



MetroWest+

Portishead Branch Line (MetroWest Phase 1)

TR040011

Applicant: North Somerset District Council

9.36 ExA.FI.D5.V1 – Draft Heads of Terms between the Applicant and Forestry Commission

Author: Ardent Management Limited

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20/01/2021

Draft Heads of Terms for an Agreement to grant Licences for temporary occupation, access, rock picking and vegetation clearance works, Compensatory planting activities and whitebeam planting on the Forestry Commission’s land.

Agreement Structure

SUBJECT TO CONTRACT – 15 FEBRUARY 2021

An Overarching Agreement (the Agreement) will be entered into between the parties (incorporating the commercial terms set out below) which will:

1. Grant the Council access for surveys, investigations and environmental mitigation works necessary to prepare for works in connection with the MetroWest Phase 1 railway project for the reinstatement, reopening and thereafter the operation of the railway line from Parson Street Junction to Portishead “the MetroWest Scheme”
2. Grant the Council a right to call for grants of Access Licences and/or Works Licences at any time during the first ten years of the agreement for works to the Avon Gorge in connection with the MetroWest Scheme
3. Document agreement that the Forestry Commission will undertake the enhanced Habitat Regulations Assessment (HRA) Compensatory Activity as detailed in a ten year Woodland Management Plan between the parties and Whitebeam Planting (at the Council's cost) subject to a right of step-in for the Council if the Forestry Commission is unable to or does not carry out the agreed works
4. Grant the Council rights of access to monitor and (if necessary) undertake the HRA Compensatory Activity works for the period of the Woodland Management Plan and the Whitebeam Planting works for a period of ten years following completion of the planting works.
5. Long term arrangement with Network Rail Infrastructure Limited (Network Rail) regarding access and inspection (to be recorded by separate agreement)

The agreements between the Landowner and the Council (excluding the long term arrangements to be agreed for Network Rail's access and inspection will be for a total aggregate period of up to 20 years (subject to prior termination by the Council)

A Deed of Grant will only be required if the Secretary of State for Environment Food and Rural Affairs confirms this is necessary to document any of the various grants detailed in the Heads of Terms as below (decision TBC).

<p>Address / Premises:</p>	<p>Land at Leigh Woods, Abbots Leigh Road, Abbots Leigh, BS8 3QB, title number AV227327 and on shown edged magenta on the attached plan named 'The_Forestry_Commission_R2_20052020', dated 20.05.20 Revision 02 (“the Plan”)</p>
<p>The Landowner</p>	<p>The Secretary of State for the Environment Food and Rural Affairs c/o The Forestry Commission (“the Forestry Commission”) 620 Bristol Business Park, Bristol, BS16 1EJ acting through Forestry England</p>

Subject to Contract

Landowner's Agent :	Laurence Platt MRICS FAAV Assistant Land Agent West England Forest District Forestry England Bullers Hill, Kennford, Devon, EX6 7XR t: 0300 067 6620 m: 07884 234737 laurence.platt@forestryengland.uk
The Landowners Solicitor:	Michelmores LLP, Woodwater House, Pynes Hill, Exeter, EX2 5WR
North Somerset District Council	North Somerset District Council ("The Council") Registered Office: Ground Floor, Castlewood, Tickenham Road, Clevedon, BS21 6FW
North Somerset District Council's Agent:	Nicola Harrington BSc (Hons) MRICS FAAV Correspondence address: Ardent Management Ltd Office 7.12, Civic House 156 Great Charles Street Queensway Birmingham B3 3HN nicolaharrington@ardent-management.com Tel: 07717 681581
North Somerset District Council's Solicitor:	Gareth Miles Womble Bond Dickinson (UK) LLP Temple Quay, Temple Back East, Bristol BS1 6DZ gareth.miles@wbd-uk.com Telephone: 0117 989 6854
TERMS	
Agreement	The agreement will: a) Grant the Council access for surveys, investigations and environmental mitigation works (per section 6 below);

