

DATED

21



BETWEEN

THE CORNWALL COUNCIL

and

MILLBROOK PARISH COUNCIL

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FUNDING AGREEMENT

relating to Residential Neighbourhood payments to Zone 5 Parishes  
(from the COMMUNITY INFRASTRUCTURE LEVY)

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Legal Services  
Cornwall Council  
New County Hall  
Truro, TR1 3AY  
Ref: SB/58686



<b>“Agreement”</b>	means all of the terms and conditions detailed herein together with all Schedules and attachments;
<b>“Approved Use”</b>	means the use set out in Schedule 1 (infrastructure works);
<b>“Clawback”</b>	means the Council’s right to recover the whole or any part of the Funding including any interest that may be payable;
<b>“Commencement Date”</b>	means the date of this Agreement;
<b>“Commencement Notice”</b>	means the notification received by the Council in respect of CIL liable residential developments being undertaken in the Recipient’s parish or jurisdiction;
<b>“Community Infrastructure Levy (CIL)”</b>	means the planning charge introduced by the Planning Act 2008 and came into force on 6 April 2010 through the Community Infrastructure Levy Regulations 2010;
<b>“Confidential Information”</b>	<p>means any information which has been designated as confidential by either Party in writing or that ought to be considered as confidential (however it is conveyed or on whatever media it is stored) including information the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, Intellectual Property Rights and know-how of either Party and all Personal Data and Special Categories of Data within the meaning of the Data Protection Legislation. Confidential Information shall not include information which:</p> <ul style="list-style-type: none"> <li>(i) was public knowledge at the time of disclosure (otherwise than by breach of clause 9 Confidentiality; Data Protection and Freedom of Information);</li> <li>(ii) was in the possession of the receiving Party, without restriction as to its disclosure, before receiving it from the disclosing Party;</li> <li>(iii) is received from a third party (who lawfully acquired it) without restriction as to its disclosure; or</li> <li>(iv) is independently developed without access to the Confidential Information;</li> </ul>
<b>“Data Guidance”</b>	means any applicable guidance, guidelines, direction or determination, framework, code of practice, standard or requirement regarding information governance, confidentiality, privacy or compliance with Data

	Protection Legislation (whether specifically mentioned in this Agreement or not) to the extent published and publicly available or their existence or contents have been notified to the Recipient by the Council and/or any relevant Regulatory Body;
<b>“Data Protection Legislation”</b>	means the General Data Protection Regulation ((EU) 2016/679) (“GDPR”) until it is no longer directly applicable in the UK, the Data Protection Act 2018 and any other applicable national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK;
<b>“EIR”</b>	means the Environmental Information Regulations 2004;
<b>“FOIA”</b>	means the Freedom of Information Act 2000 and any subordinate legislation made under this Act from time to time together with any guidance and/or codes of practice issued by the Information Authority or relevant government department in relation to such legislation and the Environmental Information Regulations 2004;
<b>‘Funding’</b>	means the monies awarded periodically by the Council to the Recipient from the Strategic Share of the CIL as a Neighbourhood portion payment and made in accordance with Clause 3;
<b>“Good Practice”</b>	means the exercise of the degree of competence which would reasonably and ordinarily be expected from the same type of organisation as the Recipient and under the same or similar circumstances;
<b>“Infrastructure”</b>	has the meaning given in section 216(2) of the Planning Act 2008 as amended by regulation 63;
<b>“Initial Term”</b>	means the period commencing on the Commencement Date and ending on the <b><u>31<sup>st</sup> December 2024</u></b> subject to clause 2;
<b>“Intellectual Property Rights”</b>	patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted,

renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

**“Indirect Losses”**

means loss of profits (other than profits directly and solely attributable to the provision of the Services), loss of use, loss of production, increased operating costs, loss of business, loss of business opportunity, loss of reputation or goodwill or any other consequential or indirect loss of any nature, whether arising in tort or on any other basis;

