

2nd April

2025

Side Agreement relating to
Pelham Street, Newark

National Highways Limited ⁽¹⁾ and
Nottinghamshire County Council ⁽²⁾

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DATE 2.4.2025

PARTIES

- (1) **National Highways Limited** (Company Registration No. 09346363) whose registered office is Bridge House, 1 Walnut Tree Close, Guildford, Surrey GU1 4LZ (**National Highways**)
- (2) **Nottinghamshire County Council** whose registered office is County Hall, Loughborough Road West Bridgford Nottingham Nottinghamshire NG2 7QP (**Nottinghamshire County Council**)

BACKGROUND

- (A) National Highways submitted an application for development consent in relation to the A46 Newark Bypass Scheme (**A46 Scheme**) in April 2024.
- (B) The A46 Scheme traffic forecast indicates that there may be an increase in the modelled traffic flows in Pelham Street, Newark, between the morning peak time of 07:30 to 08:30 and the evening peak time of 16:30 to 17:30 as a result of the A46 Scheme.
- (C) The aim of this Agreement is to outline how National Highways will monitor the traffic conditions along Pelham Street determine whether any such traffic increase occurs and if required how mitigation measures will be agreed and provided .

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

- 1.1 In this Agreement, the following expressions shall have the following meanings:

A46 Application	means the application for a development consent order or such other order as may be required together with all ancillary consents and approvals for the A46 Scheme;
A46 Scheme	means the works to upgrade approximately 6.5 kilometres of highway between Farndon Junction and the existing A1, including widening, the provision of a new section of off-line carriageway between the western and eastern sides of the A1, the enlargement and signalisation of roundabouts at Farndon and Winthorpe, grade separation of Cattle Market Roundabout and the tie in of the new dual carriageway into the existing A46 together with all ancillary and supporting works subject to the A46 Application;
Automatic Traffic Counter	means an automatic means of counting traffic numbers;
Expert	means a chartered surveyor being a member of the Royal Institution of Chartered Surveyors or an engineer being a member of the Institute of Civil Engineers or practising barrister with at least ten years' experience in the construction or measurement of, or legal issues relating to works of a similar type to the Infill Works and/or valuation of property similar to the Property;
Business Day	means any day other than a Saturday or a Sunday on which the clearing banks in London are open for a full range of transactions;
Opening for Traffic	means the date that the works are deemed substantially complete by National Highways and the A46 Scheme is open for use by the public

subject to any partial or overnight closures needed to finalise any remedial works.

1.2 In this Agreement, unless the context otherwise requires:

- 1.2.1 words importing one gender include other genders;
- 1.2.2 words importing the singular include the plural and vice versa;
- 1.2.3 references to persons include bodies corporate and vice versa;
- 1.2.4 references to clauses, schedules and annexures are references to the relevant clause in or schedule or annexure to this Agreement;
- 1.2.5 reference to notice or notify mean notice or notification in writing;
- 1.2.6 unless otherwise specified, writing or written does not include email, fax or any other form of electronic communication;
- 1.2.7 National Highways does not include National Highways' successors in title;
- 1.2.8 obligations of a party comprising more than one person are obligations of such persons jointly and severally;
- 1.2.9 references to a statute directive or regulation include any amendment modification extension consolidation or re-enactment of it and references to any statute or directive include any statutory instrument regulation or order made under it for the time being in force;
- 1.2.10 the clause headings do not affect the construction of this Agreement; and
- 1.2.11 any obligation to pay a sum shall be construed so that sum is exclusive of any VAT and the paying party will pay VAT on the sum on production of a valid VAT invoice.

2. STATUTORY PROVISIONS

- 2.1 This Deed is made pursuant to the provisions of Section 111 of the Localism Act 1972, Section 16 of the Traffic Management Act 2004 and Section 1 of the Localism Act 2011 and all other statutory and enabling powers and shall be enforceable accordingly but without prejudice to all and any other means of enforcing them at law or in equity or by statute.

3. TERM

- 3.1 This Agreement shall commence on the date written above.

