

GWLG 23/11/22

DATED:

2022

- (1) Derbyshire County Council
- (2) Derby City Council
- (3) Wilson Bowden Developments Limited
- (4) Hallam Land Management Limited

Collaboration Agreement

relating to the

South Derby Growth Zone

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THIS AGREEMENT is made on

2022

PARTIES

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, DE4 3AG ("**DCC**");
- (2) **DERBY CITY COUNCIL** of Council House, Corporation Street, Derby, DE1 2FS ("**City Council**")
- (3) **WILSON BOWDEN DEVELOPMENTS LIMITED** (CRN 00948402) whose r/o is at Barratt House,, Cartwright Way,, Forest Business Park, Bardon Hill, Coalville, Leicestershire, United Kingdom, LE67 1UF ("**WBD**"); [and
- (4) **HALLAM LAND MANAGEMENT LIMITED** (CRN 02456711) whose r/o is at Banner Cross Hall, Ecclesall Road South, Sheffield, S11 9PD ("**HLM**")

(together "the **Parties**")

BACKGROUND

- A The Parties have agreed to work collaboratively to facilitate the delivery of enabling infrastructure for housing and commercial development for the wider Infinity Garden Village Scheme in the form of a new junction on the A50 Trunk Road and a highway connection from the A50 to Infinity Park Derby extending across the Administrative Boundaries of DCC and the City Council's as well as South Derbyshire District Council ("SDDC") by DCC as Highways Authority.
- B The parties reaffirm their commitment to the delivery of the wider Infinity Garden Village Scheme.
- C The parties have each agreed to work with each other in good faith to:
 - (a) secure funding and land required to deliver the whole of the Enabling Infrastructure Works (as herein defined)
 - (b) co-ordinate negotiations with Landowners to secure the delivery of any land (through negotiation by private treaty where possible) to enable the Enabling Infrastructure Works to be undertaken and
 - (c) deliver the Enabling Infrastructure Works in accordance with the provisions of this Agreement.
- D This Agreement sets out the arrangements agreed between the Parties in respect of the obligations, payments and delivery of the Enabling Infrastructure Works
- E DCC have received an offer of funding from the Levelling Up Fund to fund the Enabling Infrastructure Works which include the LUF Funding Basic Principles and which shall be provided in the LUF Funding Agreement (as hereafter defined).
- F DCC is the Accountable Body for the distribution of funds pursuant to the LUF Funding Agreement.

- G DCC has agreed to make initial funding available from its Kick Start Fund for the Enabling Infrastructure Works comprising the DCC Initial Funding Contribution (as hereinafter defined) which will be repaid once the Levelling Up Fund Contribution is drawn down.
- H The City Council has agreed to make some funding available for the Enabling Infrastructure Works through funding received from Homes England comprising the City Council Funding Contribution (as hereinafter defined).
- I DCC will receive one half of the Private Sector Funding Contribution from each of the Developers to fund various elements of the Eligible Expenditure
- J This Agreement sets out the terms on which the Public Sector Partners and the Developers will contribute towards the Enabling Infrastructure Works including payment of the Private Sector Funding Contribution and the steps the Parties shall take to work together to deliver the Eligible Expenditure

1 Definitions

In this Agreement the following definitions apply:

Accountable Body	shall have the meaning set out in the LUF Funding Agreement
Appointments	the appointment of a member of the Professional Team in connection with the Works Contract;
Contractor	the contractor appointed by DCC (and approved by the City Council (such approval not to be unreasonably withheld or delayed) to carry out the Enabling Infrastructure Works in accordance with the terms of the Works Contract together with any replacement contractor that may be appointed by DCC
City Council Funding Contribution	£800,000
City Council Planning Permission	the planning permission dated 30 April 2021 issued by Derby City Council (reference number 19/00417/FUL in respect of the Enabling Infrastructure Works and any variations agreed thereto
Collaboration Objectives	the objectives set out in clause 3 of this Agreement;
Completion Certificate	means the statement issued by the Project Manager in accordance with the Works Contract certifying that Practical Completion has taken place;
Compensation Event Costs	Any costs over and above the Target Cost to which the Contractor is entitled pursuant to the terms of the Works Contract {subject to the Works Contract arising from any changes required to the Enabling Infrastructure Works by the Developer pursuant to clause 4.6
Compulsory Purchase Order	means any compulsory purchase order or orders made for

the acquisition of land and Required Rights within the Infrastructure Site or for the alteration or improvement of adjacent highways

Conditions Long Stop Date 31st July 2024

Conditions Precedent each and every one of the following:

- (a) The Public Sector Partners and the Developers agreeing the Revised Project Budget in accordance with clause [4.8] ;¹
- (b) approval by the Department for Transport of the Full Business Case and the securing by DCC of the Levelling up Fund Contribution in accordance with clause 3.2.1;
- (c) satisfaction of the Pre Commencement Conditions in accordance with clause 3.2.1
- (d) the acquisition of (or an option to acquire) all land and Required Rights within the Infrastructure Site by DCC either by private treaty negotiation or by implementation of a Compulsory Purchase Order in accordance with clauses 3.2.1
- (e) each of the Public Sector Partners obtaining Cabinet approval to proceed with the Enabling Infrastructure Works and to carry out and complete the Enabling Infrastructure Works;

¹ The Project Budget (to be defined as £[55.597,972]) needs to be set and any additional Cost Overruns in excess of 110% of the Project Budget need to be agreed This will essentially be based on the original construction budget and that will be the maximum figure to which the Private Sector Partners are committed. Those figures need agreeing by an agreed date which is presumably before any CPO Inquiry. If the eventual Revised Project Budget/Target Price that is agreed with contractors consequent upon the further design input etc is greater than the original Project Budget (to be defined as £[55.597,972]) plus, up to 10% then DCC will have the right to decide whether or not to proceed with the project as DCC will be bearing any additional costs. The Eligible Expenditure will of course be greater than the Works Contract price because there are elements of cost lying outside the Works Contract which are funded by the LUF

On reviewing the Project Budget now received: The Developers require a breakdown of the make-up of the Project Budget..

- a) The figure provided appears to be the LUF Bid figure.
- b) The current BPM budget is £57,335,401.
- c) That figure includes "Risk" of £6,353,565. Is that contingency/cost over run ? Cost overruns are an addition to the Project Budget.

