

DATED _____ **200**

THE OXFORDSHIRE COUNTY COUNCIL

- and -

VALE OF WHITE HORSE DISTRICT COUNCIL

Draft Agreement
under Section 101 of the Local Government Act 1972
and Section 19 of the Local Government Act 2000
relating to maintenance and management of Bury Street, Abingdon

Additional Notes

- 1. Plan of Bury Street to be attached.*
- 2. Existing policies and protocols to be attached.*

42629

P G Clark
County Solicitor
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS AGREEMENT is made the _____ day of

Two Thousand and

BETWEEN:-

- (1) **THE OXFORDSHIRE COUNTY COUNCIL** (“the County Council”)
- (2) **VALE OF WHITE HORSE DISTRICT COUNCIL** (“the District Council”)

1. **Interpretation**

In this Agreement:-

- 1.1 “the 1980 Act” means the Highways Act 1980
- 1.2 “Bury Street” means the highway shown outlined in blue on the plan attached to this Agreement (and any part of it) and includes all highway drainage and street lighting located at Bury Street
- 1.3 “the Commencement Date” means the date of issue of the Certificate of Completion (as defined in the Section 278 Agreement)
- 1.4 “the County Council” means the Oxfordshire County Council whose principal office is at County Hall New Road Oxford OX1 1ND and any successor to its statutory functions as highway authority and any duly appointed employee or agent of the County Council or such successor
- 1.5 “Delegated Functions (Maintenance)” means the functions described in Schedule 1 to this Agreement in respect of Bury Street
- 1.6 “Delegated Functions (Management)” means the functions described in Schedule 2 to this Agreement in respect of Bury Street
- 1.7 “the District Council” means Vale of White Horse District Council whose office is at Abbey House Abbey Close Abingdon Oxfordshire OX14 3JE

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1.8 “including” means including without limitation or prejudice to the generality of any preceding description defining term phrase or word(s) and ‘include’ shall be construed accordingly

1.9 “Index Linked” means adjusted according to any increase occurring between April 2012 and the date of payment to the Council in a composite index comprised of the following indices of the Monthly Bulletin of Indices Prices Adjustment Formulae for Construction Contracts (1990 Series) published on behalf of the Department of Business, Innovation and Skills weighted in the proportions below set out against each such index namely:-

Index 1	Labour & Supervision	25%
Index 2	Plant & Road Vehicles	25%
Index 3	Aggregates	30%
Index 9	Coated Macadam & Bituminous Products	20%

or if at any time for any reason it becomes impracticable to compile the said composite index then an index compiled in such other manner as may be agreed in writing by the County Council and the District Council

1.10 “Section 278 Agreement” means an agreement pursuant to inter alia Section 278 of the 1980 Act dated [REDACTED] 2012 and made between the County Council (1) and the District Council (2)

1.11 Any reference to an enactment includes any amendment to or modification of it and the version of it for the time being in force shall apply

1.12 Headings in this Agreement will be for convenience only and shall not be taken into account in its construction and interpretation

1.13 Reference to clauses sub-clauses and schedules are references to clauses sub-clauses and schedules in this Agreement

1.14 Where the context so requires:-

1.14.1 the singular includes the plural and vice versa

1.14.2 the masculine includes the feminine and vice versa

1.14.3 persons includes bodies corporate associations and partnerships and vice versa

1.15 Words denoting an obligation on a party to do any act matter or thing include an obligation to procure that this is done and words placing a party under restriction include an obligation not to cause permit or allow infringement of this restriction

2. **Preliminary**

2.1 For the purposes of the 1980 Act the County Council is the highway authority for Bury Street and for the purposes of the New Roads and Street Works Act 1991 the County Council is the street authority for Bury Street

2.2 The District Council is an urban authority for purposes of Section 161 of the Public Health Act 1875 – *please can this be confirmed by the Vale*

2.3 Pursuant to Section 101 of the Local Government Act 1972 and Section 19 of the Local Government Act 2000 the County Council has resolved to delegate to the District Council the power to discharge the Delegated Functions (Maintenance) and the Delegated Functions (Management) in accordance with the provisions of this Agreement and the District Council has decided to discharge the Delegated Functions (Maintenance) and Delegated Functions (Management) in accordance with the provisions of this Agreement

2.4 This Agreement is entered into pursuant to Section 101 of the Local Government Act 1972 Section 19 of the Local Government Act 2000 and Section 98 of the 1980 Act and all other enabling powers