**“Laws”**

means any law, statute, subordinate legislation within the meaning of section 21(1) of the Interpretation Act 1978, bye-law, enforceable right within the meaning of section 2 of the European Communities Act 1972, regulation, order, mandatory guidance or code of practice, judgment of a relevant court of law, or directives or requirements of any Regulatory Body or Relevant Authority with which the Council and the Recipient is bound to comply;

**“Losses”**

means all damage, loss, liabilities, claims, actions, costs, expenses (including the cost of legal and/or professional services) proceedings, demands and charges whether arising under statute, contract or at common law but, excluding Indirect Losses;

**“Personal Data”**

has the meaning given it in the Data Protection Legislation;

**“Prohibited Act”**

means:

- (a) offering, giving or agreeing to give any gift or consideration of any kind as an inducement or reward for:
  - (i) 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 the Council; or
  - (ii) showing or not showing favour or disfavour to any person in relation to this Agreement or any other contract with the Council;
- (b) entering into this Agreement or any other contract with the Council where a commission has been paid or has been agreed to be paid by the Recipient 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 the Council;

- (c) committing any offence:
  - (i) under the Bribery Act;
  - (ii) under legislation creating offences in respect of fraudulent acts; or
  - (iii) at common law in respect of fraudulent acts in relation to this Agreement or any other contract with the Council; or
- (d) defrauding or attempting to defraud or conspiring to defraud the Council;

**‘Regulation(s)’** means the Community Infrastructure Levy Regulations 2010 as amended by the 2012 and 2013 CIL (Amendment) Regulations;

**“Regulatory Body”** means a public organization or government agency that is set up to exercise a regulatory function. This involves imposing requirements, conditions or restrictions, setting the standard for activities, and enforcing in these areas or obtaining compliance;

**“Term”** the period of the Initial Term as may be varied by:

- (a) any extensions to this Agreement which are agreed pursuant to Clause 2 (Extending the Initial Term); or
- (b) the earlier termination of this Agreement in accordance with its terms.

In this Agreement:

- 1.2 This Agreement includes any variations hereto made from time to time and any agreement expressed to be supplemental hereto.
- 1.3 Unless otherwise specified a reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under it and all orders, notices, codes of practice and guidance made under it.
- 1.4 A reference to laws in general is to all local, national and directly applicable supra-national laws in force for the time being, taking account of any amendment, extension, application or re-enactment and includes any subordinate laws for the time being in force made under them and all orders, notices, codes of practice and guidance made under them.
- 1.5 A “person” includes a corporate or unincorporated body.

- 1.6 The singular includes the plural and neuter and vice versa and any gender includes any other gender.
- 1.7 Clause, Schedule and Paragraph headings do not affect the interpretation of this Agreement.
- 1.8 Reference to any statute, enactment, regulation, code, official guidance or other similar instruments shall be 'construed as reference to the statute, enactment, regulation, code, official guidance or other instrument as amended or replaced from time to time by any subsequent enactment, modification, order, regulation, code, official guidance or instrument.
- 1.9 Any reference which immediately before Exit Day (as defined in the European Union (Withdrawal) Act 2018 (EUWA)) was a reference to (as it has effect from time to time) any EU regulation, EU decision, EU tertiary legislation or provision of the European Economic Area (EEA) agreement (EU References) which is to form part of domestic law by application of section 3 of the EUWA shall be read on and after Exit Day as a reference to the EU References as they form part of domestic law by virtue of section 3 of the EUWA as modified by domestic law from time to time.

## **2. TERM OF AGREEMENT**

- 2.1 The Council may extend this Agreement beyond the Initial Term for an additional period or periods totalling not more than two (2) years ("**Extension Period**"), provided that the maximum Term shall not exceed seven (7) years from the Commencement Date. If the Council wishes to extend this Agreement, it shall give the Recipient at least three (3) months' written notice of such intention before the expiry of the Initial Term or subsequent Extension Period.
- 2.2 If the Council gives such notice then the Term shall be extended by the period set out in the notice.
- 2.3 If the Council does not wish to extend this Agreement beyond the Initial Term this Agreement shall expire on the expiry of the Initial Term unless terminated earlier in accordance with clause 10.

