

Appendix A

DATE

201

[Developer]

and

RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL

and

[Surety]

AGREEMENT

under Section 38 Highways Act 1980 in respect of
[development details]
in the County Borough of Rhondda Cynon Taf.

THIS AGREEMENT is made the day of Two Thousand and [] between [Developer] (hereinafter called “the Developer”) of the first part RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL of The Pavilions Cambrian Park Clydach Vale CF40 2XX (hereinafter called “the Council”) of the second part and [Surety] (hereinafter called “the Surety”) of the third part

W H E R E A S

The Council is the Local Highway Authority.

The Developer is the registered proprietor with freehold title under Title Number [title number] of [development details] in the County Borough of Rhondda Cynon Taf which includes the site of the proposed road or roads shown edged [red] and coloured [grey yellow green orange and blue] on the Drawing numbered [item 12 on instruction letter] annexed hereto and all other land required for the works hereinafter referred to and is desirous of making up the road or roads so that the same shall become a highway or highways maintainable at the public expense.

The Developer has requested that when the works hereinafter referred to for the making up of the road or roads have been executed and maintained as hereinafter appearing the Council shall undertake the maintenance of the road or roads as a highway or highways maintainable at the public expense which the Council has agreed to do upon the terms and conditions hereinafter appearing.

N O W in pursuance of Section 38 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 BY THIS DEED IT IS HEREBY AGREED AND DECLARED by and between the parties hereto as follows:

Interpretation:

IN this Agreement where the context so admits:

the “Drawings” mean the Drawing numbered [item 12 on instruction letter] annexed hereto and the Section Drawings [item 13 on instruction letter] and the Specification and any amended such Drawing signed by or on behalf of the proper officer.

the “Estimated Cost” is the sum of [item 14 on instruction letter] ([item 15 on instruction letter]) being the amount which is in the opinion of the proper officer the cost of carrying out the works within the period specified in Clause 2(1) hereof

the “Final Certificate” means the Certificate to be issued on satisfactory completion of the Works in accordance with Clause 11 hereof

the “Maintenance Period” means the period specified in Clause 9 hereof

the “Part 1 Certificate” means the Certificate to be issued on satisfactory completion of the Part 1 Works in accordance with Clause 7 hereof

the “Part 1 Works” means the works referred to in Part 1 of the Schedule hereto

the “Part 2 Certificate” means the Certificate to be issued on satisfactory completion of the Part 2 Works in accordance with Clause 9 hereof

the “Part 2 Works” means the works referred to in Part 2 of the Schedule hereto

the “Proper Officer” means the officer of the Council for the time being appointed for the purposes of this Agreement or of any provision contained herein

the “Road or Roads” means the carriageways and footways of the Road or Roads hereinbefore referred to including any off-site highway drainage shown on the Drawings and includes the footpaths street lighting all verges service strips service margins vehicular crossing road surface water drainage system (if any) and all other things ancillary thereto:

the “Specification” means the edition of the publication entitled Standard Specification for Private Residential and Industrial Estate Development and Private Street Works and dated June 2011 (Two Thousand and Eleven) a copy of which the Developer hereby acknowledges has been supplied to him.

the “Statutory Undertaker” means a “Statutory Undertaker” as defined in section 329(1) of the Highways Act 1980 and British Telecommunications PLC.

the “Works” means the works specified in the Schedule hereto for the making up of the Road or Roads.

Developer’s Liability:

THE Developer shall carry out and complete the Works at the Developer’s expense in a good and workmanlike manner and with the proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the proper officer within [item 16 on instruction letter] calendar months from the date hereof

THE Part 1 Works shall be completed within [item 17 on instruction letter] calendar months from the date hereof and the Part 2 Works shall be completed within [item 18 on instruction letter] calendar months of the date of issue of the Part 1 Certificate Declaration:

THE Developer hereby declares and warrants to the Council that he has and will throughout the duration of this Agreement maintain full right liberty and consent to carry out such works as may be necessary to connect the Road or Roads to a vehicular highway or highways.