Subject to Contract

	<p>b) Grant to the Council the Option to call on Access and Work Licences for the Option Period (per sections 1 to 3 below);</p> <p>c) Govern the undertaking, maintenance and monitoring of the Compensatory Works and Whitebeam Planting for a period of up to 20 years from the date of the agreement (per section 4 and 5 below); and</p>
<p>1. Options</p>	<p>Option to call for Access Licences and Work Licences for an initial duration of 2 years with the ability for the Council to extend this if required for the works (period of extension to be agreed). The Council will have the right to access for a further year to rectify defects.</p> <p>Access Licence:</p> <p>Subject to the Council giving at least 14 working days advance emailed notice to the Landowner, except in the case of emergency, of dates of proposed occupation, duration of the occupation, number of parking spaces required, health and safety arrangements and the nature of plant and machinery to be used, the access licences will allow the Council:</p> <ol style="list-style-type: none"> 1. To obtain access to the Avon Gorge with or without vehicles using the route as shown coloured brown on the Plan (or any other route as agreed between the parties) and for temporary use by the Council of up to 7 spaces in the Landowner's Public car park as shown denoted by plots 11b/20 and 11b/25 coloured brown on the Plan and Inset 1 on the Plan as a parking area/small site compound area for the Council during their required works on site. Subject to the Council not using the Landowner's Public Car park at weekends or peak periods of time (as determined by the Landowner) (save in the case of emergency access) both parties acting reasonably. In the event that the Landowner requires the use of the Public Car Park for other purposes during proposed periods of occupation the Landowner may, subject to providing suitable alternative parking areas within the Premises which, using reasonable endeavours, shall not be materially less convenient, relocate the occupation to areas outside the Public Car Park. 2. To allow the Council use of the Secondary Site Compound area edged in red on the plan attached entitled "secondary site compound and access plan" along with access to this shown coloured blue.

