

DATED

201

ST. HELENS BOROUGH COUNCIL

and

...(1)...

A G R E E M E N T

Under Section 278 of the Highways Act 1980
Relating to Highway Works at ...(2)...

St. Helens Borough Council
Town Hall
Victoria Square
St. Helens
Merseyside
WA10 1HP

Ref: HWYS/3/

THIS AGREEMENT is made the day of 201
B E T W E E N ST. HELENS BOROUGH COUNCIL of Town Hall St. Helens (“the
Council”) and ...(3)... of ...(4)... (“the Applicant”)

W H E R E A S:

1. The Council is the highway authority for the purpose of the Highways Act 1980 in respect of the highways maintainable at the public expense known as ...(5)... St. Helens Merseyside (“the Highway”)
2. The Applicant has been granted planning permission in relation to the land shown edged red on the plan attached hereto (“the Land”) for ...(6)... (“the Development”) and the Applicant is willing to enter into this Agreement so that the Development is carried out in all respects in the interests of good planning of the area in which the Land is situated and to the reasonable satisfaction of the Council as the Highway Authority
3. The Applicant is registered at ...(7)... District Land Registry under Title Numbers ...(8)... with an estate in fee simple in the Land and the remainder of the Land is registered until Title Number ...(9)...
4. The parties agree that the Applicant should carry out the highway works brief details of which are set out in the First Schedule to this Agreement (“the Highway Works”) in the interests of highway safety and to improve access to the Land
5. The Council consents to the construction of the Highway Works by the Applicant in accordance with the terms of this Agreement and the plan attached hereto and the detailed drawings approved by the Council in accordance with Clause 1 hereof
6. The Applicant is satisfied that the Highway Works will give them a special benefit in relation to the Development
7. This Agreement is made pursuant to Section 278 of the Highways Act 1980 as substituted by Section 23 of the New Roads and Street Works Act 1991

NOW THIS DEED WITNESSETH as follows:

1. The Applicant hereby covenants with the Council as follows:
 - (a) Prior to the commencement of the Highway Works to submit to the Council for approval detailed drawings in respect of the Highway Works
 - (b) To carry out the Highway Works at its own expense and to the reasonable satisfaction of the Council in accordance with the terms of this

Agreement the plan attached hereto the detailed drawings approved by the Council in Clause 1(a) above and the Highways Agency's "Specification for Highway Works" current at the date of this Agreement

(c) To pay to the Council the whole of the cost of the processing, signing and road markings required in relation to the road traffic regulation order specified in the Second Schedule hereto which cost is estimated to exceed the sum of ... (10)... POUNDS (£... (11)...)

(d) To dedicate any land in its ownership which is required for the Highway Works to the public for use as a highway for all traffic

(e) Prior to commencement of the Highway Works to give to the engineer appointed by the Council ("the Engineer") 14 days' written notice (or such lesser period as is agreed in writing by the Engineer)

(f) Prior to commencement of the Highway Works to furnish the Engineer with details of the proposed programme of Highway Works and to liaise with the Engineer in respect of the scheduling of any works within the Highway

(g) To complete the Highway Works no later than ... (12)... or such later date as shall be agreed by the Engineer (such agreement not to be unreasonably withheld or delayed)

(h) Prior to commencement of the Highway Works to pay the Council's fees for the supervision of the Highway Works in the sum of ... (13)... Pounds (£... (14)...)

(i) Upon completion of this Agreement to provide a Bond in the agreed form as annexed to this Agreement in the sum of ... (15)... Pounds (£... (16)...)

(j) Upon completion of the Highway Works to give notice to the Engineer of that fact so that the Engineer shall inspect the Highway Works and the Engineer shall if he is reasonably satisfied that the Highway Works have been completed issue a provisional certificate so stating that and the Applicant shall for a period of twelve months from the date of issue of the said provisional certificate ("the Maintenance Period") at all times at its own expense maintain in good order and condition the Highway Works and shall reinstate and make good all defects and/or damage therein and thereto which shall arise during the Maintenance Period (fair wear and tear excepted)

(k) From the date of the said provisional certificate the amount of the Bond sum shall be reduced to ...(17)... Pounds (£...(18)...)

