

ESCROW LETTER relating to
West Coast Partnership Franchise



Department
for Transport

Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

To:

[INSERT DATE]

[INSERT NAME OF FRANCHISEE]

Attention of [INSERT CONTACT NAME]

Dear [Sir] [Madam]

Award of West Coast Partnership Franchise Agreement pursuant to an Invitation to Tender dated [INSERT DATE] (the "ITT")

1. Thank you for taking part in the above procurement. The Secretary of State for Transport (the "**Secretary of State**") has now evaluated all of the tenders he has received.
2. On the basis of this evaluation, the Secretary of State is pleased to confirm that, subject to the terms of this letter, he intends to award the Franchise to [INSERT NAME OF FRANCHISEE].
3. In accordance with section 4.1.5 of the ITT there will be a voluntary standstill period between informing bidders of the outcome of the franchise bid process and entering into the Franchise Agreement with the identified bidder. Accordingly, the contract award decision is provisional and subject to the outcome of this standstill period. In line with section 4.1.5 of the ITT, a voluntary standstill period of at least ten (10) calendar days will be undertaken which will finish at the end of the day on [INSERT DATE] (the "**Standstill Period**").
4. The Appendix to this letter contains a list of agreements and other documents (including the Franchise Agreement) which you (and in the case of the Funding Deed, [INSERT NAME OF GUARANTOR]) have executed or initialled, as specified in the Appendix, and placed in our possession. You have also placed in our possession a signed model auditor's certificate. All such documents are to be held by us until completion occurs or they are returned to you, in each case pursuant to the terms of this letter.

1 **Note to Bidders:** All square bracketed information placeholders will be populated by DfT prior to completion of the Franchise Agreement with the winning Bidder.

5. As soon as reasonably practicable following completion of the Standstill Period, the Secretary of State will notify you whether or not he considers, in his unfettered discretion, that:
 - 5.1 a challenge requiring a delay to the outcome of the procurement has been made; and/or
 - 5.2 there are other circumstances which make it inappropriate for him to proceed with, or to decide at that time whether or not to proceed with, the award of the Franchise.
6. If the notice referred to in paragraph 5 provides that the Secretary of State considers that there is no challenge requiring a delay or other circumstances which make it inappropriate for him to proceed with, or to decide at that time whether or not to proceed with, the award of the Franchise, the Franchise will be awarded subject to the following:
 - 6.1 you will be invited to attend completion at such place and date specified by the Secretary of State. The Secretary of State envisages that any such date for completion shall be no more than thirty (30) calendar days after the end of the Standstill Period;
 - 6.2 you will be required, in accordance with the terms of the:
 - 6.2.1 Franchise Agreement, to deliver to us, prior to completion, a performance bond complying with the provisions of the Franchise Agreement (together with supporting evidence of execution by the bond provider); and
 - 6.2.2 Funding Deed, to deliver to us, prior to completion, a bond complying with the provisions of the Funding Deed (together with supporting evidence of execution by the bond provider);
 - 6.3 at completion, the agreements and other documents listed in the Appendix will be executed or initialled on behalf of the Secretary of State and at that time completion of the Franchise Agreement and other relevant agreements shall occur and they will be legally binding on the parties from such time. The Secretary of State shall retain the model auditor's certificate and you shall take possession of appropriate counterpart completed agreements and initialled agreed forms.
7. If:
 - 7.1 the notice referred to in paragraph 5 provides that the Secretary of State considers that there has been a challenge requiring a delay or other circumstances which make it inappropriate for him to proceed with, or to decide at that time whether or not to proceed with, the award of the Franchise; and
 - 7.2 the Secretary of State states that he requires the provisions of paragraph 7 to apply,

then
 - 7.3 the Secretary of State shall retain the right to complete the Franchise Agreement and other documents until the date that is the earlier of:
 - 7.3.1 Thirty (30) calendar days after the date on which the Secretary of State notifies you in writing that he considers (in his unfettered discretion)

that there are no continuing challenges and/or other circumstances which require a delay or which make it inappropriate for him to proceed with, or to decide at that time whether or not to proceed with, the award of the Franchise; and

7.3.2 the date that is 365 calendar days from [INSERT DATE],

(such date being the "**Completion Expiry Date**"); and

7.4 you shall be required to continue to undertake such works, measures and activities necessary to mobilise for the commencement of the Franchise on the assumption that the Start Date of the Franchise will be 0200 on [INSERT DATE]; and

7.5 the Secretary of State shall reimburse you for the direct costs reasonably and properly incurred from the date of the notice referred to in paragraph 7.2 in relation to such works, measures and activities necessary to mobilise for the commencement of the Franchise (the "**Mobilisation Costs**"),

provided that:

7.5.1 the Mobilisation Costs shall under no circumstances be reimbursed to you by the Secretary of State if:

7.5.1.1 the Secretary of State completes the award of the Franchise; or

7.5.1.2 having exercised his rights to complete the award of the Franchise the Secretary of State is not able to issue the Certificate of Commencement because you have not satisfied (or you are not likely to satisfy) any of the conditions precedent as specified in the Appendix to the Conditions Precedent Agreement by the Start Date; and

7.5.1.3 the Mobilisation Costs shall under no circumstances be reimbursed to you by the Secretary of State if and to the extent that they are greater than [£INSERT AMOUNT²].

