

**East Midlands Gateway Phase 2 – East Midlands Gateway Rail Freight Interchange Material Change**

**Leicestershire County Council comments on dDCO and dMCO and in response to actions assigned to LCC from ISH2 – Deadline 1 - 7<sup>th</sup> April 2026**

<b>Examination library reference</b>	<b>Document name</b>	<b>Leicestershire County Council (LCC) comments</b>
PDA-005D	DCO 3.1 Draft Development Consent Order (dDCO) (Revision 1)	<b>Requirements LCC consider to be missing from the DCO:</b> <ul style="list-style-type: none"><li>• <b>Public Rights of Way</b> – LCC raised concerns with the Applicant about the absence of a requirement for the implementation of works to Public Rights of Way. The Applicant is reliant on Schedule 5 of the DCO. LCC in its capacity as Local Highway Authority consider the commitment should be explicit in the Order and not implicit. This remains a matter of disagreement between LCC and the Applicant</li><li>• <b>Construction Traffic Management Plan (CTMP)</b> - LCC raised concerns with the Applicant about the absence of a requirement to implement the CTMP. LCC understands that the Applicant is considering amendments to Requirement 11 to address this matter. LCC is hopeful this will be addressed in a revised dDCO.</li><li>• <b>HGV Route Management</b> - LCC raised concerns with the Applicant about the absence of a requirement to control HGV routeing to and from the site. LCC understands that the Applicant is considering a Requirement to address this matter. LCC is hopeful this will be addressed in a revised dDCO.</li></ul>

		<ul style="list-style-type: none"> <li>• <b>Safeguarded land</b> – LCC understands that the Applicant will be including a requirement in the next revision of the dDCO to safeguard land along the EMG2 main site frontage with the A453 for future dualling. LCC reserves its position until a revised dDCO is submitted that reflects this change together with an associated plan.</li> </ul>
		<p><b>Requirement 4 - Sustainable transport</b> – LCC raised concerns with the Applicant that this requirement as drafted is overly complicated and would cause issues for monitoring and enforcement. LCC have requested that the Applicant separates out this requirement and includes separate requirements that cover sustainable transport/public transport provision and Travel Plans.</p>
		<p><b>Requirement 7 – Detailed Design Approval</b> – LCC raised concerns with the Applicant that reference to provision of a quantum of vehicle charging points</p>
		<p><b>Requirement 11 – Construction environmental management plan</b> – LCC has raised concerns with the Applicant that the commitment to implementation of the Site Waste Materials Management Plan, its review, and associated approval process, appears to be absent from the requirements. LCC understands that the Applicant is considering revisions to Requirement 11 and Requirement 24 to address this concern. LCC reserves its position until a revised dDCO submitted that reflects this change.</p>
		<p><b>Requirement 17 – Flood Risk and Surface Water Drainage</b> – LCC has consistently raised concerns with the Applicant regarding the wording of this requirement as reflected in [RR-002]. As currently drafted the wording only commits the Applicant to submitting details, and not implementation of works. LCC reserves its position until a revised dDCO submitted that reflects this change.</p>
		<p><b>Requirement 24 – Waste management during the operational phase</b> - LCC has raised concerns with the Applicant that the commitment to implementation of the Site Waste Materials Management Plan, its</p>

		<p>review, and associated approval process, appears to be absent from the requirements. LCC understands that the Applicant is considering revisions to Requirement 11 and Requirement 24 to address this concern. LCC reserves its position until a revised dDCO submitted that reflects this change.</p>
		<p><b>Requirement 27 – Mezannine</b> LCC and NWLDC have raised concerns with the Applicant that this requirement cannot be monitored or enforced, and on this basis LCC require assessment of the full quantum of development in PRTM2023 to understand impacts on the LRN.</p>
		<p><b>Article 2(26)</b> - LCC requires a 10-year compliance period for occupier travel plans to reflect the FTP. As per LCC comments on Q8.3.3, the FTP should be amended to require commitment from all subsequent occupiers of units within the 10-year period, and not just the first occupier.</p>
		<p><b>Article 13 – Accesses</b> - LCC understands that the Applicant is considering whether temporary construction access will be required to the LRN. LCC reserves the right to respond to this matter in detail once this information has been received.</p>
		<p><b>Article 19 – Discharge of water</b> -LCC is not aware of any proposed surface water discharge to combined systems. The Applicant should confirm this position.</p>
		<p><b>Article 38 – Felling or lopping of trees and removal of hedgerows</b> - LCC consider a 25m distance from the Order limits to allow works to trees and hedgerows to be excessive and unnecessary and the Applicant should reconsider this position. In addition, the Applicant should clearly document trees and hedgerows with the extents of the public highway for with LCC is responsible which could be impacted by this buffer. LCC reserves the right to respond to this matter in detail once this information has been received.</p>