- (f) the Developers either executing the Escrow Agreement and depositing into the Escrow Account the [Private Sector Funding Contribution or delivering to DCC a duly executed Security Bond in accordance with clause [4.13];
- (g) satisfaction of the Developer's Pre-Conditions in accordance with Clause { 3.5 }
- (h) grant of the FSA Rights

Cost Overruns	The amount by which the Eligible Expenditure exceeds the Project Budget but which amount shall not exceed in aggregate 10 % of the Project Budget unless both of the Developers otherwise agree
DCC Initial Funding Contribution	the amount determined by DCC to be taken from DCC's Kick Start Fund and which shall be applied to pay the Eligible Expenditure in accordance with the provisions of Schedule 1;
DCC Funding Contribution	the Levelling Up Fund Contribution less the DCC Initial Funding Contribution which shall be administered by DCC;
DCC Planning Permission	the planning permission dated 20 April 2021 issued by Derbyshire County Council (reference number CD9/0319/110 in respect of the Enabling Infrastructure Works and any variations of the permission
Department for Transport	Department for Transport of Great Minster House, 33 Horseferry Road, London SW1P 4DR;
Developers	together meaning WBD and HLM and "Developer" shall be either one of them;
Developers Pre-Conditions	the discharge of each and every one of the following: <ul style="list-style-type: none"> (a) WBD entering into an agreement with Christ Church, Oxford for the purchase of (or option to purchase) the land shown edged [TBC] on the plan which is annexure [TBC] which is conditional upon the grant of a satisfactory planning permission for the development of [B1/2/8]. The agreement will include the reservation and grant of rights required by that land to maintain access to and use of land until Practical Completion and for its commercial development and will provide (inter alia) for the recovery of the appropriate proportion of the Private Sector Funding Contribution from the land price; The agreement will provide a right for Christ Church to discharge the WBD's obligations under this Agreement in the event of default on the part of the

WBD and to take the benefit of this Agreement

- (b) HLM having entered into an agreement for the sale to or an option for a third party purchaser to purchase all or part of the land contained in the relevant permission conditional upon the grant of satisfactory planning permission pursuant to the IGV Planning Applications. The agreement will include the reservation and grant of rights required by that land to maintain access to and use of land until Practical Completion and for its residential development and will provide (inter alia) for the recovery of the appropriate proportion of the Private Sector Funding Contribution from the land price to HLM;
- (c) HLM having entered into an agreement with the owners of the land shown coloured [xxx][Atkin] which is in a form satisfactory to HLM to enable the promotion, sale and development of such land and which enables the discharge of the obligations in this agreement in respect of such land;
- (d) HLM having entered into an agreement with the owners of the land shown coloured [xxx][Atwall] which is in a form satisfactory to HLM to enable the promotion, sale and development of such land and which enables the discharge of the obligations in this agreement in respect of such land;
- (e) HLM having entered into an agreement with the owners of the land shown coloured [xxx][Harpur Crewe] which is in a form satisfactory to HLM to enable the promotion, sale and development of such land and which enables the discharge of the obligations in this agreement in respect of such land;
- (f) the grant of consent pursuant to the IGV Planning Applications

Eligible Expenditure

all costs reasonably and properly incurred by DCC and for which DCC are responsible in connection with the Enabling Infrastructure Works and this Agreement including but not limited to:

- (a) securing all necessary funding and compliance with the LUF Funding Agreement including reporting as appropriate and providing evidence as to compliance with LUF Funding Agreement acquisition of all the land and Required Rights within the Infrastructure Site whether by negotiation,

private treaty or by way of Compulsory Purchase Order including but not limited to all VAT, professional and legal fees and disbursements, SDLT payment, Land Registry fees and any compensation payable, whether agreed or determined by the Upper Tribunal (Lands Chamber);

- (b) the making of any statutory orders in order to carry out and complete the Enabling Infrastructure Works including for the avoidance of doubt and without limitation any orders as may be required to be made under sections 10, 14, 16, 18 or 106 of the Highways Act 1980;
- (c) discharging all the Planning Conditions, obtaining all Necessary Consents and entering into all Statutory Agreements to enable the Enabling Infrastructure Works to be carried out;
- (d) undertaking ground and site investigations at the Infrastructure Site so as to enable the Enabling Infrastructure Works}
- (e) the design, carrying out and completion of the Enabling Infrastructure Works including managing the Appointments and Works Contract; and
- (f) all reasonable legal and other professional fees irrecoverable VAT and disbursements properly and reasonably incurred by DCC and the City Council in connection with the carrying out and completion of the Enabling Infrastructure Works

Enabling Infrastructure Works the development of a new junction on the A50 and connecting link road to Infinity Park Way together with associated works including (but without prejudice to the generality of the foregoing) to include new grade separated junction on the A50 Strategic Road Network (SRN) at Deepdale Lane to include;

- (a) Demolition of Ashlea Farm;
- (b) A new 1.6km north/south carriageway link road between the new A50 junction and the arm off the roundabout at the infinity park iHub;
- (c) Two flood compensation areas (subject to discussions with WBD), to the west and north-west of the carriageway and minor watercourse

diversions;

- (d) Additional Highways mitigations measures including:
- (i) Upgrade of 2 no. laybys on the A50 SRN;
 - (ii) Traffic calming measures on Deepdale Lane running into Sinfin;
 - (iii) Widening of the carriageway at Infinity Park Way at the Wigmore Rd junction;
 - (iv) Merrill Way at the A514 Chellaston Road/Boulton Lane Signal junction; ²

which are more particularly described in the City Council Planning Permission and the DCC Planning Permission and which the Parties intend shall be undertaken by DCC and the City Council as highways authorities to the standards and specifications required for such works to become a highway maintainable at the public expense

{Escrow Account /Escrow Agreement

An interest bearing escrow account in the name of [Derbyshire County Council] into which each of the Developers will once all Conditions Precedent are satisfied [and DCC have confirmed they have entered into the Works Contract subject only to the Private Sector Funding Contribution being so deposited] I deposit one half of [the Private Sector Funding Contribution]

Expert

a person with at least ten years' post-qualification experience including significant relevant experience in the subject matter of the dispute;

Existing Infrastructure

the infrastructure completed by WBD and currently in situ being :

Flood compensation area to the west of the carriageway, north of Sinfin Moor Lane and minor watercourse diversions;

Circa 20m of single carriageway, extending the existing T12 carriage constructed by Derby City Council to the west, including cycle and pedestrian paths and lighting.

and which form part of the Enabling Infrastructure Works

FSA Rights	the acquisition by DCC by way of private treaty of such rights of entry as DCC shall reasonably require to undertake the Enabling Infrastructure Works and thereafter such rights of support for the Road Land and maintainance as shall reasonably be required for the north/south carriageway link road over the Western FSA in order to comply with the DCC Planning Permission and the LUF Funding Agreement Basic Principles
Freedom of Information Legislation	the Freedom of Information Act 2000 and any subordinate legislation made under the Act from time to time and the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant Government department in relation to such legislation;
Full Business Case	the full business case for the Enabling Infrastructure Works which is to incorporate the LUF Funding Agreement Basic Principles and which is approved by the Department for Transport as required by the Conditions Precedent;
Future Infrastructure Works	any infrastructure works which are agreed pursuant to clause [6.5] form part of the Enabling Infrastructure Works and which are to be provided by WBD and which are compliant with the LUF Funding Agreement and all highways authorities regulations so as to become adoptable and maintainable at public expense in accordance with clause 6 5
HLM Landowners	
IGV Planning Applications	planning applications submitted by the Developers in respect of the Infinity Garden Village Scheme;
Infinity Garden Village Scheme	a garden village providing new homes and employment for the South Derbyshire area including the provision of a new junction on the A50 Trunk Road and a highway connection from the A50 to Infinity Park Derby;
Infrastructure Site³	the land shown edged red on the Plan {including the new junction and road) [shown edged red on {Plan marked IFP-BWB-EWE-XX-DR-EN-007 }]; which land includes the Road Land and Required Rights Land
Interim Condition Long Stop Date	31 st March 2023 or such later date as the Developers may request and DCC shall approve (acting reasonably) but in any event no later than [TBA]

