

AN AGREEMENT made **24 MAY 2023**

BETWEEN

Ropemaker Properties Limited (Co.Regn.No. 00759094) of Chertsey Road, Sunbury on Thames, Middlesex TW16 7BP ("Owner")

Superscheme Limited (Co.Regn.No.06337417) of 3 Llys Y Bont, Parc Menai, Bangor LL574BN ("Developer")

Devon County Council of County Hall, Topsham Road, Exeter EX2 4QD ("Council")

Euler Hermes SA (NV) a company incorporated in Belgium at Avenue des Arts 56, 1000 Brussels, Belgium with company number 0403.248.596 Rpm Brussels, whose address for service is care of its registered branch Euler Hermes UK (Branch Number BR015404), 1 Canada Square, London E14 5DX ("Surety")

WHEREAS

- 1) The Council is the Local Highway Authority
- 2) The Owner is registered at Land Registry under title DN331129 of the land at **South Western Ambulance Service, Gladstone Road, Exeter, EX1 2EB** which is shown for identification only by red edging on the annexed plan
- 3) The Developer is carrying out the Development and the Council is requiring that the Developer execute certain works upon the highway as hereinafter described and the Council is satisfied that those works will be of benefit to the public

In pursuance of Section 278 of the Highways Act 1980 and Section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and Section 111 of the Local Government Act 1972 and with other enabling powers; and **it is hereby agreed and declared** by and between the parties as follows

1. Interpretation

In this Agreement where the context so admits:

"Certificate of Completion" means the certificate to be issued on satisfactory completion of the Highway Works in accordance with Clause 7

"Design Manual" means the "Design Manual for Roads and Bridges" reference GG119 published by the Highways Agency and others, and any publication which amends or replaces it;

"Development" means Former Ambulance Station, Gladstone Road, Exeter, EX1 2EB

"Drawings" mean annexed drawing 19252_100_P7 signed by or on behalf of the parties hereto and any amended such Drawings signed by or on behalf of the Proper Officer

"Final Certificate" means the certificate to be issued on satisfactory completion of the maintenance period for the Highway Works in accordance with Clause 9

"Highways Works" means the works to be executed upon the public highway and described in the Schedule and shown on the General Arrangement Plan 19252_100_P7 appended hereto

"Programme of Works" means that referred to in Clause 3.1 and described more fully at Clause 5

"Proper Officer" means the Chief Officer for Highways, Infrastructure Development & Waste or such other officer of the Council from time to time with responsibility for highways

"Specification" means the Highways in Residential and Commercial Estates Design Guide dated Jan 1996 and as amended and current at the date of commencement of the Highway Works

"Stage 1, 2, 3 and 4 Safety Audits" means the safety audits so defined in the Design Manual and the Institution of Highways and Transportation's Road Safety Audit guidelines;

"Statutory Undertaker" means a statutory undertaker as defined in Section 329(1) of the Highways Act 1980 and British Telecommunications plc

"Traffic Manager" means the officer appointed by the Council to act as traffic manager for the purposes of the Traffic Management Act 2004

"Works Contribution" means a payment of the less of

- a. 72% of the total cost of the Highway Works; or
- b. Sixty Five thousand pounds (£65,000)

2. Developer's Liability

SUBJECT to the terms conditions agreements and undertakings contained in this Agreement the Developer shall carry out and complete the Highway Works at the Developer's expense in a good and workmanlike manner and with proper materials in accordance in all respects with the Specification and the Drawings to the satisfaction of the Proper Officer and in accordance with permits and approvals granted by the Council or any other statutory or public authorities and (except as may be otherwise provided in this Agreement) shall complete the Highway Works by August 2023

3. Highway Works

The Developer covenants with the Council that the Developer will at its own expense in relation to the Highway Works observe and perform to the reasonable satisfaction of the Council the following requirements obligations and conditions or any of them outstanding at the date of this Agreement and will immediately do any act or thing required by the Council to remedy any breach of those requirements obligations and conditions: -

- 3.1 Not to commence any part of the Highway Works before a Programme of Works and a method of carrying out the Highway Works shall have been approved by the Proper Officer (such approval not to be unreasonably withheld) and the Drawings have been provided as a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer
- 3.2 Secure at its own expense any necessary approvals required from any Statutory Undertaker, emergency services and other public authorities and utilities and comply with all requirements of these

