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**Contract for Services**

**between**

**Transport for London**

**and**

**Costain Limited.**

**for**

**Targeted Investigations of the elevated  
sections of A40 Westway**

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## SCHEDULE 1

### ANCILLARY WORKS FORM OF AGREEMENT

THIS FORM OF AGREEMENT is made the *2<sup>nd</sup>* day of *September* 2015

#### BETWEEN

1. **TRANSPORT FOR LONDON** a statutory corporation established under the Greater London Authority Act 1999 of **Windsor House, 42-50 Victoria Street, London, SW1H 0TL** (hereinafter called "the *Employer*" which expression shall include its successors in title and permitted assignees); and
2. **COSTAIN LIMITED**, a company incorporated in and in accordance with the laws of England and Wales having as its registered number 610201 and its registered office at Costain House, Vanwall Business Park, Maidenhead, Berkshire SL6 4UB (hereinafter called "the *Contractor*").

#### RECITALS

- (A) This Agreement is made pursuant to a framework agreement between Transport for London and the *Contractor* dated 9<sup>th</sup> April 2013 ("the Framework Agreement").
- (B) The *Employer* wishes to appoint the *Contractor* to carry out *works* being **Targeted Investigations of the elevated sections of A40 Westway** ("the *works*").
- (C) The *Employer* has accepted a proposal by the *Contractor* for the *works* and correction of Defects therein in accordance with the *conditions of contract*.

#### OPERATIVE PROVISIONS

1. In this Form of Agreement, unless the context otherwise requires, words and expressions shall have the same meaning as set out in the *conditions of contract*.
2. The *conditions of contract* are the NEC Engineering and Construction Short Contract (Third edition June 2005 with amendments September 2011) together with and as amended by the amendments set out in Schedule 2B of the Framework Agreement.
3. This contract shall mean this document and the following documents which are hereby incorporated into and shall comprise this contract:
  - 3.1 the Contract Data;
  - 3.2 the *conditions of contract* (including, for the avoidance of doubt, the amendments set out in Schedule 2B of the Framework Agreement);
  - 3.3 Works Information;
  - 3.4 Site Information;

- 3.5 Pre-construction Information;
- 3.6 the Contractor's proposal, including the programme.
4. The several documents forming this contract are to be taken as mutually explanatory of one another. In the event of any ambiguity they shall be construed in the order set out in clause 3 of this Form of Agreement.
5. The *Contractor* Provides the Works in accordance with this contract.
6. The *Employer* pays the *Contractor* for the Provision of the Works the amount due in accordance with this contract.
7. Notwithstanding the manner of execution of this contract it is agreed that:
  - 7.1 the limitation period within which any claim may be brought by the *Employer* for breach of this contract by the *Contractor* is 12 years from the date of breach; and
  - 7.2 the *Contractor* agrees not to raise in defence of any such claim a shorter limitation period whether pursuant to the Limitation Act 1980 (as the same may be amended or re-enacted from time to time) or otherwise.

This Form of Agreement has been executed as a deed and delivered on the date stated at the start of this Form of Agreement.

**Executed as a Deed by the  
*Contractor* acting by a Director and  
its Company Secretary or two  
Directors**

[Redacted signature]

Director

[Redacted signature]

Director/Secretary

**The Common Seal/Corporate Seal of  
Transport for London was affixed to this  
Deed in the presence of:**

[Redacted signature]

.....  
Name and description of authorised signatory



## SCHEDULE 2

### ANCILLARY WORKS CONTRACT DATA

#### Contract Data

The *Employer* is

Name: **Transport for London**  
Company Number: [            ]  
Address: **42-50 Victoria Street, London SW1H 0TL**  
Telephone: [            ]  
E-mail address: [            ]

(which includes its successors in title and assigns)

The principal **the Contractor**  
contractor for the  
purposes of the CDM  
Regulations is:

The principal **the Contractor**  
contractor for the  
purposes of the Site  
Waste Management  
Plan Regulations is:

The *works* are: **those described in the Works Information, document entitled Scope of Work for Targeted Investigations, Reference No. ST130013-AMD-STR-ZZ-EP-KC-0002, Rev 02, dated 29<sup>th</sup> July 2015.**

The *site* is: **as shown (shaded coloured) on the A40 Westway Management Strategy - Structure and Element Plans – Drawings reference C011SI0431 – 001 through to 015 (rev 00), included as Appendix B to the Site Information.**

The *starting date* is: **13<sup>th</sup> July 2015**

The *completion date* is: **30<sup>th</sup> September 2015**

The *period for reply* is: **2 weeks**

The *defects date* is: **4 weeks after Completion of the whole of the works**

The *defects correction period* is: **2 weeks**

The period for payment is **28 days**

Does the United Kingdom Housing Grants, Construction and Regeneration Act (1996) apply? **Yes**

The *Adjudicator* is **an independent person appointed in accordance with clause W2.2**

The interest rate on late payment is **2% (two per cent)** per annum in excess of the rate set from time to time by the Bank of England's monetary policy committee or any successor of it.