Landowners	the WBD Landowners and the HLM Landowners who between them own the Infrastructure Site and the Required Rights Land as listed in Schedule 2
Levelling Up Fund Contribution	the maximum contribution available for the delivery of the Enabling Infrastructure Works from the Levelling Up Fund of £49.50 million pursuant to the LUF Funding Agreement;
LUF Funding Agreement	the agreement to be made between (1) Department for Transport and (2) DCC in relation to the Levelling Up Fund Contribution and which is consistent with the LUF Funding Agreement Basic Principles
“LUF Funding Agreement Basic Principles ”	shall mean the principles set out in a letter from the Dept of Transport to Derbyshire County Council dated 11 th July 2022 annexed hereto and any variations thereof which are required for the purpose of and obtaining the approval of the Department of Transport to the Full Business Case and which are approved by the Parties each acting reasonably and without delay
National Highways	National Highways of National Traffic Operations Centre 3 Ridgeway, Quinton Business Park, Birmingham, B32 1AF;
Necessary Consents	all permissions, consents, licences, certificates, authorisations, Statutory Agreements and other approvals in addition to but excluding the Planning Permission which may be required from any local or other authority or Statutory Authority body or person or any fire officer for the carrying out of the Enabling Infrastructure Works;
Parties	collectively each of the parties to this agreement and any reference to a Party shall mean a reference to a relevant party individually
Plan	
Planning Conditions	the conditions attached to the Planning Permissions
Planning Permissions	the DCC Planning Permission and the City Council Planning Permission
Planning Support	The sum of £50,000 to be paid by WBD to support a planning resource for DCC/SDDC to assist the IGV Planning Applications pursuant to the terms of a planning

	performance agreement} ⁴
Practical Completion	means practical completion of the Enabling Infrastructure Works in accordance with the Works Contract;
Pre-Start Planning Conditions	those Planning Conditions that require compliance to allow the Enabling Infrastructure Works to commence
Private Sector Funding Contribution	[£6 million {plus any VAT thereon} to be provided as to {£3,000,000 } by WBD subject to the provisions of clause 6.2 and 6.5 (WBD Eligible Expenditure Contribution) and {£3,000,000 } by HLM (HLM Eligible Expenditure Contribution) plus the amount of any Compensation Event Costs arising from any changes to the Enabling Infrastructure Works required by either of the Developers pursuant to clause 4.6
Panel Engineer	An engineer authorised by { TBC } to certify completion of the Western FSA
Project Budget Agreement Date	31 st July 2024
Professional Team	(as appropriate), the employer's agent, any M&E Engineer, any quantity surveyor, any structural engineer and any other specialist advisors that may be appointed for the time being in connection with the design and/or management of the Enabling Infrastructure Works;
Project Budget	the sum of £ [55,597,972.00] which the Parties have agreed at the date hereof in respect of the Eligible Expenditure
Project Manager	a project manager to be appointed by DCC in accordance with the Works Contract;
Public Sector Partners	DCC and the City Council;
Recipient	shall have the meaning to be set out in the LUF Funding Agreement;
Revised Project Budget	the Project Budget and any variations thereof which are agreed pursuant to clauses {4.10 and 4.11 }
Request for Information	shall have the meaning defined in section 8 of the Freedom of Information Act 2000;
Required Rights	the rights required over third party land within the Infrastructure Site to carry out and complete the Enabling Infrastructure Works and thereafter where necessary to

maintain the Enabling Infrastructure Works subject to the reservation of such rights as shall reasonably be required to maintain access to and use of such third party land until Practical Completion

Required Rights Land

The land shown coloured [] on the Plan

Road Land

The land which is required permanently for the Enabling Infrastructure Works and which is shown [] on the Plan

Security Bond

A bond which in all material respects is in the form attached at Appendix [] provided by [] or [] and which secures the Private Sector Funding Contribution or such part thereof as is not deposited within the Escrow Account

Statutory Agreements

a planning obligation or a statutory obligation necessary to carry out the Enabling Infrastructure Works (as the case may be) including without limitation an obligation under section 38 or section 278 of the Highways Act 1980 or section 111 Local Government Act 1972 or section 104 of the Water Industry Act 1991 or section 106 of the Town and Country Planning Act 1990 and/or any agreements with Highways England;

Statutory Authorities

the local authority, county, planning, highway and drainage authorities, gas, water, electricity, cable, television and telecommunication companies and any other authority, company, body, corporation or organisation exercising statutory sanctions or concerned with or responsible for highways and/or the supply of services and a 'Statutory Authority' is any one of them as the context permits;

Target Cost

means the costs of the Enabling Infrastructure Works tendered by the Contractor under the Works Contract

Unconditional Date

the date on which all of the Conditions Precedent have been satisfied or waived in accordance with clauses [3.5 and 3.6];

VAT

value added tax payable by virtue of the Value Added Tax Act 1994 or any similar tax levied in addition to or by way of replacement for VAT;

WBD Landowners

Western FSA

{TBC}

Works Contract

the {NEC 4 Option C.Contract} to be entered into between DCC (1) and the Contractor (2) for the carrying out and completion of the Enabling Infrastructure Works within [] months ;

Working Day any day other than Saturday or Sunday, or a bank or public holiday.

2 Interpretation

In this Agreement unless the context otherwise requires:

- 2.1 the index and clause headings are inserted for convenience only and shall not affect the construction of this Agreement and all references to clauses, paragraphs or Schedules are (unless otherwise expressly stated) to clauses, paragraphs of and Schedules to this Agreement;
- 2.2 the Schedules to this Agreement are intended to be an integral part of this Agreement;
- 2.3 an obligation to do any act includes an obligation to procure that it is done;
- 2.4 an obligation not to do something includes an obligation not to cause or allow that thing to be done;
- 2.5 the words 'include, 'includes' and 'including' are deemed to be followed by the words 'without limitation';
- 2.6 a reference to legislation (including subordinate legislation) is to that legislation as extended, amended, modified, consolidated, or re-enacted from time to time and includes any instrument, order, regulation, permission, content, licence, notice, direction, byelaw, statutory guidance or code of practice made or granted under such legislation (including rules, regulations and bye-laws of any Statutory Authority) and includes EU directives and regulations having effect within the UK;
- 2.7 any reference to the obtaining of an approval, consent or instructions from the Parties shall mean an approval, consent or instructions in writing signed by a director of the relevant Party or other representative of the Party from time to time designated by it for the purpose;
- 2.8 where under this Agreement an act is required to be done within a specified period of days after or from a specified date the period shall begin immediately after that date and shall exclude any day which is not a Working Day;
- 2.9 any consent or approval required under the terms of this Agreement is to be effective only if the consent or approval is given in writing;
- 2.10 words in the singular include the plural and vice versa; and
- 2.11 the liability of WBD or HLM in respect of any obligations on the part of the Developers under this Agreement shall be several and not joint.