## **3. PURPOSE OF THE FUNDING**

The Recipient shall use the Funding only for the Approved Use more particularly detailed in Schedule 1 and in accordance with the terms and conditions set out in this Agreement. The Funding shall not be used for any other purpose without the prior written agreement of the Council.

## **4. PAYMENT OF THE FUNDING**

- 4.1 Subject to the provisions of this Agreement the amount of Funding provided by the Council to the Recipient for the Approved Use will be agreed and recorded annually or bi-annually, subject to whether the Council has received a valid Commencement Notice, such determination being made solely and exclusively by the Council.

- 4.2 Any payment of the Funding is separate from any capital or other funding that may be provided at a later date.
- 4.3 The availability of the Funding is at all times subject to the Recipient's compliance with the terms of this Agreement and any rules, regulations or restrictions of any other relevant regulatory authority or grant funds.
- 4.4 Any payment of part of the Funding under this Agreement is without prejudice to the Council's rights to refuse to pay any further part of the Funding or to exercise its rights to require repayment in accordance with the provisions of this Agreement of the whole or any part of the Funding previously paid to the Recipient.

## **5. OVERPAYMENT AND CLAWBACK**

- 5.1 The Recipient shall promptly repay to the Council any money incorrectly paid to it either as a result of an administrative error or otherwise. This includes (without limitation) situations where either an incorrect sum of money has been paid or where Funding monies have been paid in error before all conditions attaching to the Funding have been complied with by the Recipient.
- 5.2 If a Clawback is imposed a notice will be sent to the Recipient setting out the amount of overpayment that the Council considers has occurred together with the level of Clawback imposed.
- 5.3 If a Clawback is imposed the Recipient shall either pay the amount or agree to the Clawback being offset from a future payment of Funding, as the case may be.
- 5.4 The Recipient shall be at liberty to make representations in writing to the Council setting out the reasons it considers that the Clawback should be adjusted together with evidence in sufficient detail to enable the Council to reconsider the requirement for the clawback provided always that the Council's decision shall be final and binding.

## **6. RECIPIENT'S OBLIGATIONS**

- 6.1 In consideration of the payment of and use of the Funding the Recipient shall:
  - 6.1.1 use the Funding only for the purpose and in accordance with section 216(2) of the Planning Act 2008 and Regulation 59 of the Regulations;
  - 6.1.2 ensure delivery of the works constituting the Approved Use in accordance with the terms of this Agreement;
  - 6.1.3 ensure that all legal and regulatory requirements are complied with in the delivery of the Approved Use to include (but not limited to) the obtaining of the Planning Permission, compliance with the Highways Act 1980, compliance with the Public Contracts Regulations 2015 and compliance with Health and Safety at Work Act 1974, the Management of Health and Safety at Work Regulations 1992;
  - 6.1.4 comply with all statutory registration requirements and exercise proper skill and diligence in the spending of the Funding;