7.5.2 If the Secretary of State has served the notice as specified in paragraph 7.1 and:

7.5.2.1 he subsequently notifies you that he considers (in his unfettered discretion) that there are no continuing challenges and/or other circumstances which require a delay or which make it inappropriate for him to proceed with, or to decide at that time whether or not to proceed with, the award of the Franchise then you will be invited to attend completion at such place and time specified by the Secretary of State and the provisions of paragraphs 6.2 and 6.3 shall apply (mutatis mutandis); or

7.5.2.2 he subsequently notifies you that he no longer requires the provisions of paragraph 7 to apply, then you shall from the date of that notice cease to incur any further Mobilisation Costs and the provisions of paragraph 7.5 shall only apply

in respect of Mobilisation Costs incurred prior to the date of issue of the notice referred to in this paragraph 7.5.2.2.

8. It is agreed that if the Secretary of State does not require for the provisions of paragraph 7 to apply as contemplated in paragraph 7.2 then, without limitation to any other rights the Secretary of State may have, he shall not have the right described in paragraph 7.3.
9. Without limiting paragraph 11, at any time prior to the completion of the award of the Franchise but after the issue of any of the notices referred to in:
 - 9.1 paragraph 5 (which such notice provides that the Secretary of State considers (in his unfettered discretion) that there is no challenge requiring a delay or other circumstances which make it inappropriate for him to proceed with the award of the Franchise); or
 - 9.2 paragraph 7.5.2.1 (which such notice provides that the Secretary of State considers (in his unfettered discretion) that there are no continuing challenges and/or other circumstances which require a delay or which make it inappropriate for him to proceed with the award of the Franchise),

the Secretary of State may notify you that he considers (in his unfettered discretion) that there is a challenge and/or there are any other circumstances which make it inappropriate for him to proceed with, or to decide at that time whether or not to proceed with, the award of the Franchise. In those circumstances the Secretary of State shall state in that notice whether or not he requires the provisions of paragraph 7 to apply and if he so requires then the provisions of paragraph 7 shall apply (mutatis mutandis) as if any notice issued pursuant to this paragraph 9.2 had been served in accordance with paragraph 5. The provisions of this paragraph 9 shall apply on more than one occasion if the relevant circumstances arise more than once.

10. If completion has not occurred by the Completion Expiry Date the Secretary of State shall return to you all documents signed and initialled by you and [INSERT NAME OF GUARANTOR] as soon as reasonably practicable after the Completion Expiry Date.
11. Pending completion of the award of the Franchise the Secretary of State retains the right to abandon the procurement, cancel the award procedure or suspend awarding the Franchise for any reason and nothing in this letter shall limit the Secretary of State's rights in this respect.
12. For the avoidance of doubt, nothing in paragraph 7 shall affect or limit the requirement in section 4.13.1 of the ITT for all the terms of your bid to be held valid for a period of 365 calendar days from the date of bid submission.
13. You agree that you will keep the arrangements specified in this letter confidential to the same extent that you would have done if the Franchise Letting Process Agreement was expressed to continue to apply beyond the announcement of the intention to award the Franchise and extended to the contents and arrangements described in this letter.
14. If you have any queries about the contents of this letter, please contact the Commercial Manager – West Coast Partnership Franchise, Department for Transport, Great Minster House, 33 Horseferry Road, London SW1P 4DR, telephone 020 7944 5300.

- 15. Please note that, except as otherwise provided in paragraph 7.5 of this letter, the Secretary of State has no liability to you arising out of your taking part in the [INSERT NAME OF FRANCHISE] Franchise letting competition until the Franchise Agreement is completed and, if it is completed, rights and liabilities shall be strictly as set out in the Franchise Agreement and other relevant agreements.

- 16. Any notice under or in accordance with this letter shall comply with the requirements set out in clause 12 (Notices) of the Franchise Agreement as if they were set out (mutatis mutandis) in this letter or alternatively may be delivered by email addressed to [INSERT NAME] in the case of notices to you and franchise.notices@dft.gsi.gov.uk in the case of notices to the Secretary of State.

- 17. Unless the context otherwise requires, capitalised terms in this letter shall have the meanings given to them in the Franchise Agreement.

Yours faithfully

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**For and on behalf of the
Secretary of State for Transport**

[INSERT FRANCHISEE NAME] agrees that the Secretary of State shall be permitted to complete the Franchise Agreement and related agreements on the basis set out in this letter.

Signed by)
 [INSERT NAME])
 as the attorney of)
 [INSERT FRANCHISEE NAME])

Signature of attorney: _____

APPENDIX

Documents held by the Secretary of State for Transport

[TO BE POPULATED BY DEPARTMENT FOR TRANSPORT BEFORE CONTRACT SIGNATURE]