Statutory Undertakers - Connections to Existing Services:

THE Developer shall before connecting the Road or Roads with any highway or highways maintainable at the public expense give notice to each person board or authority being the Statutory Undertaker for the time being of any service or services laid in upon or under such highway or highways of the proposal to make such connection as if the connection were a work to be executed for road purposes and were mentioned in Section 86(3) of the New Roads and Street Works Act 1991 and shall indemnify the Council in respect of the cost of any works or measures considered necessary by any Statutory Undertaker in consequence of the proposal to make such connection.

Indemnity

THE Developer hereby indemnifies the Council in respect of all actions claims demands expenses and proceedings (including claims for compensation under Part 1 of the Land Compensation Act 1973 or related legislation) arising out of or in connection with or incidental to the carrying out of the Works and their use other than those arising out of or in consequence of any act neglect default or liability of the Council.

Access to the Site:

THE Developer shall during the carrying out of the Works give to the Proper Officer and any other officer of the Council access to every part of the Works and sites thereof for the purpose of inspecting the Works and all materials used or intended to be used therein.

Part 1 Certificate:

ON completion of the Part 1 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue his Part 1 Certificate to the Developer.

Occupation of Buildings:

NO dwellings erected by the Developer or on his behalf fronting adjoining or abutting on to the Road or Roads shall be occupied until:

the Proper Officer has issued his Part 1 Certificate in respect of the Road or Roads or such part of the Road or Roads as will provide the occupier with access to a vehicular highway and where applicable a base course pedestrian access to such highway has been provided and

the Road or Roads or such part of the Road or Roads have columns erected ready for lighting in accordance with the Specification and the Drawings and the Developer has arranged with the electricity board for an electricity supply thereto by giving at least six weeks prior notice in writing or as may be otherwise agreed in writing by the Proper Officer.

Part 2 Certificate:

ON completion of the Part 2 Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall if any sewer constructed under the Road or Roads under an agreement under Section 104 of the Water Industry Act 1991 has been certified as being or having been on maintenance issue his Part 2 Certificate to the Developer and from the date thereof:

the Maintenance Period of 12 calendar months shall commence to run

the Road or Roads shall become a highway or highways and remain forever open for use by the public at large

the Developer shall remain the street manager for the purpose of Section 49(4) of the New Roads and Street Works Act 1991 and any statutory modification or re-enactment thereof until such time as the Road or Roads shall become a highway or highways maintainable at the public expense

Obligations During the Maintenance Period:
DURING the maintenance period:

the Developer at his own expense shall maintain the Works including all grassed and planted areas and carry out such routine maintenance as may be necessary to facilitate use by vehicles and pedestrians

the Council at its own expense shall undertake routine maintenance of and be responsible for payment for energy for all street lights and illuminated traffic signs

Final Certificate:

PRIOR to the expiration of the maintenance period the Developer shall forthwith at his own expense reinstate and make good any defect or damage which may have arisen from any cause whatsoever or be discovered during the Maintenance Period (including any defect in or damage to the road surface water system) of which he has been notified in writing by the Proper Officer so that the works comply with the Specification

AND THEN PROVIDED THAT:

the Developer has paid to the Council all amounts due to the Council under this Agreement and

any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer and

the Developer has delivered to the Proper Officer drawings showing the Works as constructed

the Proper Officer shall issue his Final Certificate to the Developer and shall release the Surety from all liability hereunder

Grants of Rights of Drainage:

BEFORE the issue of his Final Certificate by the Proper Officer the Developer shall without cost to the Council execute or procure the execution by all necessary parties of such deeds and effect registration of such deeds at HM Land Registry as are in the opinion of the Council necessary to secure to the Council full drainage rights in respect of such parts of the surface water drainage systems or the Road or Roads as are situate outside the limits of the Road or Roads and the Council shall not be liable for the payment of compensation or legal or any other costs or fees arising on account of the execution of any such deeds.

