

DATED: _____ 2023

- (1) Derbyshire County Council
- (2) South Derbyshire District Council
- (3) Derby City Council

Collaboration Agreement

relating to the

South Derby Growth Zone (SDGZ) Project

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THIS AGREEMENT is made on

2023

PARTIES

- (1) **DERBYSHIRE COUNTY COUNCIL** of County Hall, Matlock, DE4 3AG ("**DCC**").
- (2) **SOUTH DERBYSHIRE DISTRICT COUNCIL** of Civic Offices, Civic Way, Swadlincote DE11 0AH ("**SDDC**"); and
- (3) **DERBY CITY COUNCIL** of Council House, Corporation Street, Derby, DE1 2FS ("**City Council**")

(together "the **Parties**")

BACKGROUND

- A DCC, SDDC and the City Council have agreed to work collaboratively to facilitate the delivery of enabling infrastructure for housing and commercial development for the wider Infinity Garden Village Vision 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 both DCC and the City Council's administration (the "**SDGZ Project**") by DCC as Highways Authority.
- B The parties reaffirm their commitment to the delivery of the wider Infinity Garden Village Vision.
- C The parties have each agreed to work with each other in good faith to:
 - (a) secure funding to deliver the whole of the Enabling Infrastructure Works (as herein defined) to deliver the SDGZ Project;
 - (b) Co-ordinate negotiations with land owners to secure the delivery of any land (through negotiation where possible) to enable the Enabling Infrastructure Works to be undertaken and to deliver the SDGZ Project; and
 - (c) Deliver the Enabling Infrastructure Works in accordance with the provision 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 and the SDGZ Project
- E DCC ~~have~~ has received funding from the Levelling Up Fund to fund various elements of the SDGZ Project as set out 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 to the SDGZ Project 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 to the SDGZ Project through funding received from Homes England comprising the City Council Funding Contribution (as hereinafter defined).
- I The Parties will also be receiving the Private Sector Partners Contribution from the Developers to fund various elements of the SDGZ Project.
- J Following full spend of the Joint Funding the Parties intend that subject to obtaining all appropriate authorisations, the parties shall use reasonable endeavours to obtain additional funding streams in the event that the Project ~~budget~~ needs revision ("the **Additional Funding**").
- K This Agreement sets out the terms on which the Joint Funding and the Additional Funding shall be made available to the Project and the steps the Parties shall take to work together to jointly deliver the Project.

1.1 Definitions

In this Agreement the following definitions apply:

Accountable Body	shall have the meaning set out in the LUF Funding Agreement
<u>Actual Public Sector Cost Overrun Liability</u>	<u>Public Sector Initial Cost Overrun Liability plus (if appropriate) the amount notified to the Parties by DCC pursuant to clause [33]</u>
Administrative Boundary	the administrative boundary for each of the Parties as shown on Plan 2 and together the "Administrative Boundaries"
Appointments	the appointment of a member of the Professional Team.
<u>City Council Cost Overrun Contribution</u>	<u>[5033.3]% of the Actual Public Sector Cost Overrun Liability subject to any readjustment (if any) pursuant to clause [35]</u>
<u>City Council Design Phase Cost Contribution</u>	<u>[1]% being [5033.3]% of the Design Phase Costs subject to any readjustment (if any) pursuant to clause [35]</u>
City Council Funding Contribution	£800,000 which shall comprise the City Council Funding Pot;
City Council Funding Pot	the funding to the SDGZ Project from Homes England of £800,000 contributed by the City Council which shall be applied and administered in accordance with the provisions of Part 2 of Schedule 1 and HE Funding Agreement ;
City Council Planning Permission	the planning permission dated 30 April 2021 issued by the Derby City Council (reference number 19/00417/FUL in respect of the Enabling Infrastructure Works and any variations agreed thereto

<u>Clawback Event</u>	<u>the exercise of the right by Department for Transport ("DfT") of its right to seek reimbursement from DCC of the whole or any part of any payment made from the Levelling Up Fund (LUF 00007) pursuant to paragraph (c) of the LUF Letter which payments have been used by DCC to pay the Design Phase Costs</u>
Collaboration Objectives	the objectives set out in clause 3 of this Agreement;
Collateral Warranty	a collateral warranty in favour of the City Council to be provided by the Contractor as part of the Works Contract for the Enabling Infrastructure Works in substantially the form annexed to this Agreement at Appendix 36 subject to such amendments as may be agreed by DCC and the City Council (acting reasonably);
Completion Certificate	means the statement issued by the Project Manager in accordance with the Works Contract certifying that Practical Completion has taken place.
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 or to mitigate the effect of the construction of the Enabling Infrastructure Works.
Conditions Precedent	each and every one of the following: <ul style="list-style-type: none"> (a) the Parties agreeing the Project Budget in accordance with clause 4.1; (b) approval by the Department for Transport of the Full Business Case in accordance with clause 13.1; (c) satisfaction of the Planning Conditions in accordance with clause 12.1; (d) the acquisition of all land and Required Rights within the Infrastructure Site either by negotiation and/or implementation of a Compulsory Purchase Order in accordance with clauses 14.1 and 16.1; and (e) each of the Parties obtaining Cabinet approval to proceed with the SDGZ Project and to carry out and complete the Enabling Infrastructure Works; (f) the Developers providing to DCC the Private Sector Partners Contribution or Security therefore acceptable to DCC (at its absolute discretion) in accordance with the Developer's Collaboration Agreement
<u>Cost Overruns</u>	<u>The amount of any Eligible Expenditure (as defined in the Developers' Collaboration Agreement) which exceeds the Developers' Project Budget but which does not exceed the Initial Costs Overrun Figure</u>
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 together

with any replacement contractor that may be appointed by DCC in accordance with the terms of the Works Contract-

Covid 19 Event

any event or delay caused by or arising from or in relation to, a Coronavirus epidemic or pandemic that prevents or delays completion of the Enabling Infrastructure Works or the performance of any obligations under the Works Contract-

DCC Initial Funding Contribution

the amount determined by DCC to be taken from DCC's Kick Start Fund and notified to the City Council and SDDC and which shall be applied to the Project 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 in accordance with the provisions of Schedule 1-

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 agreed thereto;

Design Phase

the initial design phase of the SDGZ Project

Design Phase Costs

Four million seven hundred thousand pounds (£4,700,000) together with VAT thereon (if applicable) to be incurred by DCC in connection with the SDGZ Project in respect of the Design Phase.

Delay Event

(a) force majeure

(b) insolvency of the Contractor;

(c) Covid-19 Event

and Delay Events shall be construed accordingly-

Department for Transport

Department for Transport of Great Minster House, 33 Horseferry Road, London SW1P 4DR

Developers

Wilson Bowden Developments Limited and Hallam Land Management Limited

Developers' Collaboration Agreement

an agreement to be entered into between DCC-, the City Council and the Developers dealing with the Private Sector Partner Contribution and other matters-

Disposal

the transfer of a freehold estate in land or the grant of a lease licence or any other right or any other disposition within the meaning of section 205 of the Law of Property Act 1925 or section 27(2) of the Land Registration Act 2002; or use of the land and buildings for an income generating purpose including car parking

Eligible Expenditure

all costs reasonably and properly incurred by DCC or for which DCC are responsible for in connection with the SDGZ Project 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 evidence of compliance with Targets and Outputs;
- (b) 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);
- (c) 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;
- (d) 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;
- (e) undertaking ground and site investigations at the Infrastructure Site so as to enable the Enabling Infrastructure Work
- (f) the design, carrying out and completion of the Enabling Infrastructure Works and the SDGZ Project including managing the Appointments and Works Contract
- (g) all legal and other professional fees irrecoverable VAT and disbursements properly and reasonably incurred by DCC, SDDC and the City Council in connection with the SDGZ Project

Enabling Infrastructure Works means:

- (a) 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;
- (b) Demolition of Ashlea Farm;
- (c) 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;

- (d) Two flood compensation areas (subject to discussions with WBD), to the west and north-west of the carriageway and minor watercourse diversions;
- (e) Additional Highways mitigations measures including:
 - Upgrade of 2 no. laybys on the A50 SRN;
 - Traffic calming measures on Deepdale Lane running into Sinfin;
 - Widening of the carriageway at Infinity Park Way at the Wigmore Rd junction;
 - Merrill Way at the A514 Chellaston Road/Boulton Lane Signal junction

as more particularly described in the specification appended at Appendix 1 and shown on Plan ~~{1}~~¹

Expert

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

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 SGDZ Project as required by LUF Funding Agreement~~-~~

~~HE Funding Agreement~~

~~[City Council to provide details and a copy of any relevant agreements with Homes England]~~

IGV Enabling Committee²

a committee comprising:

- (a) ~~H~~ Chris Morgan, Principal Regeneration Manager or a person nominated by DCC from time to time as DCC's representative who shall chair the committee meetings;
- (b) Steffan Saunders, Head of Planning and Strategic Housing or a person nominated by SDDC from time to time as SDDC's representative;
- (c) ~~H~~ Jim Seymour, Assistant Director – Regeneration and Major Projects or a person nominated by the City Council from time to time as the City Council's representative;
- (d) the Project Planning Support Officer

¹ Plans to be provided – we need to ensure these correctly identify the CPO site and the Infrastructure site.

²

which group is responsible for supporting and enabling:

(1) City Council planners; and

(2) SDDC planners

to speedily process any IGV Planning Applications in a manner consistent with and to deliver the Infinity Garden Village Vision without fettering the planning function of either SDDC or the City Council in accordance with the process set out in Schedule 2-

IGV Planning Applications	planning applications submitted by the Developers in respect of the Infinity Garden Village
IGV Programme	the programme for the Infinity Garden Village which includes the key milestones and which appended to this Agreement at Appendix 2 as may be varied from time to time following the approval of the Project Board
Infinity Garden Village	the proposed new garden village as shown on the plan in the Development Framework appended to this Agreement at Appendix 5-
Infinity Garden Village Vision	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 and as more detailed in the Development Framework appended to this Agreement at Appendix 5-
Infrastructure Account	a separate identifiable account set up by DCC.
Infrastructure Site³	the land shown edged red on the Plan 1-
<u>Initial Costs Overrun Figure</u>	£5,559,797.20 [what is the position with regard to VAT?] that is 10% £5,615,767.9 <u>£5,559,797.20 together with VAT (if applicable)</u>
<u>Interest Rate</u>	<u>4% above the base rate from time to time of Barclays Bank plc-</u>
Joint Funding	together: <ul style="list-style-type: none"> (a) the DCC Initial Funding Contribution; (b) the DCC Funding Contribution (c) the City Council Funding Contribution; <u>(d) the City Council Cost Overrun Contribution;</u> (e) the SDDC Cost Overrun Contribution

³ Plan to show the land required for the infrastructure works.

	<p>(ef) the City Council Design Phase Cost Contribution;</p> <p>(f) any contribution (if any) made by SDDC pursuant to clause [35]</p> <p>(g) the SDDC Design Phase Cost Contribution;</p> <p>(gd) the Private Sector Partners Contribution and</p> <p>(he) any monies received pursuant to clauses 4.5 and 4.6.</p>
Landowners	the landowners of the properties of the Infrastructure Site listed in Schedule 3.
Levelling Up Fund Contribution	the maximum contribution available for the delivery of the SDGZ Project from the Levelling Up Fund of £49.5m pursuant to the LUF Funding Agreement;
LUF Letter	<u>The letter dated 9 March 2022 from DfT to DCC annexed at Annexure [] hereto.</u>
[Long Stop Date	1 December 2023 [Note: Does this need revising?]
LUF Funding Agreement⁴	the Memorandum of Understanding document made between (1) Department for Transport and (2) DCC and any other agreements made between the same.
Monitoring and Evaluation Requirements	the monitoring and evaluation requirements described in the LUF Funding Agreement.
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.
Plans	the plans attached to this Agreement.
Planning Conditions	the conditions attached to the Planning Permissions as detailed in the planning tracker appended at Appendix 3.
Planning Permissions	the DCC Planning Permission and the City Council Planning Permission.
Practical Completion	means issue of the Completion Certificate pursuant to the Works Contract.