4. NATIONAL HIGHWAYS OBLIGATIONS

- 4.1 Prior to the A46 Scheme Opening For Traffic , National Highways will record the traffic flow on Pelham Street near the Mill Gate junction with an Automatic Traffic Counter.
- 4.2 The monitoring referred to at clause 3.1 above will be repeated by National Highways at the following points:
 - 4.2.1 within 3 months following the opening of the A46 Scheme; and
 - 4.2.2 within 12 months following the opening of the A46 Scheme.

- 4.3 The monitoring referred to in clauses 3.1 and 3.2 above will take place for two consecutive weeks during a month that falls outside of planned school holiday dates and national holidays.
- 4.4 National Highways will provide Nottinghamshire County Council with the results of each set of monitoring referred to in clauses 3.1 and 3.2 within 6 weeks of completion of that element of monitoring.
- 4.5 Within 4 weeks the Parties agree that they will meet to discuss and agree whether or not the results of the monitoring require any further steps to be taken to mitigate the increases in traffic flows PROVIDED THAT such a meeting will not be required if in the opinion of National Highways (acting reasonably) the results of the monitoring show a negligible increase in the traffic flows.
- 4.6 If, in accordance with clause 3.5 above:
- 4.6.1 the Parties agree that no mitigation is required or in the reasonable opinion of National Highways the results of the monitoring show a negligible increase in the traffic flows this Agreement will end and the Parties will have no further obligations under it; or
 - 4.6.2 the Parties agree that the results of the monitoring require mitigation to be implemented the Parties will cooperate to agree that mitigation PROVIDED THAT the Parties consider less invasive mitigation measures before more invasive measures are considered.
- 4.7 The Parties agree that the type of mitigation being considered is set out below:
- 4.7.1 adjustments to signal timings at the Portland Street and Lombard Street junction;
 - 4.7.2 installation of physical traffic calming measures may be considered along Pelham Street;
 - 4.7.3 road closure on Pelham Street;
 - 4.7.4 speed limits on Pelham Street; and
 - 4.7.5 speed humps.

5. NOTTINGHAMSHIRE COUNTY COUNCIL OBLIGATIONS

- 5.1 Nottinghamshire County Council consent to National Highways installing and retaining for as long as reasonably necessary any equipment required in order to carry out the monitoring referred to in clauses 3.1 and 3.2 of this Agreement.
- 5.2 Nottinghamshire County Council will work with National Highways and provide all reasonable assistance, including exercising its own powers where necessary, to implement any mitigation measures agreed in accordance with clause 3.6 of this Agreement.

5. COSTS

- 5.1 National Highways will be responsible for the proper and reasonable costs of the monitoring and mitigation required as part of this Agreement up to a maximum of £100,000.00 inclusive of any VAT required to be paid by National Highways.

6. TERM

- 6.1 Subject to clause 6.2, this Agreement will terminate on the date on which any right to appeal any final order quashing the grant of development consent for the A46 Scheme pursuant to s.118(1) of the Planning Act 2008 lapses.

6.2 If the grant of development consent for the A46 Scheme is quashed and the A46 Application is referred to the Secretary of State for re-determination, this Agreement will not terminate and will continue to apply unless and until the A46 Application is refused on redetermination or the circumstances in clause 6.1 apply once again to the re-determined A46 Application, save that the Parties may agree in so far as is reasonably necessary:

6.2.1 to vary the application of any part of this Agreement to the A46 Application as it is sought to be re-determined; or

6.2.2 that certain provisions of this Agreement will not apply or will only apply in part to the A46 Application as it is sought to be re-determined.

6.3 This Agreement will terminate 18 months after the Opening for Traffic of the Works unless otherwise agreed by the Parties.