	<p>3. To use the up to 4 spaces in the Landowner's staff car park as shown coloured in red on the attached plan entitled "Forestry Commission car park area" along with access to this for parking vehicles at the weekend and in the week. This right subject to the same caveats set out at 1 above.</p> <p>The Access Licence will also enable the Council to get to the Landowner's land for the Works Licence (as defined below) and the Landowner will also grant access for the Council to use the access route coloured brown for the Council to get to any adjoining or neighbouring land not part of the Premises or cross over the land shown coloured green on the Plan to get to any adjoining or neighbouring land not part of the Premises for similar works of installing rock bolts on the gorge face, rock picking and vegetation clearance close to the railway premises together with installing rock catch fencing. Provided always that the Access Licence does not materially prejudice the Landowner's commercial forestry activity and is subject to ensuring correct Health and Safety procedures and other reasonable conditions (which shall be set out in the Agreement) are followed by both parties.</p> <p>4. In the event of an emergency, prior forestry operations or unavoidable conflict which shall result in the Council being unable to exercise the rights granted, the Landowner shall be entitled to defer access by the Council for a short period (such period to be determined based upon reasonable determination of when access may safely be available).</p> <p>The Access Licence would be granted by the Landowner to the Council and its authorised contractors and sub-contractors to include Network Rail (and Network Rail's contractors) .</p> <p>The grant of the Access Licence will be conditional on the Council obtaining any necessary statutory or third party consents prior to any access being taken and subject to the provision of all Certificates of Competence.</p> <p>A loss of income payment of £REDACTED per car park space per day for any spaces occupied by the Council in the Public car Park or the Landowner's Staff car park will be made to the Landowner following any temporary occupation by the Council during their required works on site.</p> <p>In addition of the use by the Council of the car parking spaces as set out above, the Council will also be able to use the Secondary site compound as shown edged red for their parking requirements or site compound /</p>
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	<p>storage and the additional access to this shown coloured blue on the secondary site compound and access plan attached and will pay a licence fee of £REDACTED per week .</p> <p>In the event of the licence terminating or concluding prior to the expiry of any one year the Landowner shall not be obliged to reimburse any part of these payments.</p> <p>The Landowner may review these payments every three years, adjusting them in accordance with changes in the retail price index.</p> <p>The Landowner shall have the right to deny access to the Council, subject to providing suitable alternative dates, and only in circumstances where access would cause unavoidable environmental disturbance, significant ground damage or disruption to the Landowner's planned operational activity.</p> <p>The Council shall notify the Landowner of the actual occupation of the Public carpark, Landowners staff carpark and secondary carpark at the end of each month. The Landowner shall invoice the Council quarterly in arrears for the occupation of their land.</p> <p>In exercising the rights granted, the Council and its contractors will use reasonable endeavours not to obstruct or block any part of the access roads at any times</p> <p>Conditions to be agreed between the parties setting out the frequency and during of any access pursuant to these rights during the Licence period.</p> <p>Works Licence</p> <p>5. By way of separate Licence (as determined by the Council) a Works Licence for the Council to undertake rock picking, vegetation clearance works and installation of rock bolts (the Works) on parts of the Landowner's land as shown coloured green on the Plan ("Works Licence").</p> <p>The Works Licence would be granted by the Landowner to the Council and its authorised contractors and sub-contractors to include Network Rail (and Network Rail's contractors) .</p> <p>The grant of the Works Licence will be conditional on the Council obtaining any necessary statutory or third party consents and the provision of certificates of competence prior to any access being taken which</p>
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	<p>shall be in accordance with the Landowners reasonable conditions (to be set out in the Agreement)</p> <p>Access and any temporary land use under the Works Licence will be by prior written / emailed agreement with the Landowner in relation to specific dates and works required, both parties acting reasonably, and upon provision of methods statements, risk assessments and adequate public liability insurance</p> <p>Following expiration of the Works Licence and defects period, the Works installed will become the property of the Landowner. The Landowner will need to replace any rock bolt when any of the assets become life expired (60 years)</p> <p>There will be no ongoing works, maintenance or monitoring of the affected land by the Council and any liability would revert back to the Landowner.</p> <p>Conditions to be agreed between the parties setting out the frequency and during of any access pursuant to these rights during the Licence period.</p> <p>6. An agreement for monitoring and maintenance of the Compensatory activities and tree planting, for:</p> <p>in the case of the Compensatory activities the period of the Woodland Management Plan and</p> <p>In the case of the tree planting a period of ten years following completion of the planting works.</p>
<p>2. The Option Period</p>	<p>The Option Period for the Access and Works Licences will be for 10 years.</p> <p>The Options for the above licences may be exercised individually or collectively as required by the Council at any time during the Option Period by service of an Option Notice on the Landowner.</p> <p>The Option Notice shall be in a form produced by MetroWest Phase 1 Project Solicitors.</p>
<p>3. Option Fee</p>	<p>£REDACTED to be paid to the Landowner on completion of the Agreement.</p>
<p>4. Habitat Regulations Assessment Compensatory Activity</p>	<p>Compensatory Works The Landowner will (at the cost of the Council) carry out positive management involving woodland habitat enhancement (as detailed in the ten year Woodland</p>