		<p><b>Consultee in requirements</b> - LCC in its statutory capacity as Local Highway Authority would expect to be named as a consultee in all requirements relating to highways and transport. The Applicant should revisit the wording of requirements on this basis.</p>
		<p><b>Article 2(26)</b> - LCC requires a 10-year compliance period for occupier travel plans to reflect the Framework Travel Plan (FTP). As per LCC comments on Q8.3.3, the FTP should be amended to require commitment from all subsequent occupiers of units within the 10-year period, and not just the first occupier.</p>
		<p><b>Schedule 5 Part 1 Public Rights of Way</b></p> <ul style="list-style-type: none"> <li>• LCC have requested that the Applicant consider if L45/L57 can be granted cycle track designation in addition to PRoW designation i.e. if cycle track designation is granted, will these rights of way be lost from the definitive map</li> </ul>
		<p><b>Schedule 5 Part 2 New Public Rights of Way to be created</b></p> <ul style="list-style-type: none"> <li>• LCC have advised the Applicant that the proposed Public Right of Way between points 16 to 6 on Access and Rights of Way Plan sheet 1 of 2 [APP-037D] offers no wider public benefit and should</li> </ul>

		<p>be designated as a permissive path to be maintained by the Applicant is perpetuity. This is a matter of disagreement between LCC and the Applicant</p>
		<p><b>Schedule 13 Part 2 Protective Provisions</b></p> <p>LCC has raised the following concerns with the Applicant:</p> <ul style="list-style-type: none"><li>• Drafting is overly complex and will be difficult to manage/implement</li><li>• Drafting does not replicate LCC standard s278 provisions</li><li>• Drafting does not reflect LCC bond requirements as set out at: <a href="https://www.leicestershirehighwaydesignguide.uk/fees-and-charges">https://www.leicestershirehighwaydesignguide.uk/fees-and-charges</a></li><li>• LCC fees shall be set at 10% as is the LCC standard approach (and the standard approach of numerous Highway Authorities across the Country). LCC does not have the back-office systems or support to calculate and re-charge fees on a cost basis.</li><li>• No reference is made to the adopted LCC Highway Design Guide available at: <a href="https://resources.leicestershire.gov.uk/environment-and-planning/planning/leicestershire-highway-design-guide">https://resources.leicestershire.gov.uk/environment-and-planning/planning/leicestershire-highway-design-guide</a></li><li>• Definition of “as built drawings” is missing reference to:<ul style="list-style-type: none"><li>○ Landscape drawings</li><li>○ Highway drainage drawings</li></ul></li><li>• Commuted sums should be payable <u>prior</u> to the issue of a Final Certificate</li></ul>

		<p>A track changed version of the Protective Provisions can be found below.</p>
		<p><b>Miscellaneous controls</b> - Schedule 14 – Paragraph 2 LCC does not agree with the disapplication of Section 141 of the Highways Act 1980. LCC may require this power to implement works for the dualling of the A453.</p> <p>Schedule 14 – Paragraph 3 LCC does not agree with the disapplication of Section 56(1) and 1(A) of the New Roads and Street Works Act 1991 to remove requirements for road space booking approvals.</p> <p>Schedule 14 – Paragraph 3 LCC does not agree with the disapplication of Section 58(1) of the New Roads and Street Works Act 1991 to restrict works in 12 months following substantial completion of works. This could fetter delivery of works brought forward by LCC or third parties (including statutory undertakers) including works necessary for the safe operation of the public highway. This is also the case for Section 73A(1)</p> <p>Schedule 14 – Paragraph 3 LCC does not agree with the disapplication of section 74 and 74A of the New Roads and Street Works Act 1991. Charges will be made to cover the cost of road space booking process and procedures.</p>