- 3.3 execute the Highway Works and works associated therewith expeditiously causing no unnecessary nuisance to the public
- 3.4 employ a suitably qualified supervisor to oversee the construction of the Highway Works and to act as liaison between the Developer and its contractor(s) and the Council
- 3.5 employ a contractor or contractors to carry out the Highway Works who shall be approved by the Proper Officer (such approval not to be unreasonably withheld or delayed) and ensure that all the covenants conditions and obligations contained in this Agreement relating to the method of working shall be included in any agreement between the Developer and its contractor(s) and it shall not depart from it without the approval of the Council (such approval not to be unreasonably withheld or delayed) and the said contractor or contractors shall at all times during the progress of the Highway Works maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
- 3.6 to give the Traffic Manager appropriate notice in the form required by the Traffic Manager to comply with the requirements of the Traffic Management Act 2004 of the Developer intention to commence the Highway Works
- 3.7 to undertake all the requirements in respect of the execution of the Highway Works under the Construction (Design and Management) Regulations 2015 ("Regulations") as if the Developer were the client and to indemnify the Council in respect of any actions proceedings costs claims demands and liabilities arising out of any breach of the Regulations and on the issue of the Health and Safety File for the Highway Works
- 3.8 as soon as possible after the date of this Agreement and in any event prior to the commencement of work on any element of the Highway Works the Developer shall contact the Council who shall identify any necessary Traffic Regulation Orders and any other similar changes to the highway subject to statutory publications e.g. zebra crossings, road humps etc and the Developer shall request the Council, if the Council is satisfied with the proposals to make any such Order or publish notice of intent or similar and shall indemnify the Council in respect of the costs involved in making any such Order including notification procedure pursuant to the relevant legislation (or any statutory modification or re-enactment thereof)
- 4. The Developer covenants to include in the conditions of contract of the contractors (or any sub contractors) engaged to carry out the Highway Works the following clauses
 - 4.1 The Programme of Works and method of carrying out the Highway Works shall be approved by the Proper Officer and the contractor shall in all cases submit written notice of its intended Programme of Works and any width restrictions or occupation of the public highway to the Proper Officer for approval in writing at least 4 weeks in advance of the proposed commencement of those works and the approved Programme of Works and method shall be followed at all times

- 4.2 All work on the public highway shall be restricted to dates and times agreed in writing by the Proper Officer in order to minimise delay to vehicular traffic
- 4.3 All operations on or affecting the public highway shall be carried out so as to avoid risk of danger to both pedestrians and vehicular traffic and (except as may be previously agreed in writing by the Proper Officer) to avoid any interference with the free movement of pedestrians and vehicular traffic
- 4.4 The contractor shall in accordance with the agreed Programme of Works be allowed to take possession of so much of the public highway and as may be agreed in writing by the Proper Officer for the carrying out of the Highway Works
- 4.5 Where in the opinion of the Proper Officer work affecting the public highway causes excessive traffic congestion the contractor shall immediately suspend that work and remove any plant or equipment that create such restrictions to traffic flows
- 4.6 The Proper Officer may require the contractor to agree to variations to any previously agreed Programme of Works in the event of excessive traffic congestion resulting from it and the contractor will take all steps to comply with any such request
- 4.7 The contractor will comply with the Volume 1 Department of Transport's Manual of Contract Documents for Highway Works (MCHW) – Specification for Highway Works and any publication which amends or replaces it and shall include the following additional clauses to that specification
- 4.7.1 The traffic signs road markings lamps barriers and traffic control signals shall be in accordance with the requirements of the Traffic Signs Regulations and General Directions current at the date of execution of the work
- 4.7.2 Traffic control signals shall be operated in the vehicle actuated mode unless otherwise agreed by the Proper Officer
- 4.7.3 Traffic cones and cylinders shall comply with the requirements of BS 873 Part 8 Category A Designation 1
- 4.7.4 The contractor shall construct temporary diversion ways wherever they propose to interfere with the existing public or private roads or other ways over which there is a public or private right of way for any traffic
- 4.7.5 The standard of construction and lighting shall be suitable in all respects for the appropriate class of road and the width of any diversion shall not (unless otherwise agreed with the Proper Officer such agreement not to be unreasonably withheld) be less than that of the existing way. The standard of construction shall conform to the requirements of the Council
- 4.7.6 Temporary white lining is to be provided to all such diversions and laid in accordance with the requirements of the Traffic Signs Regulations and General Directions or otherwise as instructed by the Proper Officer

