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Title Number TT39637

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THIS AGREEMENT is made the 30th day of November One thousand nine hundred and ninety-seven ^{eight} BETWEEN RAILTRACK PLC (company registration no. 2904587) whose registered office is at Railtrack House Euston Square London NW1 2EE ("Railtrack") of the first part SOUTHERN WATER SERVICES LIMITED (company registration no. 2366670) whose registered office is at Southern House Yeoman Road Worthing West Sussex BN13 3NX ("the Company") of the second part BLUE CIRCLE DEVELOPMENTS LIMITED (company registration no. 1081449) whose registered office is at 84 Eccleston Square London SW1V 1PX ("the Licensees") of the third part and CAPITAL AND COUNTIES PLC (company registration no. 280739) whose registered office is at 40 Broadway London SW1 OBU ("Capco") of the fourth part

WHEREAS:

1. In this deed:

1.1 "the Plan" means the attached plan number 3286

1.2 "the Installation" means a 200mm diameter foul water pipe in the position and direction indicated by a continuous blue line on the Plan together with any incidental works required by Railtrack and any works substituted under the provisions of this deed

1.3 "the Payment" means the sum of Five thousand pounds (£5,000.00) together with value added tax

1.4 "the Engineer" means Railtrack's engineer for the time being or such other person appointed by Railtrack in connection with the provisions of this deed

1.5 "the Perpetuity Period" means the period of eighty years from the date of this deed which shall be the perpetuity period for the purposes of this deed

1.6 references to "Railtrack" "the Company" "the Licensees" and "Capco" shall where applicable include their respective successors

1.7 where any covenants are entered into by two persons or more they shall be deemed to be made by such persons jointly and severally

2. Railtrack is the estate owner in respect of the fee simple in possession of the land forming part of Railtrack's Strood to Maidstone West line of railway at 32 miles 18

chains at Wickham Arch underbridge number 893 Cuxton Rochester in the County of Kent and shown verged green on the Plan ("**Railtrack's Land**")

- 6
3. British Railways Board ("**the Board**") entered into a Deed of Grant of easements dated 6th November 1985 with Blue Circle Developments Limited and Blue Circle Industries PLC ("**the Deed of Grant**") which included (inter alia) the right to use the new overbridge number 895 to be and now constructed by the Licensees at 32 miles 33 chains on the above line of railway to support carry and accommodate conducting media for the passage and carriage of (inter alia) foul water sewerage for the benefit of the premises identified in the Deed of Grant as "**the Blue Land**" and similarly identified in this deed
 4. The Licensees have disposed of their estate/interest in part of the Blue Land and Capco are the estate owners in respect of the fee simple in possession of that part which is registered at H M Land Registry under title numbers K 758225 and K 765979 and the remaining part of the Blue Land remains vested in the Licensees and is registered at H M Land Registry under title number K700456 and shown verged red on the Plan ("**the Licensees Land**")
 5. Railtrack is the statutory successor to the Board to whom the assets and/ or functions relevant to the Deed of Grant were transferred from the Board pursuant to the Railways Act 1993
 6. Pursuant to Section 6 of the Water Industry Act 1991 ("**the Act**") the Company have been appointed the water and/or sewerage undertaker for the area within which Railtrack's Land lies
 7. Pursuant to the Deed of Grant the Licensees now desire to construct the conducting media described in recital 3 above for the passage and carriage of foul water sewerage (defined as "**the Installation**" in this deed) through underbridge number 893 (instead of new overbridge number 895) and have requested Railtrack to allow them to lay the Installation as aforesaid and Railtrack has agreed upon payment by the Licensees to Railtrack of the Payment to grant to the Licensees and Capco permission for this as specified below
 8. It has been agreed that the Company shall take over and be responsible for the maintenance of the Installation once constructed by the Licensees and that the Licensees and Capco and the Company shall enter into the terms and conditions of a Section 104 Agreement under the Act ("**the Section 104 Agreement**") with regard to

the maintenance and repair of the Installation and shall give to Railtrack such protection as is specified below

NOW THEREFORE IT IS AGREED between Railtrack the Company the Licensees and Capco as follows:-