PD-010	Rule 6 letter - R6D18	<b>Classification of local highways</b> – LCC understands that the Applicant will be re-titling article 15 (2) to read “classification of highways”. LCC reserves its position until a revised dDCO submitted that reflects this change
	Rule 6 letter - R6D19	<b>Signage</b> – LCC has sought confirmation from the Applicant of what existing signage on the Local Road Network is proposed to be amended
	Rule 6 letter - R6D34	<b>Schedule 1 – Work no. 18(b)</b> – LCC understands that the Applicant will be removing reference to “Maintained by the LHA”. LCC reserves its position until a revised dDCO submitted that reflects this change
PDA-007M	MCO 3.1 Draft Material Change Order (Revision 2)	LCC maintains that all proposed works at the existing EMG1 access should be captured in the MCO and not split between the MCO and the DCO. LCC awaits a response from the Applicant on this matter

**PART 1**  
**FOR THE PROTECTION OF THE LOCAL HIGHWAY AUTHORITY**

**Application**

The provisions of this Part of this Schedule have effect, and apply to the county highway works, unless otherwise agreed in writing between the undertaker and the local highway authority.

**Interpretation**

1.—(1) The terms used in this Part of this Schedule are as defined in article 2 (interpretation) of this Order save where inconsistent with sub-paragraph (2) which will prevail.

(2) In this Part of this Schedule—

“as built information” means one digital copy of the following information where applicable to the phase in question—

- (a) as constructed drawings in both PDF and AutoCAD DWG formats for anything designed by the undertaker;
- (b) list of suppliers and materials used, test results and CCTV surveys;
- (c) product data sheets, technical specifications for all materials used;
- (d) as constructed information for any utilities discovered or moved during the works;
- (e) method statements for works carried out;
- (f) in relation to road lighting, signs and traffic signals any information required by Series 1400 of the Specification for Highway Works;
- (g) plan of temporary signage indicating new road layouts;
- (h) organisation and methods manuals for all products used in the construction of the authorised development;
- (i) as constructed programme;
- (j) test results and records required by the detailed design information and during the construction phase of the project;
- (k) RSA3 and exceptions agreed; and
- (l) health and safety file;
- (m)

“the bond sum” means the sum equal to 110% of all the costs of the carrying out of the phase of the county highway works concerned and 100% of the commuted sum relating to that phase or such other sum agreed between the undertaker and the local highway authority;

“commuted sum” means such sum as calculated for each phase as provided for in paragraph 9(2) of this Part of this Schedule and to be used to fund the future cost of maintenance of the county highway works.

“contractor” means any contractor or sub-contractor appointed by the undertaker to carry out the county highway works or any phase of the county highway works and approved by the local highway authority in accordance with paragraph 3(2) of this Part of this Schedule;

“county highway works” means those parts of the authorised development to be carried out in the areas identified as Works Nos. 13 to 19 on the works plans, the general arrangement of which is shown on the highway plans general arrangement, and any ancillary works;

**Commented [RH1]:** Missing:  
Landscape drawings  
Highway drainage drawings

**Commented [RH2]:** See LCC s278 bond and fee requirements at:  
<https://www.leicestershirehighwaydesignguide.uk/fees-and-charges>

“detailed design information” means drawings, specifications and other information which shall be in accordance with the general arrangements of the county highway works shown on the highway plans general arrangement unless otherwise agreed between the local highway authority and the undertaker—