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	<p>Management Plan between the Council and the Forestry Commission documenting works agreed by the Council, the Landowner and Natural England as per the Avon Gorge Vegetation Management Plan) outside of the Avon Gorge Woodlands Special Area of Conservation as shown edged and coloured blue on the Plan.</p> <p>The maximum area required for the Habitat Regulations Assessment (HRA) Compensatory Activity is currently based on the Council (or the Landowner on behalf of the Council) carrying out Compensatory activities on an area of approximately 1.45 ha ("Compensatory Activities Area") out of the 4.15 ha as identified as being required for the Compensatory Activity on the Plan.</p> <p>The Council agrees to pay all and any proper and reasonable costs accrued by the Landowner as a result of carrying out the Compensatory Works, not limited to staff time, materials, operational charges and subcontractors costs, upon the provision of invoices either directly from subcontractors or from the Landowner.</p> <p>Step in right If following payment of all required costs by the Council the Landowner is unable to or does not carry out the agreed works as detailed in the ten year Woodland Management Plan then the Landowner will permit the Council (and will grant such rights as are required to permit such access) to enter on to the Compensatory Activities Area to carry out the required works and the Forestry Commission will reimburse the Council any unexpended capital. No reimbursement will arise in relation to money already expended by the Landowner to comply with their obligations.</p> <p>Such access and rights to be subject to the deferral of access provisions referred to above and other conditions governing access by the Council.</p> <p>Monitoring and maintenance For the duration of the works as detailed in the ten year Woodland Management Plan regarding the Compensatory Activity, the Council will be granted access by the Landowner to monitor the Compensatory Activities and (if required) to exercise the step-in rights to undertake the same.</p> <p>Access off the A369 and potentially temporary parking and location of site welfare facilities as detailed in the Access Licence will be required by the Council for monitoring and maintenance works.</p>
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	<p>Access and any temporary land use to carry out the Compensatory Activity works will be by prior written / emailed agreement by the Landowner in relation to specific dates, access duration and works required, both parties acting reasonably.</p> <p>Localised fencing may be required to be erected by the Council on the Landowner's land for tree protection purposes, this will be left in situ and become the property of the Landowner at the end of the maintenance and monitoring period if still required for tree protection. The Council will be liable for any reasonable costs involved with the Landowner erecting and maintaining and eventually decommissioning and removing suitable fencing as required, both parties acting reasonably</p> <p>Subject to the MetroWest Scheme standard compensation provisions, the Council will indemnify the Landowner for any loss or damage to any third party, contractor or employee as a result of the presence of the fencing during the Woodland Management Plan and subsequent monitoring period.</p> <p>The Compensatory Activity rights in the event of step-in would be granted by the Landowner to the Council and its authorised contractors and sub-contractors to include Network Rail (and their contractors and sub-contractors).</p> <p>The Landowner will have the right to withdraw from undertaking the Compensatory Activity works subject to any repayment of any unexpended funds back to the Council. This is to account for unknown changes in workforce, internal company policy or any other factors that would impede delivery of the works. The Landowner would provide 12 months' notice to the Council of this intention to withdraw from undertaking the works and the Landowner will grant to the Council (or such third party as the Council may nominate) such rights as the Council may reasonably require to enable it to undertake the Compensatory Activity works.</p>
<p>5. Whitebeam Planting</p>	<p>The Landowner will (at the cost of the Council) carry out Whitebeam Planting (as agreed by the Council with Natural England and documented between Council and Natural England within the Avon Gorge Vegetation Management Plan) within the Avon Gorge Woodlands Special Area of Conservation as shown coloured yellow on the Plan currently comprising a red oak plantation ("Whitebeam Planting Agreement").</p>

