



Department of Transport

AGREEMENT as to construction and adoption of roads

The Agreement on page 2 incorporates —

1. the following Schedule
2. the Conditions
3. the Specifications
4. the Plans

SCHEDULE referred to in the within-written Agreement

1.	Name of Developer in full	
2.	Address or registered office	
3.	Name of Surety in full	
4.	Address or registered office	
5.	DoT ref.	
6.	Name and situation of development (and phase no. if any)	
7.	Description or name(s) of road(s)	
8.	Bond figure (in figures and words)	£ pounds
9.	Contract period	months
10.	Initial period	months

11.

Date of agreement	
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AN AGREEMENT made on the date mentioned in Part 11 of the Schedule

BETWEEN (1) the Department, **THE DEPARTMENT OF TRANSPORT**

(2) the Developer named in Part 1 of the Schedule and

(3) the Surety named in Part 3 of the Schedule

WHEREBY it is agreed pursuant to section 4 of the Highways Act 1986 that subject to and in accordance with the Conditions —

A. the Developer shall lay out sewer level pave metal flag channel make good and light the Road in accordance with the Plans and the Specifications

B. the Developer (being the Owner in customary fee simple of the Road) hereby dedicates the Road as a highway

C. the Surety shall in accordance with condition 7 pay to the Department on demand a sum or sums calculated in accordance with the Conditions

D. as provided in the Conditions the Road shall become a highway maintainable at the public expense

AS WITNESS the hand of _____ duly authorised on behalf of the Department and the Common Seals of the Developer and the Surety

SIGNED AND DELIVERED by the said

in the presence of:

THE COMMON SEAL of the Developer is

hereunto affixed in the presence of:

Surveyor

Secretary

THE COMMON SEAL of the Surety is

hereunto affixed in the presence of:

Surveyor

Secretary

CONDITIONS

1. Interpretation

1.1 In this Agreement —

1.1.1 "the bond figure" means the sum mentioned in Part 8 of the Schedule;

1.1.2 "the Conditions" means these Conditions;

1.1.3 "the contract period" means the period (calculated from the date specified in Part 11 of the Schedule) specified in Part 9 of the Schedule (subject to any extension under condition 2.8);

1.1.4 "final certificate" means a certificate issued in accordance with condition 6.1.1;

1.1.5 "the initial period" means the period (calculated from the date specified in Part 11 of the Schedule) specified in Part 10 of the Schedule (subject to any extension under condition 2.8);

1.1.6 "the lighting works" means the installation of such lighting apparatus as the local authority may require to be installed (the position of which is shown on the Plans as mentioned in condition 1.1.11);

1.1.7. "the local authority" means the local authority for the district in which the Road is situated;

1.1.8 "the maintenance period" means the period of 12 months from the issue of the provisional certificate;

1.1.9 "the Plans" means the plans and sections annexed hereto;

1.1.10 "provisional certificate" means a certificate issued in accordance with condition 4.2.1;

1.1.11 "the Road" means the road or roads (including the footways footpaths and verges) briefly described in Part 7 of the Schedule and shown on the Plans by the following colouring —

carriageways	brown
footpaths and footways	yellow
verges	green
lighting standards	red

1.1.12 "the road base certificate" means a certificate issued in accordance with condition 3.2.1;

1.1.13 "the road base works" means the works to be carried out pursuant to condition 2.4

1.1.14 "the Road Works" means the works to be carried out pursuant to clause A of this Agreement and includes the lighting works;

1.1.15 "the Schedule" means the Schedule on page 1 of this Agreement;

- 1.1.16 "the Specifications" means the specifications set out the document entitled *Manx Roads 2: Residential Roads Construction Guide* (January 1997) issued by the Department;
- 1.1.17 "statutory undertakers" includes the Department in respect of its functions under the Sewerage Act 1999;
- 1.1.18 "the Surveyor" means the Director of Highways and Traffic of the Department or such other suitably qualified person as the Department may from time to time appoint for the purpose of these Conditions.

1.2 In this Agreement expressions in the singular include the plural and vice versa.

2. Performance

- 2.1 The Developer may without prejudice to his liability hereunder engage a suitable person to carry out the Road Works on his behalf provided that such person has first been approved in writing by the Surveyor for the purpose of this Agreement.
- 2.2 Before commencing the Road Works the Developer shall give to the Surveyor not less than 14 days' notice of his intention to do so.
- 2.3 Where the Specification requires the Developer to give notice of commencement of any stage of the Road Works —
 - 2.3.1 the Developer shall give to the Surveyor not less than 5 working days' notice of such commencement;
 - 2.3.2 in default of such notice the Developer shall at its own expense carry out such tests as the Surveyor may require to determine whether the Road Works comply with the Plans and Specifications
- 2.4 Before carrying out any works of construction of any building fronting adjoining or abutting on the road (but without prejudice to condition 2.8) the Developer shall to the Surveyor's reasonable satisfaction level and lay out the Road and provide and lay out all such drains gullies and sewers as are specified in the Plans and Specifications or are required in connection with such building and construct a sound foundation including the road base course and the kerb race
- 2.5 If any of the Road Works fall within an existing highway maintainable at the public expense the Developer shall —
 - 2.5.1 carry out such works without undue delay;
 - 2.5.2 at all times maintain a safe and uninterrupted way for traffic along the highway (except so far as such traffic may be restricted or prohibited by any order or notice under the Road Traffic Regulation Act 1985); and
 - 2.5.3 comply with all reasonable requirements of the Surveyor in connection with such works.
- 2.6 On completion of the works referred to in condition 2.4 the Developer shall maintain the Road in a reasonable condition to the Surveyor's satisfaction during the construction of any such building as is referred to therein