- 4.7.7 Roads accesses and rights of way which are being used by construction traffic shall at all times be kept clean and clear so far as possible of dirt mud and material dropped from vehicles or from tyres arising from such use and the contractor shall provide maintain and use suitable equipment for this purpose
- 4.7.8 The contractor shall at all times ensure that all highway drains affected by its works shall be kept clear of any spoil mud slurry or other material likely to impede the free flow of water in them
- 4.7.9 The contractor shall provide the Proper Officer with the name and telephone number of a person and their deputy who can be contacted at any time during the day and night and who will be in a position to put into immediate effect any measures considered necessary by the Proper Officer to ensure the safety of the public

5. The Programme of Works shall include details of

- 5.1 The sequence in which each phase of the Highway Works including temporary highway works or temporary access arrangements shall be undertaken
- 5.2 The period within which each phase of work shall be completed
- 5.3 Temporary traffic and pedestrian arrangements during the construction of the development of the adjoining land including the means and positions of vehicular and pedestrian access to the development
- 5.4 Such additional plans and details as may be reasonably required by the Council to describe each phase of work

6. Access to Highway Works & Inspection

- 6.1 The Developer shall during the carrying out of the Highway Works give and allow the Proper Officer and any other officer of the Council access to every part of the Highway Works and the site thereof for the purpose of inspecting the same and all materials used or intended to be used therein and the Developer shall if requested open up for inspection any portion of the Highway Works which may be covered up and should the Developer decline to comply with such a request the Council may itself open up the Highway Works and in the event of any such portion of the same being found (in the reasonable opinion of the Council) to be defective the cost of such opening shall be recoverable from the Developer
- 6.2 If any inspection carried out under sub-clause 6.1 reveals defects in the Highway Works the Developer shall carry out remedial works to the reasonable satisfaction of the Council
- 6.3 The Council will inspect any remedial works carried out under sub-clause 6.2 within 5 working days of receipt of a written request from the Developer to do so

- 6.4 Following any inspection under sub-clause 6.3 the Council shall within 5 working days of its inspection notify the Developer in writing of its satisfaction with the remedial works PROVIDED THAT in the event of the remedial works being unsatisfactory this process may be repeated as many times as necessary until the defective works have been remedied to the reasonable satisfaction of the Council
- 6.5 The Developer shall
- 6.5.1 Employ an auditor who meets the qualifying standards of the Design Manual and who will not have been involved in any part of the scheme design to carry out the Stage 1 2 3 and 4 Safety Audits who shall be approved by the Proper Officer (such approval not be unreasonably withheld or delayed) and the said auditor or auditors shall at all times during the Stage 1 2 3 and 4 Safety Audits maintain a public liability insurance policy with a member of the Association of British Insurers for at least £5,000,000
 - 6.5.2 Provide copies of the Stage 1 and 2 Safety Audit reports to the Proper Officer and any consequent changes or recommendations agreed with the Proper Officer
 - 6.5.3 Provide copies of the Stage 3 and 4 Safety Audit reports to the Proper Officer and any recommendations or exception agreed with the Proper Officer and the Developer shall comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
 - 6.5.4 Not less than 14 days before the Highway Works are due to be completed the Developer shall ensure that the Stage 3 Safety audit of the Highway Works is carried out and upon receipt of the safety audit report the Developer shall undertake such works to comply with the recommendations of such report to the reasonable satisfaction of the Proper Officer
 - 6.5.5 The Developer shall ensure that the Stage 4 Safety Audit is carried out not earlier than 12 months nor later than 36 months from issue of the Certificate of Completion
- 6.6 In the event of the final inspection revealing any defect or defects in the Highway Works the provisions of clause 6.4 shall apply as if they related to a final inspection