Procedure for Inspection and Issue of Certificates:

WITHIN fourteen days of receipt of written application from the Developer for the issue of a Part 1 Certificate or Final Certificate pursuant to this Agreement and within twenty-eight days of written application from the Developer for the issue of a Part 2 Certificate pursuant to this Agreement the Proper Officer shall inspect the Works and where necessary provide the Developer with a definitive list in writing of any remedial works required to be carried out before the issue of that Certificate.

Any such remedial works shall be subject to the same inspection procedure detailed herein until such time as they shall be completed to the reasonable satisfaction of the Proper Officer who within twenty-eight days thereafter shall issue the relevant Certificate.

Adoption

UPON the issue of the Final Certificate the Road or Roads shall become a highway or highways maintainable at the public expense.

Inspection Fee:

(1) Upon the execution of this Agreement the Developer shall pay to the Council the sum of [item 20 on instruction letter] (£[item 21 on instruction letter]) in respect of the costs incurred in the checking of all plans, drawings and other details submitted by the Developer, the preparation of this Agreement and the inspection of the Works by the Council being 8 per cent of the estimated cost.

(2) RECEIPT by the Council of the payment of such sum shall not create any contractual relationship between the Council and the Developer nor absolve the Developer from any liability or obligation imposed upon him by the terms of this Agreement or by statute or at common law and the Council will not be liable for any loss damage or injury which the Developer may sustain by reason of insufficient or faulty inspection of the works by the Council.

Determination by the Council

IF the Developer fails to perform or observe any of the conditions stipulations or obligations on his part contained herein or if a receiving order in bankruptcy is made against him or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of amalgamation or reconstruction) the Council may without prejudice to any of its rights claims or remedies against the Developer in respect of such non-performance or non-observance determine this Agreement (except for Clauses 17,18 and 19 hereof) by notice in writing signed by the Proper Officer and delivered to the Developer or sent by post to the address stated in this Agreement.

Power to Execute Works in Default:

WITHOUT prejudice to Clauses 2 and 16 hereof if the Developer fails to execute or complete the works in accordance with the Developer's obligations hereunder the Council shall after not less than twenty-eight days notice in writing to the Developer be entitled to execute or complete the works in default by its own employees or by contract or otherwise and to recover the cost as certified by the Proper Officer from the Developer.

Surety's Obligations:

If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on his part contained in this Agreement or if a receiving order in bankruptcy is made in respect of the Developer's estate or if the Developer is being wound up or if the Developer enters into a composition or scheme of arrangement (otherwise than for the purpose of reconstruction or amalgamation)

the Proper Officer may without prejudice to any statutory rights or powers or any other right claim or remedy under this Agreement send to the Surety notice in writing (hereinafter referred to as the “Default Notice”) :-

specifying the work (hereinafter referred to as the “Default Work”) to be carried out in order that the Works may be executed out or completed as the case may be in accordance with this Agreement; and

containing an estimate by the Proper Officer of the cost of carrying out the Default Work and of the cost of maintaining the Works for a period of twelve months prior to the Road or Roads becoming maintainable at the public expense and also a statement of the amount of the usual establishment charges of the Council (together hereinafter referred to as the “Default Cost”) which cost

shall not exceed the sum of [item 22 on instruction letter] (£[item 23 on instruction letter]) being the Estimated Cost

shall not exceed the sum of [item 24 on instruction letter] (£[item 25 on instruction letter]) on and after the issue of the Part 1 Certificate

shall not exceed the sum of [item 26 on instruction letter] (£[item 27 on instruction letter]) on and after the issue of the Part 2 Certificate

Within twenty-eight days after the Surety has received the Default Notice the Surety shall -

pay the Default Cost to the Council; or

send to the Council notice in writing (hereinafter referred to as the “Surety’s Counter Notice”) of the intention of the Surety to carry out the Default Work

