

DATED 15 November 1983

MARK SCOTT CONSTRUCTION LIMITED (WITH ITS SURETY)

and

BUCKINGHAMSHIRE COUNTY COUNCIL

AGREEMENT (WITH BOND)

**relating to the construction of estate roads and other works at the extension to Farmers Way,
Manor Farm Estate, Seer Green, in the County of Buckinghamshire**

THIS AGREEMENT is made the fifteenth day of November One thousand nine hundred and eighty-three **BETWEEN MARK SCOTT CONSTRUCTION LIMITED** whose registered office is at 12 High Street, Chalfont St Giles in the County of Buckinghamshire (hereinafter called "the Owner") of the first part, **LLOYDS BANK PLC** registered office 71 Lombard Street, London, EC3P 3BS (hereinafter called "the Surety") of the second part, and **BUCKINGHAMSHIRE COUNTY COUNCIL** (hereinafter called "the Council") of the third part.

WHEREAS:

1. The Owner is seised in fee simple in possession of the land (hereinafter called "the land") described in the Schedule hereto (hereinafter called "the Schedule") and shown edged red on the plan (hereinafter called "the plan") attached hereto.
2. For the purpose of developing the land the Owner is desirous of constructing on the land the road or roads and footways (hereinafter called "the roads") shown coloured pink on the plan together with surface water sewers gully connections footway and street lighting systems (if required) and other works (hereinafter collectively referred to as "the works") so that the Roads shall become highways maintainable at the public expense.
3. The Owner has requested the Council upon the Council being satisfied that the works have been executed and carried out in accordance with the Council's Specification for advance preparation of housing sites roads and sewers and the deposited plans and sections approved by the County Engineer for the time being of the Council (hereinafter called "the Engineer") and maintained as hereinafter provided to adopt the highways maintainable at the public expense which the Council has agreed to do for the consideration and subject to the terms hereinafter mentioned.

NOW in pursuance of Section 38 of the Highways Act 1980 and of all other powers (if any) them enabling **IT IS HEREBY AGREED AND DECLARED** by and between the parties hereto as follows:

1. The Owner shall on the execution of this Agreement pay to the Council the sum specified in the Schedule as the "Supervision Charge" (exclusive of value added tax) being the charge for the supervision of the works by the Council.
2. The Owner shall repay to the Council the cost of any testing required by the Engineer in his discretion of materials in connection with the works.
3. The Owner hereby covenants with the Council:
 - i. To sewer level pave flag channel kerb metal and otherwise properly make good the roads in accordance with the said Specification deposited plans and sections.
 - ii. Within one month of the date of this Agreement to supply to the Engineer such evidence as the Engineer might require that the Owner has previously given to the Area Manager of the Post Office and/or British Telecommunications in whose area the works are situate:
 - a) notice in writing of the works
 - b) a site plan to a scale of not less than 1/2500 indicating the location of the works
 - c) a layout plan to a scale of not less than 1/500 indicating the works

PROVIDED ALWAYS that the provisions of this sub-clause shall in no wise prejudice or affect the provisions of sub-clause 3(9) hereinafter contained nor prejudice or affect the Council's statutory powers as highway authority in relation to the installation or placing or equipment in or under or over any highway.

- iii. If the same shall be required to provide both footway lighting systems and road lighting systems in accordance with the requirements of the appropriate authority for street lighting and to ensure that when such systems have been installed they are in proper working order **AND PROVIDED ALWAYS** that if either or both or such systems are required the Owner shall ensure that before any house or houses on the land are occupied there shall be provided and maintained by the Owner (until such time as Clause 5 hereof takes effect) an adequate and sufficient lighting system for the roads serving such house or houses it is proposed should be occupied.

