

JB
3C Legal Practice Ref: SCDC-S106-020928

DATED 18 AUGUST 2023

SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL (1)

and

CAMBRIDGESHIRE COUNTY COUNCIL (2)

SECTION 106 AGREEMENT relating to BIODIVERSITY NET
GAIN HABITAT SCHEME at LOWER VALLEY FARM,
FULBOURN

THIS AGREEMENT is made the 18 day of AUGUST 2023

BETWEEN:-

- (1) **SOUTH CAMBRIDGESHIRE DISTRICT COUNCIL** of South Cambridgeshire Hall, Cambourne Business Park, Cambourne, Cambridge, CB23 6EA ("the District Council")
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of New Shire Hall, Enterprise Campus, Alconbury Weald, Huntingdon, PE28 4YE ("the Provider and Freehold Owner of the Site")

W H E R E A S :-

- (1) The Provider is the owner in fee simple of the Habitat Site under title number CB4350 and the Provider of the Biodiversity Units
- (2) The District Council is the local planning authority for the area in which the Habitat Site is located.

1 DEFINITIONS

For the purposes of this Agreement the following expressions shall have the following meanings:

"1990 Act"	means the Town and Country Planning Act 1990;
"2021 Act"	means the Environment Act 2021 (as amended);
"Biodiversity Units"	means the Biodiversity Units calculated by reference to the value of the land within the Habitat Site;
"District Council Monitoring Fee"	means the sum of two thousand two hundred pounds (£2,200) being a contribution towards the monitoring of the proper and timely performance of the Provider's obligations under the terms of this Agreement;
"District Council Ecologist Monitoring Fee"	means the sum of thirty three thousand three hundred pounds (£33,300) Indexed Linked paid by way of annual instalments each of three thousand three hundred and thirty pounds (£3,330) for the first five (5) years from the date of this Agreement and

	thereafter payable at years ten (10), fifteen (15). Twenty (20), twenty five (25) and year thirty (30) to cover the cost of monitoring the Habitat Site and reviewing the Management Plan and the Monitoring Report;
"Expert"	means a person of at least ten (10) years post qualification experience in the subject matter of the dispute
"Habitat Creation Works"	The works to be undertaken to the Habitat Site to create new habitats and make it available for the provision of Biodiversity Units;
"Habitat Data Information"	means the biodiversity net gain data information to be attached to the Monitoring Report
"Habitat Data Information Form"	Means the form provided by the Council to the Provider in accordance with clause 1.1 of Schedule 2 which form shall only require such information as is required in order for the Council to undertake compliance with the Management Plan
"Habitat Site"	means the Habitat Site at Lower Valley Farm, Fulbourn, Cambridge on which the Biodiversity Units will be secured;
"Habitat Site Plan"	means the Habitat Site as outlined in red on the plan and appended at Schedule Three;
"Index"	means the CPI or such other index as may be agreed;
"Index Linked"	means the indexation to be applied and adjusted pursuant to clause 10 and by reference to the CPI and to be linked to the

	specified Contribution payments as set out in Schedule One and the term "Indexation" shall be construed accordingly;
"The Management Plan"	means the Management Plan which will include details for the delivery of the Habitat Creation Works, and the ongoing management and monitoring of the Habitat Site throughout the agreed term;
"The Monitoring Report"	means the Monitoring Report which will include the Habitat Data Information and detail the monitoring survey results and any requirements for amending the Management Plan going forward
"Working Day"	means Monday to Friday inclusive except Christmas Day Good Friday and any bank and public holidays for the time being in England
"Year One"	means the year 2023

2.0 CONSTRUCTION OF THIS AGREEMENT

- 2.1 Where in this Agreement reference is made to any clause, paragraph or schedule or recital such reference (unless the context otherwise requires) is a reference to a clause, paragraph or schedule or recital in this Agreement.
- 2.2 Words importing the singular meaning where the context so admits include the plural meaning and vice versa.
- 2.3 Words of the masculine gender include the feminine and neuter genders and words denoting actual persons include companies, corporations and firms and all such words shall be construed interchangeable in that manner.

- 2.4 Wherever there is more than one person named as a party and where more than one party undertakes an obligation all their obligations can be enforced against all of them jointly and against each individually unless there is an express provision otherwise.
- 2.5 Any reference to an Act of Parliament shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans, regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 2.6 Reference to any party to this Agreement shall include the successors in title to that party and to any deriving title through or under that party and in the case of the District Council the successors to their respective statutory functions.