3. **Agency**

- 3.1 The County Council hereby delegates to the District Council the power to discharge the Delegated Functions (Maintenance) in accordance with the provisions of this Agreement and the District Council accepts the delegation of the Delegated Functions (Maintenance) subject to the provisions of this Agreement
- 3.2 The County Council hereby delegates to the District Council the power to discharge the Delegated Functions (Management) in accordance with the provisions of this Agreement and the District Council accepts the delegation of the Delegated Functions (Management) subject to the provisions of this Agreement
- 3.3 The District Council shall act as the agent of the County Council in the discharge of the Delegated Functions (Maintenance) and Delegated Functions (Management)

4. **Commencement and Operation**

- 4.1 This Agreement shall operate on and from the Commencement Date until it is determined as follows:-
- 4.1.1 forthwith on written notice from the County Council in the case of any substantive breach by the District Council
- 4.1.2 by the County Council giving not less than 12 months prior written notice to the District Council to take effect from 1 April in any year subject always to compliance with the notice requirements in Section 98(5) of the 1980 Act
- 4.1.3 by the District Council giving not less than 12 months prior written notice to the County Council to take effect from 1 April in any year

subject always to compliance with the notice requirements in Section 98(5) of the 1980 Act

- 4.2 In the event of determination of this Agreement further to either clause 4.1.1 or 4.1.3 prior to the expiry of 30 years from the Commencement Date (or in the event that the District Council undertake maintenance of Bury Street further to Section 42 of the 1980 Act) the District Council shall pay to the County Council on the determination of the Agreement (or commencement of maintenance further to Section 42 as applicable) the sum calculated as follows:

$$\text{£ } \frac{(38,947.00 \times A)}{30} \text{ Index Linked}$$

Where A is the number of years from the date of termination of the Agreement or commencement of maintenance as applicable to the expiry of 30 years from the Commencement Date rounded up to the nearest whole number

- 4.3 If at any time it appears to the County Council that the District Council is materially in default of its obligations under this Agreement the County Council may take such action as appears to be reasonably necessary to remedy such default and may recover its reasonable costs in so doing from the District Council subject always to the default continuing after the County Council has given not less than 21 days notice (or in case of emergency such notice if any as is practicable) of the steps it requires to be taken to remedy the default

For information this is compliant with Section 98(3) of the 1980 Act

- 4.4 Termination of this Agreement will be without prejudice to continuing liability for any antecedent breach and the provision of clause 8.

5. **Performance of Delegated Functions (Maintenance)**

5.1 The District Council will perform the Delegated Functions (Maintenance) and will undertake them with all due skill care and diligence in accordance with the provisions of this Agreement and so as to ensure compliance with the duty to maintain specified in Section 41 of the 1980 Act in respect of Bury Street and also the duty to remove snow, soil etc., from the highway specified in Section 150 of the 1980 in respect of Bury Street

5.2 The Delegated Functions (Maintenance) will be exercised with as little disturbance as reasonably practicable to the highway and the District Council will take all appropriate steps to safeguard public rights of passage on the highway including taking all reasonable precautions for the prevention of accidents arising from the exercise of the Designated Functions (Maintenance)

Additional wording incorporated in order to ensure compliance with Section 175 of the 1980 Act

5.3 In carrying out the Delegated Functions (Maintenance) the District Council shall comply with the County Council's rules, policies and guidance relevant to those functions which have been notified by the County Council to the District Council (including as to undertaking periodic inspections standards and associated record keeping) and the District Council will also comply with any reasonable direction given by the County Council in respect of or arising from such rules, policies and guidance

5.4 The District Council shall comply with all relevant enactments in carrying out the Delegated Functions (Maintenance) and without limitation to the foregoing shall comply at all times in carrying out Delegated Functions (Maintenance) with

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5.4.1 Health and Safety at Work etc legislation

5.4.2 Section 174 of the 1980 Act (precautions to be taken by a person executing works in a street) and

5.4.3 Section 175A of the 1980 Act (duty to have regard to the needs of disabled and blind in executing works etc).

And as further provided in clauses 5.4 and 5.5 of this Agreement

5.5 In the performance of the Delegated Functions (Maintenance) in relation to street lighting at Bury Street the District Council shall

5.5.1 secure the prior approval of the County Council in respect of any works being executed or expenditure to be incurred

5.5.2 comply with any requirement of the County Council as to the manner in which any such works are to be carried out with any directions of the County Council and as to the terms of contracts to be entered into for the purposes of the discharge of the Delegated Functions (Maintenance)

5.5.3 complete any such works to the satisfaction of the County Council

These provisions are required in order to comply with Section 98(2) of the 1980 Act