(l) When the Maintenance Period has expired and the Applicant has at its own cost reinstated and made good all defects pursuant to Clause (j) above five working days prior to the expiration of the Maintenance Period to serve notice on the Engineer and thereafter the Engineer shall inspect the Highway Works and shall issue a final certificate of completion whereupon the Council shall provide to the Applicant confirmation in writing that the Bond is discharged

(m) That without prejudice to the Council's right to take action under Section 59 of the Highways Act 1980 or otherwise to either reimburse to the Council the cost of repairing any damage caused to any highway maintainable at the public expense by any traffic arising from the carrying out of the Highway Works or of the Development or alternatively (at the option of the Council) effect such remedial works as may reasonably be required by the Council to remedy such damage

(n) During the progress of the Highway Works and the Maintenance Period (as defined in Clause (j) above) to give to the Council through their Officers or Authorised Agents free access to every part of the Land and permit them to inspect the Highway Works being carried out and all material used or intended for use therein and to make such tests or checks at any points in relation to the Highway Works as they shall reasonably require AND to reinstate and make good to the reasonable satisfaction of the Council any part or parts of the Highway Works which shall reasonably be considered by the Council to be defective or unsatisfactory and shall be stated to be so by notice in writing from the Council to the Applicant

(o) At any time on being so requested by the Council where the Council has reasonable grounds to suppose there may be a defect in the Highway Works to open up for inspection any portion of the Highway Works which may have been covered up and should the Applicant decline to comply with any such request the Council may itself open up and in the event of any portion of the works being defective the cost of such opening shall be recoverable from the Applicant but shall otherwise be made good at the cost of the Council

- (p) To make provision to the Council's reasonable satisfaction at the site of the Highway Works to prevent mud and other materials from being carried onto adjacent highways by vehicles and plant leaving the Land (including the provision and use of on-site wheel washing facilities) and shall sweep the highway in the vicinity of the Land as often as the Council may reasonably deem to be necessary
- (q) To institute at its own expense measures reasonably required or approved by the Council to maintain safe and efficient traffic flow on the highways in the vicinity of the Land
- (r) To implement all measures necessary to comply with Chapter 8 of the Department of Transport Traffic Signs Manual (2006 Edition)
- (s) Within one month of completion of the Highway Works (including remedial works) to provide the Council with a negative of the as built drawings of the Highway Works
- (t) To use its reasonable endeavours to complete the Highway Works within the time and in the manner herein provided and to perform and observe the provisions conditions and agreements on their part herein contained and in default thereof the Council shall after 28 days' notice in writing from the Council to the Applicant of their intention so to do during which time the Applicant remains in default have the right to continue or complete the Highway Works and charge the reasonable expense of so doing including all reasonable legal costs supervision fees and other charges connected therewith to the Applicant and recover the same from them by action or otherwise
- (u) Not to at any time give consent where consent is required for the erection of anything on the Highway nor grant to any person or company or undertaking any easement or other right within under or over the Highway without the prior consent in writing of the Council such consent not to be unreasonably withheld or delayed
- (v) During the course of the Highway Works and the Maintenance Period to have in force a policy of insurance indemnifying the Council against all claims whatsoever arising out of or in connection with the carrying out of the Highway Works the insured sum to be not less than Ten Million Pounds (£10,000,000) in respect of any single event

(w) The Applicant shall be responsible for meeting all claims under the provisions of Part 1 of the Land Compensation Act 1973 and any statutory modification or re-enactment thereof arising as a result of the use of the highway following completion of the Highway Works and shall indemnify the Council accordingly

(x) To meet the Council's reasonable legal costs in dealing with this Agreement

(y) Upon the expiry of the Maintenance Period to pay to the Council the sum of ...(19)...pounds (£...(20)...) in respect of the ongoing maintenance of the Highway Works

2. The Council hereby covenants with the Applicant as follows:

(a) That subject to its statutory powers and duties it will from time to time at the request and cost of the Applicant and then as expeditiously as possible use such powers as are available to it to assist the carrying out of the Highway Works (including highway drainage) and also to use its best endeavours to publish and to make or procure the publishing and making of such orders for the temporary or permanent stopping-up or diversion or restricted use of publicly adopted highways (including highway drainage) and any public utilities equipment as may in each case be reasonably necessary to facilitate the carrying out of the Highway Works

