

DATED 11TH DECEMBER **2015**

BARNSELY METROPOLITAN BOROUGH COUNCIL

and

FARMFOODS LIMITED

AGREEMENT

under Section 278 of the Highways Act 1980 and Section 111 of the Local Government Act 1972 relating to highway improvements at Rotherham Road, Athersley South, Barnsley, South Yorkshire

A.C. Frosdick, LL.B., DipLG,
Director of Legal and
Governance
Town Hall
Barnsley
S70 2TA

THIS AGREEMENT is made the 11th day of December

Two thousand and fifteen

BETWEEN

1. **BARNSELY METROPOLITAN BOROUGH COUNCIL** of the Town Hall
Barnsley South Yorkshire S70 2TA ("**the Council**")
2. **FARMFOODS LIMITED** (Company Registration Number SC030186)
whose registered office is situate at 7 Greens Road Cumbernauld G67 2TU
("**the Company**")

INTERPRETATION

In this Agreement:-

"**the Act**" means the Highways Act 1980 as amended by the New Roads and Street Works Act 1991

"**the CDM Regulations**" means the Construction (Design and Management) Regulations 2007

"**the Certificate of Completion**" means the certificate to be issued by the Highways Officer upon the satisfactory completion of the Works

"**the Company**" includes the successors in title of the Company

"**the Conditions of Contract**" means the Institution of Civil Engineers - Conditions of Contract with such additions or amendments thereto as may be approved by the Highways Officer

"**the Development**" means the development at the site for which planning permission has been granted under reference 2014/1258

"**the Drawings**" means the drawings listed and attached at Schedule 1 hereto

"**the Final Certificate**" means the certificate to be issued by the Highways Officer once the provisions of clause 5.3 hereof have been fully complied with to the entire satisfaction of the Highways Officer

"**the Highway**" means the highway called Rotherham Road Athersley South Barnsley

“the Highways Officer” means the Head of Highways Engineering and Transportation for the time being of the Council and includes any professional officer appointed by him for the purpose of the supervision or inspection of the Works

“the Maintenance Period” means a period of twelve calendar months from the date of the issue of the Certificate of Completion

“the Section 115 Agreement” means an agreement entered into between the Council and a relevant sewerage undertaker pursuant to section 115 of the Water Industry Act 1991 to allow connections of highway drainage to the public sewerage system made pursuant or ancillary to the Works

“the Site” means the land at the site of the former Wellington public house on the south west side of Rotherham Road Athersley South

“the Supervision Fee” means the sum of £3,480.00 (three thousand four hundred and eighty pounds) being the fees which are estimated will be incurred by the Council in checking and approving the drawings site inspections and administration of the Works of which the sum of £2,500.00 (two thousand five hundred pounds) has already been paid to the Council and receipt of which is hereby acknowledged

“the Security Deposit” means the sum of £41,594.04 (forty one thousand five hundred and ninety four pounds and four pence) being the sum required to be deposited with the Council by the Company as security for the satisfactory completion of the Works

“the Specification” means the Specification for Highway Works published by HMSO with all amendments up to the date hereof

“the Works” means the works described generally in Schedule 2 hereto and indicated in outline on the Drawings and includes any amended or additional works as provided for herein

Clause headings are for ease of reference only and shall not form part of this Agreement for the purposes of its construction or interpretation

WHEREAS

- (1) The Council is the Highway Authority for the purposes of the Act
- (2) The Company has obtained planning permission for the Development of the Site and the Council and the Company are desirous that the Works shall be carried out to facilitate the Development
- (3) The Works are wholly required to improve access to the Site to a standard required for traffic safety and thus facilitate the Development and the Company will derive a special benefit if the Works are executed
- (4) The Company has agreed to execute or procure the execution of the Works as agent for and on behalf of the Council
- (5) This Agreement is made pursuant to Section 278 of the Act and Section 111 of the Local Government Act 1972 and the Council is satisfied that it will be of benefit to the public
- (6) Nothing herein contained shall operate to restrict or prejudice the powers duties and rights of the Council under the Highways Act 1980 and the New Roads and Street Works Act 1991