- 6.1.5 spend their Funding within five (5) years of receipt or promptly return it or the remainder of it (where some but not all has been applied to the Approved Use) to the Council.
- 6.1.6 keep the records referred to in Clause 6.1.9 for a minimum of 7 years following the spending of the Funding;
- 6.1.7 provide true and comprehensive copies of the records referred to in Clause 6.1.9 and Schedule 2 to the Council on reasonable notice to enable the Council to draft their annual report under the Regulations;
- 6.1.8 acknowledge that if the Recipient fails to provide any record maintained pursuant to Clause 6.1.9 on receipt of reasonable notice, the Council has the right to attend the Recipient's offices, and inspect the records and take copies of the records at all reasonable times subject always to the requirement for both Parties to comply with Data Protection Legislation;
- 6.1.9 provide to the Council an annual report no later than 01 December, setting out the information required in Regulation 121A (including the sums the Recipient retains unspent, of the Funding) and how the Funding for that year has been spent;
- 6.1.10 at all times during the period of this Agreement and for a minimum period of 6 years thereafter:
  - i) keep secure and give to the Council or make available for inspection at any reasonable hour by the Council, its internal auditors, the Commissioner for Local Administration (Ombudsman), the external auditor, or any of their representatives all original and copy records, documents, information, statements and papers which may be acquired or produced by the Recipient or by any sub-contractor in the performance of the Agreement;
  - ii) ensure the maintenance of a clear and unambiguous audit trail at all times in accordance with best practice;
- 6.1.11 ensure that it appoints a nominated representative whose details will be notified in writing to the Council within 7 days of completion of the Agreement who will act as its representative and who will be responsible for ensuring the proper control and management of the Funding and the supervision and submission of all information required by the Council. If the representative changes from time to time the Recipient shall notify the Council in writing within 7 days of such replacement;
- 6.1.12 on becoming aware, immediately notify the Council's representative by letter or email of any actual or threatened or alleged claims, demands, investigations or proceedings, whether civil or criminal in respect of the Funding against the Recipient;
- 6.1.13 ensure that local products and services are used where possible in order to support the local economy;

## **7. COUNCIL'S OBLIGATIONS**

- 7.1 In consideration of the Approved Use to be delivered by the Recipient under this Agreement and the terms and conditions of this Agreement being complied with by the Recipient the Council agrees to pay to the Recipient the Funding in accordance with Clause 4 subject to the terms and conditions set out in this Agreement.
- 7.2 The Council shall appoint a nominated representative whose details will be notified in writing to the Recipient within 7 days of completion of the Agreement. If the representative changes from time to time the Council shall notify the Recipient in writing within 7 days of such replacement.

## **8. ACKNOWLEDGMENT AND PUBLICITY**

- 8.1 The Recipient shall acknowledge the support of the Council in any materials that refer to projects supported with the CIL payment and in any written or spoken public presentations about the Project. Such acknowledgements (where appropriate or as requested by the Council) shall include the Council's name and logo (or any future name or logo adopted by the Council) using the templates provided by the Council from time to time.
- 8.2 In using the Council's name and logo, the Recipient shall comply with all reasonable branding guidelines issued by the Council from time to time.
- 8.3 The Recipient agrees to participate in and co-operate with promotional activities relating to the Funding that may be instigated and/or organised by the Council.
- 8.4 The Council may acknowledge the Recipient's involvement in Funding payments made as appropriate without prior notice. The Council shall acknowledge the support of the Recipient in any materials that refer to the Funding and in any written or spoken public presentations about projects supported with the Funding. Such acknowledgements (where appropriate or as requested by the Recipient) shall include the Recipient's name and logo (or any future name or logo adopted by the Recipient) using the templates provided by the Recipient.
- 8.5 The Recipient shall comply with all reasonable requests from the Council to facilitate visits, provide reports, statistics, photographs and case studies that will assist the Council in their promotional and fundraising activities relating to projects supported with the Funding.

## **9. CONFIDENTIALITY; DISCLOSURE OF INFORMATION; FREEDOM OF INFORMATION AND EQUALITY ACT;**

### **9.1 CONFIDENTIALITY**

- 9.1.1 Except where otherwise provided for in this Agreement, Confidential Information is owned by the Party that discloses it (the "**Disclosing Party**") and the Party that receives it (the "**Receiving Party**") has no right to use it.
- 9.1.2 Subject to Clauses 9.1.3 and 9.1.4, the Receiving Party agrees:

- (a) to use the Disclosing Party's Confidential Information only in connection with the Receiving Party's performance under this Agreement;
- (b) not to disclose the Disclosing Party's Confidential Information to any third party or to use it to the detriment of the Disclosing Party; and
- (c) to maintain the confidentiality of the Disclosing Party's Confidential Information and to return it immediately on receipt of written demand from the Disclosing Party.