5.6 In the exercise of the Delegated Functions (Maintenance) the District Council shall comply with all obligations on the part of the County Council under Sections 80 and 83 and as applicable 84 and 85 of the New Roads and Street Works Act 1991 and further it shall also notify the County Council forthwith if apparatus is found in Bury Street and where works will affect apparatus

5.7 All costs and expenses arising out of the exercise by the District Council of the Delegated Functions (Maintenance) shall be defrayed by the District

Council and without any expense to the County Council and for the avoidance of doubt this shall include payment of all energy costs for street lighting

6. **Performance of Delegated Functions (Management)**

- 6.1. The District Council shall from the Commencement Date perform the Delegated Functions (Management) and will undertake them with all due skill care and diligence in accordance with the provisions of this Agreement
- 6.2. The Delegated Functions (Management) shall be executed with minimum of disturbance to the highway and the District Council will take all appropriate steps to safeguard public rights of passage on the highway
- 6.3. In carrying out the Delegated Functions (Management) the District Council will comply with the County Council's rules policies and guidance relevant to those functions which have been notified by the County Council to the District Council and the District Council will also comply with any reasonable directions given by the County Council in respect of or arising from such rules policies and guidance
- 6.4. The District Council shall comply with all relevant enactments in carrying out the Delegated Functions and without limitation to the foregoing shall comply with Health & Safety at Work legislation at all times in carrying out Delegated Functions
- 6.5. Any notice issued by the District Council in connection with the discharge of the Delegated Functions (Management) shall state that such functions are exercised by the District Council on behalf of the County Council pursuant to an arrangement entered into under Section 101 of the Local Government Act 1972 and Section 19 of the Local Government Act 2000 but no such notice shall be invalid by reason only that this requirement is not complied with and

any person acting in pursuance of any such notice shall be concerned to see if such requirements are observed

6.6. The District Council shall send to the County Council a copy of any notice it issues in the exercise of the Delegated Functions (Management) at the same time as issuing such a notice

6.7. All costs and expenses arising out of the performance of the Delegated Functions (Maintenance) shall be defrayed by the District Council and without any expense to the County Council

7. **County Council's Constitution**

The District Council must apply the Contract Procedure Rules of the County Council comprised in the County Council's constitution in respect of the letting of any contract for the performance of the Delegated Functions (Maintenance) or Delegated Functions (Management). It is hereby noted that Rule 3.1 specifies that the Rules do not apply to contracts which are not for the provision of goods, services or works (e.g. grants or contracts relating to land) *CPR2.5*

8. **Legal Proceedings**

8.1. The District Council may take all such action including instituting legal proceedings (other than prosecutions for the commission of any offence) and defending such legal proceedings as may be necessary in connection with the discharge of the Delegated Functions (Maintenance) and the Delegated Functions (Management) but before commencing any legal proceedings the District Council shall consult with the County Council and

8.1.1 the District Council may not without the prior written consent of the County Council institute a prosecution for the commission of any offence

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- 8.1.2 The District Council shall be responsible for costs and liabilities in relation to any legal proceedings
- 8.2. Where any proceedings arise in connection with the Delegated Functions the County Council or the District Council (or both as the case may require) shall each provide to the other such evidence and other information and assistance as may reasonably be required for the purpose of those proceedings provided always for the avoidance of doubt that the obligations in this clause shall not apply to proceedings if the County Council and the District Council are opposing parties to each other in the proceedings
- 8.3. For record purposes the District Council will notify the County Council of any claim in respect of the Delegated Functions (Maintenance) or the Delegated Functions (Management) within 21 days of receipt of such a claim

9. **INDEMNITY AND INSURANCE**

- 9.1. The District Council will indemnify the County Council in respect of all actions claims costs demands proceedings and liabilities which may arise from any act omission or neglect on the part of the District Council its agents contractors lessees or employees in connection with the discharge of the Delegated Functions (Maintenance) or the Delegated Functions (Management) or from any breach by the District Council of the provisions of this Agreement save to the extent that liability arises out of the negligence or default of the County Council
- 9.2. Without prejudice to the generality of clause 8.1:-
- 9.1.1 The District Council will indemnify the County Council against all actions claims costs demands proceedings and liabilities which may arise from the failure to maintain Bury Street or arising out of any

works of maintenance to Bury Street undertaken further to the
Delegated Functions (Maintenance)

9.1.2 In the event that any undertaker or any other body or person (as defined by the New Roads and Street Works Act 1991) is eligible to recover any damages costs or expenses pursuant to the New Roads and Street Works Act 1991 as a result of or in consequence of the discharge of the Delegated Functions (Maintenance) or of Delegated Functions (Management) the District Council shall discharge such damages costs and expenses and shall indemnify the County Council against any such claims