NOW IT IS HEREBY AGREED by and between the parties as follows:-

1. EXECUTION OF THE WORKS

- 1.1 The Company shall at its own expense for the purpose of carrying out the Works:-
 - (a) carry out surveys as required by the Highways Officer of the Highway and the Site
 - (b) carry out site investigation works

- (c) appoint a designer approved by the Highways Officer to design a scheme for the Works (including all necessary drawings and documents to be approved by the Council) ("**the Approved Documents**")
- (d) appoint a contractor approved by the Highways Officer for the construction of the Works in accordance with a form of contract which shall be approved by the Highways Officer ("**the Contract**")

1.2 The Company shall:

- (a) procure the provision in writing of a programme and timetable for the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof ("**the Approved Programme**")
- (b) upon the request of the Highways Officer procure the provision of a written programme and timetable for any temporary traffic arrangements or any other measures which may be necessary or required in connection with the carrying out of the Works which shall be submitted to and approved by the Highways Officer prior to the commencement of the Works or any part thereof and shall comply with any further requests of the Highways Officer at any time during the carrying out of the Works
- (c) procure that the Works are carried out at its own expense in a good and workmanlike manner with proper and suitable materials to the reasonable satisfaction of the Highways Officer in accordance with the Specification and the Approved Documents and once commenced to proceed diligently with the Works and to use reasonable endeavours to complete the Works in accordance with the Approved Programme
- (d) before the commencement of the Works take whatever steps are necessary to locate and identify any services apparatus and

equipment of any utility company Local Authority or other body which is situated in on under or over the Highway or which may otherwise be affected by the Works and shall supply to the Highways Officer copies of all consultations which have been carried out copies of all consents and approvals obtained and details of any diversion or other works required to any services equipment or apparatus affected by the Works (**"Apparatus Works"**)

- (e) carry out and complete the Apparatus Works at its own expense and in the same manner as the Works
- (f) procure compliance with all conditions and requirements imposed by any utility company local authority or other body in respect of any services equipment or apparatus affected by the Works
- (g) give the Highways Officer free access to such parts of the Site as are reasonably necessary for the proper inspection of the Works
- (h) procure that the Works are undertaken pursuant to the CDM Regulations
- (i) ensure the Works comply in every respect with the latest edition of Chapter 8 of the Traffic Signs Manual published by the Department of Transport
- (j) at its own expense arrange for all materials and soils in connection with the Works to be tested by a UK Accreditation Service (NAMAS) accredited laboratory and shall submit the test results to the Highways Officer and meet the costs of any further testing required by the Highways Officer

- 1.3 In the event the Highways Officer determines that any variations to the Works are required the Highways Officer shall notify the Company as soon as reasonably practicable of any revised or additional works which may be necessary and the Company shall carry out and complete the revised or additional works at its own expense and in the same manner as the Works

2. CONSENT TO WORK IN THE HIGHWAY

- 2.1 The Council shall during such hours of working as may be agreed in advance with the Highways Officer permit the Company or its approved contractor (hereinbefore referred to) to enter upon the Highway for the purpose of carrying out the Works and all matters in connection with the Works

3. FEES AND COSTS

- 3.1 The Company shall pay to the Council on completion of this Agreement the remaining balance of the Supervision Fee
- 3.2 In the event the fees incurred by the Council exceed the Supervision Fee the Highways Officer shall provide a certified estimate or estimates of the increased fees and the Company shall pay the sum or sums due within 28 days of receiving a written request therefor
- 3.3 The Company shall pay to the Council upon completion of this Agreement the sum of £1,000.00 being the Council's legal fees for the preparation and completion of this Agreement

4. CERTIFICATES AND MAINTENANCE PERIOD

- 4.1 The Company may at any time when it believes the Works have been substantially completed notify the Highways Officer in writing whereupon the Highways Officer shall make arrangements to inspect the Works and the Highways Officer shall if the Works have been completed to his satisfaction issue the Certificate of Completion to the Company or the Highways Officer shall notify the Company of any outstanding items and the Company shall provide the Highways Officer with a program for their completion