1. IN consideration of the Payment paid by the Licensees to Railtrack (the receipt of which Railtrack acknowledges) Railtrack with limited title guarantee grants to the Licensees and Capco licence
 - 1.1 to construct the Installation through Railtrack's Land and to use it for the passage of foul water sewerage from the Blue Land and thereafter following adoption of the Installation by the Company for the benefit of the Company's statutory sewerage undertaking
 - 1.2 to enter on so much of Railtrack's Land only as is necessary for the purposes of maintaining cleansing repairing and renewing the Installation subject as mentioned below
2. THE Licensees and Capco shall at their own expense:
 - 2.1 construct the Installation in accordance with plans sections drawings and specifications to be previously submitted to and approved by the Engineer and the Company's engineer and surveyor and to the satisfaction in all respects of the Engineer and the Company's engineer and surveyor and in accordance with Railtrack's Special Requirements and in accordance with the Engineering Conditions already supplied to the Licensees and set out in the Schedule below
 - 2.2 construct and (until it shall have been taken over by the Company) maintain the Installation so as to occasion no damage or injury by leakage or otherwise to Railtrack's railway or property
 - 2.3 adhere to all safety requirements for the railway including (but not limited to) adherence to railway industry safety standards and safety validation of contractors employed
 - 2.4 maintain the Installation to the like satisfaction until it shall have been taken over by the Company
 - 2.5 comply with and perform and observe all the terms and conditions of the

Section 104 Agreement

3. THE Licensees and Capco until formal adoption of the Installation by the Company and the Company subsequently shall:
- 3.1 pay to Railtrack on demand all reasonable expenses certified by the Engineer to be or to have been properly incurred by Railtrack from time to time (including the reasonable cost of any works constructed by Railtrack which in the opinion of the Engineer may be necessary for the protection of the Installation or of its railway or other property and the reasonable cost of employing any inspectors flagmen watchmen or other persons whom the Engineer may think it necessary to employ for the protection of the railway or of railway traffic and the reasonable and proper cost of inspecting from time to time the Installation or any works so constructed by Railtrack) in consequence of or arising directly or indirectly out of the construction existence user maintenance repair renewal failure or abandonment of the Installation and shall also pay to Railtrack compensation for any consequent disturbance of railway traffic (including (but not limited to) such costs and expense in consequence of Railtrack being unable to deliver in timely manner any train paths for which it may then have contracted) And so that a certificate given by the Engineer under this Clause shall be conclusive as to the need for Railtrack to incur the relevant expenses or costs and as to the disturbance of railway traffic but shall not be conclusive as to the amount of such expenses or costs or as to the amount of compensation claimed for disturbance of railway traffic
- 3.2 pay to Railtrack on demand such sum if any as represents the loss or damage from time to time sustained by Railtrack by reason of the construction maintenance repair renewal failure or abandonment of the Installation provided that this agreement shall not prejudice Railtrack from making a claim under the Act or Section 278 of the Public Health Act 1936
- 3.3 not apply cathodic protection to the Installation without first obtaining Railtrack's written authority
- 3.4 (if Railtrack so requires) fix and during the continuance of this Agreement maintain in and upon the surface of Railtrack's Land such and so many iron or other indicators as the Engineer may from time to time direct or approve and in such positions as may be previously approved by him for the purpose of indicating the position and direction of the Installation and in case the

Installation shall be diverted or its position altered the position of the Installation when diverted or altered shall be indicated in the same way in accordance with the instructions and subject to the approval of the Engineer

- 3.5 pay to Railtrack on demand any additional expense which Railtrack may from time to time reasonably incur in widening altering restructuring repairing maintaining or abandoning its railway in pursuance of any powers existing at the date of this Agreement by reason of the existence of the Installation (but so that the Company's obligation is subject to Railtrack having complied with the procedure set out in Section 184 of the Act where applicable)
4. THE Company shall once the Installation has been constructed in accordance with this Agreement and the Section 104 Agreement and the parties have fully complied with their respective obligations formally adopt it as part of their public sewerage system and subsequently at their own cost maintain and repair the Installation in such manner as the Engineer may approve and under his supervision and to his reasonable satisfaction
5. IN the event of the Installation being abandoned or ceasing to be used prior to becoming vested in the Company then the Licensees and Capco or Railtrack may determine this Agreement (as to all or any part of the Installation) by giving to the other of them six months' notice in writing expiring at any time of its intention so to do and at the expiration of such notice the Licensees and Capco shall remove the Installation (or part as the case may be) and restore and make good the premises of Railtrack to their former condition and to the satisfaction of the Engineer and in default Railtrack shall be at liberty to do so at the cost of the Licensees and Capco as certified by the appropriate officer of Railtrack whose certificate shall be conclusive
6. RAILTRACK reserve full and free right:
- 6.1 at any time of constructing and erecting works and buildings for the purposes of the railway over the Installation and Railtrack shall not be liable for any damage or injury to the Installation (except to the extent that such damage or injury arises out of misconduct or negligence on the part of Railtrack or its contractors agents or employees) caused by the construction existence maintenance repair or renewal of any such works or buildings whether over or near to the Installation Provided that Railtrack at its own expense shall comply with all reasonable and practical requirements of the Company in constructing and erecting such works and buildings and before commencing the construction or erection of any such works or buildings Railtrack shall give the Licensees Capco or the Company (as