- iv. During the course of the works to cause all gas mains water service pipes electricity cables and telephone cables apparatus or poles to be laid or erected both under or over the roads and to the boundaries thereof to points to be agreed with the Engineer before the final surfacing of the roads is carried out **AND** in particular but without prejudice to the generality of the foregoing to ensure that all street lighting columns are erected and all necessary connections are made thereto before the final surfacing of the footways is carried out.
- v. To execute the works to the satisfaction in all respects of the Engineer and under the supervision of the officers appointed on the Council's behalf.
- vi. To commence the works within three months of this Agreement.
- vii. At its own expense for a period (hereinafter called "the maintenance period") of twelve months from the date on which the Engineer shall issue a provisional certificate under Clause 4 hereinafter contained **AND** to the satisfaction in all respects of the Engineer:
 - a) to maintain the roads
 - b) to clean out all gullies and sweep and cleanse the roads when required so to do by the Engineer
 - c) to reinstate and make good any defect or damage that may arise from any cause whatsoever or be discovered during the maintenance period or between the expiry thereof and the issue of the final certificate pursuant to Clause 6(2) thereof.

PROVIDED THAT the maintenance period shall be deemed to continue until all the said remedial works have been properly completed and the final certificate issued under Clause 6(2) hereof.

- viii. During the progress of the works to give to the Engineer and the officers appointed by the Council as aforesaid free access to every part of the roads and sites thereof for the purpose of inspecting the works as they proceed and all materials used or intended for use therein.
 - ix. Not at any time to give to the Post Office and/or British Telecommunications consent to the erection of telegraph poles without the previous consent in writing of the Council first being had and obtained.
 - x. To complete the works with all due diligence within such period of time from the date of this Agreement as is specified in the Schedule and in default thereof the Council shall (after a notice in writing by its County Secretary and Solicitor or the Engineer to the Owner of its intentions so to do) have the right to complete the works or any part thereof by its own employees or by contract or in such manner as it shall think fit and charge the expenses thereof against the Owner such expenses being a debt due to the Council and recoverable by the Council by action or otherwise.
4. When the Engineer is satisfied that the whole of the works have been properly completed the Engineer will issue a provisional certificate of completion of the works **PROVIDED THAT** immediately before the issue of the said provisional certificate the Owner shall at its own expense:
- i. Supply to the Engineer three copies of a plan (drawn to his satisfaction) to a scale of not less than 1/500 which plan shall clearly indicate in accordance with sub-clause (2) hereof the layout of the estate as at the date of the said provisional certificate.
 - ii. The said plan shall indicate the following matters in the manner specified:
 - a) the carriageways shall be coloured yellow
 - b) the footways shall be coloured sepia
 - c) the areas of the grass verges which are to be adopted as highways maintainable at the public expense shall be coloured green
 - d) the roadway surface water drainage system shall be coloured blue
 - e) the position of the footway and road lighting columns (if any) shall be coloured red.
 - iii. Supply to the Engineer a certificate given by the appropriate street lighting authority stating that:
 - a) the necessary lighting systems have been provided in both the requirements and satisfaction of that said authority and
 - b) responsibility for the future maintenance of the said lighting system has been accepted by that said authority.
 - iv. For the avoidance of doubt it is hereby provided that the certificate required under sub-clause (3) above shall be either the original certificate issued by the said authority or a properly certified copy thereof.