- (a) site clearance details;
- (b) boundary environmental and mitigation fencing;
- (c) road restraints systems and supporting Road Restraint Risk Appraisal Process assessment;
- (d) drainage and ducting;
- (e) earthworks including supporting geotechnical assessments required by HD22/08 and any required Strengthened Earthworks Appraisal Form certification;
- (f) pavement, pavement foundations, kerbs, footways and paved areas;
- (g) traffic signs and road markings;
- (h) traffic signal equipment and associated signal phasing and timing detail;
- (i) road lighting (including columns and brackets);
- (j) electrical work for road lighting, traffic signs and signals;
- (k) highway structures;
- (l) Stage 2 Road Safety Audit and exceptions agreed and, in the event that any works are not commenced within five years of the date of this Order comes into force, a further Stage 1 Road Safety Audit and exceptions agreed;
- (m) landscaping;
- (n) utilities diversions;
- (o) topographical survey;
- (p) identification of any land to be dedicated as highway; and
- (q) pre- construction health and safety information,

where relevant to the phase concerned;

“estimated costs” means the estimated costs in respect of each phase agreed pursuant to paragraphs 5(1) and (5) of this Part of this Schedule;

“the excess” means the amount by which the local highway authority estimates that the costs referred to in paragraph 5(1) of this Part of this Schedule will exceed the estimated costs pursuant to paragraph 5(5)(b) of this Part of this Schedule;

“nominated persons” means the undertaker’s representatives or the contractor’s representatives on site during the carrying out of the county highway works as notified to the local highway authority from time to time;

“phase” means that part of the county highway works which is to be carried out in separate phases in the areas identified as separate works numbers on the works plans or such other phasing arrangements as shall be agreed with the local highway authority;

“programme of works” means a document setting out the sequence and timetabling of the phase in question;

“Road Safety Audit” means an audit carried out in accordance with the Road Safety Audit Standard

“Road Safety Audit Standard” means the Design Manual for Roads and Bridges (DMRB) Standard GG 119 or any successor document;

“utilities” means any pipes, wires, cables or equipment belonging to any person or body having power or consent to undertake street works under the 1991 Act; and

“winter maintenance” means maintenance of the road surface to deal with snow and ice during the winter months.

### Prior approvals and security

2.—(1) No work must commence on any phase of the county highway works until the detailed design information and a programme of works in respect of that phase has been submitted to and approved in writing by the local highway authority.

(2) No works must commence on any phase of the county highway works other than by a contractor employed by the undertaker for that phase but first approved by the local highway authority.

(3) No work must commence on any phase of the county highway works until the local highway authority has agreed the bond sum for that phase and the undertaker has provided security for the carrying out of those works as provided for in paragraph 8 of this Part of this Schedule or some other form of security acceptable to the local highway authority

(4) No work must commence on any phase of the county highway works until a Stage 2 Road Safety Audit has been carried out in respect of that phase and all issues raised incorporated into an amended design approved by the local highway authority or any relevant exceptions approved by the local highway authority.

(5) No work must commence on any phase of the county highway works until a scheme of traffic management provisions has been agreed with the local highway authority.

(6) No work must commence on any phase of the county highway works until the local highway authority has approved the audit brief and CVs for all Road Safety Audits and exceptions to items raised if appropriate for that phase in accordance with the Road Safety Audit Standard.

(7) No works must commence on any phase of the county highway works until the undertaker has agreed the commuted sum for that phase with the local highway authority to be calculated in accordance with paragraph 9(2) of this Part of this Schedule.

(8) No works must commence on any phase of the county highway works until the undertaker had provided confirmation of ownership to the local highway authority for any land which is to be dedicated as highway following completion of the county highway works.

### Carrying out of works

3.—(1) The undertaker must prior to commencement of each phase of the county highway works give the local highway authority 28 days' notice in writing of the date on which that phase will start unless otherwise agreed with the local highway authority.

(2) The undertaker must comply with the local highway authority's usual road space booking procedures prior to and during the carrying out of each phase of the county highway works and no county highways works for which a road space booking is required must commence without a road space booking having first been secured and a permit in place.

