

**Dated \_\_\_\_\_ 2015**

**[                      ]**

**and**

**The County Council of Durham**

**and**

**Northumbrian Water Limited**

**Insurance Company**

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**SUDS (Sustainable Urban Drainage System) Maintenance  
Framework Agreement for [                      ], County Durham**

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2. **Definitions and Interpretation**

- 2.1. "1990 Act" means the Town and Country Planning Act 1990 (as amended).
- 2.2. "1991 Act" means the Water Industry Act 1991 (as amended).
- 2.3. "Above Ground Drainage" means that part of the SUDS on or above ground level such as but not limited to grass swales, retention ponds and ancillary structures shown on the Approved Drawings and the Plan.
- 2.4. "Below Ground Drainage" means that part of the SUDS situated below ground level such as piped systems (including perforated pipes and surrounding materials), soakaways, catchpits, filter drains and ancillary structures shown on the Approved Drawings and the Plan.
- 2.5. "Completed" means the date the Transfer of the [ ] residential dwelling by the Developer to a purchaser has been completed and the date that all the Legal documents have been signed and completed..
- 2.6. "Developer's Land" means the land as shown edged red on Plan [X]
- 2.7. "Legal Documents" means rent charge/assignment, deed of covenant, deed of apportionment and transfer,
- 2.8. "[ Management Plan]" means the management plan attached at Annexure 1 hereto.
- 2.9. "Development Site" Means that part of the [ site ] shown edged [ ] on the Plan
- 2.10. "Council Representative" means such person as may be designated by the Council to inspect and approve the Works on behalf of the Council.
- 2.11. "Defects Correction Period" means the period of 24 months after the date of issue of the Provisional Certificate PROVIDED THAT the Council Representative may by notice in writing to the Developer before the expiry of the said 24 month period extend the Defects Correction Period by such period as he reasonably considers necessary (but not exceeding 6 months) if in the Council Representative's reasonable opinion abnormal weather conditions or other factors outside the Council's control have resulted in insufficient opportunity for the proper operation of the SUDS to be fully tested.
- 2.12. "Approved Drawings" means all plans, drawings, sections and the design or working documents in the form attached to this Agreement at Annexure 2 hereto and described in and attached in the Schedule to this Agreement or otherwise as shall be approved by the Council's Representative in writing such approval not to be unreasonably withheld or delayed.
- 2.13. "Final Certificate" means the certificate defined in clause 14.3.
- 2.14. "Plan" means the plan annexed at Annexure 3 hereto.
- 2.15. "Planning Authority" means the relevant local authority or statutory body responsible for planning in respect of the area in which the Land is situated.

- 2.16. "Planning Permission" means the planning permission number [ ] and [ ] granted by the Planning Authority with any variation thereof or supplementary permission issued in respect thereof and or any Planning Agreement relating to the Development of the Site.
- 2.17. "Provisional Certificate" means the certificate defined in clause 10.2.
- 2.18. "Sewerage Undertakers Works" means those parts (if any) of the SUDS that will be vested in the Sewerage Undertaker under the Undertakers Agreement.
- 2.19. "Specification" means the guidance notes on design and construction of SUDS from time to time published by CIRIA and comprising the following:
- 2.19.1. Book 14 Design of flood storage reservoirs
  - 2.19.2. CIRIA Report I56 Infiltration drainage
  - 2.19.3. C522 Sustainable urban drainage systems – design manual for England and Wales
  - 2.19.4. C523 Sustainable urban drainage systems – best practice manual
  - 2.19.5. C582 Source control using constructed pervious surfaces
  - 2.19.6. C609 Sustainable drainage systems – hydraulic, structural and water quality advice
  - 2.19.7. CIRIA SUDS Design Manual C697
- or revisions or updates to the above
- 2.20. "SUDS" means the sustainable urban drainage system comprising the Above Ground Drainage and the Below Ground Drainage to be constructed as part of the Works on the Developer's Land to serve the Development.
- 2.21. "Transfer" means the transfer of the Developer's Land to the Council on or after the date that every residential dwelling on the Site pursuant to the Development have been sold to a purchaser and Completed.
- 2.22. "Undertakers Agreement" means any agreement made pursuant to section 104 of the 1991 Act.
- 2.23. "Works" means the construction of the SUDS in accordance with the Specification (so far as applicable and as agreed in writing with the Council), the Approved Drawings, the Plan and the Planning Permission
- 2.24. Words imparting one gender shall be construed as imparting any other gender.
- 2.25. Words imparting the singular shall be construed as imparting the plural and vice versa.
- 2.26. Words imparting persons shall be construed as imparting a corporate body and/or a partnership and vice versa.