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	<p>The Landowner will at the cost of the Council (scope of works and costs to be agreed in advance between the parties) fell and remove the existing red oak trees and make the ground suitable and then plant whitebeam trees on the area. Planting proposals are as detailed in the Avon Gorge Vegetation Management Plan.</p> <p>The Council agrees to pay all and any proper and reasonable costs accrued by the Landowner as a result of carrying out the Whitebeam Planting, not limited to staff time, materials, operational charges and subcontractors costs, upon the provision of invoices either directly from subcontractors or from the Forestry Commission.</p> <p>Step in right If following payment of all required costs by the Council, the Landowner is unable to or does not carry out the agreed works then the Forestry Commission will permit the Council to enter on to the relevant land and will grant relevant rights to the Council to carry out the required works and the Landowner will reimburse the Council the unexpended funds.</p> <p>Such access and rights to be subject to the deferral of access provisions referred to above and other conditions governing access by the Council.</p> <p>Monitoring and maintenance Following the works as detailed regarding the Whitebeam Planting being completed, the Council will be granted access by the Landowner to undertake any necessary re-planting and monitor the works for a minimum 10 year period to expire no later than 20 years from the date of the Agreement. In the event that re planting is required, the Landowner shall undertake such activity upon reasonable request from the Council and subject to the Council covering the Landowner's reasonable costs in doing so.</p> <p>Access off the A369 and potentially temporary parking and location of site welfare facilities as detailed in the Access Licence will be required by the Council for monitoring, replanting and maintenance works.</p> <p>Access and any temporary land use to carry out the Whitebeam Planting works will be by prior written / emailed agreement by the Landowner in relation to specific dates, access duration and works required, both parties acting reasonably.</p>
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	<p>Localised fencing may be required to be erected by the Council on the Landowner's land for tree protection purposes, this will be left in situ and become the property of the Landowner at the end of the maintenance and monitoring period if still required for tree protection.</p> <p>The Council will be liable for any costs involved with the Landowner erecting, maintaining, decommissioning and removing the fencing as required, both parties acting reasonably.</p> <p>Subject to the MetroWest Scheme standard compensation provisions, the Council will indemnify the Landowner for any loss or damage to any third party, contractor or employee as a result of the presence of the fencing during the monitoring period.</p> <p>The Whitebeam Planting rights in the event of step-in would be granted by the Landowner to the Council and its authorised contractors and sub-contractors to include Network Rail (and their contractors and sub-contractors).</p> <p>The Landowner will not be liable if the Whitebeam trees fails to establish following being planted by them as above.</p>
<p>6. Survey / Mitigation Access under the Option</p>	<p>The Landowner will agree to allow access for surveys, investigations and environmental mitigation works necessary to prepare for works in connection with the MetroWest Scheme upon 10 working days' notice and subject to agreement on the method statement and means of access.</p>
<p>7. General Conditions in respect of the above separate agreements</p>	<ol style="list-style-type: none"> 1. Reinstatement. The Council to reinstate any areas used for temporary occupation, access or where any damage has been caused by the Council to no worse a condition as existed prior to access as evidenced by a schedule of condition. 2. Schedule of Condition. The Council will undertake a photographic schedule of condition of the access route and any areas to be used on a temporary basis or used to undertake works prior to entry / the beginning of the relevant licences and will supply a copy of the record to the Landowner for approval. 3. Termination. The Council will notify the Landowner's Agent when access / works are finalised and any reinstatement works have been completed to the Landowner's reasonable satisfaction in accordance

	<p>with Clause 7.1 above and this will be the termination date of a particular Licence Agreement.</p> <p>4. Alienation. The Landowner and the Council will have the ability to assign the Agreement to any successors in title during the Agreement subject to approval by the other party (not to be unreasonably withheld).</p> <p>5. The Agreement will be protected on the Landowner's title by way of a unilateral notice and restriction.</p>
8. Assignment and Subletting	The Council will have the ability to assign, sub-let or share all agreements/options referred to above with Network Rail and any appointed contractor or sub-contractor of the Council and Network Rail
9. Alterations	Alterations will be permitted in line with the agreed use in each agreements as applicable.
10. Fees	<p>The Council will pay reasonable legal costs, surveyors costs and staff cost fees (plus any unrecoverable VAT as applicable) as reasonably required for the Landowner in relation to the completion of the Agreement in line with individual cost and fee undertaking to be provided by the Council.</p> <p>The Council agrees to pay Laurence Platt's properly incurred professional charges of £REDACTED per day (£REDACTED per hour) in relation to the completion of the Agreement</p>

Signatures

The Landowner (printed name).....

Signed..... Date

The Forestry Commission (printed name).....

Signed..... Date

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The Council (printed name).....

Signed..... Date

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