the case may be) reasonable notice of its intention so to do

- 6.2 at any time during the Perpetuity Period of infilling underbridge number 893 without payment of any compensation to the Licensees and Capco and/or the Company and without being liable for any damage so caused to the Installation (except to the extent that such damage or injury arises out of misconduct or negligence on the part of Railtrack or its contractors agents or employees) and if for this purpose Railtrack shall require the alteration or diversion of the Installation it may effect (or at its sole discretion require the Licensees and Capco/ the Company to do so) such alteration or diversion without payment of any compensation to the Licensees and Capco/ the Company provided that
- 6.2.1 in the case of such alteration or diversion Railtrack shall substitute other convenient alternative route such substitute route to be subject to the terms covenants and conditions of this deed; and
- 6.2.2 the cost of any such alteration or diversion shall be at the Licensees and Capco/ the Company's own sole expense; and
- 6.2.3 the rights granted by this Agreement shall apply to the installation as altered or diverted
7. THE Licensees Capco or the Company (as the case may be) shall give at least Twenty-eight days' notice to the Engineer or as he may direct before the carrying out of any works of maintenance of the Installation except in case of emergency when as long as notice as possible shall be given
8. NOTHING contained in this Agreement shall prejudice or affect any provision for the protection of Railtrack included in any special Act or Order
9. ANY dispute or difference arising between the parties (except where the decision of the Engineer is expressly stated to be conclusive or it is a question of law or the construction of this Agreement) shall be referred to the decision of a single arbitrator who shall be appointed (failing agreement between the parties) by the President for the time being of the Institution of Civil Engineers
10. ANY notice given to Railtrack relating to the Installation (other than a notice under Clause 7) shall be deemed to be effectively served if addressed to Railtrack and served on the Director of Property ~~Management (London)~~ of Railtrack PLC at Railtrack
- 9

House Euston Square London NW1 2EE or upon such other person and/or such other address as Railtrack may from time to time in writing designate

11. IN consideration of the grant contained in this Agreement the Licensees and Capco with full title guarantee surrender and yield up and release to Railtrack all their respective estate interest and rights in respect of foul water sewer contained in the Deed of Grant ("**the Surrendered Easement**") to the intent that the easement granted by the Deed of Grant insofar as it relates to the Surrendered Easement and all or any other estate interest or rights of the Licensees and Capco in the Surrendered Easement whether granted by or arising from the Deed of Grant (other than this Agreement) or otherwise shall merge and be extinguished in Railtrack's freehold estate

11.1 insofar as such obligations or liabilities relate to the Surrendered Easement Railtrack the Licensees and Capco release each other from all the obligations contained in and all liabilities under the Deed of Grant (other than this Agreement) whether past present or future and all damages actions proceedings costs claims demands and expenses arising from such obligations and liabilities

11.2 the above surrender shall not prejudice or affect the respective rights of Railtrack the Licensees and Capco in respect of the remaining easements covenants and conditions and other matters contained in the Deed of Grant and save as surrendered above the Deed of Grant and every clause therein shall continue in full force and effect and be binding on Railtrack the Licensees and Capco as the case may be

11.3 Railtrack and the Licensees agree immediately to endorse a memorandum of this surrender on the Deed of Grant and Duplicate and to supply to the other party a certified copy of the same within twenty-one days of the date of this Agreement

12. The Licensees covenant with Railtrack for the benefit and protection of Railtrack's Land and with intent to bind as far as legally may be the Licensees and the Licensees successors in title owners for the time being of the Licensees Land or any part of it in whosoever hands it may come the Licensees shall not grant a right of connection to the Installation to any owner of adjoining neighbouring or other land without the prior written consent of Railtrack

12.1 The Licensees shall not dispose of their freehold interest in the whole or part of the Licensees Land without procuring that the purchaser enters into a direct

covenant with Railtrack to observe and perform the obligation contained in Clause 12

12.2 The Licensees undertake with Railtrack to deposit their Land Certificate of title number K700456 to enable a note of the above restrictive covenant to be registered

12.3 The parties hereto expressly agree that this Clause shall not apply to the Company by virtue of the Company being a successor in title to the Installation once it has been formally vested in them as a public sewer pursuant to the terms of the Section 104 Agreement the Act or otherwise