9.1.3 The Receiving Party may disclose the Disclosing Party's Confidential Information:

- (a) in connection with any dispute resolution under Clause 14 (Dispute Resolution);
- (b) in connection with any litigation between the Parties;
- (c) to comply with the law;
- (d) to its staff, consultants and sub-contractors, who shall in respect of such Confidential Information be under a duty no less onerous than the Receiving Party's duty set out in clause 9.1.2;
- (e) to comply with a regulatory bodies request.

9.1.4 The obligations in clause 9.1 and clause 9.2 will not apply to any Confidential Information which:

- (a) is in or comes into the public domain other than by breach of this Agreement;
- (b) the Receiving Party can show by its records was in its possession before it received it from the Disclosing Party; or
- (c) the Receiving Party can prove that it obtained or was able to obtain from a source other than the Disclosing Party without breaching any obligation of confidence.

9.1.5 The obligations in clause 9.1 and clause 9.2 shall not apply where the Confidential Information is related to an item of business at a board meeting of the Council or of any committee, sub-committee or joint committee of the Council or is related to an executive decision of the Council and it is not reasonably practicable for that item of business to be transacted or that executive decision to be made without reference to the Confidential Information, provided that the Confidential Information is exempt information within the meaning of Section 101 of the Local Government Act 1972 (as amended), the Council shall consider properly whether or not to exercise its powers under Part V of that Act or (in the case of executive decisions) under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as amended to prevent the disclosure of that Confidential Information and in doing so shall give due weight to the interests of the Recipient and where reasonably practicable shall consider any representations made by the Recipient.

## 9.2 DATA PROTECTION

9.2.1 The Parties acknowledge and shall comply with the provisions of the Data Protection Legislation and Data Guidance and any related legislation insofar as the same relates

to the terms of this Agreement. The Parties do not anticipate any processing of Personal Data for the provision of Funding under this Agreement. If Personal Data is processed under this Agreement, then in advance of doing so the Parties shall agree an appropriate amendment that will comply with the provisions of the Data Protection Legislation.

### 9.3 FREEDOM OF INFORMATION AND TRANSPARENCY

9.3.1 The Parties acknowledge their respective duties under the FOIA and the EIR and shall give all reasonable assistance to each other where appropriate or necessary to comply with such duties.

9.3.2 The Parties acknowledge that, except for any information which is exempt from disclosure in accordance with the provisions of the FOIA, the content of this Agreement is not Confidential Information.

9.3.3 Notwithstanding any other provision of this Agreement, the Recipient hereby consents to the publication of this Agreement in its entirety including from time to time agreed changes to this Agreement subject to the redaction of information that is exempt from disclosure in accordance with the provisions of the FOIA.

9.3.4 In preparing a copy of this Agreement for publication pursuant to clause 9.3.4 the Council may consult with the Recipient to inform its decision making regarding any redactions but the final decision in relation to the redaction of information shall be at the Council's absolute discretion.

9.3.5 The Recipient shall comply with any requirements (including compliance with any appropriate information assurance scheme and the Computer Misuse Act 1990) in relation to its security policies, procedures and control of Confidential Information.

9.3.6 Each Party shall be responsible for any costs associated with its own compliance with the provisions of this clause 9.3.

### 9.4 EQUALITY ACT

In respect of the use of the Funding the Recipient shall, where appropriate, comply with the Equality Act 2010 and all other relevant related statutory and regulatory requirements relating to equal opportunities and shall not treat any person or group of people less favourably than another on the grounds of race, colour, religion, belief, ethnicity, gender, age, disability, nationality, marital status and civil partnership, pregnancy and maternity or sexual orientation;

## 10. TERMINATION

10.1 This Agreement shall continue until the date set out in Clause 2.1 unless otherwise terminated in accordance with terms of this Agreement.

10.2 The Council may terminate the Agreement at any time by giving at least one (1) months' notice in writing (or such other longer period as is specified in the notice) to the Recipient.

10.3 In the event of termination of this Agreement:

- 10.3.1 the Council shall cease to be under any obligation to the Recipient and all payments of Funding shall cease immediately;
- 10.3.2 the Recipient shall promptly return all Funding monies paid to it, or proportion thereof, not properly utilised or applied as set out in CIL Regulation 59.
- 10.4 Termination or expiry of this agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination or expiry.