- 4.2 The Company shall at its own expense maintain the Works throughout the Maintenance Period and shall make good any defects or damage arising or occurring during that period to the satisfaction of the Highways Officer
- 4.3 After the expiration of the Maintenance Period and provided the Company has made good any defects or damage to the entire satisfaction of the Highways Officer and provided that all monies due to the Council hereunder have been paid and provided that the requirements of clause 5.4 below have been complied with the Highways Officer shall issue the Final Certificate to the Company
- 4.4 For the avoidance of doubt the covenants on the part of the Company contained in clause 6 of this Agreement shall not be affected by the issue of the Final Certificate
- 4.5 On the expiry of the Maintenance Period but before the issue of the Final Certificate the Company shall submit to the Highways Officer 'as-built' drawings and the Health and Safety file pursuant to the requirements of the CDM Regulations

5. IT IS HEREBY AGREED AND DECLARED as follows:-

- 5.1 That for the purpose of carrying out its obligations under this Agreement but for no other purpose whatsoever the Company will act as agent for and on behalf of the Council
- 5.2 The Company is to act as the only client in respect of the Works pursuant to the CDM Regulations
- 5.3 Any monies due to be paid under the provisions of this Agreement shall be paid within twenty one days of the due date or if not paid within that period shall bear interest at 3% above the Base Rate of Barclays Bank Plc for the time being such interest being payable from the due date to the date of payment

- 5.4 Once executed the Contract shall be deemed incorporated in this Agreement insofar as it is applicable and does not conflict with the provisions herein
- 5.5 The Company shall not assign its rights and obligations arising under this Agreement without the prior written consent of the Council

6. COMPENSATION AND INDEMNITY

- 6.1 The Company will on demand reimburse the Council with all expenditure it may properly incur in relation to any valid and proper claims made pursuant to the Noise Insulation Regulations 1975 or Part I of the Land Compensation Act 1973 arising from the use of the Highway as altered by the Works and the Roads constructed by the Works together with the reasonable legal costs and surveyor's fees incurred either by the Council or any third party whose costs the Council is legally obliged to pay in connection with the processing and settlement of any such claims
- 6.2 The Company will indemnify and keep indemnified the Council against all costs actions proceedings claims demands damages and losses of whatever nature arising out of the non-observance non-performance or other breach of the Company's obligations under this Agreement and all claims demands damages and losses of whatever nature which may be suffered by the Council due to any reason connected with the carrying out of the Works
- 6.3 The Company shall insure or shall procure that the Contractor carrying out the Works shall insure against any damage loss or injury which may occur to any property or person arising by or out of the execution of the Works otherwise than due to any act or omission of the Council and such insurance shall be effected prior to the commencement of the Works with a reputable insurer on commercially reasonable and prudent terms and for

the avoidance of doubt for at least the sum of £10,000,000 for each and every claim

6.4 The Company shall be responsible for :-

(a) any costs that the Council may incur in entering into a Section 115 Agreement including any costs the sewerage undertaker may charge the Council under the Section 115 Agreement for technical administrative supervisory or legal costs from time to time

(b) notifying the sewerage undertaker of their intention to commence drainage connection works

(c) carrying out any maintenance or remedial works required by the sewerage undertaker pursuant to the Section 115 Agreement

(d) indemnifying the Council against all losses liabilities claims costs damages and expenses arising from any claim by a sewerage undertaker any person or competent authority arising from or ancillary to the connection of the highway drains to the public sewers

7. DETERMINATION BY THE COUNCIL

- 7.1 In the event the Company fails to perform or observe any of the covenants or obligations herein contained or if a receiving order in bankruptcy is made against the Company or if the Company is wound up or enters into a composition or 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 Company for such non-performance or non-observance determine this Agreement by notice in writing to the Company sent to the address stated in this Agreement Subject always to the provisions of clauses 8 and 9 hereof

8. DEFAULT POWERS

- 8.1 Without prejudice to clause 7 hereof if the Company fails to execute or complete the Works in accordance with the Company's obligations hereunder the Council shall be entitled to execute or complete the Works in default by its own employees contractors or otherwise and to recover from the Company the reasonable and proper costs incurred by the Council thereby as certified in writing by the Highways Officer Provided that this default power shall only be exercisable by the Council after at least twenty eight days notice of intention has been given in writing to the Company