7. Completion of Highway Works

On completion of the Highway Works to the satisfaction of the Proper Officer in all respects the Proper Officer shall issue the Certificate of Completion and from the date thereof the maintenance period shall commence to run and shall expire not less than 12 months thereafter or on the issue of the Final Certificate whichever shall be the later

8. Obligations During Maintenance Period for Highway Works

During the maintenance period for the Highway Works the Developer shall maintain the Highway Works and for the purposes of this clause and for the avoidance of doubt the Developer shall not have any

obligations in respect of cyclic maintenance such as sweeping cleansing and provision of street lighting and other functions normally performed by the Council in respect of highways maintained at public expense

9. Final Certificate for Highway Works

Prior to the expiration of the maintenance period for the Highway Works the Developer shall forthwith at their 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 of which they have been notified in writing by the Proper Officer so that the Highway Works comply with the Specification **and then provided that:**

- 9.1 the Developer has paid to the Council all amounts due to it under this Agreement and
- 9.2 any necessary reinstatement or other works have been completed to the satisfaction in all respects of the Proper Officer
- 9.3 the Developer has delivered to the Proper Officer drawings showing the works as constructed one set being a CAD (dwg.) file or such other format as agreed in writing by the Proper Officer

the Proper Officer shall issue the Final Certificate to the Developer in respect of the Highway Works

10. Inspection Fee

- 10.1 Within 7 working days of the completion of this Agreement the Developer shall pay to the Council Six thousand three hundred pounds (**£6,300.00**) in respect of the costs incurred by the Council in inspecting the Highway Works
- 10.2 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 them 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 Highway Works by the Council

11. Determination by the Council

If the Developer fails to perform or observe any of the conditions stipulations or obligations on their part contained herein or if a receiving order in bankruptcy is made against them 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 Clause 12) 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

12. Power to Execute Highway Works in Default

If the Developer fails to execute the Highway Works in accordance with any previously agreed Programme of Works (unless prevented from doing so by matters beyond the control of the Developer when the period for completion of the Highway Works or the relevant part of them shall be extended by such reasonable period as shall be appropriate to the circumstances of delay) or if work shall (without the prior agreement of the Council) cease for more than one month or if the Developer shall go into voluntary or compulsory liquidation or if interim works are required in the interests of public safety then the Council may under Sections 278 and 296 of the Highways Act 1980 and after service of notice carry out any works it deems necessary in order to meet the requirements of this Agreement (if necessary entering onto the adjoining land for the purpose) and may then recover the reasonable and proper cost of those works from the Developer who shall reimburse the Council on demand

13. Surety's Obligations

- a) If the Developer at any time fails to perform or observe any of the conditions stipulations or obligations on their part contained in this Agreement or if the Developer is adjudged bankrupt or if the Developer is being wound up or if the Developer enters into a composition or scheme or arrangements (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 ("Default Notice")
 - i) specifying the work ("Default Work") to be carried out in order that the Highway Works may be executed carried out or completed as the case may be in accordance with this Agreement and
 - ii) containing an estimate by the Proper Officer of the costs of the carrying out of the Default Work and the cost of maintaining the Highway Works for 12 months prior to the Highway Works becoming maintainable at the public expense or the issue of the Final Certificate and also a statement of the amount of the usual establishment charges of the Council (together referred to as "Default Cost") which cost
 - 1) shall not exceed Ninety Thousand pounds (£90,000.00) being the Estimated Cost
 - 2) shall not exceed Twenty Seven thousand pounds (£27,000.00) on and after the issue of the Certificate of Completion for the Highway Works
- b) Within 28 days after the Surety has received the Default Notice the Surety shall
 - i) pay the Default Cost to the Council or
 - ii) send to the Council notice in writing ("Surety's Counter Notice") of the intention of the Surety to carry out the Default Work
- c) If the Surety having sent the Surety's Counter Notice to the Council fails to start the Default Work within 56 days after the Surety received the Default Notice the Surety shall pay the Default Cost to

the Council with interest added at 4 per cent per annum above the prevailing base rate from time to time of Barclays Bank Plc calculated from the date on which the Surety received the Default Notice

- d) 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 4 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 pay to the Council such sum as 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 12 months prior to the Highway Works becoming maintainable at public expense as may be the case (or as being the cost of both) and also to pay to the Council the amount determined by the Proper Officer as being the amount of the appropriate usual establishment charges of the Council
- e) The sum payable under sub-clause (d) shall not exceed the Default Cost and the covenant in Clause 13(c) shall apply with respect to such sum and on the issue of the Final Certificate the Surety shall be released from all liability hereunder
- f) 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 obligations 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

14. Works Contribution

- 14.1 Once the Council is reasonably satisfied that the Highway Works have been completed the Council will pay the Developer the Works Contribution to offset the cost of the Highway Works required by the Development.
- 14.2 The Developer hereby covenants to provide such evidence as reasonably required by the Council to show total cost of the Highway Works.