If the Surety having sent the Surety’s Counter Notice to the Council fails to start the Default Work within fifty-six days after the Surety received the Default Notice the Surety shall forthwith pay the Default Cost to the Council with simple interest thereon at the rate of 4 per cent per annum from the date on which the Surety received the Default Notice

If the Surety having sent the Surety’s Counter Notice to the Council starts the Default Work and the said work is not completed within four months after the Surety’s Counter Notice was received by the Council or within such further period as may be agreed by the Council the Surety shall subject to sub-clause (e) forthwith on demand by the Proper Officer may determine as being the cost of carrying out any Default Work not carried out by the Surety or the cost of maintaining the works for the period of twelve months prior to the Road or Roads becoming maintainable at the public expense as may be the case (or as being the cost of both) and also pay to the Council the amount determined by the Proper Officer as being the amount of the appropriate usual establishment charges of the Council.

The sum payable under sub-clause (d) shall not exceed the Default Cost and the covenant in Clause 19(c) shall apply with respect to such sum and if the costs of executing the Default Works shall exceed the costs referred to in the Default Notice the Surety shall repay to the Council the additional costs within seven days of receipt of a copy of the Proper Officers final certificate provided however that the total sum payable by the Surety shall not exceed the sum specified in clause 18(a)(ii)(1)

The Surety shall be released from all liability under this Agreement either:-

upon the issue of the Proper Officers Final Certificate where repayment is made in full or

where the actual costs of executing the Default Works exceed the estimate of the Default Costs upon receipt of the actual costs specified in the account rendered by the Proper Officer under the preceding sub-clause.

for the purposes of this Agreement a demand stated to be made hereunder and signed or purportedly signed on behalf of the Council shall be conclusive as to the Surety's obligation to pay the amount demanded and there shall be no obligation or duty whatsoever on the Surety to consider the alternative set out in (b)(ii) above.

Council's Covenants:

THE Council HEREBY COVENANTS with the Developer and with the Surety for the benefit of all building plots fronting adjoining or abutting the Road or Roads and for each and every one of them:

to use its best endeavours in consultation with the Surety to mitigate any loss or damage sustained by reason of any default by the Developer by taking such reasonable steps as the Council shall think fit

to apply all monies received from the Surety as hereinbefore mentioned towards the expenditure involved in executing or completing the works and maintaining and making good all defects for a period of twelve months after completion and the amount so received shall be deducted from any sum which would otherwise be recoverable from the owners of premises fronting the Road or Roads under the provisions of the Highways Act 1980 or any other Act for the time being in force replacing or amending the same

in the event of the sum paid by the Surety to the Council exceeding the cost of executing or completing the Works and maintaining and making good all defects as aforesaid together with the amount of the Council's usual establishment charges to repay to the Surety within twenty-eight days after the Road or Roads become maintainable at the public expense the amount of such excess with interest calculated at half-yearly rests on the unexpected balance for the time being of the sum paid by the Surety to the Council at the rate of interest prevailing from time to time on monies held in a deposit account with the Council's bankers.

THE Council HEREBY FURTHER COVENANTS that the Final Certificate will be issued in accordance with this Agreement and that the Surety will be released from all liability under this Agreement in accordance with this Agreement.

Part of Parts:

NOTWITHSTANDING anything hereinbefore contained the Developer may from time to time during the currency of the Agreement apply to the Proper Officer for his Part 1 Certificate or his Part 2 Certificate in respect of any part of the Road or Roads (being the whole width of the Road or Roads between points to be defined in the application) and if the Proper Officer shall be satisfied that the part so defined is in all respects suitable to be treated as a separate road for the purposes of construction and adoption in accordance with the several provisions contained in this Agreement then he shall issue a separate Part 1 Certificate or Part 2 Certificate as the case may be in respect of that part and thereafter the same proceedings may be taken in respect of the said part of the Road or Roads as if the said part were the subject of a separate Agreement under which the terms of this Agreement applied to the said part separately from the remainder of the Road or Roads but without prejudice to the application of this Agreement to the remainder of the Road or Roads and the liability of the Surety shall be reduced as may be agreed by the Proper Officer with the Developer.