2.27. Where any party comprises more than one person the obligations and liabilities of that party under this Agreement shall be joint and several obligations and liabilities of those persons.

2.28. The clause headings shall not form part of this Agreement and shall not be taken into account in its construction or interpretation.

3. **Responsibility**

The Developer agrees to construct the SUDS on the Developer's Land for the benefit of the Development and has agreed to carry out such construction on the terms set out in this Agreement.

4. **Construction of the Works**

The Developer shall construct and complete the Works at its own expense in accordance with the Approved Drawings, the Specification (so far as applicable and is agreed in writing with the Council) and Planning Permission (as may be varied in accordance with clause [5]) to the reasonable satisfaction of the Council Representative in the position and to the extent shown in the Approved Drawings and the Plan.

5. **Minor Variations**

Without prejudice to clause 4 the Council Representative may at the written request of the Developer give consent to the Developer (such consent not to be unreasonably withheld or delayed) to construct the Works or any part of them otherwise than in strict conformity with the Approved Drawings and the Specification subject as follows:

5.1. The written request by the Developer is to be accompanied with such information and drawings that the Council Representative may reasonably require and the consent of the Council Representative shall be in writing.

5.2. The Developer shall not allow any variation without such written consent being first obtained.

5.3. Nothing within this clause shall permit or authorise the breach of the Specification.

5.4. The grant of consent by the Council Representative under this clause shall not in any way prejudice any rights of the Council against the Developer in respect of any breach or non-observance of any part of this Agreement.

5.5. The Developer shall pay on demand the Council Representative's reasonable and proper costs incurred in connection with the operation of this clause.

6. **Notification of intended Commencement of the Works**

The Developer shall:

6.1. Give to the Council Representative 4 weeks' written notice of the date on which it proposes to commence the Works or any part of them; and

- 6.2. At the same time submit to the Council Representative for inspection such additional plans, drawings and other design or working documents not previously submitted to him which relate to the carrying out of the Works and as the Council Representative may reasonably require; and
- 6.3. Notwithstanding the notice previously given, give to the Council and the Council Representative 48 hours' notice in writing of its intention to start the Works or any part of them.

## 7. **Easements and Agreements**

- 7.1. The Developer shall at its own expense [prior to commencement of the Works] obtain or ensure that they have been fully executed and enforce the following deeds and agreements:
- 7.2. Easements from third parties having interests in land if required by the Sewerage Undertaker and Council through and on which the Above Ground Drainage and Below Ground Drainage are to be located for the Developer, the Owner, the Council, and the Sewerage Undertaker their servants and agents to enter upon such land for the purpose of inspection, repair, maintenance, reconstruction, replacement or cleansing the form of and easements to be approved by the Council, and the Sewerage Undertaker.
- 7.3. Easements and consents in favour of the Developer, the Owner, the Council, and the Sewerage Undertaker their servants and agents for the Works and the free flow and passage of water with or without other matter through them.
- 7.4. Such Statutory consents as may be required for the discharge of flood drainage works.
- 7.5. if necessary easements and consents in favour of the Council the Highway Authority and the Sewerage Undertaker their servants and agents for:-
- 7.6. the Works and the free flow and passage of water with our without other matter through them.
- 7.7. Highways Agreement
- 7.8. Undertakers Agreement
- 7.9. Such statutory consents as may be required for the discharge of flood drainage works and the Developer shall at its own expense enter into such deeds of grant and such other agreements (including an Undertakers Agreement) in such form as the Undertaker shall require and the Developer shall be responsible for any legal fees or other fees payable to the Council, and the Sewerage Undertaker in relation to any such deeds or agreements.

## 8. **Restriction of Other Works and Structures**

- 8.1. The Council and the Developer will comply, with and will ensure that their contractors agents and invitees entering on the Developer's Land comply with the following restrictions:
  - 8.1.1. No building or structure is to be erected or acts or operations carried out so as to impair the proper operation of the Works.