(3) Each phase of the county highway works must be carried out to the satisfaction of the local highway authority in accordance with—

- (a) the relevant detailed design information and a programme of works approved pursuant to paragraph 3(1) of this Part of this Schedule or as subsequently varied by agreement between the undertaker and the local highway authority;
- (b) the Design Manual for Roads and Bridges (DMRB), the Specification for Highway Works (contained within the Manual of Contract Documents for Highways Works), all relevant interim advice notes, the Traffic Signs Manual and the Traffic Signs Regulations and General Directions 2016(1) and any amendment to or replacement thereof for the time being in force save to the extent that they are inconsistent with the highway plans general arrangement or a departure from such standards has been approved by the local highway authority;
- (c) such approvals or requirements of the local authority that are required by the provisions of paragraph 3 of this Part of this Schedule to be in place prior to the relevant phase of the county highway works being undertaken; and

**Commented [RH3]:** Need to include provision for submission of a works programme

**Commented [RH4]:** Reference to the Leicestershire Highway Design Guide must be included

- (d) all aspects of the Construction (Design and Management) Regulations 2015(2) or any statutory amendment or variation of the same and in particular the undertaker as client shall ensure that all client duties (as defined in the said regulations) are undertaken to the satisfaction of the local highway authority.

(4) The undertaker must permit and require the contractor to permit at all reasonable times persons authorised by the local highway authority (whose identity must have been previously notified to the undertaker by the local highway authority) to gain access to the land upon which the county highway works are being carried out for the purposes of inspection and supervision and the undertaker must provide to the local highway authority contact details of the nominated persons with whom the local highway authority should liaise during the carrying out of the county highway works.

(5) At any time during the carrying out of the county highway works the nominated persons must act upon any reasonable request made by the local highway authority in relation to the carrying out of the county highway works as soon as practicable following such request being made to the nominated persons or the undertaker's obligations in this Order.

(6) If at any time the undertaker does not comply with any of the terms of this Part of this Schedule in respect of any phase of the county highway works having been given notice of an alleged breach and an adequate opportunity to remedy it by the local highway authority, the local highway authority, on giving the undertaker 14 days' notice in writing to that effect, is entitled to either—

- (a) carry out and complete that phase of the county highway works and any maintenance works which the undertaker would have been responsible for on the undertaker's behalf; or
- (b) carry out such necessary works of reinstatement of the highways and other land and premises of the local highway authority,

and in either case the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(7) If at any time the undertaker, in carrying out any phase of the county highway works, causes any damage or disruption to the local road network not hereby authorised then the local highway authority is to give notice of such damage or disruption and allow the undertaker 14 days to remedy the problem. Should the undertaker fail to adequately remedy the problem to the satisfaction of the local highway authority, the local highway authority, on giving the undertaker 7 days' notice in writing to that effect, is entitled to carry out such necessary works deemed appropriate to remedy the damage or disruption, and the undertaker must within 28 days of receipt of the itemised costs pay to the local highway authority the costs so incurred by the local highway authority in undertaking this work.

(8) Nothing in this Part of this Schedule prevents the local highway authority from carrying out any work or taking such action as deemed appropriate, without prior notice to the undertaker, in the event of an emergency or danger to the public. The cost to the local highway authority of such work or action being chargeable to and recoverable from the undertaker if the need for such action arises from the carrying out of the county highway works.

(9) The undertaker, in carrying out each phase of the county highway works, must at its own expense divert or protect all utilities as may be necessary to enable the county highway works to be properly carried out, and all agreed alterations to existing services must be carried out to the reasonable satisfaction of the local highway authority.

(10) In the event that the local highway authority incurs additional costs in the winter maintenance of the highway as a result of traffic management measures regulating the phase concerned (over and above the costs that would have been incurred in the absence of the county highway works being carried out), the undertaker must reimburse the local highway authority those additional costs, such costs to include any administration costs incurred.

(11) The undertaker must notify the local highway authority of the intended date of opening of each phase to public traffic not less than 14 days in advance of the intended date and the undertaker must notify the local highway authority of the actual date that each phase is open to public traffic on each occasion within 14 days of that occurrence.

## Payments

4.—(1) The undertaker must fund the whole of the cost of the county highway works and all costs incidental to the county highway works and must also pay to the local highway authority in respect of each phase of the county highway works a sum equal to the whole of any costs and expenses which the local highway authority incur, including costs and expenses for using external staff and resources as well as costs and expenses of using in-house staff and resources in relation to the county highway works and arising out of them and their implementation on, including—

- (a) the checking and approval of all design work carried out by or on behalf of the undertaker for that phase;
- (b) costs in relation to agreeing the programme of works for that phase;
- (c) the carrying out of the inspection of that phase; and
- (d) all administrative costs in relation to paragraphs (a), (b) and (c),

together comprising “the estimated costs”).