## **11. WITHHOLDING, SUSPENDING AND REPAYMENT OF FUNDING**

- 11.1 The Council will pay to the Recipient any Funding due, by the end of April and/or October each year, as appropriate, subject to the Council having received a valid Commencement Notice, such determination being made solely and exclusively by the Council. However, without prejudice to the Council's other rights and remedies, the Council may at its discretion withhold or suspend payment of the Funding and/or require repayment of all or part of the Funding (together with associated costs) if:
  - 11.1.1 the Recipient uses the Funding for purposes other than those for which they have been awarded;
  - 11.1.2 the Council considers that the Recipient has not spent the Funding within 5 years from the date of the grant;
  - 11.1.3 the Recipient is, in the reasonable opinion of the Council, delivering the Approved Use in a negligent manner;
  - 11.1.4 the Recipient commits or committed a Prohibited Act;
  - 11.1.5 an offence is committed by the Recipient, or any body contracted by the Recipient delivering the Approved Use, under the Bribery Act 2010 or any related subsequent legislation, or Section 117(2) of the Local Government Act 1972
  - 11.1.6 the Recipient fails to comply with any of the terms and conditions set out in this Agreement and fails to rectify any such failure within thirty (30) days of receiving written notice detailing the failure.
- 11.2 In the event of any of the circumstances set out in 11.1, the Council reserves the right to terminate the contract immediately.
- 11.3 Wherever under the Agreement any sum of money is recoverable from or payable by the Recipient (including any sum that the Recipient is liable to pay to the Council in respect of any breach of the Agreement), the Council may unilaterally deduct that sum from any future Funding then due, or which at any later time may become due to the Recipient under the Agreement or under any other agreement or contract with the Council.
- 11.4 The Recipient shall make any payments due to the Council without any deduction whether by way of set-off, counterclaim, discount, abatement or otherwise.

- 11.5 Should the Recipient be subject to financial or other difficulties which are capable of having a material impact on its effective delivery of the Approved Use or compliance with this Agreement it will notify the Council as soon as possible so that, if possible, and without creating any legal obligation, the Council will have an opportunity to provide assistance in resolving the problem or to take action to protect the Council and the Funding.

## **12. LIMITATION OF LIABILITY**

- 12.1 The Council accepts no liability for any consequences, whether direct or indirect, that may come about from the use of the Funding or from withdrawal of the Funding. The Recipient shall indemnify and hold harmless the Council, its employees, agents, officers or sub-contractors with respect to all claims, demands, actions, costs, expenses, losses, damages and all other liabilities arising from or incurred by reason of the actions and/or omissions of the Recipient in relation to the application of the Funding, the non-fulfilment of obligations of the Recipient under this Agreement or its obligations to third parties.
- 12.2 The Recipient shall effect and maintain with a reputable insurance company a policy or policies in respect of all risks which may be incurred by the Recipient, arising out of the Recipients performance of the Agreement, including death or personal injury, loss or damage to property or any other loss, not limited to public liability insurance and employers liability insurance.
- 12.3 The Council accepts no liability for the future maintenance or repair of any projects supported with the Funding and the Council's liability under this Agreement is limited to the payment of the Funding.

## **13. FORCE MAJEURE**

Both Parties shall be released from their respective obligations in the event of any national emergency, war, prohibitive government regulations or in the case of cessation of funding to the Council or for any other cause beyond the reasonable control of the Parties or either of them which renders the performance of this Agreement impossible whereupon all monies not used in the provision of the Project and paid in advance by the Council to the Recipient shall be returned to the Council.

## **14. DISPUTE RESOLUTION**

- 14.1 Any disputes or differences arising between the Parties in respect of the construction or effect of this Agreement, or the rights, duties and liabilities of the Parties hereinunder, or any matter or event connected with or arising out of the Agreement shall be resolved by the Parties negotiating in good faith.
- 14.2 The submission of either Party to clause 14.1 above shall not limit their right to commence any proceedings in any court of competent jurisdiction in England and Wales.