(b) Nothing contained or employed in this Agreement shall fetter limit prejudice or affect the rights duties or obligations of the Council under any statute byelaw statutory instrument order or regulation in its exercise of its function as Highway Authority

3. The Council and the Applicant agree as follows:

(a) That the performance of the obligations on the part of the Applicant relating to the Highway Works may be delegated by the Applicant to a contractor approved by the Council or on the Council's approved list provided that:

(i) the Applicant shall remain liable to the Council for the true performance and observance of this Agreement

(ii) the contract by which the obligations contained in this Agreement are delegated shall contain the terms and conditions contained in this Agreement

(b) (i) Except as to matters of law and subject to the express provisions of this Agreement to the contrary any dispute or difference arising between the parties as to any of the provisions of this Agreement and/or respective rights duties or obligations or as to any other matter or thing in any way arising out of or connected with the subject matter of this Agreement shall forthwith be referred by the parties or either of them for determination by an independent person ("the Expert") to be agreed upon between the parties and failing such agreement within seven days by the President for the time being of the Institution of Civil Engineers or any successor institute ("the President")

(ii) The Expert shall act as an expert and make his determination within one month from the date of his appointment such determination to be made in writing giving full reasons therefore and shall be binding upon the parties

(i) If the Expert shall die delay or become unwilling or incapable of acting or if for any reason the President shall in his absolute discretion think fit he may in writing discharge the Expert and appoint another in his place

(ii) It is hereby agreed and declared that

(1) the Expert shall afford to the parties the opportunity to make representations in writing and consider any written representations made by or on behalf of the parties hereto which are received by him within fourteen days after the parties have been afforded such opportunity and each party shall be entitled to receive a copy of any such written representations made by or on behalf of the other party and within five days of such receipt to make written counter-representations

(2) the Expert shall be entitled to call for such independent expert advice on such matters as he shall think fit

(3) the Expert shall have an unfettered discretion to determine the reference to him

(4) the fees and expenses of the Expert including the cost of his appointment shall be borne equally between the parties (and if either party shall pay the Expert's fees and expenses it shall be entitled to recover one half from the other) unless the Expert shall direct otherwise and he shall have power so to direct if he

considers it reasonable to do so having had regard to the conduct of the parties during the course of the dispute in question

1. The Applicant shall not assign any interest or responsibility under this Agreement without the express written consent of the Council and upon such conditions and terms as the Council may in its absolute discretion impose
2. The expressions "the Applicant" and "the Council" shall include their respective successors in title and assigns
3. For the purposes of this Agreement:
 - (a) any plan, document or other item to be submitted to the Council or application for approval shall be to the Assistant Director (Engineering) of the Environmental Protection Department, 4th Floor, Wesley House, St. Helens (telephone: St. Helens 01744-456381), which person or his/her appointee shall be deemed to be the Engineer for the purposes of this Agreement
 - (b) any approval by the Council required hereunder shall not be unreasonably withheld nor delayed
4. Nothing herein contained shall:
 - (a) operate to take away or prejudice the right of the Council to exercise any powers conferred upon it by statute in respect of the Highway Works if the Applicant shall fail to perform or observe all or any of the obligations undertaken or imposed upon the Applicant by this Agreement
 - (b) operate to render the Council in any way liable for any act or default of the Applicant while carrying out the Highway Works
5. If the Applicant shall enter into liquidation whether compulsorily or voluntary (other than for the purpose of reconstruction or amalgamation) or shall enter into any composition or arrangement or execute any Deed of Assignment for the benefit of creditors or otherwise compound with creditors then the Council may forthwith without previous notice to the Applicant and without prejudice to any rights claims or other remedies of the Council against the Applicant determine this Agreement by notice in writing signed by the Solicitor to the Council or in his absence on his behalf

THE FIRST SCHEDULE

Description of the Highway Works

THE SECOND SCHEDULE

Description of the Road Traffic Regulation Order

IN WITNESS whereof this Deed is duly executed and delivered the day and year first before written

Executed as a Deed by the)
THE COMMON SEAL of **ST. HELENS**)
BOROUGH COUNCIL being hereunto)
affixed in the presence of:)

Authorised Signatory

Executed as a Deed by)
)
by affixing the **COMMON SEAL** in the presence of:)

Director

Director