(2) The undertaker must pay to the local highway authority upon demand and prior to such costs being incurred the total costs that the local highway authority believe will be properly and necessarily incurred by the local highway authority in undertaking any statutory procedure or preparing and bringing into force any traffic regulation order or orders necessary to carry out or for effectively implementing the county highway works provided that this sub-paragraph does not apply to the making of any orders which duplicate orders contained in this Order.

(3) The undertaker and the local highway authority must agree a schedule of the estimated costs to be incurred pursuant to sub-paragraph (1) in respect of each phase prior to the commencement of that phase.

(4) The undertaker must make the payments referred to in sub-paragraph (1) as follows—

- (a) the undertaker must pay a sum equal to the agreed estimated costs to the local highway authority prior to the local highway authority undertaking those tasks in respect of any phase of the county highway works;
- (b) if at any time or times after the payment in respect of a phase referred to in paragraph (a) has become payable, the local highway authority reasonably estimates that the costs in respect of that phase referred to in paragraph (1) above will exceed the estimated costs for that phase, it may give notice to the undertaker of the amount by which it then reasonably estimates those costs will exceed the estimated costs (“the excess”) and the undertaker must pay to the county highway authority within 28 days of the date of that notice a sum equal to the excess.

(5) Within 30 days of the issue of the final certificate for each phase of the county highway works pursuant to paragraph 7 of this Part of this Schedule the local highway authority must give the undertaker a final account of the costs referred to in sub-paragraph (1) and within 28 days from the expiry of the 30 day period—

- (a) if the account shows a further sum as due to the local highway authority the undertaker must pay to the local highway authority the sum shown due to it in that final account; and
- (b) if the account shows that the payment or payments previously made have exceeded those costs the local highway authority must refund the difference to the undertaker.

(6) If any payment due under any of the provisions of this Part of this Schedule is not made on or before the date on which it falls due the party from whom it was due must at the same time as making the payment pay to the party to whom it was due interest at 1% above the rate payable in respect of compensation under section 32 (rate of interest after entry on land) of the 1961 Act for the period starting on the date upon which the payment fell due and ending with the date of payment of the sum on which interest is payable together with that interest.

## Provisional certificate and defects and maintenance period

5.—(1) As soon as each phase of the county highway works has been completed and—

- (a) a Stage 3 Road Safety Audit for that phase has been carried out;
- (b) any resulting recommendations have been complied with and any exceptions agreed;

**Commented [RH5]:** As discussed with the Applicant, this cannot be agreed. LCC does not have the back office systems or resource to support recharge of fees on a cost basis. This must be set at a flat % fee in line with the above and as per LCC standard s278 requirements

**Commented [RH6]:** Where is this phasing set out for the County highway works?

- (c) the undertaker has provided a plan clearly identifying the extent of any land which is to become highway maintainable at public expense by the local highway authority upon the issue of the final certificate referred to in paragraph 7 of this Part of this Schedule;
- (d) the undertaker providing confirmation that any additional land which is to be dedicated as highway maintainable at public expense is so dedicated; and
- (e) the as built information has been provided to the local highway authority,

the local highway authority must issue a provisional certificate of completion in respect of that phase of the county highway works such certificate not to be unreasonably withheld or delayed.

(2) Subject to sub-paragraph (3) the undertaker must at its own expense remedy any and all defects and of any and all imperfections and all other faults arising out of defective design materials or workmanship or of any other nature whatsoever (which includes all damage to the highway whether accidental or otherwise (but only that attributable to defective design materials or workmanship and including winter maintenance)) in that phase of the county highway works as reasonably required to be remedied by the local highway authority and identified by the local highway authority during a minimum period of 12 months from the date of the provisional certificate in respect of that phase and until such time as a Final Certificate is issued.