- 8.1.2. No access to the Works is to be in any way obstructed.
- 8.1.3. Not to withdraw support for the SUDS.
- 8.1.4. Ground levels within the Land are not to be altered prior to the issue of the Provisional Certificate other than as envisaged by the Approved Drawings and are not to be altered after the issue of the Provisional Certificate such that the SUDS may function less well or less adequately for the storage or dispersal of water (as the case may be) than at the date of the Provisional Certificate.
- 8.2. Any transfer, conveyance or other disposition of the Developer's Land or any part thereof shall be in the form of the transfer annexed hereto as Annexure 4.
9. **Compensation**
- 9.1. The Council and the Sewerage Undertaker shall not be liable to make any payment in respect of :
- 9.1.1. Any diminution in value of the Developer's Land by reason of the exercise of any rights or obligations in relation to the SUDS.
- 9.1.2. Any claim, demands, losses, costs, charges and expenses in respect of or arising out of the exercise of any rights or obligations in relation to the SUDS, otherwise than arising in part or in whole from any act or default of the Council or Sewerage Undertaker.
10. **Certificates**
- 10.1. When the Developer is of the opinion that the Works have been completed it shall serve written notice on the Council Representative .
- 10.2. After receiving such notice the Council Representative shall satisfy himself as to whether or not the Works have been constructed and completed in accordance with the Approved Drawings and the Specification and in doing so shall act reasonably. As soon as reasonably practicable after he is so satisfied shall thereafter issue a certificate on behalf of the Council to that effect ("the Provisional Certificate") .
- 10.3. If during the Defects Correction Period or before the transfer of the SUDS to the Council any defect damage or blockage shall appear, arise or occur in the Works the Developer shall at its own expense and within a reasonable timescale after such defect damage or blockage has appeared, arisen or occurred (or immediately if required in writing by the Council Representative) make good to the reasonable satisfaction of the Council Representative.
- 10.4. During the Defects Correction Period the Developer will in accordance with clause 11.4 be responsible for correcting any defects damage or blockage that shall arise or occur in the Works at its own cost

The Developer shall continue to maintain the SUDS to the reasonable satisfaction of the Council Representative and in accordance with the Mount Oswald Management Plan until the provisions of clause 14.2 have been satisfied.

11. **Access**

The Developer shall allow and arrange for the Council Representative to have access to the Works and the Developer's Land at all reasonable times for the purpose of ensuring compliance with this Agreement.

12. **Inspections**

12.1. At any time before issue of the Final Certificate in accordance with clause 14 the Developer shall on being so reasonably requested in writing by the Council Representative open up for inspection any part of the Works which may have been covered up.

12.2. Should the Developer fail to comply with any such request under 12.1 (and without prejudice to any other rights accruing or a breach of any part of this Agreement by the Developer) the Council Representative may arrange to open up the Works or any part of them.

12.3. In the event that any part of the Works is found to be defective, obstructed or otherwise failing to conform with the requirements of this Agreement the cost of such opening up rectification and reinstatement shall (subject to clause 12.4 below) be borne by the Developer.

12.4. In any case other than mentioned in clause 12.3 above such costs shall be borne by the Council except that in any case where the Council Representative has not been given reasonable notice and facilities by the Developer in accordance with this Agreement to inspect any part of the Works and did not inspect them the cost of the opening reinstatement and rectification (if any) in relation to any part of the Works which shall have been opened up shall be borne by the Developer whether or not such opening up reveals any defect, obstruction or other failure to comply with the requirements of this Agreement.