9.2 The District Council covenants with the County Council that it will maintain insurance cover with a reputable insurance company to include public liability insurance in the minimum sum of Ten Million Pounds (£10,000,000) per claim and employers liability insurance in the sum of Ten Million Pounds (£10,000,000) per claim. The District Council will within 14 days of request supply evidence to the County Council that such insurance is being maintained by the District Council

10 **Notices**

10.1 Any notice or notification to be given to the County Council under this Agreement shall be sent to the Director for Environment and Economy of the Council, Speedwell House, Speedwell Street, Oxford OX1 1NE or to such other person at such address as the County Council shall direct from time to time

10.2 Any notice or notification to be given to the District Council under this Agreement shall be sent to [REDACTED] or to such other person at such

address as the District Council shall notify in writing to the County Council
from time to time

10.3 For the avoidance of doubt any notice required to be given under the New Roads and Street Works Act 1991 or as applicable the 1980 Act in the discharge of the Delegated Functions (Maintenance) or the Delegated Functions (Management) shall be given in the prescribed form in accordance with requirements of the New Roads and Street Works Act 1991 or as applicable the 1980 Act.

11 Third Party Rights

This Agreement gives no rights under the Contract (Rights of Third Parties) Act 1999 but this does not affect any rights which were available apart from that Act

12 No Waiver

No alterations in the terms of this Agreement nor any forbearance or forgiveness on the part of any party in or in the extent or nature of any matter or thing concerning this Agreement shall in anyway release any party from liability under this Agreement

13 No Fetter

Nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the County Council or District Council in the exercise of their respective functions in any capacity

14 Variations

Any provision of this Agreement may be varied at any time by written agreement between the parties such variation to be attached to this Agreement

15 Dispute Resolution

In the event of a dispute arising in connection with this Agreement which is not resolved within 14 days by the District Council and the County Council it shall:-

- 15.1 in the first instance be referred to the respective directors of the District Council and the County Council with overall responsibility for the performance of the Delegated Functions (Maintenance) and Delegated Functions (Management)
- 15.2 if after a further 14 days the dispute remains outstanding it will be referred to the chief executives of the District Council and the County Council
- 15.3 if within 21 days of such referral (or such longer period as may be agreed between the parties) no agreement is reached then the District Council and the County Council shall give serious consideration to the use of mediation

IN WITNESS whereof the parties have executed this Agreement as a deed the day and year first above written

SCHEDULE 1

Delegated Functions (Maintenance)

The maintenance of Bury Street so as to comply fully with the duties of the highway authority pursuant to Section 41 of the 1980 Act and Section 150 the 1980 Act subject to and in compliance with the provisions of this Agreement

The performance of the street lighting functions of the County Council at Bury Street so that the street lighting is fully operational at all times whilst this Agreement is in force subject to and in compliance with the provisions of this Agreement

SCHEDULE 2

Delegated Functions (Management)

The functions of the County Council pursuant to the following sections of the 1980 Act subject to and in compliance with the provisions of this Agreement

[Section 132 – Unauthorised marks on the highways

Section 133 – Damage to footways of street by excavations

Section 140 – Removal of builders' skips

Section 143 – Power to remove structures from highways

Section 149 – Removal of things so deposited on the highways as to be a nuisance etc

Section 153 – Doors etc in streets not to open outwards

Section 154 – Cutting or felling etc trees

Section 161 – Penalties for causing certain kinds of danger or annoyance

Section 161A – Danger or annoyance caused by fires lit otherwise than on highways

Section 162 – Penalty for placing rope, etc across highway

Section 168 – Building operations affecting public safety

Section 174 – Precautions to be taken by persons executing works in streets]

The functions of the County Council pursuant to the following sections of the New Roads and Street Works Act 1991 subject to and in compliance with the provisions of this Agreement

Section 65 - Safety measures

Section 66 – Avoidance of unnecessary delay or obstruction

Section 68 – Facilities to be afforded to street authority

Section 70 – Duty of undertaker to reinstate

Section 71 – Materials Workmanship and standard of reinstatement

Section 72 – Powers of street authority in relation to reinstatement

Section 73 – Reinstatement affected by subsequent works

Section 75 – Inspection fees

THE COMMON SEAL of **THE**)

OXFORDSHIRE COUNTY COUNCIL)

was affixed in the presence of:-)

Solicitor to the Council
and Designated Officer

THE COMMON SEAL of **THE**)

VALE OF WHITE HORSE)

DISTRICT COUNCIL)

Was affixed in the presence of:-)