**15. SEVERANCE**

If any term or provision in this Agreement shall be held to be illegal or unenforceable, in whole or in part, under any enactment or rule of law, such term or provision or part shall to that extent be deemed not to form part of this Agreement but the validity and enforcement of the remainder of this Agreement shall not be affected.

**16. AGENCY AND JOINT VENTURE EXCLUDED**

Nothing contained in this Agreement shall be so construed as to constitute either Party to be the agent of the other nor shall this Agreement operate so as to create a legal partnership, company or joint venture of any kind between the Parties hereto.

**17. AUTHORITY**

Each Party hereto warrants and represents to each of the others that it has the full authority, power and capacity to enter into this Agreement, and that all necessary actions have been taken to enable it lawfully to enter into this Agreement.

**18. UK SUBSIDY CONTROL**

- 18.1 If any court or person with requisite standing alleges that all or any part of the Funding provided by the Strategic CIL under this Agreement breaches the UK Subsidy Control regime, the Parties shall work together to address and mitigate the allegations made and if required establish such alternative means of funding as is lawful.
- 18.2 If any court or person with requisite standing requires all or any part of the Funding provided by the Strategic CIL under this Agreement to be recovered by reason of a breach of the UK Subsidy Control regime and no lawful alternative means of funding can be established, then the Council may claw back any payment already made to the Recipient pursuant to this Agreement to the extent that such payment is unlawful and required at law to be repaid.

**19. AMENDMENTS TO AGREEMENT**

This Agreement may not be amended or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of the Parties hereto.

**20. ENTIRE AGREEMENT**

Each party acknowledges that this Agreement and any Appendices thereto contain the whole Agreement between the parties and supersedes any previous agreement between the parties whether written or oral.

**21. NOTICE**

Any notice to be served by either of the Parties on the other shall be in writing and signed by or on behalf of the Party giving it and sent by pre-paid recorded delivery or

registered post to the address set out at the start of this Agreement, in the case of the Council marked for the attention of

Infrastructure Group Leader, Cornwall Council,  
Planning Policy, Room 3B, Pydar House, Pydar Street,  
Truro TR1 1XU

and in the case of the Recipient marked for the attention of

The Parish Clerk, Millbrook Parish Council,  
The Parade, Millbrook, Torpoint PL10 1AX

or in either case at such address and marked for such other attention as may be notified in writing by the relevant Party to the other Party from time to time for this purpose.

## **22. COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all the counterparts together shall constitute the one Agreement.

## **23. RIGHTS OF THIRD PARTIES**

No person other than a contracting party may enforce the provisions of this Agreement by virtue of the Contracts (Rights of Third Parties) Act 1999 but this does not affect any right or remedy of a third party which exists or is available apart from the Act.

## **24. GOVERNING LAW & JURISDICTION**

This Agreement shall be governed by English law and the courts of England shall have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement.

## **25. ELECTRONIC SIGNATURES**

Each Party agrees to sign this Agreement by electronic signature (whatever form the electronic signature takes) and that this method of signature is as conclusive of our intention to be bound by this Agreement as if signed by each Party's manuscript signature.



**IN WITNESS** of which the Parties have caused this document to be duly executed as a deed the day and year first above written.

**EXECUTED AS A DEED** by affixing the )  
COMMON SEAL of **THE CORNWALL** )  
**COUNCIL** in the presence of: )

.....  
Authorised Officer

**EXECUTED AS A DEED** by )  
**MILLBROOK PARISH COUNCIL** )  
acting by: )

.....  
Member

.....  
Signatory Full Name

.....  
Member

.....  
Signatory Full Name

**SCHEDULE 1**

**Infrastructure**

59.—(1) A charging authority (the Council) must apply CIL to funding the provision, improvement, replacement, operation or maintenance of infrastructure to support the development of its area.

(4) For the purposes of this regulation, any reference to applying CIL includes a reference to causing it to be applied, and includes passing CIL to another person for that person to apply to funding the provision, improvement, replacement, operation or maintenance of infrastructure.

(5) This regulation is subject to regulations 59E, detailed below:

**[ 59E.— Recovery of CIL passed in accordance with regulation 59A or 59B**

(1) This regulation applies to CIL receipts received by a local council in accordance with regulation 59A or 59B that the local council—

- (a) has not applied to support the development of its area within 5 years of receipt; or
- (b) has applied otherwise than in accordance with regulation 59C.

(2) The charging authority may serve a notice on the local council requiring it to repay some or all of the CIL receipts that this regulation applies to.

(3) A notice under paragraph (2) will be valid if it contains the following information—

- (a) the amount of CIL receipts to be repaid;
- (b) the reasons for requiring those receipts to be repaid; and
- (c) the date by which repayment is to be made which must be no earlier than 28 days from the day the notice is served.

(4) On receipt of a valid notice the local council must send to the charging authority any CIL receipts it has not spent up to the value set out under sub-paragraph (3)(a) within the time set out under sub-paragraph (3)(c).

(5) If the local council is unable to repay the full amount set out under sub-paragraph (3)(a) out of unspent CIL receipts, the charging authority must recover the rest of that amount out of future CIL receipts that it would otherwise have to pass to the local council in accordance with regulation 59A or 59B.

(6) If the charging authority recovers CIL receipts in accordance with paragraph (5) it must serve a notice on the local council when those receipts would otherwise be passed to the local council stating—

- (a) the amount of CIL receipts recovered; and
- (b) the amount of CIL receipts still to be recovered by the charging authority from the local council.

(7) A charging authority may withdraw a notice served under paragraph (2) at any time and if it does so any unspent CIL receipts recovered under paragraph (4) or (5) in accordance with the withdrawn notice must be returned to the local council.

(8) A charging authority and a local council may at any time vary the terms of a notice served under paragraph (2) by agreement.

(9) Part 9 (enforcement) does not apply in relation to this regulation.

(10) CIL receipts recovered under this regulation must be used by the charging authority to support the development of the area of the local council they are recovered from by funding—

- (a) the provision, improvement, replacement, operation or maintenance of infrastructure;
- or
- (b) anything else that is concerned with addressing the demands that development places on an area.

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Notes

<sup>1</sup> Added by Community Infrastructure Levy (Amendment) Regulations 2013/982 reg.8(3) (April 25, 2013: insertion has effect subject to transitional provision specified in SI 2013/982 reg.12)

## SCHEDULE 2

### Reporting on Funding Spend

The Recipient shall report annually to the Council on how the Funding granted has been applied to the Project. The financial report must include the following details as a minimum:-

Prepare a report for any financial year (“the **reported year**”) in which the Recipient receives Funding.

The report must include—

- (a) the total Funding received for the reported year;
- (b) the total expenditure of the Funding for the reported year;
- (c) summary of the expenditure from the Funding during the reported year including—
  - (i) the items to which Funding has been applied; and
  - (ii) the amount of expenditure Funding on each item; and
- (d) details of any notices received from the Council requiring repayment of some or all of the Funding receipts that have not been applied in accordance with this Agreement, including—
  - (i) the total value of Funding receipts subject to notices for return served in accordance with this Agreement during the reported year;
  - (ii) the total value of Funding receipts subject to a notice served in accordance with this Agreement in any year that has not been paid to the relevant charging authority by the end of the reported year.
- (e) the total amount of—
  - (i) Funding receipts for the reported year retained at the end of the reported year; and
  - (ii) Funding receipts from previous years retained at the end of the reported year.

The Recipient must—

- (a) publish the report—
  - (i) on its website;
  - (ii) on the website of the Council for the area if the Recipient does not have a website; or
  - (iii) within its area as it considers appropriate if or the Council refuses to put the report on its website in accordance with paragraph (ii); and
- (b) send a copy of the report to the Council from which it received Funding, no later than 30<sup>th</sup> November following the reported year.