15. Assignment

This Agreement may not be assigned by the Developer without the consent of the Council which consent shall not be unreasonably withheld provided that the Council may require bonding as a condition of such an assignment

16. 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 Act 1996 or any statutory re-enactment or modification thereof

17. Indemnity

The Developer shall indemnify and keep indemnified the Council against any actions costs claims demands expenses and proceedings arising out of the undertaking of any of the Highway Works which are due to any acts or defaults of the Developer or its contractor whether directly or indirectly during the course of their construction or during the ensuing maintenance period other than those arising out of or in consequence of any act neglect default or liability of the Council

18. Land Compensation Act 1973

The Developer shall indemnify the Council in respect of all claims pursuant to the Land Compensation Act 1973 (or any statutory modification or re-enactment of it) arising from the carrying out of the Highway Works and prior to the commencement of the Highway Works shall carry out such surveys as may be necessary to define the levels of physical factors as specified in the said Act

19. Consents & Approvals

Where under this Agreement the consent or approval of any party is required that consent or approval shall not be unreasonably withheld or delayed

20. Notice

Any notice required to be served under this Agreement shall be in writing and shall be validly served if delivered to the relevant party or if sent by registered or recorded delivery post (and by facsimile in the case of emergency) as set out below:

- 20.1 in the case of the Council to the Head of Planning, Transportation & Environment, Devon County Council County Hall, Topsham Road, Exeter EX2 4QD
- 20.2 in the case of the Developer and Owner and Surety to their respective addresses shown in this Agreement

21. Supplemental Drawings etc

All subsequent drawings specifications licences agreements letters and documents relating to any matter contained or referred to in this Agreement shall be signed by or on behalf of the parties to this Agreement as appropriate and shall be deemed to be supplemental to this Agreement and the stipulations and conditions contained in this Agreement shall apply to all such drawings specifications licences agreements letters and documents as if the same were incorporated in and formed part of this Agreement unless the parties specifically agree otherwise

22. Costs

On completion of this Agreement the Developer shall pay the Council's reasonable costs relating to the preparation and completion of this Agreement

23. Interest

If the Developer fails to pay any sum payable to the Council under this Agreement on the date when such payment falls due then the Council shall have the right to charge interest on such unpaid sum at the rate of 4% above base rate of Barclays Bank plc or any rate substituted therefor

24. Governing Law

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. Counterparts

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original but all the counterparts shall together constitute the one Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

THE SCHEDULE

The Highway Works

As shown on the Drawings and all other associated works reasonably required by the Proper Officer

SIGNED AS A DEED BY)
Ropemaker Properties Limited)
acting by ~~two directors/ a~~)
~~director and secretary or a~~)
single director *its attorney*)
in the presence of a witness

.....

Signed by witness:

Witness Name **Shakir Potts**
Associate
Witness Address **Watson Farley & Williams LLP**
15 Appold Street
London EC2A 2HB
United Kingdom
Occupation

SIGNED AS A DEED BY)
Superscheme Limited)
acting by two directors/ a)
director and secretary or a)
single director)
in the presence of a witness

..

.....

Signed by witness: ..

Witness Name:
Witness Address:
.....
.....
Occupation

EXECUTED AS A DEED on behalf of)
Euler Hermes SA (NV))
a company incorporated in Belgium)

by: _____
(Print Name) (Signature)

and: _____
(Print Name) (Signature)

being persons who, in accordance with the laws of that territory, are acting under the authority of the company.

THE COMMON SEAL of)
The Council was hereunto)
affixed in execution as a deed)
in the presence of)



document number 519624
reference

A Duly Authorised Officer