13. **Right to Repair**

If at any time prior to the issue of the Transfer the Developer shall fail to construct, complete or make good any defect, blockage, damage in the Works or any part of them or maintain the SUDS in accordance with this Agreement:

13.1. The Council's Representative shall be entitled to serve written notice on the Developer and should such failure not be rectified by the Developer within 14 days of receipt of such notice ("the 14 Day Period") then, subject to clause 13.2 below, the Council may at its discretion and at reasonable cost construct, complete, make good and maintain such parts of the Works as may be necessary in the reasonable opinion of the Council Representative or the Sewerage Undertaker for the proper operation of the Works and may do so either by their own employees or by contract or in such other matter as they reasonably think fit

13.2. If:

13.2.1. it shall be impractical due to the nature and extent of the repairs to the Works for the Developer to construct, complete or make good and such defect within the 14 Day Period; and

- 13.2.2. the Developer has informed the Council of this in writing within the 14 Day Period

then the Council Representative shall (acting reasonably having regard to the nature and extent of the Works to be carried out) agree such longer period of time for rectification of the Works as shall be reasonable in all the circumstances PROVIDED THAT if at the end of such extended period the failure has not been properly rectified then the Council may at its discretion and at reasonable cost construct, complete, make good and maintain such parts of the Works as may be necessary in the reasonable opinion of the Council Representative for the proper operation of the Works and may do so either by their own employees or by contract or in such other matter as they reasonably think fit.

- 13.3. The Developer shall upon demand pay to the Council and the Sewerage Undertaker (where costs have been incurred) the costs as certified by the Council Representative Engineer of undertaking such part of the Works referred to in clause 13.1 and 13.2 including the reasonable cost of preparation and service of notices of administration.

14. **Assumption of Responsibility by Council**

- 14.1. The Council shall (subject to the Developer complying with the terms of this Agreement) accept and take over responsibility for the SUDS in accordance with the [ ] Management Plan on and from the date of the Transfer and completion of the Legal Documents.

- 14.2. The Council shall not be required to accept or to take over responsibility for the ongoing maintenance of the SUDS in accordance with the [ ] Management Plan or any part of it until the following have occurred:

14.2.1. the Council Representative shall have issued a Provisional Certificate;

14.2.2. the Developer has maintained the SUDS and corrected any defects during the Defect Correction Period and the Final Certificate has been issued in accordance with clause 14.3;

14.2.3. all payments required by clause 19 have been made;

14.2.4. the Developer has completed a Transfer of the Developer's Land to Council and the Legal Documents have been completed

- 14.3. the Developer shall not Transfer the Developer's land to the Council until all 60 residential dwellings have been sold and Completed

- 14.4. The Developer shall maintain the SUDS in accordance with the [ ] Management Plan until all of the [ ] residential dwellings have been sold and Completed and the Developer has completed a Transfer to the Council and the Legal Documents have been completed

- 14.5. The Council shall assume responsibility for the SUDS in accordance with the [ ] Management Plan from the date of the Transfer .

- 14.6. For the avoidance of doubt, clause 14.6 shall not prejudice any third party collateral warranties provided to the Council.
- 14.7. To ensure that the Works shall so soon as practicable after the Defects Correction Period receive the Final Certificate:
- 14.7.1. The Developer shall give to the Council 2 months' written notice before the end of the Defects Correction Period.
- 14.7.2. The Council Representative shall on receipt of such written notice as required under clause 14.7.1 above, inspect the Works prior to the expiry of the Defects Correction Period and the Council shall procure that the Council Representative shall within 7 days after such inspection either:
- 14.7.2.1. advise the Developer in writing of any defects arising or work required in connection with the Works and which require to be rectified or done under the terms of this Agreement before the issue of the Final Certificate but upon completion of any such works issue the Final Certificate; or
- 14.7.2.2. issue the Final Certificate.
- 14.8. Subject to the terms of this Agreement the Council will maintain or procure the maintenance of the SUDS in accordance with the Mount Oswald Management Plan.
- 14.9. The Developer shall Transfer the land to the Council in accordance with clause 14.3 and (if not already done so) enter into the Legal Agreements maintenance agreement in respect of that part of the Site as is edged [ ] on the Plan in the form annexed at Annexure 5. Completion of the transfer shall be effected by the transfer annexed at Annexure 4 which the Developer and the Council each agree to executed and deliver to the other
15. **Duty to Developer**
- Nothing in this Agreement shall imply any obligation on the part of the Council Representative or the Council to the Developer or to any other person to ensure that the Works or any part them are properly constructed.
16. **Indemnity**
- 16.1. The Developer shall indemnify the Council, against all claims, costs, losses or expenses, which may be made against them by reason of any breach by the Developer of its obligations in this Agreement.
- 16.2. The liability of the Developer to the Council in respect of any obligation under this Agreement is to cease on the transfer of the Land, except that liability will not so cease in respect of:
- 16.2.1. claims begun before the issue of the Transfer of the Developer's Land; and

16.2.2. accrued and identified rights of action in respect of which the Council has given notice to the Developer of or intention to make a claim before the Transfer.