(3) The local highway authority will provide to the undertaker all information on any accident or incident resulting in damage to the highway which occurs in any phase of the county highway works during the period of 12 months referred to in sub-paragraph (2).

(4) The undertaker must submit Stage 4 Road Safety Audits for each phase of the county highway works as required by and in line with the timescales stipulated in the Road Safety Audit Standard. The undertaker must comply with the findings of the Stage 4 Road Safety Audits and be responsible for all costs of and incidental to such audits.

#### Final Certificate

6.—(1) The undertaker must apply to the local highway authority for the issue of the final certificate in respect of each phase at the expiration of the 12 month period in respect of that phase referred to in paragraph 6(2) of this Part of this Schedule or, if later, on the date on which any defects or damage arising during that period which are the responsibility of the undertaker under the provisions of paragraph 6 of this Part of this Schedule have been made good to the reasonable satisfaction of the local highway authority.

(2) If the provisions of sub-paragraph (1) are satisfied the local highway authority must issue a final certificate for the phase of the county highway works concerned, such certificate not to be unreasonably withheld or delayed.

#### Security

7.—(1) Subject to paragraph 3(3) of this Part of this Schedule the undertaker must provide security for the carrying out of the county highway works as follows—

- (a) prior to the commencement of each phase, the county highway works within that phase must be secured by a bond from a bondsman first approved by the local highway authority drafted substantially as detailed in Form 2 contained in paragraph 15 of this part of this Schedule, or such other form that may be agreed between the undertaker and the local highway authority, to indemnify the local highway authority against all losses, damages, costs or expenses arising from any breach of any one or more of the obligations of the undertaker in respect of that phase of the county highway works under the provisions of this Part of this Schedule, provided that the maximum liability of the bond does not exceed the bond sum relating to that phase.

(2) Each bond sum is to be progressively reduced as follows—

- (a) on receipt of written confirmation (including receipt of receipted invoices evidencing payments made by the undertaker to the contractors) from the undertaker of the payments made from time to time to the contractor (“the submission”), the local highway authority, may in writing authorise the reduction of the bond sum by such proportion of the bond sum as amounts to 75% of those payments provided that—

**Commented [RH7]:** See bond requirements in link above. LCC will accept as drafted but the Applicant may wish to reconsider

- (i) there is not more than two submissions of written confirmation to the local highway authority during each phase of the county highway works;
  - (ii) an evaluation of the county highway works completed and remaining has been carried out by the undertaker and audited and agreed by the local highway authority to ensure that the stage of completion of the works is relative to the payments made by the undertaker to the contractors (the local highway authority will only be required to provide the said authorisation if it is satisfied that the monies remaining secured by the bond sum will be sufficient to cover all remaining costs and liabilities anticipated to be incurred in completing the county highway works plus an additional 10%); and
  - (iii) the operation of paragraph (a) will not enable the overall reduction of the bond to be greater than 70% of the original bond sum;
- (b) within 20 working days of completion of each phase of the county highway works (as evidenced by the issuing of the provisional certificate in respect of that phase pursuant to paragraph 6(1) of this Part of this Schedule) the local highway authority must in writing release the bond provider from its obligations in respect of 75% of the bond sum relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date; and
- (c) within 20 working days of the issue of the final certificate for each phase of the county highway works referred to in paragraph 7 of this Part of this Schedule the local highway authority must in writing release the bond provider from all its obligations in respect of the bond relating to that phase save insofar as any claim or claims have been made against the bond or liability on its part has arisen prior to that date.

#### **Commuted sums**

8.—(1) Prior to the issue of the final certificate in respect of any phase the undertaker must pay to the local highway authority any commuted sums payable in respect of that phase calculated as provided for in subparagraph (2).

(2) The rates to be applied in calculating the commuted sums payable must be calculated in accordance with the local highway authority's commuted sum calculator or as otherwise agreed between the undertaker and the local highway authority prior to commencement of work on any phase.

#### **Insurance**

9. The undertaker must prior to commencement of the county highway works effect public liability insurance with an insurer in the minimum sum of £10,000,000.00 (ten million pounds) for any one claim against any legal liability for damage loss or injury to any property or any person arising out of or in connection with the execution of the county highway works or any part thereof by the undertaker.