7. CONFIDENTIALITY

7.1 Neither party will, without the prior consent in writing of the other, disclose any information acquired in consequence of or in contemplation of this Agreement or the contents of or existence of this Agreement, except:

- (a) where required by law;
- (b) where required by the rules and regulations of any securities exchange or regulatory authority or government body to which either party is subject;
- (c) where required to comply with the proper requirements of its auditors;
- (d) where required for the purpose of the A46 Application;
- (e) where required for the purposes of or in connection with the A46 Scheme or ancillary matters or consent relating to the A46 Scheme;
- (f) to the party's owners, investors, employees and/or officers to enable the party to comply with its obligations under this Agreement or carry on its business; and
- (g) to the extent that the information has come into the public domain through no fault of that party.

8. DISPUTE RESOLUTION

8.1 National Highways and Nottinghamshire County Council will act reasonably and in good faith at all times in respect of this Agreement.

8.2 In case of any dispute relating to this Agreement the parties will follow the procedure as detailed in this clause 8.2:

8.2.1 the parties agree to meet to discuss any dispute and agree to any meeting requested on not less than 5 Business Days written notice;

8.2.2 if initial discussions are not sufficient to resolve such dispute the parties agree that a senior representative with sufficient knowledge and authority in respect of the matter in dispute will attend a further meeting and cooperate in good faith with a view to resolving the dispute and such meeting will take place as soon as reasonably possible and within 10 Business Days of the request;

8.2.3 if the point at dispute is not resolved the parties agree to enter into mediation in good faith to settle such a dispute and will do so in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure. Unless otherwise agreed

between the parties within 15 Business Days' of notice of the dispute, the mediator will be nominated by CEDR; and

- 8.2.4 if following mediation pursuant to clause 8.2.3 the parties have still been unable to reach an amicable agreement either party may refer the matter for determination by an Expert.
- 8.3 The Expert will be appointed by National Highways and Nottinghamshire County Council jointly, or, in default of agreement between the parties within 5 Business Days' after service of notice of intention to refer the matter to the Expert (time being of the essence), at the request of either party:
 - 8.3.1 in respect of any dispute relating to materials or methodology of the works, by the President (or other acting senior officer) of the Institute of Civil Engineers;
 - 8.3.2 in respect of any dispute relating to price, valuation or planning matters, by the President (or other acting senior officer) of the Royal Institution of Chartered Surveyors; or
 - 8.3.3 in respect of any dispute relating to the interpretation of this Agreement or any other agreement between the parties the Chairman for the time being of the Bar.
- 8.4 The Expert will:
 - 8.4.1 act as an expert and determine the issue in dispute;
 - 8.4.2 consider all representations made in writing by, or on behalf of, the parties, which are delivered to him within any period stipulated by him; and
 - 8.4.3 use his reasonable endeavours to give his decision in writing to both parties as speedily as possible.
- 8.5 The parties will (and will procure that their agents, contractors and/or employees) provide the Expert with the assistance and documents that the Expert reasonably requires to reach his decision.
- 8.6 If the Expert dies, refuses, is unable to act, or does not deliver his decision within the time required by this clause:
 - 8.6.1 either party may apply to the President (or other acting senior officer) of the Royal Institution of Chartered Surveyors or Civil Engineers, or the Chairman for the time being of the Bar (as appropriate), to discharge the Expert and to appoint a replacement;
 - 8.6.2 this clause will apply in relation to the replacement Expert as if to the first Expert; and
 - 8.6.3 the procedure for appointment set out in this clause will be repeated as often as necessary.
- 8.7 The proper costs of the Expert will be payable by the parties in equal proportions, unless the Expert makes any other determination about responsibility for payment of them as between the parties.
- 8.8 The determination of the Expert will be final and binding on the parties, except in the case of manifest error or fraud.
- 9. NEGLIGENCE ETC.**
 - 9.1 Nothing in this Agreement imposes any liability on any of the parties with respect to any damage, cost, expense or loss which is attributable to the negligence, neglect or default of another party or

of any person in their employment, or of their contractors or agents, and any liability of any party under this Agreement will be reduced proportionately by the extent to which any damage, cost, expense or loss is attributable to the negligence, neglect or default of the other party or of any person in its employment, or of its contractors or agents.