17. **Disputes**

All questions, disputes or differences which may arise at any time between the parties here to in relation to the construction of the Works shall be referred in the first instance to a senior manager of each party who will attempt in good faith to resolve any issue arising out of this Agreement but failing resolution within 14 days may be referred with the agreement of all affected parties to mediation in accordance with the Centre for Dispute Resolution (CEDR) Model Mediation Procedure. If such parties do not agree upon mediation within 7 days thereafter or have not settled a dispute by mediation within 42 days from the initiation of the mediation the dispute shall be referred to the decision of a single arbitrator mutually agreed upon or failing such agreement within 14 days to be appointed by the President for the time being of the Chartered Institute of Arbitrators on the application of any of the affected parties and such arbitration shall be carried out in accordance with and subject to the application provisions of the Arbitration Act 1996.

18. **Notices**

Any notice to be served or document to be supplied or submitted under this Agreement shall be delivered or posted in respect of the Council FAO Head of Legal Services, The County Council of Durham, County Hall, Durham, DH1 5UL to the Sewerage Undertaker at its registered office and any notices to be served on the Developer may be delivered or posted to its/his last known address or its registered office.

19. **Fees and Charges**

The Developer shall on the signing hereof pay the reasonable Council Representative fees in the sum of £ in respect of the costs incurred by the Council in approving the Approved Drawings and of inspecting the Works and the Council's legal fees in the sum of £x and the Surveyor's fees in the sum of £

20. **Assignment**

The Developer shall not assign any interest or responsibility under this Agreement without the express written consent of the Council and upon such conditions and terms as it may reasonably impose.

21. **Default**

If the Developer shall:

- 21.1. materially fail to perform any of its obligations under this Agreement, which failure has not been rectified following notice in writing from the Council Representative specifying the breach and the steps required to remedy it and allowing a reasonable period for such remedial steps to be taken; or
- 21.2. shall go into liquidation voluntarily or otherwise compound with its creditors (except for the purpose of reconstruction or amalgamation)

then the Council may without prejudice to their other rights remedies and powers against the Developer for such breach of notice in writing to the Developer determine this Agreement and upon such notice being served this Agreement shall immediately determine but without prejudice to the obligations of the Developer to the Council under clause (22) and under this Agreement .

22. **Statutory Rights**

Nothing in this Agreement shall in anyway prejudice the exercise by the Council of any of their statutory rights and powers arising otherwise than by virtue of this Agreement.

23. **Third Party Rights**

A person who is not a party to this Deed has no rights under the Contract (Rights of Third Parties) Act 1999 to enforce or have the benefit of any term of this Deed save where this Deed expressly provides otherwise but none of the foregoing provisions of this clause affect any right or remedy of a third party which exists or is available apart from the Act.

24. **Application**

This Agreement shall be governed by the laws of England and Wales.

25. **Bond**

[NB: It is understood a cash bond is to be provided]

**IN WITNESS** whereof the Council and the Sewerage Undertaker have hereunto affixed their respective Common Seal and the Developer has executed this document as a Deed the day and year first hereinbefore written

Durham County Council accepts no liability or liability for third parties relying on this document

**The Schedule**



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**EXECUTED AS A DEED BY**

[            ]

acting by two directors or a director  
and its secretary :-

Director .....

Director/Secretary .....

**EXECUTED as a DEED (but not  
delivered until the date of it) by the  
affixing of THE COMMON SEAL OF  
THE COUNTY COUNCIL OF  
DURHAM By Order:**

**Authorised Sealing Officer  
(A permanent Officer of the County  
Council)**

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**EXECUTED AS A DEED BY  
AFFIXING THE COMMON  
SEAL of THE SEWERAGE  
UNDERTAKER**

in the presence of :-

Executed as a deed (but not  
delivered until the date inserted above)

by affixing the common seal of **AVIVA**

**INSURANCE LIMITED in the presence of:**

{mines and minerals}

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