#### **Indemnification**

10.—(1) The undertaker must in relation to the carrying out of the county highway works take such precautions for the protection of the public and private interest as would be incumbent upon it if it were the highway authority and must indemnify the local highway authority from and against all costs, expenses, damages, losses and liabilities arising from or in connection with or ancillary to any claim demand action or proceedings resulting from the design and carrying out of the county highway works, provided that—

- (a) the foregoing indemnity shall not extend to any costs, expenses, liabilities and damages caused by or arising out of the neglect or default of the local highway authority or its officers, servants, agents or contractors or any person or body for whom it is responsible;
- (b) the local highway authority must notify the undertaker upon receipt of any claim ; and
- (c) the local highway authority must, following the acceptance of any claim, notify the quantum thereof to the undertaker in writing and the undertaker must within 14 days of the receipt of such notification pay to the local highway authority the amount specified as the quantum of such claim.

## Warranties

11. The undertaker must procure warranties from the contractor and designer of each phase to the effect that all reasonable skill, care and due diligence will be exercised in designing and constructing that phase including the selection of materials, goods, equipment and plant such warranties to be provided to the local highway authority before that phase commences.

## Approvals

12.—(1) Any approvals, certificates, consents or agreements required or sought from or with the local highway authority pursuant to the provisions of this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing save that any such approvals, certificates, consents or agreements shall be deemed to have been given if it is neither given nor refused within 42 days of the specified day.

(2) In this paragraph “specified day” means—

- (a) the day on which particulars of the matter are submitted to the local highway authority under the provisions of this Part of this Schedule; or
- (b) the day on which the undertaker provides the local highway authority with any further particulars of the matter that have been reasonably requested by the local highway authority or within 28 days of the date in paragraph (a),

whichever is the later.

## Expert determination

13.—(1) Article 45 (arbitration) does not apply to this Part of this Schedule except in respect of subparagraph (5).

(2) Any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use best endeavours to do so within 21 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 28 days of the notification of the dispute.

(4) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert’s appointment;
- (b) permit a party to comment on the submissions made by the other party within 21 days of receipt of the submission;
- (c) issue a decision within 42 days of receipt of the submissions under paragraph (b); and
- (d) give reasons for the decision.

(5) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 46.

(6) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

14. Form 2 as referred to in paragraph 8—

<i>Bond – Local Authority Highway</i>
BY THIS BOND [ ] [(Company Regn No )] whose registered office is situate at [ ] (“the undertaker”) and [ ] [(Company Regn No )] whose registered office is situate at [ ] (“the Surety”) are jointly and severally bound to [ ] of [ ] (“the [ ]”) this [ ] day of [ ] 200[ ]

in the sum of [ ] pounds (£[Surety Sum]) to the payment of which sum the undertaker and the Surety hereby jointly and severally bind themselves their successors and assigns

WHEREAS under a Development Consent Order known as the East Midlands Gateway Phase 2 and Highway Order 20[ ] (“the DCO”) the undertaker is empowered to commence execute perform and complete the highway works mentioned therein in such manner and within such time and subject to such conditions and stipulations as are particularly specified and set forth in the DCO and also to pay to the local highway authority such sums as are therein provided

NOW THE CONDITIONS of this Bond are such that if the undertaker shall duly observe and perform all the terms provisions covenants conditions and stipulations of Part 3 of Schedule [13] to the DCO on the undertaker’s part to be observed and performed according to the true purport intent and meaning thereof or if on default by the undertaker the Surety shall satisfy and discharge the damages sustained by the local highway authority thereby up to the amount of this Bond then this obligation shall be null and void but otherwise shall be and remain in full force and effect in accordance with the provisions of the DCO (and including any reductions as provided for in the DCO) but no allowance of time by the local highway authority under the DCO nor any forbearance or forgiveness in or in respect of any matter or thing concerning the DCO on the part of the local highway authority shall in any way release the Surety from any liability under this Bond

It is hereby agreed that this Bond will be reduced and released in accordance with paragraph 8 of Part 2 of Schedule 13 to the DCO.

[Attestation]