3 Collaboration Objectives and Obligations

- 3.1 The Parties agree that the Collaboration Objectives of this Agreement are
 - 3.1.1 to secure funding to acquire all land and Required Rights necessary within the Infrastructure Site to deliver the whole of the Enabling Infrastructure Works;
 - 3.1.2 to secure funding to deliver the whole of the Enabling Infrastructure Works

- 3.1.3 to co-ordinate and conclude negotiations with the Landowners to secure (by way of private treaty) any land and the Required Rights required to enable the delivery of the Enabling Infrastructure Works;
- 3.1.4 where land and Required Rights have not been secured by private treaty to enable DCC as Appropriate Authority to compulsorily purchase such land and Required Rights which are required to deliver the Enabling Infrastructure Works
- 3.1.5 to enable DCC as Appropriate Authority to deliver the Enabling Infrastructure Works;
- 3.2 To achieve the Collaboration Objectives each of the Parties acknowledges their roles and responsibilities will be as set out in the following provisions of this Clause 3.
- 3.3 DCC agree and acknowledge that
 - 3.3.1 as soon as practicable from the date hereof that they will use reasonable endeavours to
 - (i) act as the sponsor and lead for the Enabling Infrastructure Works working closely with SDDC and the other Parties;
 - (ii) act as Appropriate Authority for the relevant part of the Enabling Infrastructure Works which is to be constructed within the administrative boundary of the City Council and of South Derbyshire District Council;
 - (iii) liaise with National Highways and the City Council regarding construction of the infrastructure to an adoptable standard;
 - (iv) acquire the land and the Required Rights (or an option to acquire the land and the Required Rights) within the Infrastructure Site which are required for the delivery of the Enabling Infrastructure Works by private treaty via negotiation or in the absence of acquisition by private treaty via Compulsory Purchase Order;
 - (v) use reasonable endeavours to agree the Revised Project Budget with the Developers in accordance with clause { 4.8 }
 - (vi) seek approval by the Department for Transport to the Full Business Case and secure the Levelling Up Fund Contribution;
 - (vii) exclude from the Compulsory Purchase Order before it is made or confirmed by the Secretary of State, as the case may be, all land and Required Rights within the Infrastructure Site that have been acquired by private treaty; and
 - (viii) agree the FSA Rights
 - 3.3.2 subject to satisfaction of all the Conditions Precedent that they will use reasonable endeavours to:
 - (a) procure the appointment of the Professional Team and enter into the Works Contract with the Contractor for the Enabling Infrastructure Works;

- (b) let and manage the Appointments and the Works Contract and diligently perform their obligations thereunder with the intention of delivering the Enabling Infrastructure Works in accordance with all Necessary Consents and Statutory Agreements and it is agreed that DCC and the City Council (as appropriate) shall be responsible as highways authority for the Enabling Infrastructure Works such that they become a highway maintainable at the public expense ⁵
- (c) maintain records of expenditure available for inspection by the Developers and provide a schedule of Eligible Expenditure on a monthly basis to the other Parties;
- (d) Contribute 50% towards any Cost Overruns in accordance with clause 5.3.3
- (e) procure the discharge of the Pre Start Planning Conditions in the DCC Planning Permission;

PROVIDED that these obligations shall not fetter DCC's discretion as Appropriate Authority and that compliance with these obligations shall not put DCC in breach of its other statutory functions nor put it in a position which would result in it acting ultra vires

3.4 WBD agree and acknowledge that they will⁶

3.4.1 pay to {DCC/City Council/SDDC} in accordance with the terms of a planning performance agreement with [SDDC] the sum of £50,000 towards the cost of the Planning Support; and

3.4.2 as soon as practicable after the date hereof use reasonable endeavours to:

- (a) procure the WBD Landowners to engage with DCC promptly to dispose of the land within the Infrastructure Site to DCC and to grant the Required Rights {and licences to access land on a temporary basis as required to construct the Enabling Infrastructure Works } by way of private treaty;
- (b) ensure that land within their ownership or control)is made available for the Enabling Infrastructure Works without ransom;
- (c) keep the Parties informed as to the progress being made in negotiating with the WBD Landowners for the acquisition of land neighbouring the Infrastructure Site and to be incorporated within the Infinity Garden Village Scheme and shall keep DCC regularly informed as to the progress (or otherwise) they are making with regard to satisfying the Developers Pre Conditions and answering all reasonable questions from DCC associated therewith

⁶ This planning support payment should be paid on exchange by Developers. No it should be paid pursuant to the terms of a planning performance agreement. Have the terms of this been agreed ?

- (d) lead on the planning application submission for commercial developments in support of the wider Infinity Garden Village Scheme;
- (e) satisfy the condition in paragraph (a) of the Developers Pre Conditions by the Interim Condition Long Stop Date
- (f) agree the Revised Project Budget with DCC in accordance with clause { 4.8 }
- (g) Contribute 25% towards any Cost Overruns in accordance with clause 6.7 }and
- (h) Agree with DCC and procure the grant to DCC of the FSA Rights

3.5 HLM agree and acknowledge that it will as soon as practicable after:

3.5.1 the date hereof use reasonable endeavours to:

- (a) keep the Parties informed as to the progress being made in negotiating with the HLM Landowners for the entering into a contract for the control of land neighbouring the Infrastructure Site {and to be incorporated within the Infinity Garden Village Scheme};
- (b) keep DCC regularly informed as to the progress (or otherwise) HLM is making with regard to satisfying the Developers Pre Conditions and answering all reasonable questions from DCC associated therewith;
- (c) satisfy the Developers Pre Condition sub paragraphs (c), (d) and (e) by the Interim Condition Long Stop Date
- (d) use reasonable endeavours to agree the Revised Project Budget with DCC in accordance with clause { 4. 8}]

3.5.2 the date on which this agreement becomes unconditional to:

- (a) procure the HLM Landowners to engage with DCC promptly to dispose of the land within the Infrastructure Site to DCC and to grant the Required Rights {and licences to access land on a temporary basis as required to construct the Enabling Infrastructure Works} by way of private treaty;
- (b) ensure that land within their ownership or control is made available for the Enabling Infrastructure Works without ransom

3.6 The Developers shall notify the Public Sector Partners in writing within 5 Working Days following the date on which each of the Developers Pre Conditions are satisfied PROVIDED that WBD shall have the right to waive in writing the Developer's Pre-Condition in paragraph (a) of that definition and HLM shall have the right to waive the conditions in paragraphs (b), (c), (d) and (e) in that definition and either of them may waive any of the Developer's Pre-Conditions which are to be satisfied by the other Developer by notice in writing provided that in so doing the Developer serving such notice shall assume liability for all of the obligations on the part of the Developers in this Agreement and the remaining Developer shall be released from all further liabilities on its part contained in this Agreement.

3.7 The Public Sector Partners shall notify the Developers in writing within 5 Working Days following the date on which each of the Conditions Precedent (other than Condition Precedent (f) and the Developers Pre Conditions) is satisfied and the Unconditional Date has occurred PROVIDED that the Public Sector Partners shall together have the right to waive in writing any or all of the Conditions Precedent other than the Developers Pre-Conditions.