- 2.7 During the progress of the Road Works the Developer shall afford to the Department and its duly authorised agents servants and contractors free access to every part of the Road and permit them to inspect the same and to take samples of and inspect and test all materials used or to be used in the Road works
- 2.8 The Developer shall proceed with the Road Works with all due expedition and speed and in accordance with the following time-table, subject to any extension of time granted by the Surveyor in writing in his discretion on an application made in writing by the Developer before the expiry of the relevant time —
 - 2.8.1 the road base works to be completed within the initial period;
 - 2.8.2 the footway and footpath (if any) fronting any house and the curtilage thereof to be completed to base course before the house is occupied;
 - 2.8.3 any lighting works serving the access to any house to be installed and operating before the house is occupied;
 - 2.8.4 the Road Works to be completed before the expiration of the contract period or the expiration of 3 months beginning with the completion of the penultimate house to be erected fronting the Road, whichever is the sooner.
- 2.9 The Developer shall carry out the Road Works in a proper and workmanlike manner and using proper materials and fully in accordance with the Plans and Specifications.

3. Road base certificate

- 3.1 The Developer shall notify the Surveyor writing of the completion of the road base works.
- 3.2 As soon as reasonably practicable after notification under condition 3.1 the Surveyor shall inspect the road base works and —
 - 3.2.1 if the road base works have been completed to his reasonable satisfaction he shall issue a certificate to that effect and send a copy to the Developer;
 - 3.2.2 if he is not so satisfied he shall give the Developer notice in writing —
 - (a) specifying any defects found in the road base works and the works required to remedy those defects or
 - (b) requiring the Developer to carry out such tests as are specified in the notice.
- 3.3 Condition 3.2 applies with any necessary modifications where the Developer has notified the Surveyor —
 - 3.3.1 that he has carried out the works required by a notice under condition 3.2.2(a) or
 - 3.3.2 of the results of the tests required by a notice under condition 3.2.2(b).
- 3.4 If the road base works have been carried out to the Surveyor's reasonable satisfaction in respect of part only of the Road then the Surveyor may in his discretion issue a road base certificate in respect of that part only and thereupon these Conditions (except condition 6) shall apply in respect of that part of the Road

as they apply to the whole subject to any necessary modifications but without prejudice to the obligations of the parties in respect of the rest of the Road.

4. Provisional certificate

- 4.1 The Developer shall notify the Surveyor writing of the completion of the Road Works.
- 4.2 As soon as reasonably practicable after notification under condition 4.1 the Surveyor shall inspect the Road Works and —
 - 4.2.1 if the Road Works have been completed to his reasonable satisfaction he shall issue a certificate to that effect and send a copy to the Developer;
 - 4.2.2 if he is not so satisfied he shall give the Developer notice in writing —
 - (a) specifying any defects found in the Road Works and the works required to remedy those defects or
 - (b) requiring the Developer to carry out such tests as are specified in the notice.
- 4.3 Condition 4.2 applies with any necessary modifications where the Developer has notified the Surveyor —
 - 4.3.1 that he has carried out the works required by a notice under condition 4.2.2(a) or
 - 4.3.2 of the results of the tests required by a notice under condition 4.2.2(b).
- 4.4 When applying for a provisional certificate the Developer shall furnish the Surveyor with "as built" drawings of the Road Works.
- 4.5 If part only of the Road is made up to the Surveyor's reasonable satisfaction then the Surveyor may in his discretion issue a provisional certificate in respect of that part only and thereupon these Conditions (except condition 6) shall apply in respect of that part of the Road as they apply to the whole subject to any necessary modifications but without prejudice to the obligations of the parties in respect of the rest of the Road.

5. Maintenance period

- 5.1 During the maintenance period the Developer shall to the Surveyor's satisfaction —
 - 5.1.1 keep the Road in good repair and condition;
 - 5.1.2 reinstate any openings and other works carried out by any statutory undertakers; and
 - 5.1.3 as soon as possible, and in any event within one month of the same being discovered by or notified to the Developer, remedy any defects which may be found in the Road Works.