Public Sector Initial Cost Overrun Liability ~~£2,779,898.60, 5%~~ [50% of the difference between £56,157,679 £55,597,972 and £61,773,446.90 £61,157,769 being £2,779,898.5 together with VAT (if applicable)]

Private Sector Partners Contribution ⁵ ~~£6 million~~ comprising monies and/or ~~[those parts of the Enabling Infrastructure Works as set out in Appendix [] and/or]~~ such Enabling Infrastructure Works as may be agreed between the Developers and DCC to be paid and/or provided by the Developers

Private Sector Partners Cost Overrun Contribution ⁶ ~~[]%~~ of any cost overruns relating to the SDGZ Project to be paid in accordance with the Developers' Collaboration Agreement.

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 or the SDGZ Project.

Project Control Board a project control board comprising:

- (a) ~~[] Paul Patterson, Programme Director~~—or a person nominated by DCC from time to time as DCC's representative;
- (b) Mike Roylance, Head of Economic Development and Growth or a person nominated by SDDC from time to time as SDDC's representative;
- (c) ~~[] Chris Morgan, Principal Regeneration Manager~~ or a person nominated by the City Council from time to time as the City Council's representative

which group is responsible for setting the strategic direction, agreeing changes to the Collaboration Objectives and reviewing progress towards achieving the Collaboration Objectives and confirming actions required.

Project Budget the project budget agreed by the Parties for the SDGZ Project and the Enabling Infrastructure Works in accordance with clause 4.1 and which may be updated from time to time by the Steering Group

Project Manager a project manager to be appointed by DCC in accordance with the

	Works Contract-
Project Planning Support Officer	such person to be appointed by the Parties to liaise with the Developers in preparing any IGV Planning Applications before submission during the pre-application phase and after submission to assist in the timely review, consideration and determination of any IGV Planning Applications in accordance with Schedule 2-
<u>Properties</u>	<u>the properties within the Infrastructure Site listed in Schedule 3-</u>
Recipient	shall have the meaning set out in the LUF Funding Agreement-
Relevant Statutory Agreement Contributions	any contributions received in respect of Statutory Agreements relating to the Infinity Garden Village and in particular the delivery of the SDGZ Project and provision of the Enabling Infrastructure Works-
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 to carry out and complete the Enabling Infrastructure Works
<u>Revised Project Budget</u>	<u>the revised figure notified to the City Council and SDDC pursuant to clause 34 £5,559,797.20-£61,157,769 together with VAT (if applicable) being the revised Project Budget agreed by DCC and the Developers under the Developers' Collaboration Agreement and notified to the City Council and SDDC</u>
<u>Revised Public Sector Maximum-Cost Overrun Liability</u>	<u>The revised figure notified to the City Council and SDDC pursuant to clause 33-</u>
<u>SDDC Cost-Overrun Contribution</u>	<u>[33.3] % of the Actual Public Sector Cost Overrun Liability-</u>
<u>SDDC Design-Phase Cost Contribution</u>	<u>[33.3]% of the Design Costs Actual Public Sector Cost Overrun Liability</u>
SDGZ Infinity Village Collaborative Partnership Board	<p>a partnership board comprising the Chief Executives, portfolio members/chair of committees and officers of each of the Parties which group is responsible for</p> <p>(a) reviewing progress towards the Collaboration Objectives and the delivery of the SDGZ Project;</p> <p>(b) overseeing the SDGZ Project and Infinity Garden Village Vision</p>

including taking the strategic decisions relating to these;

- (c) setting the terms of reference for the Project Control Board, IGV Enabling Committee;
- (d) agreeing the Project Budget and resource for the SDGZ Project and the Infinity Garden Village Vision; and
- (f) dealing with the provision of any Relevant Statutory Agreement Contributions and/or Windfalls together with considering how any cost overruns are to be dealt with between the Parties~~-~~

Section 8 Agreement

the agreement to be entered into between DDC and the City Council whereby the City Council authorise DCC to discharge its functions pursuant to section 8 of the Highways Act 1980 and the Local Authorities (Arrangements for the Discharge of Functions)(England) Regulations 2012, the form of which can be found in Appendix ~~42-~~

Security

the security to be given to DCC by the Developers pursuant to the Developer's Collaboration Agreement comprising the Escrow Account (as defined therein) in respect of the Private Sector Partners Contribution~~-~~

Side Road Orders

side roads order under section 14 of the Highways Act 1980~~-~~

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 and Outputs

any targets and outputs relating to the delivery of the infrastructure as detailed in the LUF Funding Agreement

Unconditional Date

the date on which all of the Conditions Precedent have been satisfied or waived in accordance with clause 11.3~~-~~

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~~-~~

Windfalls	any monies SDDC or the City Council receive from additional contributions from developers and/or landowners in relation to development within the Infinity Garden Village except for the Relevant Statutory Agreement Contributions, planning application fees and planning performance agreements-
Windfall Proportion	in respect of each Windfall, the relevant proportion agreed between the Parties (acting reasonably) pursuant to clause 4.6-
Works Contract	the design and build contract to be entered into between DCC (1) and the Contractor (2) for the carrying out and completion of the Enabling Infrastructure Works as opposed to the Design Phase-
Working Day	any day other than Saturday or Sunday, or a bank or public holiday-

2.1 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 indemnify means to indemnify against all actions, claims, demands and proceedings taken or made against the relevant Party and all costs, damages, expenses, liabilities and losses incurred by the relevant Party;
- 2.8 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;
- 2.9 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;

2.10 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;

2.11 words in the singular include the plural and vice versa.

3.1 **Collaboration Objectives**

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 and to deliver the whole of the Enabling Infrastructure Works;

3.1.2 to co-ordinate and conclude negotiations with ~~H~~andowners within the Infrastructure Site to secure any land and the Relevant Rights requites to enable the delivery of the Enabling Infrastructure Works;

3.1.3 to enable DCC as Highways Authority to compulsorily purchase any land and Relevant Rights which are not acquired by private treaty;

3.1.4 to enable DCC as Highways Authority to commence and deliver the Enabling Infrastructure Works; and

3.1.5 to authorise DCC to commission and manage the Works Contract on behalf of the Parties with payments to the appointed contractor to be funded by the Joint Funding.

3.2 To achieve the Collaboration Objectives each of the Parties acknowledges their roles and responsibilities will be as follows:

3.2.1 DCC agree and acknowledge that they will:

- (a) act as the sponsor and lead of the SDGZ Project working closely with SDDC and the City Council to deliver the SDGZ Project;
- (b) act as Highways Authority for the relevant part of the Infrastructure which is to constructed within the administrative Boundary of City Council and of SDDC;
- (c) liaise with National Highways and the City Council regarding construction of the infrastructure to an adoptable standard which shall be reflected in the Works Contract;
- (d) use reasonable endeavours to acquire the land within the Infrastructure Site and the Required Rights either via negotiation by private treaty or via Compulsory Purchase Order;
- (e) procure the discharge of the Planning Conditions in the DCC Planning Permission;
- (f) procure the appointment of the Professional Team and Contractor for the Enabling Infrastructure Works;
- (g) manage the Appointments and the Works Contract;

- (h) maintain records of expenditure and provide a schedule of Eligible Expenditure on a quarterly basis to the other Parties;
- (i) comply with the LUF Funding Agreement;
- (j) use reasonable endeavours to obtain additional funding streams for the SDGZ project;

PROVIDED that these obligations shall not fetter DCC's discretion as highways 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 and DCC shall not be responsible to the other parties for any defect or delay in the delivery of the Enabling Infrastructure Works.

3.2.2 SDDC agree and acknowledge that they will:

- (a) assist DCC with the acquisition of land required within the Infrastructure Site and any Required Rights and, if required, support DCC through the making and confirmation of any Compulsory Purchase Order in respect of land and required rights within the Infrastructure Site;
- (b) assist DCC and the City Council to discharge the Planning Conditions;
- (c) comply with the LUF Funding Agreement in a manner which does not knowingly or deliberately put DCC in breach of it;
- (d) use reasonable endeavours to obtain additional funding streams for the SDGZ project; and
- (e) act as the planning authority for those parts of the Infinity Garden Village Vision which are to be constructed within SDDC's Administrative Boundary;

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

3.2.3 the City Council agree and acknowledge that they will:

- (a) enter into a Section 8 Agreement to allow DCC to deliver the Infrastructure and the SDGZ Project within the City Council's Administrative Boundary;
- (b) assist DCC with the acquisition of land required within the Infrastructure Site and any Required Rights, if required, support DCC through any compulsory purchase of land and Required Rights within the Infrastructure Site;
- (c) utilise powers to make a Compulsory Purchase Order in respect of land and required rights within the Infrastructure Site within the City Council's Administrative Boundary to the extent required;
- (d) procure the discharge of the Planning Conditions in the City Council Planning Permission;

(e) assist DCC to discharge the Planning Conditions in the DCC Planning Permission;

(f) comply with the LUF Funding Agreement in a manner which does not knowingly or deliberately put DCC in breach of it;

~~(g) to ensure the terms of the HE Funding Agreement are consistent with this Agreement and to comply with the HE Funding Agreement;~~

~~(h)~~(g) use reasonable endeavours to obtain additional funding streams for the SDGZ project; and

~~(i)~~(h) act as the planning authority for those parts of the Infinity Garden Village Vision which are to be constructed within the City Council's Administrative Boundary

PROVIDED that these obligations shall not fetter the City Council's discretion as local planning authority and that compliance with these obligations shall not put the City Council in breach of its other statutory functions nor put it in a position which would result in it acting ultra vires.

3.3 The Parties shall not encumber any part of the Infrastructure Site save with the consent of the other Parties.

4.1 **Project Contributions and Funding**

4.1 The Parties shall use reasonable endeavours to agree the Project Budget as soon as reasonably practicable following the date of this Agreement. Once agreed, the Project Budget shall be reviewed regularly by the Steering Group and the Project Control Board.

4.2 Subject to clause 4.3, DCC will make the following contributions to the SDGZ Project in accordance with Part 1 of Schedule 1:

4.2.1 the DCC Initial Funding Contribution; and

4.2.2 (once available) the DCC Funding Contribution in accordance with and prescribed by the LUF Funding Agreement

4.3 DCC shall notify the other Parties if DCC consider that it will not have the appropriate funding to continue providing the DCC Initial Funding Contribution or the DCC Funding Contribution or sufficient additional funds to apply towards the SDGZ Project. Following notification, the Parties shall meet within a reasonable time thereafter to:

4.3.1 discuss if any Additional Funding or any other funding from other sources is available;

4.3.2 what steps should be taken to obtain it and any impact on the timescales; and

4.3.3 whether the SDGZ Project should be terminated and if so, the steps required to effect such termination.

4.4 The City Council will make the City Council Funding Contribution to the SDGZ Project in accordance with Part 2 of Schedule 1 ~~and the HE Funding Agreement.~~

- 4.5 SDDC and the City Council shall use reasonable endeavours to obtain the Relevant Statutory Agreement Contributions and shall make available to the SDGZ Project monies received by way of the Relevant Statutory Agreement Contributions on the following basis:
- 4.5.1 SDDC and the City Council shall notify the other Parties on a 6 monthly basis whether they have received any Relevant Statutory Agreement Contributions or whether any Relevant Statutory Agreement Contributions are receivable in respect of the preceding 6 months;
 - 4.5.2 When monies are received, SDDC or the City Council (as the case may be) shall within ~~21~~ ~~Working~~ ~~Days~~ pay to DCC the Relevant Statutory Agreement Contributions notified by it under clause 4.5.1;
 - 4.5.3 DCC shall apply any monies towards any Eligible Expenditure.
- 4.6 SDDC and the City Council shall make available to the SDGZ Project the Windfall Proportion of any Windfalls received by it on the following basis:
- 4.6.1 SDDC and the City Council shall notify the other Parties on a 6 monthly basis whether they have received any Windfalls or whether any Windfalls are receivable in respect of the preceding 6 months (together with details of what this comprises) and if there are any such Windfall the Parties shall use reasonable endeavours to agree whether and what proportion of such Windfalls are to be paid to DCC to be applied toward Eligible Expenditure (the “**Windfall Proportion**”);
 - 4.6.2 when monies are received, SDDC or the City Council (as the case may be) shall within ~~21~~ ~~Working~~ ~~Days~~ of agreement of the Windfall Proportion pay to DCC the relevant Windfall Proportion;
 - 4.6.3 DCC shall apply any monies towards any Eligible Expenditure.
- 4.7 The Parties shall use reasonable endeavours to apply for and obtain Additional Funding if the Project Budget needs revision or the Eligible Expenditure exceeds the Joint Funding or if DCC have notified the other parties in under clause 4.3 in accordance with Part 3 of Schedule 1 and the following provisions:
- 4.7.1 keep each other updated monthly as to its progress with regard to obtaining Additional Funding;
 - 4.7.2 if Additional Funding is obtained,
 - (a) confirm the amount of Additional Funding available to the other Parties as soon as practicable;
 - (b) provide copies of the relevant funding document to the other Parties as soon as practicable;
 - (c) make the Additional Funding available to the SDGZ Project within [28] Working Days and in accordance with and prescribed by the relevant funding documentation

- 4.8 If the Eligible Expenditure exceeds the Joint Funding and any Additional Funding obtained, DCC and the City Council shall contribute to any overrun in proportions to be agreed between DCC and the City Council (acting reasonably).

5.1 **Private Sector Funding**

- 5.1 DCC shall use reasonable endeavours to enter into the Developers' Collaboration Agreement with the Developers as soon as reasonably practicable following the date of this Agreement.
- 5.2 SDDC and the City Council shall use reasonable endeavours to support the negotiations with the Developers and provide such assistance as shall be reasonable in relation thereto.
- 5.3 DCC will notify SDDC and the City Council when it receives either the Private Sector Partners Contribution (including whether this is monies received or the Developers undertaking part of the Enabling Infrastructure Works) or the Security from the Developers pursuant to the Developers' Collaboration Agreement and whether in the case of the Security it is acceptable to it (in its absolute discretion).
- 5.4 DCC shall use monies received as part of the Private Sector Partners Contribution towards the Eligible Expenditure, it being acknowledged by the parties that such monies may be in repayment of monies already paid by DCC.
- 5.5 In the event of any cost overruns, DCC and the City Council will use reasonable endeavours to recover the Private Sector Partners Cost Overrun Contribution in accordance with the terms of the Developers' Collaboration Agreement.

6.1 **Infinity Garden Village Vision**

- 6.1 The Parties reaffirm their commitment to the Infinity Garden Village Vision.
- 6.2 SDDC accept and acknowledge they will act as planning authority for those parts of the Infinity Garden Village Vision which are to be constructed within their Administrative Boundary.
- 6.3 The City Council accept and acknowledge they will act as planning authority for those parts of the Infinity Garden Village Vision which are to be constructed within their Administrative Boundary.
- 6.4 The provisions of Schedule 2 shall apply in respect of any IGV Planning Application.

7.1 **SDGZ Infinity Village Collaborative Partnership Board**

- 7.1 The SDGZ Infinity Village Collaborative Partnership Board shall meet at least bi-monthly (unless agreed in writing otherwise and more often if circumstances require) and such meetings shall be conducted in the following manner:
- 7.1.1 the Parties must use reasonable endeavours to procure that their representative (or a substitute of similar standing and seniority) duly attend such meetings;
- 7.1.2 the Parties may invite other strategic partner including but not limited to Department for Transport, Homes England, the Developers and the Landowners of the Properties to attend the whole or any part of these meetings;

- 7.1.3 full minutes of the meetings must be taken by the Parties on a rotation basis and circulated within 5 Working Days of such meetings;
- 7.1.4 the Parties shall be entitled to invite to any meetings their consultants and advisers retained for the Project;
- 7.1.5 all matters relating to the management and conduct of this Agreement (including the division of responsibility between the Parties) shall (except where otherwise provided by this Agreement) be as jointly decided from time to time by them;

7.2 ~~Any~~ matter referred to it shall be resolved as soon as reasonably practicable. The SDGZ Infinity Village Collaborative Partnership Board shall be responsible for setting (and updating as appropriate) the terms of reference for the IGV Enabling Committee, the Project Control Board and any other committees together with determining the Project Budget.

8.1 **Project Control Board**

8.1 The Project Control Board must meet fortnightly (unless agreed in writing otherwise and more often if circumstances require) and its responsibilities will include:

- 8.1.1 approving the Heads of Terms with the ~~Landowners~~ of the Properties in accordance with clause 14.1;
- 8.1.2 managing the Works Contract and Appointments;
- 8.1.3 reviewing and monitoring how Eligible Expenditure is being incurred as against the Project Budget and the Joint Funding and shall notify the Parties of any potential or project overspend as soon reasonably practicable after becoming aware of the same;
- 8.1.4 considering any sources of Additional Funding;
- 8.1.5 dealing with any Windfalls and Relevant Statutory Agreement Contributions;
- 8.1.6 considering and approving any variations to the Planning Permissions
- 8.1.7 considering and approving any amendments to the IGV Programme

8.2 The Project Control Board meetings will be conducted in the following manner:

- 8.2.1 the Parties must use reasonable endeavours to procure that their representative (or a substitute of similar standing and seniority) duly attend such meetings;
- 8.2.2 full minutes of the meetings must be taken by the Parties on a rotation basis and circulated within 5 Working Days of such meetings;
- 8.2.3 the Parties shall be entitled to invite to any meetings their consultants and advisers retained for the Project;
- 8.2.4 all matters relating to the management and conduct of this Agreement (including the division of responsibility between the Parties) shall (except where otherwise provided by this Agreement) be as jointly decided from time to time by them;

- 8.3 The Project Control Board shall report to the SDGZ Infinity Village Collaborative Partnership Board on a regular basis including providing a report on the progress of the SDGZ Project prior to any meetings of the SDGZ Infinity Village Collaborative Partnership Board.

9.1 IGV Enabling Committee

- 9.1 The IGV Enabling Committee must meet at least ~~once a month~~ (unless agreed in writing otherwise and more often if circumstances require) to consider how support can be provided to any IGV Planning Application in accordance with the provisions of Schedule 2 and to the Infinity Garden Village Vision generally and the meetings shall be conducted in the following manner:

- 9.1.1 the Parties must use reasonable endeavours to procure that their representative (or a substitute of similar standing and seniority) duly attend such meetings;
- 9.1.2 the representative from DCC shall chair the meetings;
- 9.1.3 full minutes of the meetings must be taken by the Parties on a rotation basis and circulated within 5 Working Days of such meetings; and
- 9.1.4 the Parties shall be entitled to invite to any meetings their consultants and advisers retained for the Project and the Infinity Garden Village Vision.

10.1 Good Faith

- 10.1 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.
- 10.2 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.
- 10.3 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.

11.1 Conditions Precedent

- 11.1 Subject to clause 11.2, this Agreement comes into force on the date of this Agreement.
- 11.2 Clause 18.1 is conditional on the satisfaction or waiver in accordance with clause 11.3 of the ~~Condition~~s Precedent and shall come into force only on the Unconditional Date.
- 11.3 The Parties may only waive the ~~Condition~~s Precedent by agreement in writing.
- 11.4 If it becomes apparent to any of the Parties, that the ~~Condition~~s Precedent~~s~~ may not be satisfied by the Long Stop Date, the parties shall meet and use reasonable endeavours to agree what steps need to be undertaken in connection with the SDGZ Project which may include termination of this Agreement.

12.1 Planning and Planning Conditions

- 12.1 DCC shall use reasonable endeavours to discharge the Planning Conditions listed in the DCC Planning Permission as soon as reasonably practicable after the date of this Agreement and shall notify the other Parties as soon as reasonably practicable after each of the Planning Conditions have been satisfied and keep the Steering Group updated as to progress.
- 12.2 The City Council shall use reasonable endeavours to discharge the Planning Conditions listed in the City Council Planning Permission as soon as reasonably practicable after the date of this Agreement and shall notify the other Parties as soon as reasonably practicable after each of the Planning Conditions have been satisfied and keep the Steering Group updated as to progress.
- 12.3 DCC and the City Council shall each use reasonable endeavours to assist the other in the discharge of the Planning Conditions in their respective Planning Permissions.
- 12.4 SDDC will use reasonable endeavours to assist DCC and the City Council to discharge the Planning Conditions, provided always that it is agreed and acknowledge that this agreement shall not fetter their functions as Local Planning Authority.
- 12.5 The Parties shall not (whilst this Agreement is in force) submit, instruct ~~z~~-or assist others to submit a planning application (save as required as local planning authority) in respect of the whole or any part of the Infrastructure Site.
- 12.6 DCC and the City Council shall not make any variations to the DCC Planning Permission and/or the City Council Planning Permission without the prior approval of the Project Control Board (not to be unreasonably withheld or delayed). If any variations are approved and submitted, DCC and the City Council (as the case may be) shall keep the other Parties and Project Control Board updated as to the progress of these variations.

13.1 Full Business Case

- 13.1 The Parties shall use reasonable endeavours to put together and agree the Full Business Case for submission to the Department for Transport for approval under the terms of the LUF Funding. The Full Business Case shall be developed in accordance the Department for Transport's requirements.
- 13.2 Once the Full Business Case has been approved by the Parties, DCC shall submit it to the Department for Transport for approval and shall notify the Parties as soon as it has been approved together with providing a briefing note on any conditions contained in the funding offer received from the Department for Transport.
- 13.3 SDDC and the City Council shall assist DCC in obtaining the approval of the Department for Transport of the Full Business Case including responding promptly and with full information to all requests received from the Department for Transport or as required by DCC.

14.1 Land Assembly

- 14.1 DCC shall use reasonable endeavours to acquire the land and required rights within the Infrastructure Site to enable the Enabling Infrastructure Works to be carried out and completed.

- 14.1.1 In relation to the Properties DCC shall engage with each of the Landowners (and their agents) as appropriate and seek to negotiate acceptable heads of terms to acquire the land interests and Required Rights (the “**Heads of Terms**”)
- 14.1.2 Once Heads of Terms have been agreed with each Landowner, DCC shall notify the other parties and these shall be subject to the approval of the Project Control Board
- 14.1.3 The Project Control Board shall either confirm its approval or provide details of what terms require change within 2 Working Days of receipt of the Heads of Terms.
- 14.1.4 If changes are required to the Heads of Terms, DCC will use reasonable endeavours to negotiate these changes with the Landowner and the process in clauses 14.1.2 and 14.1.3 will be repeated as often as required until the Heads of Terms are approved
- 14.1.5 Following approval of the Heads of Terms by the Project Control Board, DCC will use reasonable endeavour to negotiate all relevant documentation and conclude the acquisition. DCC shall keep the Project Control Board updated as to the progress of the acquisition and provide copies of relevant documentation once completed
- 14.2 SDDC and the City Council shall provide reasonable assistance to DCC to enable DCC to acquire the land interests and required rights within the Infrastructure Site.
- 15.1 **Long Stop Date**
- 15.1 If the Unconditional Date has not occurred by the Long Stop Date, any of the Parties may at any time after the Long Stop Date (but only before the Unconditional Date) give written notice to the other Parties and the Parties shall meet to agree how to proceed with the SDGZ Project 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.
- 16.1 **Section 8 Agreement**
- 16.1 DCC and the City Council shall enter into the Section 8 Agreement on or before the date of this Agreement.
- 16.2 Upon completion of the Section 8 Agreement DCC shall
 - 16.2.1 use reasonable endeavours to make and confirm any Compulsory Purchase Orders to acquire the land and required rights within the Infrastructure Site as may be required to enable the Enabling Infrastructure Works to be carried out and completed;
 - 16.2.2 use reasonable endeavours to make and confirm any statutory orders including without limitation orders under sections 10, 14, or 106 of the Highways Act 1980 as may be required to enable the Enabling Infrastructure Works to be carried out and completed; and
 - 16.2.3 request that Highways England use reasonable endeavours to make and confirm any statutory orders including without limitation orders under sections 16 or 18 of the Highways Act 1980 as may be required to enable the Enabling Infrastructure Works to be carried out and completed

17.1 Statutory Agreements

17.1 DCC as Highways Authority and as landowner (once the land has been acquired in accordance with clause 14.1 and/or a Compulsory Purchase Order) shall at the appropriate time enter into the Statutory Agreements in the form agreed between the Parties acting reasonably.

17.2 The Parties shall co-operate fully in relation to the Enabling Infrastructure Works and shall negotiate and join into such agreements as may be reasonably required by DCC relating to:

17.2.1 Statutory Agreements;

17.2.2 the transfer of sub-stations and similar service structures to statutory undertakers or other third parties;

17.2.3 the grant of wayleaves and service easements to statutory undertakers or other third parties;

17.2.4 any other matter reasonably required as ancillary to the carrying out of the Enabling Infrastructure Works as agreed by the Parties.

18.1 Enabling Infrastructure Works

18.1 DCC shall enter into the Appointments with the Professional Team and shall observe and perform the obligations on its part in the respective Appointments.

18.2 DCC shall enter into the Works Contract with the Contractor as soon as reasonably practicable after the Unconditional Date and shall observe and perform the obligations on its part in the Works Contract.

18.3 DCC shall use reasonable endeavours to enforce the obligations on the part of the Contractor in the Works Contract and on the part of each member of the Professional Team in respect of their Appointments.

18.4 DCC shall use reasonable endeavours to procure the carrying out and completion of the Enabling Infrastructure Works by the Contractor:

18.4.1 as soon as reasonably practicable after the Unconditional Date;

18.4.2 in accordance with the provisions of the Works Contract;

AND FOR THE AVOIDANCE OF DOUBT the liabilities proper costs and expenses this clause 18.1 places upon DCC shall be borne by the Joint Funding. DCC shall incur no contractual liability to the Parties or any other parties as a consequence of breach by the Contractor.

18.5 DCC shall use reasonable endeavours to procure the Contractor provides a Collateral Warranty to the City Council.

18.6 DCC⁷ shall

- 18.6.1 keep the Parties and the Project Control Board regularly updated (being no less frequent than every two months) as to amount of the Eligible Expenditure, how the Eligible Expenditure is being met by the Joint Funding and any Additional Funding together with any potential cost overruns (the **"Cost Report"**);
- 18.6.2 keep records of all Eligible Expenditure incurred together with payments made from the Infrastructure Account which shall be available for inspection on an open book basis by the City Council at agreed times (both parties acting reasonably);
- 18.7 DCC shall be released from all liability in respect of its obligations in this clause 18.1 after a period of 12 months after the Practical Completion Date except in relation to any claim made against or notified to it prior to the end of that period.
- 18.8 The parties acknowledge and agree that upon completion of the Enabling Infrastructure Works the same will become highway maintainable at public expense.
- 19.1 **Governance and regulatory Issues**
- 19.1 The Parties shall at all times act within their powers and in compliance with all relevant law.
- 19.2 Without prejudice to the generality of clause 19.1, the Parties shall ensure that:
 - 19.2.1 any action taken under this Agreement shall comply with subsidy control rules;
 - 19.2.2 any action taken under this Agreement shall be a reasonable exercise of the relevant Party's powers; and
 - 19.2.3 the Parties shall record and maintain records of their compliance with all relevant law for the purposes of this Agreement.
- 20.1 **Indemnities**
- 20.1 DCC shall indemnify SDDC and the City Council against all liabilities costs expenses damages and losses (including but not limited to any direct indirect or consequential losses loss of profit loss of reputation and all interest penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by SDDC or the City Council (as the case may be) arising out of or in connection with:
 - 20.1.1 DCC's breach or non-performance of this Agreement including non compliance of any of the LUF Funding Agreement;
 - 20.1.2 the enforcement of this Agreement;
 - 20.1.3 any claim made against SDDC and/or the City Council by a third party arising out of or in connection with DCC's breach or non-performance of this Agreement.
- 20.2 SDDC shall indemnify DCC and the City Council against all liabilities costs expenses damages and losses (including but not limited to any direct indirect or consequential losses loss of profit loss of reputation and all interest penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by DCC or the City Council (as the case may be) arising out of or in connection with:

- 20.2.1 SDDC's breach or non-performance of this Agreement ;
 - 20.2.2 the enforcement of this Agreement;
 - 20.2.3 any claim made against DCC and/or the City Council by a third party arising out of or in connection with SDDC's breach or non-performance of this Agreement.
- 20.3 The City Council shall indemnify DCC and SDDC against all liabilities costs expenses damages and losses (including but not limited to any direct indirect or consequential losses loss of profit loss of reputation and all interest penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by DCC or SDDC (as the case may be) arising out of or in connection with:
- 20.3.1 the City Council's breach or non-performance of this Agreement
 - 20.3.2 the enforcement of this Agreement;
 - 20.3.3 any claim made against DCC or SDDC by a third party arising out of or in connection with the City Council's breach or non-performance of this Agreement.
- 21.1 **Dispute Resolution and Expert Determination**
- 21.1 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.
- 21.2 Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 21.1.
- 21.3 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).
- 21.4 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.
- 21.5 If any dispute between the Parties cannot be resolved by the Heads of Paid Service 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.
- 21.6 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:
- 21.6.1 the Expert shall give the Parties an opportunity to make representations before making his decision;
 - 21.6.2 the Expert may obtain opinions from others;

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

21.6.4 the Expert shall give reasons for their decision;

21.6.5 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;

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

22.1 **Assignment**

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.

23.1 **Confidentiality**

23.1 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.

23.2 The provisions of clause 23.1 shall not apply to information that:

23.2.1 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;

23.2.2 Was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;

23.2.3 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;

23.2.4 The parties agree in writing is not confidential or may be disclosed.

23.3 The Parties acknowledge that they are subject to Freedom of information Legislation. Each Party shall:

23.3.1 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;

23.3.2 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; and

23.4 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.

24.1 Notices

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

24.1.1 it is given by hand or sent by special or recorded delivery; and

24.1.2 it is served on the recipient at the following address of that Party or such other address for service in the United Kingdom specified in a notice given by the recipient to the other Party.⁸

(a) to DCC at

County Hall, Matlock, DE4 3AG

marked for the attention of Head of Legal

(b) to SDDC at

Civic Offices, Civic Way, Swadlincote DE11 0AH

marked for the attention of Head of Legal

(c) to the City Council at

Council House, Corporation Street, Derby, DE1 2FS

marked for the attention of Head of Legal

24.2 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.

24.3 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.

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

25.1 **Status of this Agreement**

25.1 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.

25.2 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.

26.1 **VAT and SDLT**

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

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

26.2.1 (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

26.2.2 delivery of a valid VAT invoice.

26.3 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.

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

27.1 **Rights of Third Parties**

27.1 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.

28.1 **Duration of Agreement**

28.1 This Agreement shall continue

28.1.1 until the date when any Eligible Expenditure incurred by the Parties (including any cost overruns) have been paid and discharged by them in accordance with the provisions of this Agreement; and

28.1.2 the SDGZ Project has been delivered

unless any Parties wishes to terminate before in which case the Parties shall discuss and agree how the Agreement should be terminated.

29.1 **Non Fetter**

29.1 Nothing in this agreement shall prejudice or affect any of the Parties rights powers duties and obligations in the exercise of their functions as Local Authority and their rights powers duties and obligations under all public and private statutes and bye-laws orders regulations

30.1 Further Agreements

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

31.1 Governing Law and Jurisdiction

31.1 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.

32.1 Clawback Event

32.1 If a Clawback Event occurs DCC shall as soon as reasonably practicable thereafter:-

32.1.1 notify both the City Council and SDDC of the Clawback Event in writing ("the Clawback Notification").

32.1.2 The Clawback Notification shall be accompanied by the details of:-

- (a) the amount to be clawed back;
- (b) the amount of Design Phase Costs to which this relates;
- (c) relevant correspondence;
- (d) details of the City Council's Design Phase Cost Contribution;
- ~~(a)(e) details of SDDC's Design Phase Cost Contribution.~~

32.2 The City Council shall pay the City Council Design Phase Costs Contribution to DCC within ~~[21]~~ Working Days following the date of receipt of the Clawback Notification.

~~31.2 32.3~~ ~~SDDC shall pay the SDDC Design Phase Cost Contribution to DCC within [] Working Days following the date of receipt of the Clawback Notification.~~

32.4 Any dispute relating to any payment pursuant to this clause 32 shall be made pursuant to clause 32 shall be referred in writing immediately (and in any event within 5 Working Days) to the Project Control Board who shall convene an extraordinary meeting to discuss and who shall use reasonable endeavours to resolve the same as soon as reasonably practicable following such a referral.

32.5 If the Project Control Board is unable or unwilling to resolve any disputes, ~~the Parties either DCC or the City Council~~ may invoke the provisions of Clause 21 and refer the matter for the resolution thereunder.

32.6 Interest will be applied at the Interest Rate from the date the payment becomes due until payment in cleared funds has been received by DCC.

33.1 Cost Overruns

33.1 DCC will have notified the City Council and SDDC of the Revised Project Budget determined by it pursuant to ~~[clause 4.8]~~⁹ of the Developers' Collaboration Agreement as soon as

⁹ To double check once the Developer's Collaboration Agreement has been finalised

reasonably practicable following the same being determined. Such notice shall also set out the Revised Project Budget ("the Budget Notification").

33.2 Where the Revised Project Budget is greater than £61,157,769 together with VAT (if applicable) the sum of the Developers' Project Budget and the Initial Costs Overrun Figure, DCC will notify the City Council [and SDDC] as to whether or not the Developers agree to the Revised Project Budget within 10 Working Days following receipt of written notification of the same from the Developers pursuant to clause 4.9 of the Developers' Collaboration Agreement ("Developers Agreement Notification").

33.3 If the Revised Project Budget is greater than £61,157,769 plus VAT (if applicable) the sum of the Developers' Project Budget and the Initial Costs Overrun Figure and has not been agreed between DCC and the Developers before [31 July 2024] then DCC will notify the City Council and SDDC as soon as reasonably practicable whether:-

33.3.1 it intends to terminate the Developers' Collaboration Agreement; or

33.3.2 if the Developers have terminated the Developers' Collaboration Agreement

33.4 Following such notification:-

33.4.1 the City Council will pay the City Council Cost Overrun Contribution (being ~~33.3~~50% of the Public Sector Initial Cost Overrun Liability) within 15 Working Days following the date of receipt of notification pursuant to clause 33.3;

~~31.2.133.4.2 SDDC will pay the SDDC Cost Overrun Contribution (being 33.3% of the Public Sector Initial Cost Overrun Liability).~~

whereupon following receipt the obligations in this clause 33 shall cease to be relevant

34.1 Revised Project Budget

34.1 If the Revised Project Budget is agreed between the Developers and DCC then the Initial Costs Overrun Figure of £5,559,797.20 shall be revised as stated in the Budget Notification served pursuant to clause 33.1 and the Revised Cost Overrun Figure shall be as stated therein.

34.2 The Revised Public Sector Cost Overrun Liability shall be 50% of the Revised Cost Overrun Figure and shall comprise the Actual Public Sector Cost Overrun Liability.

34.3 If the Developers Agreement Notification served pursuant to clause 33.2 indicates that the Developers have agreed the Revised Project Budget then:-

34.3.1 the City Council will pay DCC the City Council Cost Overrun Contribution within 15 Working Days of the date of receipt of such notification;

~~31.2.234.3.2 SDDC will pay DCC the SDDC Cost Overrun Contribution within 15 Working Days of the date of receipt of such notification~~

34.4 If the Revised Project Budget set out in the Budget Notification is the same or less than the Developers' Project Budget then that will comprise the Revised Project Budget; and

34.4.1 the Revised Cost Overrun Figure shall be 10% of the Revised Project Budget;

34.4.2 the Actual Public Sector Cost Overrun Liability shall comprise 50% of the Revised Cost Overrun Figure.

34.5 If the Budget Notification served pursuant to clause 33.1 indicates that the Revised Project Budget is the same or less than the Developers' Project Budget plus the Initial Cost Overrun Figure, then the Public Sector Initial Cost Overrun Liability shall remain as is or be revised downwards as set out in the Budget Notification ("the Overrun Figure").

34.6 The Overrun Figure set out in accordance with clause 34.5 shall be treated as the Actual Public Sector Cost Overrun Liability; and

34.7 the City Council will pay DCC the City Council Cost Overrun Contribution within 15 Working Days of the date of receipt of such notification.

~~31.3~~34.8 ~~SDDC will pay DCC the SDDC Cost Overrun Contribution within 15 Working Days of the date of receipt of such notification.~~

~~32.1~~35.1 DCC shall notify SDDC as soon as reasonably practicable thereafter following payment by it towards the Public Sector Cost Overrun Liabilities and the Design Phase Costs and by the City Council of the City Council Cost Overrun Contribution and the City Council Design Phase Cost Contribution ("the Liability")

35.2.1 SDDC will ,if it considers it appropriate ,acting reasonably ,at some reasonable point in time ,after being notified of the Liability in writing by DCC consider, in its discretion whether it will make a contribution towards the Liability and ,if so ,what that contribution will comprise and the timing of payment ("SDDC Contribution ")on the basis amongst other considerations that the provision of the road and associated infrastructure is a key part of the development of Infinity Garden Village .

35.2.2 If SDDC does decide to make the SDDC Contribution it will notify both DCC and the City Council of the same in writing

35.2.3 If SDDC decides to make a contribution it will notify in writing DCC and the City Council of the amount and the date payment of the SDDC Contribution will be made to DCC (the SDDC Contribution)

35.2.4 Following receipt of the SDDC Contribution DCC and the City Council will offset the SDDC Contribution once received against their respective contributions to the Liability.

SCHEDULE 1

Part 1

DCC Funding Contribution

- 1.1 DCC confirms to SDDC and the City Council 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 and this Schedule 1.
- 1.3 DCC shall put the DCC Funding Contribution into the Infrastructure Account following receipt of such monies under the LUF Funding Agreement.
- 1.4 SDDC and the City Council each separately covenant with DCC and confirms they shall each:-
 - 1.4.1 not to knowingly or deliberately do or permit anything to be done or omit anything which would put DDC in breach of the LUF Funding Agreement 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;
 - 1.4.2 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;
 - 1.4.3 not at any time divulge any confidential information relating to the LUF Funding Agreement of which it becomes aware.
- 1.5 The Parties shall work together to comply with the Monitoring and Evaluation Requirements
- 1.6 DCC and the City Council (as appropriate) shall work together to comply with the Target and Outputs.

Part 2

City Council Funding Contribution

- 1.1 The City Council shall pay towards the following Eligible Expenditure from the City Council's Funding Pot

Categories of Expenditure	Allocation of Funding ¹⁰
Detailed Design	£320,000
Ground and Site Investigations	£350,000
Traffic Modelling	£30,000
CPO [and land acquisition] costs	£100,000
TOTAL	£800,000

- 1.2 Payments by the City Council shall in accordance with Part 4 of this Schedule 1.
- 1.3 The City Council shall ensure the City Council's Funding Pot is separately identifiable in their accounts.
- 1.4 [If the City Council incurs and pays Eligible Expenditure direct (as opposed to payments being made in accordance with Part 4 of this Schedule 1), the City Council shall notify DCC of such payments and provide evidence on an open book basis of such payments.]

Part 3

Additional Funding

Subject to appropriate authorisations to additional spend being secured if the Joint Funding is exhausted or if the parties agree in writing that any incurred expenditure not comprising Eligible Expenditure is to be treated as a shared expense of the scheme DCC and the City Council agree that they will contribute to such ongoing expenditure through Additional Funding in proportions to be agreed between DCC and the City Council acting reasonably).

Part 4

Payment of Invoices

- 1.1 At the end of each month, DCC may submit to the City Council (as appropriate) monthly invoices for payment of any Eligible Expenditure incurred that month which falls within those categories of Expenditure identified in paragraph 1.1 of the Part 2 to this Schedule
- 1.2 Each invoice shall:
- 1.2.1 confirm the amount of the Eligible Expenditure incurred to which the City Council are to pay and how these fall within the categories of expenditure identified in paragraph 1.1 of the Part 2 to this Schedule;
 - 1.2.2 include evidence of the Eligible Expenditure incurred including but not limited to copies of invoices and any other supporting documents received from third parties; and

¹⁰

1.2.3 include confirmation ~~from []~~ that the expenditure has been reasonably and properly incurred.

~~1.2.4 [would anything else be required in the invoice for the City or under HE funding arrangements]~~

~~1.3~~ 1.2.4 DCC and the City Council shall use their respective reasonable endeavours to agree any amount of any Eligible Expenditure to be paid by the City Council prior to it being submitted pursuant to paragraph 1.1.

1.3 Each invoice shall be retained by the City Council for a period of at least 6 years after receipt by the City Council. The City Council and DCC shall provide Homes England and any of its employees, agents or auditors authorised with reasonable access to any invoices submitted pursuant to this Agreement for a period of 6 years following the date of this Agreement.

1.4 If DCC and the City Council are unable to agree the invoice the matter shall be remitted to each Party's Head of Paid Service for resolution.

1.5 Following agreement or resolution pursuant to paragraph 1.3 DCC shall submit the invoice.

1.6 Following receipt of an invoice, the City Council shall consider and verify that invoice within ~~[seven10]~~ Working Days¹¹ and shall pay DCC the sums due within ~~[twenty-one (21)]~~ Working Days of receipt.

1.7 The City Council may request such additional information from DCC as is reasonably required to verify each invoice. DCC shall provide such information as soon as reasonably practicable following such request.

1.8 If any invoices are not paid by the due date, the City Council shall pay interest on such sums at the Contract Rate for the period from the due date to the date of actual payment

SCHEDULE 2

1 Objectives and Principles

- 1.1 The Parties agree that the following principles shall apply in order to meet the Parties' objectives of (1) identifying the relevant issues associated with any IGV Planning Application, and (2) seeking early resolution of those issues in order to facilitate the efficient determination of any IGV Planning Application:
- 1.1.1 To work together as a project team proactively, collaboratively and in good faith and to respect each other's interests and confidentiality.
 - 1.1.2 To use the pre-application period to address matters that may arise following the submission of any IGV Planning Application and to aim to resolve such matters wherever possible to avoid undue delay later in the development process
 - 1.1.3 To work together to examine ways of ensuring the effective consideration of the proposed development within the Infinity Garden Village.
 - 1.1.4 To promote transparency and consistency at all times between Parties.
 - 1.1.5 To help to facilitate (where appropriate) effective involvement and consultation with the surrounding community, statutory and other stakeholders, and any individual or group with a legitimate interest, at the appropriate time/stage
 - 1.1.6 To identify and involve specialist consultees, consultants and advisors including Senior Officers/Managers and external consultants where appropriate
 - 1.1.7 To set the principles (and expectations) for engagement with Officers, Senior Managers and Members of the relevant authorities.

2 IGV Planning Applications

- 2.1 SDDC and the City Council shall use reasonable endeavours to notify the other Parties and the IGV Enabling Committee within 10 Working Days of receipt of a IGV Planning Application.
- 2.2 The IGV Enabling Committee will, following notification of a IGV Planning Application pursuant to paragraph 2.1, either add the IGV Planning Application to the agenda of the next monthly meeting or call a new meeting to specifically deal with the relevant IGV Planning Application.
- 2.3 Following notification pursuant to paragraph 2.1 above, all the Parties shall consider and shall use reasonable endeavours to discuss and agree at the IGV Enabling Committee meeting what support and resource can be provided (including by the Planning Support Officer) to enable:
- 2.3.1 (subject to paragraph 2.5) the timely review of a IGV Planning Application by the relevant planning department being no later than the Statutory Timescales;
 - 2.3.2 the provision of any ancillary information to assist with the review and determination of a IGV Planning Application;

- 2.3.3 (subject to paragraph 2.5) the determination of a IGV Planning Application no later than stated in the Statutory Timescale [] and in any event in accordance with the IGV Programme; ¹²
- 2.3.4 the timely resolution of any matters arising between the Developers and the relevant planning department;
- 2.3.5 (subject to paragraph 2.5) any section 106 agreements and any other Statutory Agreements relevant to that IGV Planning Application to be agreed
- 2.3.6 (subject to paragraph 2.5) the relevant planning department to have sufficient resource to enable the review and determination of a IGV Planning Application in accordance with the Statutory Timescales
- 2.4 If any of the Parties are able to provide additional resource to assist with the determination of a IGV Planning Application, that shall be provided as soon as reasonably practicable in manner agreed between the Parties.
- 2.5 Where additional resource is available including ~~via~~ the Planning Support Officer, the timescales specified in paragraph 2.3 shall be shortened where possible by such amount of time that is reasonably practicable and agreed between SDDC and the City Council. SDDC and the City Council shall confirm the shortened timescale to the other Parties and the IGV Enabling Committee when notifying of receipt of an application under paragraph 2.1 of this Schedule.
- ~~2.5.1 the timescale in paragraph 2.3.1 shall be changed from reference to the Statutory Timescales to no later than [] Working Days following the date of receipt so the paragraph will read as follows:~~
- ~~*the timely review of a IGV Planning Application by the relevant planning department being no later than [] Working Days following the date of receipt;*~~
- ~~2.5.2 the timescale in paragraph 2.3.3 shall be changed from reference to no later than [] to no later than [] Working Days following the date of receipt so the paragraph will read as follows:~~
- ~~*the determination of a IGV Planning Application no later than [] and in any event in accordance with the IGV Programme;*~~
- ~~2.5.3 paragraph 2.3.5 shall be amended to refer to a specific timescale so the paragraph will read as follows:~~
- ~~*any section 106 agreements and any other Statutory Agreements relevant to that IGV Planning Application to be agreed within [] Working Days*~~
- ~~2.5.4 the timescale in paragraph 2.3.6 shall be changed from reference to the Statutory Timescales to no later than [] Working Days following the date of receipt so the paragraph will read as follows:~~

~~the relevant planning department to have sufficient resource to enable the review and determination of a IGV Planning Application in accordance with [] Working Days of receipt.~~

3 Timetable

- 3.1 The Parties have a shared commitment to the IGV Programme and towards the determination of any IGV Planning Applications including the completion of any associated technical approval process which may be necessary.
- 3.2 The Parties acknowledge and agree the IGV Programme which contains the key milestones and will each use their respective reasonable endeavours to comply with their obligations in this Agreement to enable the IGV Programme and key milestones to be observed and met.

4 Non-Fetter

- 4.1 The provisions of this Schedule 2 shall not fetter any Party in exercising its statutory duties as local planning authority and it will not prejudice the outcome of any IGV Planning Application or affect the impartiality of the local planning authority.

SCHEDULE 3

LANDOWNERS PROPERTIES

Title Number	Property Details	Landowner
DY10375, DY496177	Land and buildings lying to the south west of Merrill Way, Allenton, Derby and Land on the south side of Wilmore Road, Derby	Rolls Royce
DY496177	The south side of Wilmore Road, Derby	Mr David Goodwin (Tenant)
DY449831, DY449779, DY420477	Land to the south of Sinfin, Moor Lane, Sinfin, Derby and Land on the south and north side of Sinfin, Moor Lane, Sinfin, Derby.	Christchurch
DY449831, DY420477	Land to the south of Sinfin Moor Lane, Sinfin, Derby and Land on the south side of Sinfin, Moor Lane, Sinfin, Derby	Harold and David Goodwin
DY370492	land on the East side of Deepdale Lane, Sinfin, Derby and land on the East and West sides of Arleston Lane, Sinfin, Derby.	Harpur Crewe
DY392979	Land on the west side of Deepdale Lane, Sinfin, Derby.	Hallam Land Management
DY215555, DY257181	Ashlea Farm, Sinfin Lane, Barrow On Trent, Derby (DE73 7LJ) and Land on the North Side of Deep Dale Lane, Barrow on Trent.	Kenneth Ernest Atkin, Heather Catherine Atkin, Neil Kenneth Atkin and Kevan John Atkin
DY160463	Land on the West of Deep Dale Lane, Barrow.	Garibaldi Limited
DY395183, DY395521, DY341170	Land lying to the south and south east of Ashlea Farm, Barrow on Trent (DE73 1HH). Land on the East and West side of Arleston Lane, Barrow on Trent	National Highways Limited
DY516307, DY520868	Land lying to the South and North of Ashlea Farm, Deep Dale Lane, Barrow On Trent, Derby.	Kenneth Ernest Atkin, Heather Catherine Atkin and Kevan John Atkin
DY278529	Fir Tree Farm, Fir Tree Drive, Barrow On Trent, Derby, DE73 7GF	Kenneth William Atkin and Robert John Atkin
DY517196	Gas Governor Site, Infinity Park Way, Derby	Energetics Gas Limited
DY551015	Land on the east side of Deepdale Lane, Sinfin, Derby.	Taylor Wimpey

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)

The Common Seal of SOUTH
DERBYSHIRE DISTRICT COUNCIL was
hereunto affixed in the presence of

.....

Chairman

.....

Chief Executive

Executed as a Deed by **DERBY CITY**) .
COUNCIL by affixing its Common Seal in the
presence of

.....

Authorised Signatory

APPENDIX 1 – ENABLING INFRASTRUCTURE WORKS SPECIFICATION

~~APPENDIX 2 – IGV PROGRAMME~~

APPENDIX 3 — PLANNING CONDITION TRACKER

APPENDIX 24 – FORM OF SECTION 8 AGREEMENT

Derbyshire County Council

and

Derby City Council

**Agreement under Section 8 Highways Act 1980 relating to South Derbyshire Growth
Zone**

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THIS AGREEMENT is made on

2022

BETWEEN

- (4) Derbyshire County Council of County Hall, Matlock DE4 3AG (“Derbyshire”)
- (5) Derby City Council of Council House Corporation Street Derby DE1 2FS (“Derby”).
- (together “the Parties”)

BACKGROUND

- L Derby is the highway authority for the administrative area of Derby and Derbyshire is the highway authority for other administrative areas of Derbyshire.
- M Derby has agreed to delegate its functions as a highway authority to Derbyshire to the extent that the highways authority is undertaking highways and infrastructure work relating to the South Derbyshire Growth Zone Project comprising the Works (as hereinafter defined).
- N This Agreement sets out the arrangements agreed between the Parties in respect of the arrangements relating to highways and infrastructure works relating to the South Derbyshire Growth Zone Project comprising the Works (as hereinafter defined).

Definitions

In this Agreement the following definitions apply:

Blight Notice	(1) any notice served on any of the Parties pursuant to section 150 of the Town and Country Planning Act 1990;
Certificate of Practical Completion	(2) a certificate to be issued by Derbyshire when the Works have been satisfactorily completed;
Compulsory Purchase Order	(4) any compulsory purchase order or orders made for the acquisition of the land required for the construction of the Works or for the alteration or improvement of adjacent highways or to mitigate the effect of the construction of the Works;
Expert	(6) a person with at least ten years’ post-qualification experience including significant relevant experience in the subject matter of the dispute;
Final Certificate	(7) the certificate issued following the expiry of the Defect Liability Period and if the South Derbyshire Growth Zone Project may be completed in stages shall include such certificate as may be issued at the expiry of the Defect Liability Period for each stage;
Freedom of	(8) the Freedom of Information Act 2000 and any subordinate

Information Legislation	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;
Orders	any Compulsory Purchase Order or Side Roads Order;
Proper Officers	(9) the officer for the time being appointed by either Derby or Derbyshire for the purposes of this Agreement;
Request for Information	(10) a request for information as defined in section 8 of the Freedom of Information Act 2000;
Side Roads Order	(11) any order or orders made pursuant to section 14, 125 and Schedule 1 of the Highways Act 1980;
South Derbyshire Growth Zone Project	(13) a project to provide enabling infrastructure for housing and commercial development in South Derbyshire in the form of a new junction on the A50 Trunk Road and a highway connection to Infinity Park Derby as shown generally on the Plan.
Statutory Undertaker	(14) a statutory undertaker as defined in section 329 of the Highways Act 1980;
Traffic Regulation Orders	(15) any temporary or permanent order required to commence and carry out the construction of the works and safe operation of the highway pursuant to the Road Traffic Regulation Act 1984 including any amendment required to an existing order;
Works	(16) the works specified in (A) to this Agreement;
Working Day	(17) any day other than Saturday or Sunday, or a bank or public holiday.

Interpretation

In this Agreement unless the context otherwise requires:

Part A 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;

Part B the Schedules to this Agreement are intended to be an integral part of this Agreement;

Part C an obligation to do any act includes an obligation to procure that it is done;

Part D an obligation not to do something includes an obligation not to cause or allow that thing to be done;

Part E the words 'include', 'includes' and 'including' are deemed to be followed by the words 'without limitation';

Part F 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;

Part G indemnify means to indemnify against all actions, claims, demands and proceedings taken or made against the relevant Party and all costs, damages, expenses, liabilities and losses incurred by the relevant Party;

Part H 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;

Part I 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;

Part J 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;

Part K words in the singular include the plural and vice versa.

Statutory Provision

Part L This Agreement is made under section 8 of the Highways Act 1980 the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2012 section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and any other power or authority thereby enabling.

Exercise of Functions

Part M Derby subject to the provisions of this Agreement hereby authorises Derbyshire to exercise all of its functions as highway authority and as acquiring authority for the purposes of the acquisition if necessary through compulsory purchase of land and buildings including without limitation to make the Orders; to undertake all necessary action and to enter into any other agreements necessary and to acquire whether by voluntary agreement or compulsorily of land and all other interests rights and privileges that are necessary to be acquired insofar as is required for the purposes of the carrying out of the Works to enable the South Derbyshire Growth Zone Project in accordance with the terms of this Agreement.

Part N Derbyshire agrees to exercise the functions of Derby as highway authority in so far as is required for the purpose of carrying out Works to enable the South Derbyshire Growth Zone Project in accordance with the terms of this Agreement.

Part O The Orders shall be made by Derbyshire provided that prior to the preparation of the draft Orders Derbyshire shall consult with Derby to agree the design features and drawings and all other technical aspects of constructing and designing the Works.

Part P Any payment of costs incurred by Derbyshire in designing the Works shall be paid in accordance with the collaboration agreement between the Parties and South Derbyshire District Council.

Part Q Upon any part of the Works becoming adopted highway maintainable at the public expense in accordance with an adoption plan or statement to be agreed between Derbyshire and Derby Derbyshire shall transfer to Derby all interests in that land forming the adopted highway maintainable at the public expense which lies within the area of Derby.

Part R Upon the acquisition of any interest acquired by Derbyshire on behalf of the Parties whether in the area of Derbyshire or Derby Derbyshire shall register the interest acquired at the Land Registry.

Part S Once construction of the Works is complete each Party will maintain at its own expense those sections of the Works which have been constructed in its own area and be the highway authority for those sections and prior to completion of the construction of the Works Derbyshire shall be responsible for ensuring that the sections of the Works so constructed are adopted as roads maintainable at public expense.

Part T For the avoidance of doubt any provision for a transfer of the exercise of function from Derby to Derbyshire under this clause 4 shall not apply if such transfer would constitute an ultra vires act on behalf of Derby.

Blight Notice

Part U Should a Blight Notice be served on Derby in connection with the South Derbyshire Growth Zone Project Derby shall proceed to supply a copy of the Blight Notice to Derbyshire forthwith whereupon Derbyshire shall decide on whether the Blight Notice should be accepted or an objection made to the Blight Notice.

Part V If Derbyshire decides to object to the Blight Notice Derbyshire shall thereupon proceed to serve the requisite statutory counter-notice pursuant to section 151 of the Town and Country Planning Act 1990 specifying the grounds for such objection agreed between the Parties and proceed accordingly to prosecute the objection to the Blight Notice through its statutory stages.

Part W Derbyshire shall acquire any relevant land and pay any compensation if it is accepted that a Blight Notice is valid.

Part X The Parties in entering into this Agreement agree that they or any successors in title shall not serve a Blight Notice on each other.

Side Roads Order and Compulsory Purchase Order – Objections

Part Y If any objection is made to the necessary Orders Derbyshire on being notified of any objections by the appropriate Secretary of State or otherwise being aware of such objections or of an intended objection shall promptly use reasonable endeavours to obtain the withdrawal of such objection by negotiation and in consultation with each other. Derby shall assist and provide Derbyshire with all possible support in the preparation of a case including expert evidence witness statements and all appropriate documentation in its possession or control to challenge any objection and to justify the need for the South Derbyshire Growth Zone Project in the public interest and will provide every assistance and give evidence to any local public inquiry as may be required by Derbyshire in the event of a local public inquiry being held to consider any objection to the Orders. Such assistance shall be extended to include any Blight Notice or compensation proceedings whether on a dispute with a claimant as to the quantum of compensation payable or a Blight Notice proceeding.

Exercise of Compulsory Purchase Powers

Part Z Provided the Orders are confirmed Derbyshire shall bring the Orders into operation forthwith and decide how powers of compulsory purchase are to be exercised and thereafter diligently proceed to exercise compulsory purchase powers to acquire such land as may be required for the South Derbyshire Growth Zone Project.

Part AA Derbyshire shall consider negotiate and settle any compensation claim and, where necessary shall pay any compensation into court to the account of any claimant or potential claimant legally entitled thereto under Section 9 of the Compulsory Purchase Act 1965 or any other enabling power in order to obtain title to land needed for the South Derbyshire Growth Zone Project should Derbyshire deem that such action is appropriate in connection with the acquisition of any interest that is needed to be acquired to facilitate the proper prosecution of the South Derbyshire Growth Zone Project.

Part BB Derbyshire may at its discretion obtain possession of any land the subject of a confirmed Compulsory Purchase Order through the execution of a General Vesting Declaration pursuant to Section 1 of the Compulsory Purchase (Vesting Declarations) Act 1981 or through the service of a Notice to Treat and subsequent Notice of Entry.

Compensation Proceedings

Part CC Derbyshire may at its discretion:

- 1 take a reference to the Lands Chamber of the Upper Tribunal where in the opinion of Derbyshire it has become impossible to agree the amount of any compensation claim through negotiation; and
- 2 defend any reference to the Lands Chamber of the Upper Tribunal taken by the claimant for any compensation.

Advance Payments

Part DD Derbyshire may make advance payments of compensation pursuant to section 52 of the Land Compensation Act 1973 provided that any compensation so paid as an advance payment of compensation does not exceed 90% of the sum agreed by the Parties as being the estimated compensation payable in respect of the interest to be acquired.

Part EE Advance payments of compensation shall be regarded as Eligible Expenditure for the purposes of the collaboration agreement between the Parties and South Derbyshire District Council. Advance payments of compensation shall be paid in accordance with the requirements of that collaboration agreement.

Derby Owned Land

Part FF The Parties agree in principle to release all and every one of their respective legal and equitable proprietary interests in any land that is currently in their ownership for the South Derbyshire Growth Zone Project at the date of this Agreement but to hold the same on trust pending the need to release the land for the South Derbyshire Growth Zone Project and shall not encumber any such land or in any way prevent the land being available to be released with vacant possession and unoccupied to facilitate the South Derbyshire Growth Zone Project.

Derbyshire's Obligations

Part GG Derbyshire shall comply with public procurement legislation in the procurement of any contractors or professional advisers.

Part HH Derbyshire shall keep Derby reasonably informed of progress on the South Derbyshire Growth Zone Project.

Derby's Obligations

Part II Derby shall:

- 1 As soon as practicable, use its powers to obtain any Traffic Regulation Orders to enable the Works.
- 2 Not unreasonably delay in the carrying out of any works upon which the deliverability of the South Derbyshire Growth Zone Project is dependent, but which do not form part of the Works comprising this agreement.

Construction of the Works

Part JJ Derbyshire will be responsible for the delivery and construction of the Works.

Part KK Derbyshire shall provide Derby's Proper Officer or Representative with reasonable notice of the commencement of any works to Statutory Undertakers' mains or services, plant or equipment necessitated by the Works and carry out or procure the carrying out of such works in accordance with the provisions of the New Roads and Street Works Act 1991 and the Traffic Management Act 2004 or any agreement with the Statutory Undertaker.

Part LL Derbyshire shall, carry out and complete the Works in a good and workmanlike manner.

Part MM Derbyshire shall co-operate with Derby and:

- 1 Permit Derby's Proper Officer or Representative at all reasonable times and upon such notice as is reasonable in all circumstances to conduct onsite visits whilst the Works are being carried out to review the progress made;
- 2 Notify in writing at least 7 working days in advance and invite Derby's Proper Officer or Representative to meetings held with Derbyshire or its appointed representatives to discuss progress.

Defect Liability

Part NN Throughout the Defect Liability Period Derbyshire shall reinstate and make good any defect to the Works and all other works/maintenance will be carried out by the local highway authority for the area in question.

Final Certificate

Part OO On completion of the Defect Liability Period and provided clause Part NN has been complied with the Final Certificate will be issued.

Part PP From the date of the issue of the Final Certificate the Works shall become part of the highway maintainable at public expense and Derby's Proper Officer or Representative shall release Derbyshire from all liability hereunder.

Communications

Part QQ All communications between the Parties hereto shall be valid and effectual if given in writing or via email to the Authorised Representatives. Any formal notice to be served under this Agreement may be served by electronic email transmission to the Authorised Representatives.

Part RR The Authorised Representatives in respect of the Project for each Party shall be:

Derbyshire County Council: Helen Barrington, Director of Legal and Democratic Services: E-mail: helen.barrington@derbyshire.gov.uk

Derby City Council: Chris Morgan, Principal Regeneration Manager: E-mail: chris.morgan@derby.gov.uk

Part SS The Authorised Representatives specified in this Clause 0 shall also include their successors in title or such other authorised persons as may be specified by each Party.

Agreement – Further Assurance

Part TT The Parties shall each do or cause to be done all acts and things and enter into any deed or document either severally or jointly with third parties which either Party may reasonably consider necessary or desirable to give effect to this Agreement.

Approvals

Part UU The Parties confirm that each of them have passed appropriate resolutions through their constitutional decision making process to join into the South Derbyshire Growth Zone Project and enter into this agreement.

Part VV Any approval required of the Parties in connection with any provision of this Agreement shall be in writing and shall not be unreasonably withheld or delayed.

Disputes

Part WW In the event of any dispute or difference between the Parties arising out of this Agreement, resolution shall be sought between the respective Authorised Representatives acting in relation to this matter on behalf of the Parties. If the issue and dispute cannot be resolved between the respective Authorised Representatives, then the matter shall be referred to the Chief Executives of the Parties for determination.

Part XX Any dispute or difference arising between the Parties which cannot be resolved by the Chief Executives of the Parties under Clause Part WW above (other than where it is specifically provided by this Agreement to the contrary) shall be referred to and determined by an independent person (the "Expert") if so required by any Party by notice to the other Party.

Part YY The Expert shall be appointed by agreement between the Parties, or failing such agreement within ten working days of the notice referred to in Clause Part XX, shall be appointed on the application of any of the Parties by such one of the following persons as the Parties shall agree to be appropriate having regard to the nature of the dispute or difference in question:

- 1 The President for the time being of the Law Society.
- 2 The President of the Institute of Civil Engineers
- 3 The President for the time being of the Royal Institution of Chartered Surveyors; or
- 4 The President for the time being of the Institute of Chartered Accountants in England and Wales or, in any such case, his duly appointed deputy or any other person authorised by him to make appointments on his behalf.

Part ZZ If within fifteen working days after service of the notice referred to in Clause Part XX the Parties have been unable to agree which of the persons referred to in Clause Part YY is appropriate to appoint the Expert, the Expert will be appointed, on the application of any of the Parties by the President for the time being of the Law Society or his duly appointed deputy or any other person authorised by him to make appointments on his behalf.

Part AAA Whenever the Expert is to be appointed under this Clause he shall act as an expert and not as an arbitrator and the following provisions shall have effect:

- 1 The Expert's decision shall (in the absence of fraud or manifest error) be final and binding upon the Parties;
- 2 The Expert shall consider, inter alia, but shall not be bound by, any written representations on behalf of the Parties made within such time limits as he shall specify, which time limits shall be as short as he shall consider practicable in the circumstances;
- 3 The Expert shall make available to each Party copies of the other Party's representations and allow the other Party to make further written representations thereon to which clause 2 shall apply;
- 4 Upon receipt of any such representations the Expert shall forthwith inspect the site of the works if necessary and give notice of his instructions, if any, to the Parties and, if he shall so require, invite them or their advisers to attend his inspection and to make oral representations thereat;
- 5 The Expert shall as quickly as possible thereafter notify the Parties in writing of his determination of the dispute or difference referred to him;
- 6 The Parties shall use all reasonable endeavours to procure that the Expert shall give his decision with reasons as speedily as possible;
- 7 The costs of appointing the Expert and his costs and disbursements in connection with his duties under this Agreement shall be shared between the Parties in such proportions as the Expert shall determine or in the absence of such determination equally between them.
- 8 If the Expert shall die or be or become unwilling or incapable of acting or in the reasonable opinion of any Party shall delay his determination avoidably or if for any other reason he shall not deliver his decision, any party shall be entitled to apply to the President for the time being of the relevant professional institution to discharge the expert and appoint another in his place.

Good Faith

Part BBB 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.

Part CCC The Parties shall at all times act in the utmost good faith towards each other to give effect to the spirit and intent of this Agreement.

Termination

Part DDD This Agreement will automatically terminate at the issue of Final Certificate following expiration of the Defect Liability Period for the final stage or part of the Works.

Dispute Resolution and Expert Determination

Part EEE 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.

Part FFF Any dispute arising in relation to any aspect of this Agreement shall be resolved in accordance with this clause 19.1.

Part GGG 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.

Part HHH 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.

Part III If any dispute between the Parties cannot be resolved by the Heads of Paid Service 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.

Part JJJ 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:

- 1 the Expert shall give the Parties an opportunity to make representations before making his decision;
- 2 the Expert may obtain opinions from others;
- 3 the Expert's decision on matters of valuation must be within the range of any representations made by the Parties;
- 4 the Expert shall give reasons for their decision;

- 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;
- 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.

Assignment

This Agreement is personal to the Parties and neither 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, provided however that this clause shall not operate to prevent any statutory reorganisation of either Party.

Confidentiality

Part KKK 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.

Part LLL The provisions of clause 23.1 shall not apply to information that:

- 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;
- 2 Was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- 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;
- 4 The parties agree in writing is not confidential or may be disclosed.

Part MMM The Parties acknowledge that Derbyshire and Derby are subject to Freedom of information Legislation. Each Party shall:

- 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;
- 2 provide each of the Parties 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 Party reasonably requires within 5 Working Days (or such other period as the Council may reasonably specify) of the Council's request for such Information; and

Part NNN 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.

Notices

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

- 1 it is given by hand or sent by special or recorded delivery; and
- 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.

Part PPP 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.

Part QQQ 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.

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

Status of this Agreement

Part SSS 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.

VAT

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

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

- 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
- 2 delivery of a valid VAT invoice.

Part VVV 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.

Severability

Part WWW The invalidity or unenforceability of any term of this Agreement shall not affect the remaining rights or terms of the same.

Rights of Third Parties

Part XXX 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.

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.

(A) THE WORKS

- (a) 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;
- (b) Demolition of Ashlea Farm;
- (c) 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;
- (d) Two flood compensation areas (subject to discussions with WBD), to the west and north-west of the carriageway and minor watercourse diversions;
- (e) Additional Highways mitigations measures including:
 - Upgrade of 2 no. laybys on the A50 SRN;
 - Traffic calming measures on Deepdale Lane running into Sinfin;
 - Widening of the carriageway at Infinity Park Way at the Wigmore Rd junction;
- (f) Merrill Way at the A514 Chellaston Road/Boulton Lane Signal junction

(B) **POWERS WHICH ARE NOT DELEGATED TO DERBYSHIRE**

Derby delegates to Derbyshire the power to enter Derby's land and complete the construction of the Works and any associated powers which shall include but not be limited to power to make a compulsory purchase order and side roads order if needed. Derby will remain the highway and traffic authority for all other functions, including::

a) all Traffic Management Measures required in connection with the South Derbyshire Growth Zone Project;

b) all TROs that will be required during the construction and after the completion of the Works;

c) any other permits or licences required during construction or after completion of

works

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APPENDIX 5 – IGV DEVELOPMENT FRAMEWORK

APPENDIX 36 – FORM OF COLLATERAL WARRANTY

Dated

20[]

(1) [CONTRACTOR]

(2) [BENEFICIARY]

(3) [EMPLOYER]

COLLATERAL WARRANTY OF CONTRACTOR

In relation to

[INSERT BRIEF DETAILS]

Geldards
law firm

WARRANTY PARTICULARS & DEFINITIONS

Date of Deed:	
Beneficiary:	[BENEFICIARY]
Company Registration Number:	[Company Number]
of/whose registered office is at:	[Registered Address]
Building Contract:	The building contract between the Employer and the Contractor dated [date]
Contractor:	[CONTRACTOR]
Company Registration Number	[Company Number]
of/whose registered office is at:	[Registered Address]
Documents:	all drawings, details, plans, reports, models, specifications, bills of quantities, calculations, and other documents of any nature whatsoever which have been, or are hereafter, created and/or developed by or for the Contractor in relation to the Works.
Employer:	[EMPLOYER]
Company Registration Number	[Company Number]
of/whose registered office is at:	[Registered Address]
Intellectual Property:	all copyright and all neighbouring and database rights and moral rights, registered designs, registered and unregistered design rights, or any rights or property similar to the foregoing in any part of the world whether registered or unregistered together with the right to apply for the registration of such rights in any part of the world and the rights to current applications for registration of any such intellectual property referred to above.
Professional Indemnity Insurance:	£[INSERT – to match description in the Building Contract]
Project:	[INSERT BRIEF DESCRIPTION OF PROJECT]

Works:	The design and construction of the Project (as more particularly described in the Building Contract)
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1. WARRANTY PARTICULARS

The completed Warranty Particulars and Definitions set out on page 1 of this Deed form part of this Deed.

2. BACKGROUND

- 2.1** The Contractor is obliged to provide this Deed pursuant to the Building Contract.
- 2.2** The Beneficiary has an actual or prospective interest in the Project whether as a funder, purchaser or lessee of the whole or part of the Project, or otherwise.
- 2.3** The Employer agrees to the provision of this Deed to the Beneficiary.

3. CONSIDERATION

This Deed is made on the date appearing in the Warranty Particulars between the Employer, the Contractor and the Beneficiary in consideration of the payment of £10 by the Beneficiary to the Contractor and the Employer (receipt of which both parties acknowledge).

4. WARRANTY AND LIABILITY

- 4.1** The Contractor warrants to the Beneficiary that it has complied and will at all times comply with the terms of the Building Contract, and any specifications or requirements included or referred to in the Building Contract, and that, in the design of the Works, the selection of goods, materials, equipment or plant for the Works and the satisfaction of any performance requirement or specification of or for the Works, it has exercised and will continue to exercise all the reasonable skill and care as may be expected of a properly qualified designer of the appropriate discipline(s) for such design, experienced in carrying out works of a similar scope, nature, timescale and complexity and on a similar site or at a similar location to the Works.
- 4.2** The Contractor has no liability under this Deed which is greater or of longer duration than it would have had if the Beneficiary had been a party to the Building Contract as joint employer and the Contractor shall be entitled in any action or proceedings by the Beneficiary under this Deed to rely on any limitation in the Building Contract and to raise the equivalent rights in defence of liability (but excluding set-offs or counterclaims) as it would have had if the Beneficiary had been named as the employer under the Building Contract. However, it shall not be a defence to any action brought against the Contractor under this Deed that the Employer has suffered no loss under the Building Contract.
- 4.3** Upon the expiration of 12 years from the date of completion of the Project the liability of the Contractor under this Deed shall cease save in relation to any claims made by the Beneficiary against the Contractor and previously notified in writing by the Beneficiary to the Contractor.

5. STANDARDS OF PRODUCTS AND MATERIALS

- 5.1** The Contractor warrants that it has exercised, and will continue to exercise, the level of skill and care required by clause 4.1 to see that it has not specified or selected for use, and will not specify or select for use, and (as appropriate) it has not authorised or approved, and it will not authorise or approve, the specification, selection or use by others of any product or material or building practice or technique which is:
 - 5.1.1** prohibited by the Building Contract; or
 - 5.1.2** not in conformity with relevant British Standards and/or Codes of Practice; or
 - 5.1.3** generally known to members of the Contractor's profession to be deleterious or hazardous to health and safety or to the durability of buildings and/or other structures

and/or finishes and/or plant and machinery in the particular circumstances in which it is used; or

5.1.4 not in conformity with any applicable agrément certificate issued by the British Board of Agrément; or

5.1.5 is in breach of the UK version of Regulation (EU) No. 305/2011, as it forms part of English law under the European Union (Withdrawal) Act 2018 or is supplied or placed on the market in breach of the Construction Products Regulations 2013 (SI 2013/1387).

5.2 If, in the performance of its duties under the Building Contract, the Contractor becomes aware that it, or any other person, has specified or used, or authorised or approved, the specification or use by others of any such products or materials the Contractor will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Contractor to inspect or check the work of others which is not required by the Building Contract.

6. INSURANCE

6.1 The Contractor will:

- (a) take out and maintain professional indemnity insurance with reputable insurers in the UK insurance market in an amount of not less than that stated in the Warranty Particulars for any occurrence or series of occurrences arising out of any one event for a period expiring no earlier than 12 years after the date of completion of the Project, provided that such insurance is available in the UK insurance market to members of the Contractor's profession at commercially reasonable rates. Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts or omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates;
- (b) inform the Beneficiary or its assignees in writing immediately of any failure or inability to maintain such professional indemnity insurance cover in accordance with clause 6.1(a), and of any circumstances likely to render such insurance void or voidable, in order that the Contractor and the Beneficiary can discuss means of best protecting their respective positions in the absence of such insurance; and
- (c) when reasonably requested by the Beneficiary, to produce for inspection documentary evidence that its professional indemnity insurance cover is being properly maintained and that payment has been made in respect of the last preceding premium.

7. DOCUMENTS

Subject to the following provisions of this Deed, all Intellectual Property in the Documents shall remain vested in the Contractor.

7.1 The Contractor grants (or, if such a grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of any of the Intellectual Property not yet in existence with effect from the creation of such Intellectual Property, an irrevocable, royalty-free, non-exclusive licence to use the Intellectual Property and to reproduce all Documents for any purpose whatsoever connected with the Development including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement and repair of the Development. Such licence shall:

7.2.1 carry the right to grant sub-licences;

- 7.2.2 shall remain in full force and effect notwithstanding the completion of the Contractor's obligations or the termination of the Building Contract or this Deed or the determination of the Contractor's engagement under the Building Contract or any dispute under the Building Contract or this Deed;
- 7.2.3 be transferable to third parties; and
- 7.2.4 shall enable the Beneficiary to use and reproduce the Documents for any extension of the Development, but shall not include a licence to reproduce the Intellectual Property in the Documents for any extension of the Development;
- 7.3 The Contractor shall not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Building Contract or under this Deed or as otherwise required to enable it to fulfil its obligations under the Building Contract.
- 7.4 The Contractor shall not be liable for any use the Beneficiary may make of the Documents for any purpose other than the purposes set out in clause 7.2.
- 7.5 The Contractor warrants that the Documents (save to the extent that duly authorised sub-consultants have been used to prepare the same) are the Contractor's own original work and that in any event their use in connection with the Development shall not infringe the rights of any third party. The Contractor further warrants that where duly authorised sub-contractors or consultants are used their work shall be original and that the Contractor shall obtain the necessary consents in relation to clause 7.2.
- 7.6 The Contractor agrees on reasonable request at any time and following reasonable prior notice to give to the Beneficiary, or those authorised by the Beneficiary, access to the Documents and to provide copies (including electronic copies in a readable form) of the Documents at the Beneficiary's expense.
- 7.7 The Contractor waives and agrees not to assert (and to procure that any sub-contractors do likewise) any moral rights in the Documents or in relation to the Development that it (or any sub-contractors) may have pursuant to Part 1 Chapter IV of the Copyright, Designs and Patents Act 1988 or any re-enactment or modification of it.

8. ASSIGNMENT

- 8.1 The benefit of this Deed may be assigned by the Beneficiary to any person having a bona fide actual or prospective legal or commercial interest in the Project or any part thereof twice only without the consent of the Contractor. The Beneficiary shall give the Contractor notice following any such assignment specifying the name and address of the assignee and the date of the assignment.
- 8.2 The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original beneficiary hereunder or by reason that the original beneficiary or any intermediate beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Project or that that original beneficiary or any intermediate beneficiary has not suffered any or as much loss.
- 8.3 Notwithstanding clause 8.1, the Beneficiary may assign the benefit of this Deed without restriction to any company within the same "group" as the Beneficiary (as defined by Section 42 of the Landlord and Tenant Act 1954).

9. INSPECTION OF DOCUMENTS

- 9.1 The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure to be made for its benefit or on its behalf.

OTHER RIGHTS AND REMEDIES

The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including, without limitation, any remedies in negligence.

10. SUCCESSORS

References to the Beneficiary shall include the person or persons from time to time entitled to the benefit of this Deed.

11. NOTICES

Any notice, request, demand, consent or approval given under or in connection with this Deed must be given or confirmed in writing. Any such notice, request, demand, consent or approval shall be delivered personally or addressed to the respective address of each party set out in this Deed or to the registered office or the principal business address of either party for the time being and, if sent by post, shall be sent by first class pre-paid post or recorded delivery and shall be deemed to have been received on the second working day after posting.

12. DISPUTE RESOLUTION

12.1 Any disputes arising under or in connection with this Deed may be referred by either party to adjudication in accordance with the Scheme for Construction Contracts (England and Wales) Regulations 1998 as amended by the Scheme for Construction Contracts (England and Wales) Regulations 1998 (Amendment) (England) Regulations 2011.

12.2 In the absence of agreement between the parties as to the choice of adjudicator, the adjudicator shall be appointed by the Chairman for the time being of the Technology and Construction Solicitors Association or his nominated representative.

12.3 The decision of any adjudicator shall be binding on, and implemented by, both parties pending any final determination of the relevant dispute by the courts of England and Wales.

13. APPLICABLE LAW AND JURISDICTION

15.1 This Deed and all matter arising out of or in connection with it (including, without limitation, any non-contractual matters) will be subject to and construed in accordance with the laws of England.

15.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to determine any dispute arising out of or in connection with this Deed (including, without limitation, in relation to any non-contractual obligations). The parties irrevocably submit to the jurisdiction of those courts.

14. THIRD PARTY RIGHTS

This Deed is enforceable by the original parties to it and their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

15. STEP-IN RIGHTS

16.1 Subject to clause 16.7, the Contractor shall not exercise or seek to exercise any right which may be or become available to it to terminate or treat as terminated or repudiated the Building Contract or its engagement under it or discontinue or suspend the performance of any duties

or obligations under the Building Contract, without first giving to the Beneficiary not less than[twenty-eight days' prior notice specifying the Contractor's grounds for terminating or treating as terminated or repudiated the Building Contract or its engagement under it or discontinuing or suspending its performance of the Building Contract and stating the amount (if any) of monies outstanding under the Building Contract. Within such period of notice:

16.1.1 the Beneficiary may give notice to the Contractor expressly confirming its intention to comply with clause 16.1.3 and that the Beneficiary shall become the employer under the Building Contract to the exclusion of the Employer and, upon giving such notice, that shall be the case and the Building Contract shall be and remain in full force and effect notwithstanding any of the grounds in the Contractor's notice under clause 16.1; and

16.1.2 if the Beneficiary has given notice under clause 16.1.1 or under clause 16.3, the Beneficiary shall then as soon as practicable remedy any outstanding breach by the Employer; and

16.1.3 if:

16.1.3.1 the Beneficiary has given notice under clause 16.1.1 then from the date of the Contractor's notice; or

16.1.3.2 the Beneficiary has given notice under clause 16.3 then from the date of the Beneficiary's notice

the Beneficiary shall, by clause 16.1.1, become responsible for all sums properly payable to the Contractor under the Building Contract and for the observance and performance of all of the other duties and obligations on the part of the Employer to be observed and performed under the Building Contract accruing due after the service of such Contractor's notice or Beneficiary's notice (as applicable) but the Beneficiary shall in paying such sums be entitled to the same rights of set-off and deduction as would have applied to the Employer under the Building Contract.

16.2 Notwithstanding anything contained in this Deed and notwithstanding any payments which may be made by the Beneficiary to the Contractor, the Beneficiary shall not be under any obligation to the Contractor nor shall the Contractor have any claim or cause of action against the Beneficiary unless and until the Beneficiary has given notice to the Contractor under either clause 16.1.1 or clause 16.3.

16.3 The Contractor further covenants with the Beneficiary that if requested by the Beneficiary by notice expressly confirming the Beneficiary's intention to comply with clause 16.1.3 and subject to clause 16.1.2 and clause 16.1.3, it shall accept the instructions of the Beneficiary to the exclusion of the Employer in respect of the Development upon the terms and conditions of the Building Contract. The Beneficiary shall then become the employer under the Building Contract to the exclusion of the Employer and the Contractor shall, if so requested, enter into a novation agreement in order to substitute the Beneficiary for the Employer under the Building Contract.

16.4 Where the Contractor has given rights in relation to the Building Contract similar to those contained in this clause 16 to any other person then if both the Beneficiary and any such other person serve notice under clause 16.1 or clause 16.3 or its equivalent the notice served by the Beneficiary shall prevail.

- 16.5 The Employer acknowledges that the Contractor shall be entitled to rely on a notice given to the Contractor by the Beneficiary under clause 16.3 as conclusive evidence that the Beneficiary is entitled to serve such notice and is a party to this Deed to confirm its agreement to this.
- 16.6 The Beneficiary may by notice to the Contractor appoint another person to exercise its rights under this clause 16 subject to the Beneficiary remaining liable to the Contractor as guarantor for its appointee in respect of its obligations under this Deed.
- 16.7 Where the Contractor is seeking to exercise a right to suspend the performance of any duties or obligations under the Building Contract as a result of non-payment or in accordance with s112 of the Housing Grants, Construction and Regeneration Act 1996, the Contractor shall give to the Beneficiary notice of its intention to do so at the same time as it serves notice on the Employer.
- 16.8 Notwithstanding the other provisions of this clause 16, if the Building Contract has for any reason been terminated prior to receipt by the Contractor of a notice from the Beneficiary served under clause 16.1.1 or clause 16.1.3, the Contractor shall on receipt of any such notice from the Beneficiary enter into a new contract with the Beneficiary on the same terms as the Building Contract to continue the services in all respects as if the Building Contract had been transferred to the Beneficiary in accordance with the provisions of this clause 16.

IN WITNESS WHEREOF this Deed has been executed as a deed on the date and year stated above.

EXECUTED AS A DEED BY THE CONTRACTOR

[]

acting by a director and its secretary/two directors

.....
Print name

.....
Signature Director

.....
Print name

.....
Signature Director/Company Secretary

EXECUTED AS A DEED BY THE BENEFICIARY

[]

by affixing hereto its common seal
in the presence of:-

.....
Authorised Signatory Signature

.....
Print name

.....
Job Title

[EXECUTED AS A DEED BY THE CLIENT

[]

by affixing hereto its common seal
in the presence of:-

.....
Authorised Signatory Signature

.....
Print name

.....
Job Title

PLAN 1 - INFRASTRUCTURE SITE



PLAN 2 - ADMINISTRATIVE BOUNDARY