set out in the OA is to ensure that there is a back to back provision in the Works Contracts to pass on this interest rate to Works Contractor (Balfour Beatty).

10. Insurances

- 10.1 Under the OA, KCC in relation to the delivery of the Works, shall insure in the joint names of KCC, Blueco and BOAL the Works - covering Public Liability, Professional Indemnity and Employment.
- 10.2 The obligation in paragraph 10.1 above will be passed on to the Works Contractor under the Works Contract.

11. Statutory Compliance

During the construction of the Works, KCC will and shall procure that Balfour Beatty and other procured professionals comply with the provisions of the law and ensure that the Works Contract enables KCC to bring actions against them for all claims, demand, proceedings, damages, costs, charges and expenses whatsoever in respect of any breach.

12. **Boilerplate**

The OA contains the usual boiler-plate terms to govern notices, a duty to mitigate losses, etc. record-keeping, data protection, dispute resolution, assignment and terms on expiry/termination. The OA provides for meetings and liaison.

I therefore conclude that the Overarching Agreement is in a form suitable for the Kent County Council to enter into, as it reflects the position agreed between the parties during negotiations.

***Adeola Sonola
Invicta Law Limited
27 June 2019***