3.8 *[Do we need new clauses to reflect the agreement to provide licences for temporarily required land which will be withdrawn from the CPO upon conclusion of those licences as per Charles Felgate's email of 23rd Sept]?*

4 Agreement as to Revised Project Budget

4.1 The Parties have agreed the Project Budget for the Eligible Expenditure as at the date hereof

4.2 The Parties acknowledge that in developing the detailed design of the Enabling Infrastructure Works with the Contractor to determine the Target Cost then the Project Budget may need to be revised to become the Revised Project Budget.

4.3 DCC will provide full details to the Developers of any changes to the Project Budget from that which has been agreed at the date of this Agreement and the reasons therefor as soon as they become known and not less frequently than monthly during the subsistence of this Agreement.

4.4 DCC will develop and agree with the Contractor the detailed design of the Enabling Infrastructure Works which will determine the Target Cost and DCC shall invite the Developers to attend and provide input into the relevant design meetings and will provide the Developers with all material design details and invite them to provide comments on such design but the Developers agree that DCC are the lead authority in respect of the Enabling Infrastructure Works and the final decision on the terms of the Works Contract shall be with DCC.

4.5 In developing and agreeing the Target Cost DCC shall use reasonable endeavours to achieve best value reasonably obtainable in the market and to exercise reasonable and proper control over such costs.

4.6 Either of the Developers may require changes to the Enabling Infrastructure Works to provide for access points , pedestrian and cycle crossings , crossings and ducting for utilities required to serve the development of the Infinity Garden Village Scheme and shall provide full details of their requirements to DCC as soon as reasonably practicable. Any changes to the design must be agreed by DCC (such agreement not to be unreasonably withheld or delayed but without prejudice to the generality thereof it shall not be unreasonable for DCC to object to such changes if they materially delay or are reasonably likely to materially delay Practical Completion of the Enabling Infrastructure Works) and once agreed DCC shall:

4.6.1 Confirm the Compensation Event Costs which apply to such changes ; and

4.6.2 Subject to the Developer confirming its acceptance of such Compensation Event Costs require such changes to be implemented by the Project Manager. PROVIDED THAT such change shall not form part of the Project Budget or the Revised Project Budget but shall be identified as a separate cost and for which the Developer shall pay all sums which are due and are attributable to such change (together with VAT thereon) by way of increase to the Private Sector Funding

Contribution or if demanded earlier by payment to DCC if required to fund a demand for payment by the Contractor in accordance with the Works Contract

- 4.7 DCC may make such changes to the Enabling Infrastructure as are required to comply with the LUF Funding Agreement any Necessary Consents or the terms of any Statutory Agreements but any other changes which might adversely affect the development of the land to be serviced by the Enabling Infrastructure Works shall require the approval of the Developers which shall not be unreasonably withheld or delayed and DCC shall notify the Developers in writing of any changes which they require to make to the Enabling Infrastructure Works and if such changes are Compensation Event Costs then such changes shall be paid for by the Public Sector Partners and shall not form part of the Project Budget or the Revised Project Budget but shall be identified as a separate cost and for which the Public Sector Partners shall pay all sums which are due and are attributable to such change.
- 4.8 As soon as DCC has determined the Target Cost and any changes to any of the other items of Eligible Expenditure from those shown in the Project Budget then DCC shall in writing :
- 4.8.1 provide to the Developers fully detailed revisions to the Project Budget and which informs the Developers of all changes in the Target Cost from those anticipated in the Project Budget and any changes to the other Eligible Expenditure shown in the Project Budget and in each case the reasons for those changes
 - 4.8.2 confirm whether or not the Revised Project Budget is in accordance with the terms of the LUF Funding Agreement; and
 - 4.8.3 if so whether DCC is willing to enter into the Works Contract and proceed with the Enabling Infrastructure Works in accordance with the Revised Project Budget .
- 4.9 Within 15 Working Days following receipt of written notification from DCC pursuant to clause 4.8 the Developers shall serve written notice upon DCC and the City Council as to whether or not they agree to the Revised Project Budget;
- 4.10 If either the Target Costs together with any revisions to the other Eligible Expenditure do not exceed the aggregate of the costs in Project Budget as agreed at the date of this Agreement plus the agreed amount for Cost Overruns or the Developers otherwise serve written notice upon DCC agreeing to the Revised Project Budget then the Revised Project Budget shall be agreed ;
- 4.11 If the Revised Project Budget is higher than the aggregate of the costs in the Project Budget plus the agreed amount for Cost Overruns and the Developers do not agree the Revised Project Budget then the Developers shall serve written notice on DCC to that effect within 15 Working Days following receipt of written notification from DCC pursuant to clause 4.8 and the Parties shall meet as soon as practicable within a reasonable time thereafter to:
- 4.10.1 discuss if any additional funding or any other funding from other sources is available;
 - 4.10.2 what steps should be taken to obtain additional funding and any impact on the timescales;

- 4.10.3 each use their reasonable endeavours to agree variations to the Enabling Infrastructure Works which can be made to enable the Revised Project Budget to be agreed and which are compliant with the terms of the LUF Funding Agreement; and
- 4.10.4 whether this Agreement should be varied or terminated and if so, the steps required to effect such termination
- 4.11 In the event that the Revised Project Budget is greater than the aggregate of the costs in the Project Budget plus the agreed amount for Cost Overruns and has not been agreed on or before the Project Budget Agreement Date then neither the Public Sector Partners or the Developers shall be under any obligations to pursue satisfaction of the Conditions Precedent and DCC or the Developers may terminate this agreement on written notice to the other Parties at any time after the Project Budget Agreement Date if the Revised Project Budget has not been agreed at the date of termination.
- 4.12 DCC shall notify the other Parties in writing as soon as reasonably possible if DCC consider that it will not by the Conditions Long Stop Date have the appropriate funding to continue providing the DCC Initial Funding Contribution or the DCC Funding Contribution or sufficient additional funds to complete the Enabling Infrastructure Works in accordance with the LUF Funding Agreement and statutory highway requirements and thereafter any party may terminate this agreement forthwith on written notice to the other Parties
- 4.13 Within 5 Working Days following the later of receipt of written confirmation from DCC pursuant to clause 3.6 that each Condition Precedent (other than Condition Precedent (f)) are satisfied and the date on which the Developers Pre Conditions are satisfied and DCC confirming that they have entered into the Works Contract subject to the Private Sector Funding Contribution being paid) the Developers shall each either sign the Escrow Agreement and pay its one half of the Private Sector Funding Contribution into the Escrow Account and execute and complete the Escrow Agreement or deliver to DCC the Security Bond for the amount of its share of the Private Sector Funding Contribution
- 4.14 If either Developer shall fail to comply with its obligations in relation to any payment due from it in accordance with this Agreement then the other Developer which is not in default shall be entitled at any time thereafter to give written notice to the defaulting Developer demanding that the payments are made immediately and if the defaulting Developer shall not make the payment in question then the Developer which is not in default may make the payment due from the defaulting Developer but the defaulting Developer shall nevertheless remain liable to pay its share of the Private Sector Funding Contribution and any other payments due to be paid by it under this Agreement and continue to be bound by the provisions of this Agreement and the defaulting Developer shall pay as a debt due to the Developer that is not in default the sum paid by the Developer that is not in default together with interest on such sum at 4% above the base rate from time to time of {Barclays Bank plc} calculated from the date payment is made by the Developer that is not in default to the date of actual payment

5 Public Sector Further Obligations

- 5.1 The Public Sector Partners shall keep the Parties updated monthly as to the amount of the Eligible Expenditure, and how the Eligible Expenditure is being met out of the Project Budget or the Revised Project Budget together with any potential or actual Cost Overruns .