9. SECURITY DEPOSIT

- 9.1 The Company shall prior to the commencement of the Works pay the Security Deposit to the Council
- 9.2 Upon the issue of the Certificate of Completion the sum of the Security Deposit shall be reduced to a sum equal to ten percent of its original sum and the Council shall arrange as soon as practicable thereafter to refund the sum of the excess to the Company
- 9.3 As soon as practicable after the issue of the Final Certificate the Council shall refund the remaining sum of the Security Deposit to the Company
- 9.4 If at any time the Company fails to observe or perform any of the covenants on the Company's part herein contained or to pay any sums due from the Company to the Council under this Agreement or if circumstances shall arise which would entitle the Council to terminate this Agreement then without prejudice to any other rights and remedies of the Council against the Company under this Agreement or under statutory powers the Council shall be entitled to deduct the amount of any costs and expenditure which the Council may suffer or incur by reason thereof from the Security Deposit and the Council shall be entitled to retain any such sums so deducted and

apply the same to discharge any such amounts or sums due from the Company to the Council

9.5 If the Council gives notice pursuant to clause 8 hereof and the amount as certified by the Highways Officer to be the estimated cost of carrying out and completing the Works or any part thereof or otherwise remedying any breach by the Company of the provisions hereof shall exceed the sum of the Security Deposit being held at that time the Company shall forthwith on demand pay the difference between the estimated cost and the sum of the Security Deposit to the Council and the same shall be held by the Council as part of the Security Deposit

9.6 The amount of the costs and expenditure estimated to be incurred by the Council shall be that certified by the Highways Officer in writing and such certificate shall be final and binding on the parties hereto

10. COVENANTS BY THE COMPANY AND THE COUNCIL

10.1 If at any time prior to the commencement of the Works the Company wishes to terminate this Agreement it may do so by giving notice to the Council and the Council shall give the Company an account of all abortive costs reasonably and properly incurred by the Council in respect of this Agreement Within 28 days from the date of that account if that account shows that the payments made by the Company under the foregoing provisions of this Agreement have exceeded those costs the Council shall refund that excess and if that account shows that those costs exceed the payment made by the Company under the foregoing provisions of this Agreement the Company shall pay to the Council a sum equal to that excess

11. NOTICES

- 11.1 Any notice or demand required by this Agreement to be given or made shall be in writing and sent to the addresses stated in this Agreement

12. BENEFITS

- 12.1 The land which is to be benefited by the Works is the land to which the planning application hereinbefore referred to relates
- 12.2 This Agreement will be of benefit to the public

13. ARBITRATION

- 13.1 The Company hereby further agrees with the Council in the event of any dispute or difference between the parties hereto arising as to the construction of this Agreement or any of the provisions hereof such dispute or difference shall be referred to the President for the time being of the Institution of Civil Engineers whose decision shall be final and binding on the parties hereto Provided that nothing in this clause shall authorise the reference to arbitration of any question as to whether the whole or any part of the Works has been carried out and completed to the satisfaction of the Highways Officer

SCHEDULE 1

THE DRAWINGS

15073/100

15073/101A

15073/102A

15073/190A

15073/191A

SCHEDULE 2

THE WORKS

- (a) Widening of existing site access at Rotherham Road;
- (b) Provision of uncontrolled pedestrian crossing;
- (c) Carriageway and footway surfacing;
- (d) Associated highway drainage;
- (e) Provision of road markings and lining;
- (f) Any other works ancillary to the above.

EXECUTED by the parties hereto as a Deed the day and year first before written

THE COMMON SEAL of Barnsley)

Metropolitan Borough Council was)

hereunto affixed in the presence of:-

Garry Ke

Director of Legal & Governance/Authorised Signatory



EXECUTED AS A DEED

on behalf of Farmfoods)

Limited by *GEORGE HEED* a, Director)

in the presence of:-)

[Signature]



Director

H. Eades

Witness signature:

HANNAH EADES

Witness name:

Shakespeare Martineau LLP
Solicitors
No 1 Colmore Square
Birmingham
B4 6AA

Witness address:

TRAINING SOLICITOR

Witness occupation: