

Wiltshire Council

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SECTION 106 SIDE AGREEMENT RELATING TO

CALNE ROAD, LYNEHAM, WILTSHIRE

between

WILTSHIRE COUNCIL

and

LYNEHAM AND BRADENSTOKE PARISH COUNCIL

IKEN: 133580

THIS DEED is dated

2021

PARTIES

- (1) **WILTSHIRE COUNCIL** of County Hall, Bythesea Road, Trowbridge, Wiltshire, BA14 8JN (**Wiltshire Council**)
- (2) **LYNEHAM AND BRADENSTOKE PARISH COUNCIL** c/o 72 The Green, Poulshot, SN10 1RT (**Lyneham and Bradenstoke Parish Council**)

BACKGROUND

- (A) Wiltshire Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 for the area in which the Land is situated.
- (B) Wiltshire Council has received the Open Space Contribution from the Payer.
- (C) The parties seek to enter into this agreement to allow Lyneham and Bradenstoke Parish Council to complete the Works.
- (D) In consideration of Lyneham and Bradenstoke Parish Council using the Contribution in accordance with the terms of this Agreement and indemnifying Wiltshire Council in respect of any liabilities relating to the Contribution contained within the Section 106 Agreement, Wiltshire Council will transfer the Contribution to Lyneham and Bradenstoke Parish Council.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this Agreement.

Authorised Representative: means the persons respectively designated as such by the parties, the first such persons being set out in Schedule 3 to this Agreement

Contribution: means sum of £40,740.00 (forty thousand, seven hundred and forty pounds);

Controller has the meaning given to it in the UK GDPR;

Data Protection Legislation means the UK GDPR, the Data Protection Act 2018 and any other relevant national laws implementing, supplementing or relating to the derogation from the UK GDPR, and any formal guidance or codes of conduct issued by the Information Commissioner's Office (or other competent authority) in each case as amended, superseded or replaced from time to time;

Development has the same meaning as defined in the Section 106 Agreement;

Director has the same meaning as defined in the Section 106 Agreement;

DPA 2018 means the Data Protection Act 2018;

Interest: means interest at the rate of 4% above the base lending rate of the HSBC Bank Plc from time to time;

Land: means the land at 23 Calne Road, Lyneham, Chippenham, Wiltshire SN15 4PT, shown edged red on the Plan;

Losses: means all claims, liabilities, reasonable costs and reasonable expenses (including reasonable legal expenses).

Open Space Contribution: means the sum received by the Council on 27 January 2016 in accordance with Schedule 1 of the Section 106 Agreement.

Payer: Those who have made payment of the Open Space Contribution to Wiltshire Council under the Section 106 Agreement;

Personal Data has the meaning given to it in the UK GDPR;

Plan: means the plan defined as Plan in the Section 106 Agreement;

Processor has the meaning given to it in the UK GDPR;

Prohibited Act: means:

1.1.1 offering, giving or agreeing to give to any servant of Wiltshire Council any gift or consideration of any kind as an inducement or reward for:

- (a) doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this agreement or any other contract with Wiltshire Council; or
- (b) showing or not showing favour or disfavour to any person in relation to this agreement or any other contract with Wiltshire Council;

1.1.2 entering into this agreement or any other contract with Wiltshire Council where a commission has been paid or has been agreed to be paid by [Name of Contracting Party] or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to Wiltshire Council;

1.1.3 committing any offence:

- (a) under the Bribery Act;
- (b) under legislation creating offences in respect of fraudulent acts; or
- (c) at common law in respect of fraudulent acts in relation to this agreement or any other contract with Wiltshire Council; or

defrauding or attempting to defraud or conspiring to defraud Wiltshire Council

Purpose: means providing improving and/or maintaining adult or children's sport play or recreation facilities or installing and/or maintaining equipment in connection with such facilities on land certified by the Director as being directly relevant to the Development;

Section 106 Agreement: means an agreement dated 3 September 2014 and made between (1) Wiltshire Council and (2) Brian Michael Pickering, Ann Dolores Pickering, AJ Bell Trustees Limited, a copy of which is attached at Schedule 1.

Section 106 Restrictions: means all those conditions contained in the Section 106 Agreement which apply to Wiltshire Council regarding the use of the Open Space Contribution.

UK GDPR: means the retained EU law version of the General Data Protection Regulation (EU) 2016/679), as incorporated into UK law under section 3 of the European Union (Withdrawal) Act 2018 and as defined in the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019, as amended, updated or replaced from time to time;

Working Days: means any day from Monday to Friday (inclusive) which is not Christmas Day, Good Friday or any statutory Bank Holiday.

Works: means the works to deliver the Purpose;

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.
- 1.10 Where there is any conflict or inconsistency between the provisions of the agreement, such conflict or inconsistency shall be resolved according to the following order of precedence:
 - 1.10.1 the clauses of the agreement;
 - 1.10.2 the schedules to this agreement.

2. WILTSHIRE COUNCIL OBLIGATIONS

- 2.1 Wiltshire Council shall transfer the Contribution to Lyneham and Bradenstoke Parish Council within 28 Working Days of receipt of an invoice in accordance with clause 3.1.1.

3. LYNEHAM AND BRADENSTOKE PARISH COUNCIL OBLIGATIONS

- 3.1 Lyneham and Bradenstoke Parish Council shall:
 - 3.1.1 raise an invoice for the Contribution on completion of this agreement;

- 3.1.2 use the Contribution only for the Purpose and to the reasonable satisfaction of Wiltshire Council;
- 3.1.3 complete the Works to the reasonable satisfaction of Wiltshire Council;
- 3.1.4 maintain the Works to the reasonable satisfaction of Wiltshire Council;
- 3.1.5 permit in perpetuity public access to any land that has benefited from the use of the Contribution;
- 3.1.6 place the Contribution in an interest-bearing account from which it and any interest accrued thereon can be identified annually;
- 3.1.7 in the event that the any of the Contribution or any Interest accrued thereon is not used in accordance with this Agreement and any other document referred to in it, it shall be repaid to Wiltshire Council on written demand.
- 3.1.8 within 10 Working Days of any reasonable written request by Wiltshire Council to provide information on the amount of the Contribution held, the interest accrued, the amount expended and the purposes on which it has been expended.

4. WARRANTIES

- 4.1 Each party represents and warrants to the other that following its own investigations, it has full capacity and authority, and all necessary consents, licences and permissions to enter into and perform its obligations under this agreement and that it has not committed a Prohibited Act.
- 4.2 Save as expressly provided in this agreement or any of the documents referred to in it, no representations, warranties or conditions are given or assumed by Wiltshire Council in respect of any information which is provided to Lyneham and Bradenstoke Parish Council by Wiltshire Council and any such representations, warranties or conditions are excluded, save to the extent that such exclusion is prohibited by law.
- 4.3 Nothing in this clause shall limit or exclude the liability of Wiltshire Council or Lyneham and Bradenstoke Parish Council for fraud or fraudulent misrepresentation.

5. INDEMNITIES

- 5.1 Lyneham and Bradenstoke Parish Council shall indemnify and keep indemnified Wiltshire Council against all Losses incurred by Wiltshire Council to the extent that such Losses arise as a result of:
 - 5.1.1 Lyneham and Bradenstoke Parish Council's breach of this Agreement and any other document referred to in it;
 - 5.1.2 any fraudulent or negligent act or any Prohibited Act committed by Lyneham and Bradenstoke Parish Council, its agents or contractors; and/or
 - 5.1.3 any breach of the Section 106 Restrictions.

6. DISPUTE RESOLUTION

- 6.1 In the event of any complaint or dispute arising between the parties in relation to this agreement, the matter should first be referred for resolution to the Authorised Representative of each party (or their nominated representatives).
- 6.2 Should the complaint or dispute remain unresolved within 14 days of the matter first being referred to each Authorised Representative in accordance with clause 6.1, either party may refer the matter to an Executive Director of Wiltshire Council and the Chairman of Lyneham and Bradenstoke Parish Council with an instruction to attempt to resolve the dispute by agreement within 28 days, or such other period as may be mutually agreed by Wiltshire Council and Lyneham and Bradenstoke Parish Council.
- 6.3 In the absence of agreement under clause 6.2, the parties may seek to resolve the matter through mediation under the CEDR Model Mediation Procedure (or such other appropriate dispute resolution model as is agreed by both parties). Unless otherwise agreed, the parties shall bear the costs and expenses of the mediation equally.

7. DATA PROTECTION

- 7.1 Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not remove or replace, a party's obligations under the Data Protection Legislation.
- 7.2 The parties shall comply with their respective obligations set out in Schedule 2 (Data Protection).
- 7.3 Each party shall ensure that it does nothing knowingly or negligently which places the other party in breach of Data Protection Legislation.
- 7.4 The provisions of this clause and Schedule 2 (Data Protection) shall apply during the term of this Contract and indefinitely after its expiry.

8. GENERAL

- 8.1 This agreement and the other documents referred to in it contain the whole agreement between the parties and supersedes and replaces any prior written or oral agreements, representations or understandings between them. The parties confirm that they have not entered into this agreement on the basis of any representation that is not expressly incorporated into this agreement. Nothing in this clause shall exclude liability for fraud or fraudulent misrepresentation.
- 8.2 No forbearance or delay by either party in enforcing its rights will prejudice or restrict the rights of that party and no waiver of any such rights or of any breach of any contractual terms will be deemed to be a waiver of any other right or of any later breach.
- 8.3 Nothing in this agreement will be construed as constituting or evidencing any partnership, contract of employment or joint venture of any kind between the parties or as authorising one party to act as agent for the other. No party will have authority to make representations for, act in the name or on behalf of or otherwise to bind the other party in any way.

9. **VARIATION**

- 9.1 No variation of this agreement will be valid unless recorded in writing and signed by or on behalf of each of the parties to this agreement.

10. **CUMULATION OF REMEDIES**

- 10.1 Subject to the specific limitations set out in this agreement, no remedy conferred by any provision of this agreement is intended to be exclusive of any other remedy except as expressly provided for in this agreement and each and every remedy shall be cumulative and shall be in addition to every other remedy given there under or existing at law or in equity by statute or otherwise.

11. **SEVERANCE**

- 11.1 If any provision (or part of a provision) of this agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision (or part of a provision) shall be deemed deleted. Any modification to or deletion of a provision (or part of a provision) under this clause shall not affect the legality, validity and enforceability of the rest of this agreement.

12. **THIRD PARTY RIGHTS**

- 12.1 Except as expressly provided in this agreement, a person who is not a party to this agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this agreement. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.
- 12.2 The rights of the parties to rescind or agree any amendment or waiver under this deed are not subject to the consent of any other person.

13. **NOTICES**

- 13.1 Notices shall be in writing, and shall be sent to the other party marked for the attention of the person at the address set out for such party in this agreement. Notices may be sent by first-class mail or facsimile transmission provided that facsimile transmissions are confirmed within twenty-four (24) hours by first-class mailed confirmation of a copy. Correctly addressed notices sent by first-class mail shall be deemed to have been delivered seventy-two (72) hours after posting and correctly directed facsimile transmissions shall be deemed to have been received instantaneously on transmission provided that they are confirmed as set out above.

14. **COUNTERPARTS**

- 14.1 This agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute one agreement.
- 14.2 No counterpart shall be effective until each party has executed at least one counterpart.

15. **GOVERNING LAW AND JURISDICTION**

- 15.1 This agreement will be governed by and interpreted in accordance with the law of England and Wales.
- 15.2 Each party irrevocably submits to the exclusive jurisdiction of the courts of England and Wales over any claim or matter arising under or in connection with this agreement.

EXECUTED as a DEED
By affixing of the COMMON SEAL of
WILTSHIRE COUNCIL

in the presence of:

.....
Authorised Officer

EXECUTED as a DEED
by Lyneham & Bradenstoke Parish
Council
acting by and under the signatures of:

[INSERT NAME]
[INSERT POSITION] [SIGNATURE]

[INSERT NAME]
[INSERT POSITION] [SIGNATURE]

in the presence of:

.....
Authorised Officer

Schedule 1 – Section 106 Agreement

Schedule 2 – Data Protection

1 Data Processing

- 1.1 As at the Commencement Date, Wiltshire Council has determined that the performance of this agreement does not require disclosure of Personal Data.
- 1.2 Neither party shall disclose any Personal Data to the other party in connection with this agreement.
- 1.3 The parties acknowledge that each of them retains the role of Controller only for their respective organisation in connection with this agreement.
- 1.4 In the event that Wiltshire Council determines that disclosure of Personal Data is required for the proper performance of this agreement, before either party makes any such disclosure:
 - 1.4.1 the parties shall co-operate in good faith to review relevant requirements;
 - 1.4.2 should Wiltshire Council determine that changes to the terms of this Schedule 2 are necessary to ensure compliance with Data Protection Legislation (the **Required Changes**), Wiltshire Council will provide at least one month's written notice to Lyneham and Bradenstoke Parish Council of the Required Changes (such notice to be given in accordance with clause 13 (Notices)). Lyneham and Bradenstoke Parish Council will upon receipt of such notice confirm that it will accept these changes; and
 - 1.4.3 Lyneham and Bradenstoke Parish Council shall enter into such further agreements relating to compliance with Data Protection Legislation as Wiltshire Council may reasonably require.

Schedule 3 – Authorised Representatives

1.1 AUTHORISED REPRESENTATIVES

(a) Wiltshire Council's Authorised Representative:

Technical Team Manager, Communities and Neighbourhoods, Wiltshire Council,
County Hall, Bythesea Road, Trowbridge. BA14 8JN

(b) Lyneham and Bradenstoke Parish Council's Authorised Representative:

Elizabeth Martin – Parish Clerk

72 The Green, Poulshot, SN10 1RT

Parish.clerk@lynehamandbradenstoke-pc.gov.uk