10. GENERAL

Waiver

- 10.1 No waiver by any party of any provisions of this Agreement shall be binding unless made expressly in writing by the relevant party. No waiver by any party of any rights under this Agreement or arising out of any breach of this Agreement shall be considered as a waiver of any subsequent rights arising under the same or any other provision.

Amendment

- 10.2 This Agreement may not be renewed, extended, amended or otherwise modified except by an instrument in writing executed by each of the parties.

Governing Law and Jurisdiction

- 10.3 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by and shall be construed according to the laws of England and Wales and the parties hereby irrevocably submit to the exclusive jurisdiction of the English courts.

Notices

- 10.4 For the purposes of this Agreement any communications to be made between the parties shall be in writing and shall be sufficiently made if sent by pre-paid registered mail or recorded delivery, other agreed electronic means or by delivering the same by hand to the address of the party detailed in clause 10.7.
- 10.5 Subject to clause 10.6 notices shall be deemed to have been received in accordance with the following:
- 10.5.1 if delivered by hand – at the time of delivery;
 - 10.5.2 if sent by other electronic means, at the time agreed in writing by the parties;
 - 10.5.3 if sent by pre-paid registered mail or recorded delivery – on the date of receipt.
- 10.6 If the time of such deemed receipt is after 5.00pm on any Business Day at the place of receipt, or occurs on any day which is not a Business Day, notice shall be deemed to have been received at 10.00am on the first Business Day thereafter.
- 10.7 The addresses to which communications shall be sent shall be as follows:

In the case of: **National Highways**

██████████ (Senior Project Manager A46 Newark Bypass)
National Highways
2 Colmore Square
Birmingham
B4 6BN

In the case of: **Nottinghamshire County Council**

██████████ (Team Manager Transport Planning & Programme Development)
Nottinghamshire County Council

County Hall
Loughborough Road
West Bridgford
Nottinghamshire
NG2 7QP

or such other address, telephone number or as a party respectively may notify to the other in writing from time to time.

Severance

- 10.8 If any provision (or part of it) of, or pursuant to, this Agreement is or becomes unlawful, void or unenforceable, the legality, validity or enforceability of any other part of that provision or any other provision shall not be affected but shall continue in full force and effect.

Entire Agreement

- 10.9 This Agreement represents the entire agreement between the parties in relation to the subject matter hereof and supersedes any previous agreement or understanding between the parties in relation to all or any such matters. Each of the parties acknowledges and agrees that in entering into this Agreement, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement. Nothing in this clause 10.9, however, shall operate to limit or exclude any liability for fraud.

Counterpart Execution

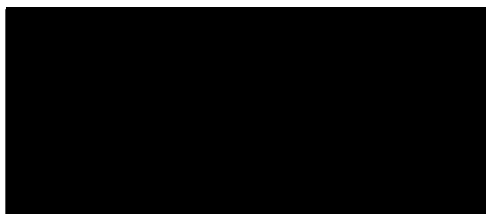
- 10.10 This Agreement may be executed in any number of counterparts with the same effect as if the signatures were upon a single engrossment of this Agreement but shall not be effective until each party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same instrument.

The Contracts (Rights of the Third Parties) Act 1999 (1999 Act)

- 10.11 No third party (as defined in the 1999 Act) except for any permitted successor or assignee of any party to this Agreement has any rights under the 1999 Act to enforce any term of this Agreement.

This Agreement was entered into on the date set out at the beginning of it

Signed for and on behalf of



SENIOR SELLER

Position

Signed for and on behalf of
National Highways Limited

.....

Name

.....

Position

This Agreement was entered into on the date set out at the beginning of it

Signed for and on behalf of

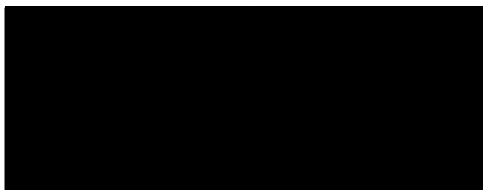
Nottinghamshire County Council

.....
Name

.....
Position

Signed for and on behalf of

National Highways Limited



.....
Position *Project Manager*