13. RAILTRACK's reasonable and proper legal costs of £ 4550 in connection with the preparation and completion of this Agreement in quadruplicate (together with the stamp duties) and a contribution of £ 1000 towards the expenses of Railtrack's Surveyor (together in each case with value added tax if applicable) shall be borne by the Licensees

14. IF at any time after the formal adoption of the Installation by the Company the section of railway line of Railtrack along across or under which the Installation (or any works substituted for it) have been laid shall cease to be in the ownership of Railtrack (or any other undertaking or person empowered to run a railway whether public or private) the following Clauses shall cease to be of effect as from the ceasing of such ownership: Clauses 3 1 3.3 3.4 3.5 4 6.1 and 9

IN WITNESS of which Railtrack the Company the Licensees and Capco have executed this Agreement as a deed as first dated above

THE SCHEDULE
THE ENGINEERING CONDITIONS
IN RESPECT OF FOUL VACUUM DRAINAGE SYSTEM RISING MAIN
THROUGH WICKHAM ARCH UNDERBRIDGE NO. 893
BETWEEN STROOD AND CUXTON AT 32M 18CH

1. The construction of the sewer has taken place with the benefit of the knowledge that Railtrack intend to infill the structure, nominally within five years of this Agreement being signed.

2. The form of construction chosen is to install a 300mm diameter "Rigiduct" fixed to the existing bridge abutment.
3. Within this "Rigiduct" is a 200mm UPVC sewer. The annulus around the sewer may not be grouted or otherwise infilled, as this could prejudice the future infilling of the bridge proposed by Railtrack. The annulus is intended to permit vertical and horizontal settlement of the existing structure, including the roadway slab, currently designed to act as a strut between the existing abutments.
4. The thrust blocks for changes in direction of the sewer will be constructed outside the line of influence of the proposed embankment, assuming 45 angle of repose for the granular fill material.
5. Isolation valves will be provided on either side of Railtrack property to enable shutdown in the event of mishap.
6. During the infilling of the bridge the sewer will be monitored for distress.
7. Prior to the infilling commencing the method of fixing the "Rigiduct" will be re-examined. The sewer owner will be offered the opportunity to sever the connecting dowel bars, if it is considered that these could produce loading concentrations on the sewer.
8. Upon notice of abandonment of the sewer Railtrack will arrange for the "Rigiduct" to be pressure grouted at the owner's expense.
9. Marker plates will be erected and maintained at track level.

RR K700456

R. R. FILE

RAILTRACK PLC
SEAL N° 12219

THE COMMON SEAL of
RAILTRACK PLC was hereunto
affixed in the presence of :-



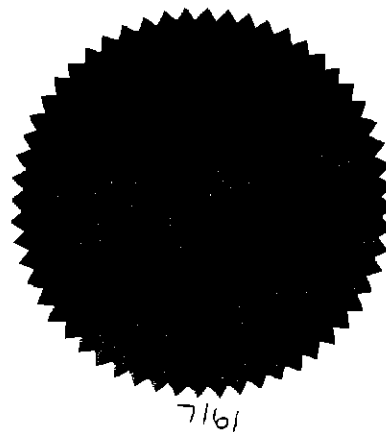
Authorised signatory, as approved
by a resolution of the board
of Railtrack PLC on 5th December 1994

THE COMMON SEAL of
SOUTHERN WATER
LIMITED was hereunto
affixed in the presence of :-



Director

Secretary



THE COMMON SEAL of
BLUE CIRCLE DEVELOPMENTS
LIMITED was hereunto affixed
in the presence of :-



Director

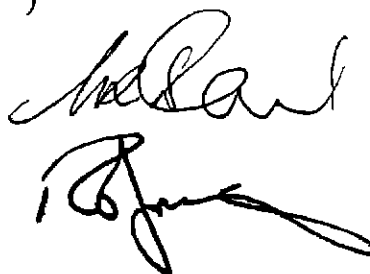
Secretary



Executed as a deed by
~~THE COMMON SEAL of~~
CAPITAL AND COUNTIES PLC
~~was hereunto affixed in the~~
~~presence of:-~~ acting by

Director

Secretary



MEDWAY VALLEY PARK

CUXTON/STROOD

To Cuxton

To Strood

RAILTRACK PLC
SEAL N° 12219

Authorised signatory, as approved
by a resolution of the board
of Railtrack PLC on 5th December 1994

ENLARGEMENT
Scale 1:1250

SCALE 1:2500

RAILTRACK
BOUNDARY EDGED GREEN

RAILTRACK PROPERTY
20th Aug 97
FITZROY HOUSE 355 EUSTON ROAD LONDON NW1 3AG
D/O No. 3280
PREPARED BY



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