Agreement:

THIS Agreement may not be assigned by the Developer without the consent of the Council and the Surety which consent shall not be unreasonably withheld

Arbitration:

IN the event of any dispute arising out of this Agreement the same shall be referred to a sole arbitrator to be agreed between the parties or failing agreement to be appointed by the President for the time being of the Institution of Civil Engineers and in this respect this Agreement shall be construed as a submission to arbitration within the meaning of the Arbitration Acts 1950 to 1996 or any statutory re-enactment or modification thereof

Developer may be called upon to transfer land

If and when called upon by the Council to do so within 21 years from the date of this agreement, the Developer shall prove his title to the land dedicated to the public and shall upon payment of £1.00 transfer the freehold estate in the Road or Roads to the Council or its nominee with full title guarantee.

Further Bond

At any time after 12 months from the date of this agreement the Developer shall, if required by written notice served by the Council to do so, procure a further bond by the Surety in favour of the Council in such sum as the Proper Officer shall determine to guarantee further the terms and conditions contained in this Agreement. The further bond shall be terminated in accordance with clause 18. If within 14 days of service of any notice under this clause the Developer disputes the reasonableness of the sum specified, the Developer shall give notice to that effect to the Council and the dispute or difference shall be referred to the determination of a single arbitrator to be agreed upon by the parties, or failing agreement nominated by the President of the Institution of Civil Engineers, in the manner provided by the Arbitration Act 1996 or any statutory modification or re-enactment of it for the time being in force.

Limited Action by the Council

If, at any time after work has been done in or for the purpose of erecting any building adjoining the road or roads or part of them and before the Developer has completed the Works in respect of the Road or Roads or parts of them, the Council is of the opinion that the circumstances warrant action on its part but do not at that time warrant action under clauses 16 or 17, the Council may by notice require the Developer to pay to the Council on demand such sum as the Council thinks fit not exceeding the estimated cost of completion of the parts of the Road or Roads opposite the frontage of any such building and of any completed building (including any buildings built before the date of this Agreement) and any parts intervening between any of those parts and between them and the nearest highway maintainable at the public expense. If the Council takes action under this clause such action shall not in any way prejudice the Council from taking further action under clauses 16 or 17 of this Agreement should any further work subsequently be done in or for the purpose of erecting any building adjoining the Road or Roads.

The Highways Act 1980 section 203(1) shall apply for the interpretation of this clause as it applies for the interpretation of the advance payments code of that Act.

Service of Notices

Any notice required to be given to the Developer under this agreement shall be deemed to have been properly served if it is sent by the Council by pre-paid recorded delivery post to the Developer at the addresses given in this Agreement. Any notice required to be given by the Developer to the Council (which expression shall include the Proper Officer) shall be deemed to be properly served if sent by pre-paid recorded delivery post to the Chief Executive of the Council at the address given in this agreement.

THE SCHEDULE

Part 1

All highway drainage

All other drainage contained within the highway

All kerb foundations and where appropriate kerbs including lowering at vehicle crossings and pram-ramps

Carriageway sub-base road base and any supporting structures thereto

Carriageway binder course surfacing where appropriate

Demarcation of sight lines and clearance of vision splays

Part 2

All outstanding kerbing not completed in Part 1

Pedestrian ways

Carriageway surface course and carriageway binder course if not carried out in Part 1

Vision splays and verges

Street lighting and street furniture

Street name plates

Road markings

All other works described in the Specification and shown in the Drawings

IN WITNESS whereof the parties hereto have caused their respective Common Seals to be hereunto affixed the day and year first before written

Executed as a deed by affixing the common seal of **RHONDDA CYNON TAF COUNTY BOROUGH COUNCIL** in the presence of :-

AUTHORISED SIGNATORY

Executed as a Deed by
[developer]
in the presence of

Director

Director/Secretary

Executed as a Deed by
[surety]
in the presence of

Director

Director/Secretary