- 5.2 The City Council shall pay to DCC the City Council Funding Contribution in accordance with the agreement between them and as soon as reasonably possible discharge the Planning Conditions in the City Council Planning Permission;
- 5.3 Subject to satisfaction of the Conditions Precedent, DCC will make the following contributions to the Eligible Expenditure in accordance with Schedule 1:
- 5.3.1 the DCC Initial Funding Contribution;
 - 5.3.2 (once available) the DCC Funding Contribution in accordance with and prescribed by the LUF Funding Agreement; and
 - 5.3.3 50% of all Cost Overruns actually incurred.
- 5.4 Upon entering into the Works Contract DCC shall provide a full copy to the Developers including the programme for the completion of each stage of the Enabling Infrastructure Works;
- 5.5 DCC will promptly provide all material design details for the Enabling Infrastructure Works provided by the Contractor or issued by DCC pursuant to the Works Contract and shall have proper regard to any reasonable representations made by the Developers in respect of any such details;
- 5.6 DCC shall keep the Developers regularly and fully advised as to the progress of the Enabling Infrastructure Works and any alterations and the reasons for such alterations to the Enabling Infrastructure Works or programme for each stage of the Enabling Infrastructure Works but the Developers agree that DCC are the lead authority in respect of the Enabling Infrastructure Works and the final decision on any alterations to the Works Contract shall be with DCC.
- 5.7 DCC shall diligently manage the Appointments and the Works Contract and perform their obligations thereunder to the standard reasonably expected of a competent project manager experienced in procuring works of the type of the Enabling Infrastructure Works and procure that practical completion of the Enabling Works Infrastructure occurs within [] months following entering into the Works Contract.
- 5.8 The Private Sector Contribution has been agreed on the basis that it will be paid equally (but without joint and several liability on the part of the Developers who shall only be responsible for their separately identified share) by the Developers and that the Developers will recover such payments under the terms of the agreements referred to in the Developer's Pre-Conditions which they enter into. DCC shall confirm to the Developers the details of any payments to defray any of the Eligible Expenditure to which it is entitled from private sector third parties other than those Landowners with whom such agreements are entered into and that the Private Sector Contribution shall be reduced or repaid by an amount equal to a fair and proper proportion (based on gross land areas) of any such payments which DCC receives.

6 Agreement as to Existing Infrastructure and Future Infrastructure Works

- 6.1 DCC and the Developers have agreed that the value of the Existing Infrastructure is £[]
The value of the Existing Infrastructure shall either:
- (a) be deducted from the **WBD's Eligible Expenditure Contribution** before the balance of **WBD's Eligible Expenditure Contribution** is paid into the Escrow Account pursuant to

clause { 4.13 } if by then the road forming part of the Existing Infrastructure has been practically completed and to the standards and specifications required for such works to become a highway and highway infrastructure maintainable at the public expense and is subject to a Section 38 Agreement or other relevant statutory agreement and the Western FSA has been completed and a completion certificate issued by a Panel Engineer ; or

(b) if the road forming part of the Existing Infrastructure has not been so practically completed and a Section 38 Agreement or other relevant statutory agreement entered into before the Private Sector Funding Contribution is paid into the Escrow Account pursuant to clause {4.13} then it shall be paid to WBD out of the {Escrow Account} once the road forming part of the Existing Infrastructure has been practically completed to the standards and specifications required for such works to become a highway and highway infrastructure maintainable at the public expense and is subject to a Section 38 Agreement or other relevant statutory agreement and the Western FSA has been completed and a completion certificate issued by a Panel Engineer

6.2 WBD shall notify DCC in writing as soon as practicable after the date hereof (and in any event by [31st October 2023] what (if any) Future Infrastructure Works WBD may (but shall not be obliged to) carry out.

6.3 Within 20 Working Days following receipt of such notification DCC shall confirm to WBD in writing which Future Infrastructure Works it approves and those which it does not and shall provide reasons for not approving any such works. DCC's approval shall not be unreasonably withheld. The Parties agree that it shall not be unreasonable for DCC to refuse approval if such works:

6.3.1 are not to be completed subject to and in accordance with a Section 38 Agreement or other relevant statutory agreement to the standards and specifications required for such works to become a highway and highway infrastructure maintainable at the public expense; or

6.3.2 if they do not comply with the terms of the LUF Funding Agreement or the DCC Planning Permission

6.4 As soon as practical and in any event not later than Practical Completion of the Enabling Infrastructure Works the Future Infrastructure Works will be valued and the amount agreed between WBD and DCC or in the absence of agreement determined pursuant to clause { 13 } as the relevant value and such value shall be withdrawn from the Escrow Account and paid to WBD once the road forming part of the Future Infrastructure Works has been practically completed to the standards and specifications required for such works to become a highway and highway infrastructure maintainable at the public expense and is subject to a Section 38 Agreement or other relevant statutory agreement PROVIDED that DCC shall not be liable to pay WBD any sum in excess of that remaining in the Escrow Account

6.5 If WBD notify DCC that they will carry out Future Infrastructure Works but fail to commence and enter into a construction contract by the later of 31st December 2023 or 2 months prior to the date which DCC notifies to WBD as being the date on which it intends to commence the construction of the Enabling Infrastructure Works under the Works Contract {and such contract provides for practical completion of the Future Infrastructure Works prior to the date which DCC has notified to WBD as being the date for Practical Completion then DCC} may by notice in writing step in and complete the same and/or carry out such work and WBD shall novate to DCC on demand in writing any building contracts agreements warranties and shall

assign the benefit of any reports surveys and intellectual property in any plans drawings and specifications which they own or control in connection with such Future Infrastructure Works or any Necessary Consents relating thereto so as to enable DCC to carry out and complete the Future Infrastructure Works and all costs thereof shall be paid to DCC from the Escrow Account

6.6 Each of the Developers shall pay to DCC following receipt of written demand within 10 Working Days following the issue of the Completion Certificate:

6.6.1 [25% of any Cost Overruns due under the Works Contract subject to receiving reasonable evidence that such Cost Overruns are due and payable] and

6.6.2 the Compensation Event Costs agreed by the relevant Developer in accordance with clause 4.6 subject to deduction of any payments made earlier pursuant to clause 4.6.2

PROVIDED that interest shall be paid on any late payments at 4% above the base rate from time to time of Barclays Bank plc calculated from the date 10 Working Days following the issue of the Completion Certificate to the date of actual payment

7 Infinity Garden Village Scheme

The Parties reaffirm their commitment to the Infinity Garden Village Scheme.

