

Dated the [Do Not Enter Date] day of Do Not Enter Date 20[]



SURREY
COUNTY COUNCIL

AGREEMENT

Pursuant to Section 278 of the Highways Act 1980 and s111 of the Local Government Act 1972 relating to works on the public highway at

gf

BETWEEN:

1. **SURREY COUNTY COUNCIL** (“the Council”) of County Hall Penrhyn Road Kingston upon Thames Surrey KT1 2DN
2. Enter Company Name & Registration No.

(“the Developer”) whose registered office is situated at
Enter Developer's Registered Address

WHEREAS

- (a) The Council is the Highway Authority for Surrey
- (b) The Developer is the owner of or has the permission of the land owner to enter into this Agreement in order to secure the carrying out of the Works at the Location and has agreed that it will pay the full cost of the Works, in relation to Planning Permission Enter Planning Reference referred to in Schedule A and in accordance with the terms and conditions of this Agreement
- (c) The Council agrees to enable the Works on the highway maintainable at public expense on the terms and conditions contained in this Agreement

IT IS AGREED THAT:

1. The Sums Payable to the Council by the Developer are set out at 6.2 below and referred to at Schedule B1
2. The Provisions of Schedule C hereto shall apply to the construction and interpretation of this Agreement.
3. Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons
4. This Agreement is made pursuant to Section 59 and 278 of the Highway Act 1980 and Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000
5. Any notice or approval in writing by the parties under the terms of this Agreement shall be given by email to the following officials/persons at the respective addresses specified:

In respect of the Council:

Caroline Smith, Planning and Development Group Manager

(F.A.O. TDP Officer

at @surreycc.gov.uk)

In respect of the Developer:

Developer Contact

at

Postal Address:

Developer's Obligations:

6. The Developer hereby covenants with the Council as follows:

- 6.1. IN consideration of the payment by the Council to the Developer of the sum of FIVE PENCE (£0.05) (the receipt of which is hereby acknowledged) the Developer hereby agrees to carry out at its own expense by a person or company to be approved by the Council (such approval not to be unreasonably withheld) the Works
- 6.2. The Developer shall pay to the Council, on or before the execution of this Agreement, the sums below and as specified in Schedule B1.
 - (a) The Agreement Fee: £ Agt Fee (as referred to in Schedule B Clause 1.1)
 - (b) Commuted Sum: £ Commuted Sum Value
 - (c) Cash Deposit: £ Cash Deposit Value
 - (d) Legal Fees: £400pounds to cover the Council's costs in executing the agreement and the remainder as specified in Schedule B1.
- 6.3. That if the Works are subject to the CDM Regulations the provisions in Schedule B will apply
- 6.4. That the Works will require a Permit to Work and such Works will not to commence until the Permit to Work has been issued and this Agreement has been completed
- 6.5. That under Section 59 of the Highways Act, the Highway Authority is permitted to charge developers for damage caused by excessive weight and movements of vehicles to and from a site. The Highway Authority will pass on the cost of any excess repairs compared to normal maintenance costs to the developer/organisation responsible for the damage
- 6.6. To give the Council at least 7 days notice in writing of the proposed start date of the Works
- 6.7. To carry out and complete the Works within the area coloured green on the Agreement Drawing as stated in Schedule A at no cost to the Council in accordance with the Approved Drawings and any conditions attached to the Permit to Work and in any event to commence the Works within calendar weeks from the date of this Agreement.
- 6.8. To complete the Works within calendar weeks of their commencement, and to notify the Council in writing of completion of the Works within 7 days of such completion.
- 6.9. To indemnify and keep indemnified the Council in respect of all claims as specified in Schedule B2.
- 6.10. The developer would be expected to undertake a Development Engineering Inspection Regime to agree a programme of implementation of all necessary statutory utility works associated with the development, including liaison between Surrey County Council Streetworks Team, the relevant Utility Companies and the Developer to ensure that where possible the works take the route of least disruption and occurs at least disruptive times to highway users, including pre-commencement survey
- 6.11. Upon the receipt of the Provisional Certificate issued by the Council to maintain the Works during the Maintenance Period to the satisfaction of the Council
- 6.12. To provide to the Council before the expiry of the Maintenance Period:
 - (a) an electronic copy of the "As Built Drawings"; and
 - (b) an electronic copy of the Health and Safety Plan File