The *Contractor's* total liability to the *Employer* for all matters arising under or in connection with this contract, is **£600,000**

The *Employer* provides this insurance: **As stated in the insurance table below**

The minimum amounts of cover or minimum limits of indemnity for the insurances to be maintained in accordance with the Insurance Table are: **As stated in the insurance table below**

<b>INSURANCE AGAINST</b>	<b>WHICH PARTY PROVIDES</b>	<b>MINIMUM AMOUNT OF COVER OR MINIMUM LEVEL OF INDEMNITY</b>
<p>All risks of loss or damage (not excluded by the terms and conditions of the policy) to permanent works and materials or equipment for incorporation therein, any temporary works (i.e. other works erected or constructed for the purpose of making possible the erection or installation of permanent works) constructional plant and equipment temporary buildings and other property owned by or supplied by an <i>Employer</i>.</p>	<p>Employer</p>	
<p>All sums for which the insured shall become legally liable to pay as damages in respect of death of or injury or illness or disease to third parties and/or loss of or damage to third party property obstruction loss of amenities trespass nuisance or any like cause happening during the period of insurance and arising out of or in connection with the Framework Agreement and each Call-Off Contract</p>	<p>Employer</p>	<p>£10,000,000 any one occurrence and unlimited in the period of insurance. To be maintained for the duration of the project.</p>
<p>Liability for death of or bodily injury or illness sustained by employees of the <i>Contractor</i> arising out of or in the course of their employment in connection with the Framework Agreement and each Call-Off Contract</p>	<p><i>Contractor</i></p>	<p>The greater of £5,000,000 or the amount required by the applicable law or such other amount stated in the relevant Call-Off Contract for any one event</p>

Loss or damage to constructional plant, tools, equipment, temporary buildings (including contents therein) belonging to or the responsibility of the <i>Contractor</i>	<i>Contractor</i>	The replacement cost
<b>Professional Indemnity Insurance</b> Negligence omission or default in respect of design for which the <i>Contractor</i> is responsible	<i>Contractor</i>	£5,000,000 per incident and in annual aggregate to be maintained for 12 years from date of completion.

The *Adjudicator nominating body* is: **the President or a Vice-President of the Chartered Institute of Arbitrators**

The *tribunal* is: **litigation in the English courts.**

The *conditions of contract* are the NEC3 Engineering and Construction Short Contract (Third Edition 2005 with amendments September 2011) together with and as amended and supplemented by the amendments and additional conditions annexed to the Framework Agreement at Schedule 2B.

For the purpose of this call-off contract only, amendments to Schedule 2B of the Framework Agreement are as follows:

Amend clause 82.1 to the following:

Clause 82.1 Delete "Insurance Table" and substitute with "Insurance Table set out in the **Contract Data for Ancillary Works for Targeted Investigations on Westway Flyover.**" Delete the "Insurance Table" in its entirety.

At the end of the clause insert:

"Subject to clause 82.2, the insurances provide cover from the *starting date* until the Defects Certificate or a termination certificate has been issued, whichever is the later (or for such other period as stated in the Contract Data)."

Clause 82.2 Insert a new clause:

“82.2

The *Contractor* maintains with reputable insurers carrying on business in the European Union until twelve years after Completion of the *works*, professional indemnity insurance of no less than the amount set out in **the insurance table set out in the Contract Data for Ancillary Works for Targeted Investigations on Westway Flyover** for any one occurrence or series of occurrences arising out of any one event in relation to the *works* provided that such insurance is generally available in the market to design and build contractors at commercially reasonable rates and terms.”

Delete clause Z1A.

Delete clause Z18.

**Contract Data**

**The Contractor's Offer**

The *Contractor* is

Name: Costain Ltd

Company Number: 610201

Address: Costain House, Vanwall Business Park, Maidenhead,  
Berks SL6 4UB

Telephone: [REDACTED] (Offices at Hammersmith Flyover)

Fax: N/A

E-mail address: [REDACTED]@costain.com

The percentage for overheads and profit added to the Defined Cost for people is [REDACTED]

The percentage for overheads and profit added to other Defined Cost is [REDACTED]

The *Contractor* offers to Provide the Works in accordance with the *conditions of contract* for an amount to be determined in accordance with the *conditions of contract*.

The offered total of the  
Prices is: [REDACTED]