8 Good Faith

8.1 In entering into this Agreement, the Parties recognise that it is impracticable to provide for every contingency which may arise in pursuing the Collaboration Objectives. Accordingly the Parties declare their intention that this Agreement shall operate between them with fairness and without detriment to the interests of any of them. If in the course of performance of this Agreement unfairness to any Party is disclosed or anticipated then the Parties shall use their reasonable endeavours to agree upon a course of action as may be necessary and equitable to remove the cause of it.

8.2 The Parties shall at all times act in the utmost good faith towards each other and to procure that the Collaboration Objectives are achieved and to give effect to the spirit and intent of this Agreement.

8.3 The Parties agree and acknowledge that the provisions of this Agreement shall not fetter any Party in the exercise of its statutory duties or functions including as local planning authority.

9 Conditions Precedent

9.1 Subject to clause { } this Agreement comes into force on the date of this Agreement.

9.2 Clauses {3.2.2 and 3.3.2 and 3.4.2, 6.4, 6.5 and 6.6 } are conditional on the satisfaction or waiver in accordance with clause 9.3 of the Conditions Precedent and shall come into force on the Unconditional Date.

9.3 The Parties may only waive the Conditions Precedents or any one or more of them by agreement in writing by all the Parties. [cf Clause 3.5?]

- 9.4 If it becomes apparent to any of the Parties, that the Conditions Precedent or any one or more of them may not be satisfied by the Conditions Long Stop Date, the Parties shall meet and use reasonable endeavours to agree what steps need to be undertaken in connection with the Enabling Infrastructure Works which may include termination of this Agreement.

10 Land Assembly

- 10.1 DCC shall use reasonable endeavours to acquire the land and Required Rights within the Infrastructure Site (or options to acquire them) to enable the Enabling Infrastructure Works to be carried out and completed.
- 10.2 DCC shall engage promptly with the Developers and each of the WBD Landowners and HLM Landowners as appropriate and use reasonable endeavours to acquire (or an option to acquire) by private treaty all land interests and Required Rights within the Infrastructure Site required for the completion adoption and maintenance of the Enabling Infrastructure Works
- 10.3 The Developers shall provide all reasonable assistance to DCC to enable DCC to acquire the land interests and Required Rights within the Infrastructure Site by private treaty.
- 10.4 DCC shall notify the Developers in writing within 5 Working Days following the date on which they acquire land within the Infrastructure Site by way of private treaty or CPO
- 10.5 Once the Developers are notified that DCC have acquired land within the Infrastructure Site by way of private treaty or CPO they shall within 15 Working Days apply to remove any entries they have registered on the title to the Infrastructure Site and shall not encumber any part of the Infrastructure Site save with the consent of DCC.
- 10.6 In consideration of land and Required Rights within the Infrastructure Site being acquired by private treaty from the Landowners, DCC will exclude from the Compulsory Purchase Order (before it is made or confirmed by the Secretary of State, as the case may be) such land and Required Rights and will not appropriate, extinguish, override or interfere by way of creation of restrictive covenants, rights or otherwise such interests of the landowners.

11 Conditions Long Stop Date

If any of the Conditions Precedent have not been satisfied (or waived) by the Conditions Long Stop Date then the Parties shall meet to agree how to proceed with the delivering the Enabling Infrastructure Works and what variations may be required to this Agreement to enable this. If no alternative can be found, after the Parties have acted reasonably to consider the alternatives, any of the Parties may give notice to terminate this Agreement.

[Shoosmiths – should we have provision here if the interim conditions not met by the Interim Conditions Longstop Date?]

12 Governance and regulatory Issues

- 12.1 The Parties shall at all times act within their powers and in compliance with all relevant law.
- 12.2 Without prejudice to the generality of clause 12.1, the Parties shall ensure that:
- 12.2.1 any action taken under this Agreement shall comply with subsidy control rules;

12.2.2 any action taken under this Agreement shall be a reasonable exercise of the relevant Party's powers; and

12.2.3 the Parties shall record and maintain records of their compliance with all relevant law for the purposes of this Agreement.

13 Dispute Resolution and Expert Determination

13.1 The Parties undertake and agree to pursue a positive approach towards dispute resolution which seeks to identify a solution at the lowest operational level that is appropriate to the subject of the dispute and which avoids legal proceedings and maintains a strong working relationship between the Parties.

13.2 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 13.

13.3 All disputes, claims or differences between the Parties arising out of or in connection with this Agreement or its subject matter or formation, including any question regarding its existence, validity or termination, (a "**Dispute**") shall, at the written request of any Party be referred by each Party to its Head of Paid Service or equivalent for the Developers

13.4 If the Parties reach agreement on the resolution of the Dispute, such agreement shall be reduced to writing and, once it is signed by the Parties or their duly authorised representatives, shall be and remain binding upon the Parties.

13.5 If any dispute between the Parties cannot be resolved by the Heads of Paid Service (or equivalent for the Developers) of the Parties then any of the Parties may give notice to the others that it requires such dispute or difference to be referred to and determined by the Expert.

13.6 The Expert shall act as an expert and not as an arbitrator and the Expert's decision shall be final and binding on the Parties (except on a point of law or in the case of manifest error) and the following provisions shall apply:

13.6.1 the Expert shall give the Parties an opportunity to make representations before making his decision;

13.6.2 the Expert may obtain opinions from others;

13.6.3 the Expert's decision on matters of valuation must be within the range of any representations made by the Parties;

13.6.4 the Expert shall give reasons for their decision;

13.6.5 the Expert shall comply with any time limits or other directions agreed between the Parties or imposed by the President of the relevant professional body;

13.6.6 the charges and expenses of the Expert shall be borne equally between the Parties or in such other proportions as the Expert may direct.

14 Assignment

- 14.1 Save as provided in clause 14.2 this Agreement is personal to the Parties and none of the Parties may assign, share or otherwise deal or part with or dispose of its interest in this Agreement or any part of it.
- 14.2 The Parties agree that if by the terms of the agreement referred to in paragraph (a) of the Developers Pre-Conditions WBD are required to agree to a novation of this Agreement and the obligations and rights of WBD to Christ Church Oxford then following receipt by DCC of written notification that such right has arisen the Parties agree they shall promptly enter into a deed of novation of the obligations and rights on the part of WBD to Christ Church is such form as the Parties acting reasonably shall agree or which in the absence of agreement which form shall be determined by the Expert

15 Confidentiality

- 15.1 The Parties shall at all times keep confidential information acquired in consequence of this Agreement except for information which they may be entitled or bound to disclose under compulsion of law or where requested by regulatory agencies or to their professional advisers where reasonably necessary for the performance of their professional services or where required to enable the proper performance of their respective obligations hereunder including in the case of the Developers their related agreements with the Landowners and in connection with the wider delivery of the wider Infinity Garden Village Scheme.
- 15.2 The provisions of clause 15.1 shall not apply to information that:
- 15.2.1 is or becomes generally available to the public other than as a result of disclosure by the receiving party or its representatives in breach of this clause;
 - 15.2.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
 - 15.2.3 was or becomes available to the receiving party on a non-confidential basis from a person who to the receiving party's knowledge is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party;
 - 15.2.4 the parties agree in writing is not confidential or may be disclosed.
- 15.3 The Parties acknowledge that they are subject to Freedom of information Legislation. Each Party shall:
- 15.3.1 provide all necessary assistance and cooperation as reasonably requested by each or both of the Parties to enable the Parties to comply with their obligations under Freedom of Information Legislation; and
 - 15.3.2 provide each of the Councils with a copy of all Information held on behalf of the Council which is requested in a Request For Information and which is in its possession or control in the form that the Council reasonably requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information.