Council's Obligations

7. The Council hereby:

- 7.1 authorises the Developer to carry out and complete the Works subject to and strictly in accordance with the terms and conditions set out in clause 6 above.
- 7.2 consents to the Developer being elected as the sole client for the purposes of the CDM Regulations
- 7.3 agrees that upon the practical completion of the Works:
 - (a) It shall issue the Provisional Certificate provided that if in the opinion of the Council the Works will be used by the construction traffic associated with the Development, the Council shall be entitled to delay the issue of the Provisional Certificate until such time as such activities have ceased; and
 - (b) within one (1) calendar month of the issue of the Provisional Certificate it shall reduce the Cash Deposit by a maximum of 90 per cent (90%) and shall pay to the Developer a sum equivalent to such reduction.
- 7.4 agrees that:
 - (a) after the expiry of the Maintenance Period and provided that any defects arising during the Maintenance Period from defective goods materials or workmanship have been made good to the satisfaction of the Council it shall issue a Final Certificate for the Works and upon its issue the Developer shall no longer have any liability for the Works save for indemnity required in Schedule B
 - (b) upon the issue of the Final Certificate the Council shall repay to the Developer the balance of the Cash Deposit remaining after the reduction as referred to in Schedule B Clause 1.5 or in the event of the Cash Deposit being used in accordance with Schedule B Clause 1.5 a sum equivalent to the balance of such part of the Cash Deposit as remains

SCHEDULE A

The Development:	Brief description of planning application
Address:	
Planning Application Reference Number:	Planning Reference Number
The Agreement Drawing:	Drawing Reference Number

Full Description of s278 Works:



SCHEDULE B

1. Sums Payable to the Council by the Developer:

- 1.1. the Agreement Fee representing the sum of twelve per cent of the total Cost of the Works or £1500 whichever is the greater for the expenses incurred by the Council in relation to this Agreement and any other expenses in connection with the inspection of the Works. An additional fee of £400 is required to meet the County Council's legal costs.
- 1.2. the Commuted Sum in respect of the full cost to be incurred by the Council for the maintenance of the works, specified as Commuted Works.
- 1.3. Within 14 days of demand the full cost to the Council in applying for obtaining altering and implementing any necessary Traffic Regulation Orders required for the Works whether or not such Traffic Regulation Orders are confirmed.
- 1.4. Within 14 days of demand the full cost to the Council in preparing any Safety Audit reports including the cost of any correspondence and additional reports related to the Safety Audit Reports.
- 1.5. A Cash Deposit, which the Council will hold in its general account and without undertaking any fiduciary obligations as trustee for the Developer PROVIDED THAT IF:
 - (a) the Developer fails to carry out and/or complete the Works within the period specified in this Agreement; or
 - (b) the Developer having received written notice from the Council fails to remedy any defects and/or carry out any remedial works specified in such notice to the satisfaction of the Council within the period of time specified in such notice (or such longer period as the Council may agree in writing in its absolute sole discretion); or
 - (c) an Insolvency Event occurs in respect of the Developer the Council may itself carry out and complete the Works or at its discretion restore the safe operation of the public highway affected by the Works and may deduct from the Cash Deposit all costs fees and expenses incurred by the Council in so doing (including the cost fees and expenses of preparing an alternative contract for the Works and of supervising the execution of such alternative contract) and all other sums due from the Developer under the terms of this Agreement not payable by Cash Deposit.

2. Developer's Indemnities

- 2.1 To indemnify and keep indemnified the Council against all actions claims demands expenses and proceedings arising out of or in connection with or incidental to the carrying out of the Works and any works required by any statutory undertaker other than those arising under Parts I and II of the Land Compensation Act 1973 in respect of which the provisions of Clause 2.2 below shall apply

- 2.2 To indemnify and keep indemnified the Council against all claims under Part I and Part II of the Land Compensation Act 1973 arising out of the use of the Works and for the purposes of this indemnity the Developer is deemed to carry out the Works as agent for the Council
- 2.3 Without prejudice to its liability under Clauses 2.1 and 2.2 above to indemnify the Council the Developer shall take out and maintain public liability insurance for a sum of at least *five million pounds (£5,000,000)* in respect of any one claim and shall ensure that any person or persons carrying out the Works on its behalf is similarly insured and the Developer or any person authorised by it to carry out the Works shall on request by the Council produce for inspection the relevant policies of insurance together with receipts for the premiums paid