6. Adoption

- 6.1 At the end of the maintenance period the Surveyor shall inspect the Road Works and —
 - 6.1.1 if he is satisfied that condition 5 has been fulfilled he shall issue a certificate to that effect and send a copy to the Developer;

- 6.1.2 if he is not so satisfied he shall give the Developer notice in writing —
 - (a) specifying any defects found in the Road and the works required to remedy those defects or
 - (b) requiring the Developer to carry out such tests as are specified in the notice.
- 6.2 Condition 6.1 applies with any necessary modifications where the Developer has notified the Surveyor —
 - 6.2.1 that he has remedied all defects as required by a notice under condition 6.1.2(a) or
 - 6.2.2 of the results of all tests as required by a notice under condition 6.1.2(b).
- 6.3 The Surveyor may in his discretion issue a final certificate in respect of part only of the Road.
- 6.4 The Surveyor may refuse to issue a final certificate if the Department is not satisfied that the Developer has validly dedicated the whole of the Road as a highway due to want of title.
- 6.5 On the issue of a final certificate the Road or part thereof as the case may be shall become a highway maintainable at the public expense
- 6.6 Conditions 6.1 to 6.5 apply in the case of completion of the Road Works by the Department pursuant to condition 7.2 with the modification that the final certificate shall be issued on the completion of the Road Works.

7. Surety's liability

- 7.1 The Surety's liability under this Agreement shall arise on the issue of the road base certificate.
- 7.2 After the happening of any of the following events the Surety shall on demand pay to the Department such amount (not exceeding the bond figure) as the Surveyor certifies as is in his opinion required to fulfil the Department's obligations under condition 6.2 —
 - 7.2.1 any failure by the Developer to comply with the provisions of conditions 2.5 to 2.9 and condition 5;
 - 7.2.2 any failure by the Developer to complete the Road Works within the contract period;
 - 7.2.3 the commencement of the winding up of the Developer or the appointment of a receiver of any of the Developer's assets or (if the Developer is an individual or individuals) the adjudication in bankruptcy of the Developer or (if more than one) any of them
 - 7.2.4 any failure by the Developer to dedicate the whole of the Road as a highway due to want of title (but the Surety's liability hereunder shall not arise unless the Developer fails during the contract period to procure such a dedication to the Department's satisfaction).
- 7.3 Subject to condition 7.4 the Department shall as soon as reasonably practicable complete the Road Works in accordance with the Plans and Specifications and

remedy any defect therein and any default of the Developer in performing any of its obligations hereunder (including obtaining a dedication of the Road as a highway).

- 7.4 On completion of the works and other matters specified in condition 7.3 the Surveyor shall certify the total of the following expenses —
- 7.4.1 the expense of completing the Road Works or remedying any defect therein or any default of the Developer in performing any obligation of his hereunder as the case may be (including the expense of obtaining compulsory powers to acquire any land necessary to dedicate the Road as a highway and all costs and expenses of acquiring the same);
- 7.4.2 the estimated cost of maintaining the Road for the duration of the maintenance period; and
- 7.4.3 the Department's establishment and administrative expenses in connection with its functions under condition 7.3.
- 7.5 As the case may require —
- 7.5.1 the Department shall refund to the Surety the balance of the sum paid under condition 7.2 after deducting the amount certified under condition 7.3 or
- 7.5.2 the Surety shall pay to the Department a sum equal to (a) the unpaid balance of the bond figure or (b) the amount certified under condition 7.4 less the sum paid under condition 7.2, whichever is the less.
- 7.6 The liability of the Surety shall cease on the issue of a final certificate in respect of the whole of the Road.
- 7.7 On the issue of a final certificate in respect of part only of the Road the liability of the Surety shall be reduced to such amount as the Surveyor certifies as is in his opinion required to remedy the matters specified in conditions 7.2.1 to 7.2.4 in relation to the rest of the Road.
- 7.8 If the Department decides to execute street works in respect of the Road under Part VII of the Highways Act 1986 all monies received from the Surety under conditions 7.2 to 7.5 shall be applied in reduction of the liabilities of the owners of premises in respect of the street works.

8. Expenses of Department

- 8.1 The Developer shall on the execution of this Agreement pay to the Department a sum equal to 5 per cent. of the bond figure in respect of the Department's legal and administrative expenses of this Agreement.

9. Disputes

- 9.1 Subject to condition 9.2 any dispute arising under this Agreement shall be determined by arbitration by a Chartered Civil Engineer to be appointed in default of agreement by the Lieutenant Governor of the Isle of Man.
- 9.2 In the case of a discrepancy between the Plans and the Specifications the latter shall prevail and in the case of a discrepancy between any provisions of the Plans or of the Specifications the Surveyor shall determine which shall prevail.

10. Apparatus of statutory undertakers

- 10.1 The Developer shall carry out at his own expense all such works and shall pay all such sums as may be required by any statutory undertakers in connection with the alteration or removal of any of their apparatus in consequence of the Road Works.

11. Indemnity etc.

- 11.1 The Developer shall indemnify the Department against all costs claims actions demands and expenses whatsoever arising from or incidental to or in connection with the carrying out of the Road Works.
- 11.2 Nothing in this Agreement imposes any obligation on the Department as against the Developer or the Surety or any other person to ensure that the Road Works are carried out in accordance with this Agreement.

12. Rights of third parties

- 12.1 The obligations of the Developer and the Department under this Agreement may be enforced by the owner or occupier of any house fronting the Road.