5. From the date of the provisional certificate of the Engineer mentioned in Clause 4 above or the date upon which either or both of the footway or road lighting systems have been fully completed in accordance with the preceding clauses and are lit and are in use whichever is the earlier the appropriate authority for street lighting shall become responsible for the running costs of the lighted street lighting installation but without prejudice to the Owner's obligations to make good any defect or damage in accordance with the provisions of this Agreement.
6. **IT IS HEREBY** declared that:
 - i. From the date of the provisional certificate mentioned in Clause 4 above the roads shall be and remain forever open to the use of the public for all purposes.
 - ii. When the period of maintenance mentioned in Clause 3(7) hereof shall have expired and all work on reinstatement and making good of all defects and damage has been completed to the satisfaction of the Engineer the Engineer shall forthwith issue a final certificate that the works have been executed and maintained as hereinbefore provided to his satisfaction **AND** upon the date of the said final certificate the roads shall become highways maintainable at the public expense.
7. The Owner on behalf of itself and its successors in title or assigns hereby undertakes agrees and covenants with the Council that in the event of any claim for compensation or otherwise or charges arising in connection with or incidental to the carrying out of the works and not hereby otherwise provided for and until such time as the roads shall become highways maintainable at the public expense it will hold the Council harmless and indemnified therefrom and against all claims charges costs and expenses in connection therewith or arising thereout.
8. If the Owner shall fail to perform or observe any of the covenants conditions or agreements on the part of the Owner herein contained or shall fail duly and regularly to proceed with the execution and completion of the works to the satisfaction of the Engineer or if the Owner shall become bankrupt or shall go into liquidation voluntarily or otherwise or shall execute a deed of assignment for the benefit of creditors or otherwise compound with creditors the Council may either:
 - i. Bring into operation the provisions of Clause 3(10) hereof by the service of the notice referred to therein as if no period of time for the completion of the works was set out therein or
 - ii. By resolution passed at any meeting of the Highways Sub-Committee of the Council without previous notice to the Owner and without prejudice to any of their rights claims or remedies against the Owner for any such non-observance or non-performance and without prejudice to the rights and remedies of the Council under any other of the clauses herein contained determine this Agreement by notice in writing signed by their County Secretary and Solicitor and delivered to the Owner or sent by post to the address as stated in this Agreement.
9. Nothing in this Agreement shall restrict or fetter the right of the Council upon either the termination of this Agreement under Clause 8 hereof or following the service of a notice under Clause 3(10) hereof to put into operation or to have the works or any part of them carried out under the private street works code contained in the Highways Act 1980 or any Act replacing re-enacting or modifying the same.
10.
 - i. The Owner and the Surety acknowledge themselves their successors in title and assigns jointly and severally bound by these presents unto the Council in the sum specified as "the Bond" in the Schedule hereto **PROVIDED THAT** if the Owner shall duly perform and observe all the terms provisions covenants conditions and stipulations contained in this Agreement on the Owner's part to be performed and observed according to the true purport intent and meaning thereof then this obligation shall cease but otherwise shall be and remain in full force and effect.
 - ii. The Surety shall not be discharged or released from this Bond or guarantee by any arrangement between the Owner and the Council or by any alteration in the Owner's obligations or by any forbearance whether as to payment performance time or otherwise whether made with or without the assent of the Surety.
 - iii. The exercise by the Council of its powers under Clauses 8 or 9 hereof shall not in anywise prejudice or affect the aforementioned Bond or guarantee nor release the Surety therefrom save as herein provided.

- iv. For the avoidance of doubt it is hereby declared that upon the issue of the final certificate under clause 6(2) hereof either:
- a) If there are no claims whatsoever outstanding under this Agreement then the aforementioned Bond or guarantee shall cease and be void **OR**
 - b) If there are claims outstanding then the Bond or guarantee shall not be released but shall remain in full force and effect until such times as all such claims have been fully settled or compromised up to the full value of the Bond or guarantee (but not beyond) and thereupon the Bond or guarantee shall be deemed fulfilled and cease to be of effect **AND** in the event the issue of the final certificate under Clause 6(2) hereof shall not prejudice or affect claims outstanding at the date of the said final certificate which shall remain to be dealt with under the terms of this Agreement and Bond or guarantee.

11. Any notice to be served on the Council shall be delivered or posted to its County Secretary and Solicitor at County Hall, Aylesbury, Buckinghamshire, HP20 1UA and any notices to be served on either the Owner or the Surety may be delivered or posted to the address of each or either of them as the case may be as shown in the Agreement.

12. In this Agreement where the context so admits or requires where the expression "the Owner" comprises two or more persons then the covenants and undertakings expressed to be made by "the Owner" shall be deemed to be made by such persons jointly and severally and the whole of this Agreement shall be construed accordingly.

IN WITNESS whereof the Owner the Surety and the Council have caused their respective Common Seals to be hereunto affixed the day and year first before written.

THE SCHEDULE hereinbefore referred to Recital (1) "the land" **ALL THAT** land situate at and known as extension to Farmers Way, Manor Farm Estate, Seer Green in the County of Buckinghamshire.

CLAUSE 1	"Supervision Charge"	£1180	exclusive of value added tax
CLAUSE 3(10)	"Period of time"	two years	
CLAUSE 10(1)	"The Bond" (in words)	Twenty-three thousand seven hundred and fifty pounds	

THE COMMON SEAL of **MARK SCOTT**)
CONSTRUCTION LIMITED was hereunto)
affixed in the presence of:)

THE COMMON SEAL of **BUCKINGHAMSHIRE**)
COUNTY COUNCIL was hereunto affixed in)
the presence of:)