3. Construction Design and Management (CDM) 2015 Regulations

- 3.1 If the Works are subject to the CDM Regulations as per Clause 7 above:-
- (a) the Developer hereby elects itself to be treated as the only client for the purposes of the CDM Regulations; and
 - (b) the Council consents to such election and shall not be subject to any duty owed by a client under the CDM Regulations save for the duties in Regulations 5(1)(b) 10(1) 15 and 17(1) in so far as those duties relate to information in its possession

SCHEDULE C (Construction and Interpretation)

“Agreement Drawing”	the identified drawing(s) attached at Schedule A indicating the extent of the works within the existing publicly maintainable highway
“As Built Drawings”	the Approved Drawings revised by the Developer to include any changes to the Works arising from their construction
“Approved Drawings”	the working drawings and specification submitted by the Developer to the Council and approved by the Council and subject to, as needed, any Road Safety Audit prior to the commencement of the Works
“Cash Deposit”	a cash deposit equal to the cost of the Works including any statutory undertakers costs
“Commutated Sum”	a sum to meet the additional maintenance costs arising from the Works, calculated in accordance with the Council commuted sums protocol
“CDM Regulations”	the Construction Design and Management Regulations 2015
“Development Engineering Inspection Regime”	A mechanism by which developers adhere to an inspection schedule to be implemented by Surrey Development Engineers with regards to pre-commencement surveys through to completion and occur at regular intervals as set by the Highway Inspector.
“The Development”	the construction works associated with the implementation of the planning permission identified at Schedule A.
“Final Certificate”	the certificate issued by the Council after the expiry of the Maintenance Period
“Health & Safety File”	a file produced in accordance with the CDM Regulations containing information needed to ensure health and safety during maintenance cleaning repair refurbishment renewal alteration decommissioning demolition activities concerning with Works following the issue of the Provisional Certificate
“Insolvency Event”	means any one of the following: if the Developer is an individual or a firm: - the presentation of a petition for the Developer’s bankruptcy; or the making of a criminal bankruptcy order against the Developer or any partner in the firm; or the Developer or any partner in the firm making a composition or arrangement for the benefit of creditors; or the making of a conveyance or assignment for the benefit of creditors; or the appointment of an administrator to manage the Developers’ or firm’s affairs if the Developer is a company: - the company passing a resolution for winding up or dissolution (otherwise than for the purposes of and followed by an amalgamation or reconstruction); or the making of an application for, or any meeting of its members resolving to make an application for an administration order in relation to it; or the giving or filing of notice by any party of intention to appoint an administrator of it; or the appointing of such an administrator or the making by the court of a winding up order, or the company making a composition or arrangement with its creditors, or the appointment of an administrative receiver, receiver or manager or supervisor by a creditor or by the court, or the taking of possession of its property under the terms of a fixed or floating charge
“Provisional Certificate”	the certificate issued by the Council upon practical completion of the Works to the satisfaction of the Council
“Traffic Regulation Order”	any Order or Notice required under the (Highways Act 1980) such as those required to create or alter waiting restrictions, speed limits, banned movements, traffic calming, cycle routes and signal controlled pedestrian crossings
“Land”	shown edged red on the Agreement Drawing
“Maintenance Period”	the period of twelve months commencing on the date of issue of the Provisional Certificate
“Permit to Work”	a permit to be issued by the Council to carry out the Works under the terms of The Traffic Management (Surrey County Council) Permit Order 2013
“Safety Audit Report”	The formal report produced by either the Council or the Developer examining the safety performance of the Works.
“Works”	the alteration of the existing publicly maintained highway as illustrated on the Approved Drawings and at Schedule A

IN WITNESS WHEREOF

For individuals, complete the following:

This deed has been duly executed the day and year first before written.

Signed as a deed by Full Name of Individual / Acting Power of Attorney (delete as appropriate)

Full Name of Individual / Acting Power of Attorney (BLOCK CAPITALS) in the presence of a witness

Signature :

Signature of witness:

Witness Name (Block Capitals):

Witness Address:

If you are a Limited Company, otherwise than under a common seal, complete the following:

Executed as a deed by Name of Company

acting by [a director and its secretary] / [two directors]

Signature of Director:

Name (Block Capitals)

Signature of [Secretary][Director]:

Name (Block Capitals)

EXECUTED AS A DEED by
affixing THE COMMON SEAL
OF SURREY COUNTY COUNCIL
in the presence of and attested
by:

Head of Legal Services/Authorised Signatory