- 15.4 The Parties acknowledge that each or both of the Parties may be required under Freedom of Information Act Legislation to disclose Information (including commercially sensitive information) without consulting or obtaining consent from the other party. Each of the Parties shall take reasonable steps to notify the other party of a Request For Information (in accordance with the Freedom of Information Code of Practice) to the extent that it is permissible and reasonably practical for it to do so but (notwithstanding any other provision in the agreement) each of the Parties shall be responsible for determining in its absolute discretion (having liaised with the other party and notified them in advance where reasonably possible) whether any commercially sensitive information and/or any other information is exempt from disclosure in accordance with the Freedom of Information Legislation.

16 Notices

- 16.1 Any notice required to be given under this Agreement must be in writing and shall be valid only if:

16.1.1 it is given by hand or sent by special or recorded delivery;

16.1.2 it is served on the recipient at the address of that Party shown in this Agreement in the United Kingdom or such other address for service in the United Kingdom specified in a notice given by the recipient to the other Party;

16.1.3 Service on DCC shall be made on {TBC}⁷;

16.1.4 Service on the City Council shall be made on {TBC}

16.1.5 Service on WBD shall be made on the Managing Director and

16.1.6 Service on HLM shall be made on Head of Legal (Property) at its registered office with a copy also sent by email to PBurton@hallamland.co.uk, LSalvin@hallamland.co.uk, and Thomas.Hall@shoosmiths.co.uk;

- 16.2 Unless it is returned through the postal service undelivered a notice sent by special delivery or recorded delivery is treated as served on the third Working Day after posting regardless of whenever (and whether or not) it is received.

- 16.3 A notice delivered by hand is deemed to have been received or given at the time the notice is left at the address. If deemed receipt would occur on a day which is not a Working Day it shall be deferred until the next Working Day.

- 16.4 A notice or document given or delivered under this Agreement by email shall not be validly given or delivered.

17 Status of this Agreement

- 17.1 This Agreement is not intended to create a partnership between the Parties or to operate as an association in the nature of a joint venture between them.

⁷ Parties to provide detail for service of notices?

- 17.2 The terms of this Agreement shall only represent the collaboration between the Parties in connection with the Project only and does not include or extend to any other development, land or business venture.

18 VAT and SDLT⁸

- 18.1 Any consideration to be provided or sums of money payable under this Agreement shall be exclusive of VAT.

- 18.2 Each Party shall on the relevant tax point pay any VAT properly chargeable in respect of any supply to it against:

18.2.1 (if applicable) production of a certified copy of the notice of election to waive exemption from VAT and HM Revenue and Custom's acknowledgement of receipt of such notice; and

18.2.2 delivery of a valid VAT invoice.

- 18.3 Where in this Agreement a Party agrees to reimburse a sum or costs to the other it shall also pay (except to the extent that the other Party can reclaim it) all VAT properly paid by the other in respect of such sum or costs.

- 18.4 The Parties shall co-operate to ensure that the carrying out of the Collaboration Objectives shall be carried out in a VAT efficient manner.

19 Rights of Third Parties

The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Agreement except to the extent that any provision of this Agreement expressly provides to the contrary.

20 Duration of Agreement

- 20.1 Once the Conditions Precedent have been discharged or waived by the Parties this Agreement shall continue until the date ⁹

20.1.1 The Private Sector Funding Contribution has been paid in full; and

20.1.2 DCC has completed the Enabling Infrastructure Works in accordance with the terms of this Agreement.

21 Further Agreements

Nothing in this Agreement shall prohibit the Parties from entering into any further agreements, documents or other arrangements relating to the Infinity Garden Village Scheme.

22 Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it or its formation shall be governed by and in accordance with the law of England and Wales.

⁸ Each party to check its own tax position and revert with any comments.

SCHEDULE 1

DCC Funding Contribution

- 1.1 DCC confirms that it shall comply with its obligations as Recipient in the LUF Funding Agreement.
- 1.2 DCC shall draw down monies to pay for Eligible Expenditure initially from the DCC Initial Funding Contribution in accordance with the provisions of the Kick Start Fund and then (once available) the DCC Funding Contribution in accordance with the provisions of the LUF Funding Agreement.
- 1.3 WBD and HLM each separately covenant with DCC and confirms they shall each:-
 - 1.3.1 not to do or permit anything to be done or omit to do anything which would put DCC in breach of the { **LUF Funding Agreement Basic Principles** } ¹⁰ and once the LUF Funding Agreement is issued following approval of the Full Business Case by the Department for Transport then to the extent that the terms of the LUF Funding Agreement are consistent with the { LUF Funding Agreement Basic Principles } not to do or permit anything to be done or omit anything which would put DCC in breach of the LUF Funding Agreement
 - 1.3.2 provide such information and assistance as shall be reasonable to enable DCC to comply with its obligations in the LUF Funding Agreement and without prejudice to the generality of the foregoing to assist and cooperate with DCC as Accountable Body and the Department for Transport to enable them to comply with their obligations under Freedom of Information Legislation;
 - 1.3.3 use its reasonable endeavours to assist DCC with:
 - (a) any requests made pursuant to the LUF Funding Agreement under FOIA or EIR;
 - (b) any dispute arising between the Department for Transport and DCC as Accountable Body under the LUF Funding Agreement;
 - 1.3.4 not at any time divulge any confidential information relating to the LUF Funding Agreement of which it becomes aware.
- 1.4 The Parties shall work together to comply with the LUF Funding Agreement Basic Principles.

⁹ Anything else to consider?

¹⁰ Draft LUF awaited?

SCHEDULE 2

WBD LANDOWNERS*[details to be added]***HLM LANDOWNERS***[details to be added]*

EXECUTED AS A DEED by the parties on the date of this deed

Executed as a Deed by **DERBYSHIRE**)
COUNTY COUNCIL by affixing its Common
Seal in the presence of

.....

Authorised Signatory

Executed as a Deed by affixing)
THE COMMON SEAL of the said)
HALLAM LAND MANAGEMENT LIMITED)
in the presence of:)

Director:

Secretary

OR

Signed as a deed by)
.....)
.....)
as **ATTORNEY** for **HALLAM LAND**)
MANAGEMENT LIMITED under a)
Power of Attorney dated)
.....)
in the presence of the following)
witness to the above signature.....)

.....
Attorney

.....

.....
Full name of witness:

.....

.....
Witness address