3.0 LEGAL BASIS

- 3.1 The covenants, restrictions and requirements imposed upon the Provider under this Agreement create obligations and are enforceable by the District Council as local planning authority against the Provider
- 3.2 This Agreement is entered into pursuant to Section 106 of the 1990 Act Section 111 of the 1972 Act and Section 1 of the 2011 Act.

4.0 VAT

- 4.1 All consideration given in accordance with the terms of this Agreement shall be exclusive of any value added tax properly payable.

5. NO FETTER OF DISCRETION

- 5.1 Nothing (contained or implied) in this Agreement shall fetter or restrict the District Council's statutory rights powers discretions and responsibilities.

6.0 JURISDICTION

- 6.1 This Agreement is governed by and interpreted in accordance with the law of England.

7.0 DISPUTE RESOLUTION

- 7.1 If any dispute arises between any or all of the parties with respect to a matter falling for determination under this Agreement (other than over an issue of law or interpretation of this Agreement), and the dispute persists 6 weeks after it is raised in writing by any party then
- 7.1.1 the dispute may at the instance of any disputing party be referred to an Expert; or
- 7.1.2 in the absence of agreement within fifteen (15) Working Days of the notice invoking this clause, then the disputing party may seek nomination of an Expert between the parties

7.2 An Expert shall;

- 7.2.1 not be liable in the making of his or her decision save to the extent in law as provided in relation to the decisions of an expert;
- 7.2.2 give each disputing party the opportunity to comment on the representations of the other
- 7.2.3 make a decision that is final and conclusive as between the disputing parties to such dispute (except in regard to matters of law or in the case of manifest error); and
- 7.2.4 be replaced by a fresh appointee in the event of him or her becoming at any time unable or unwilling for any reason to proceed to discharge his or her functions such fresh appointee to be appointed in the manner prescribed in clause 7.1; and
- 7.2.5 make his or her decision within six (6) weeks of being appointed.

7.3 The costs of appointing an Expert under clause 7.1 shall be shared equally by the parties involved in the dispute except where the Expert takes the view that one party has acted unreasonably in which case the Expert shall have binding discretion as to apportionment of those costs.

8.0 Local Land Charge

8.1 This Agreement will be registered as a Local Land Charge by the District Council

9. Release of Habitat Site

9.1 For the avoidance of doubt any part of the Habitat Site that has been allocated shall cease to be subject to the provisions of this Agreement on the date that is thirty years from Year One

10.0 Indexation

10.1 Each of the sums payable under Schedule One shall be adjusted in accordance with movements in the Index from the date of this Agreement until the date on which the final payment is made

11.0 Legal Costs

11.1 The Provider shall pay on completion of this Agreement the reasonable and proper legal costs of the District Council incurred in the negotiation and execution of this Agreement

12.0 Failing to comply

12.1 In the case of material default of compliance by the Provider as to the Habitat Site the District Council shall have the rights (but shall be under no obligation in respect thereof), so far as shall be reasonably necessary to rectify any default in addition to all or any statutory powers it might have in this regard, and to do any of the following in respect of the Habitat Site having first given written notice to the

Provider of its intention so to exercise the said rights of any of them PROVIDED THAT the District Council shall have first given to the Provider a written notice confirming what default has occurred and what works are required in order to rectify such default and (other than in the case of emergency works where no such notice shall be required) given the Provider a reasonable period of time in which to exercise such works as are specified in the written notice (such period to be not less than twenty eight (28) Working Days):-

- 12.2 Enter upon the Habitat Site with or without vehicles and equipment;
- 12.3 Itself or themselves carry out such works as shall be appropriate in respect of the Habitat Site including the removal of any matter or thing on that part of the site
- 12.4 Maintain the Habitat Site and replace any relevant planting; and
- 12.5 Claim all its or their reasonable costs from the Provider of entry to the Habitat Site to enable the carrying out of the required works, the costs of maintenance and of replacement habitat where required and the cost of any Court proceedings

13. DELIVERY

The provisions of this Agreement shall be of no effect until this Agreement has been dated

14. The Provider's covenants

- 14.1 The Provider covenants with the District Council as set out in the First Schedule

15. The District Council's Covenants

- 15.1 The District Council covenant with the Provider as set out in the Second Schedule

IN WITNESS whereof the parties hereto have executed this Agreement on the day and year first before written.

SCHEDULE ONE
Obligations of the Provider

The Provider covenants with the District Council

- 1.1 To submit the Monitoring Report and Management Plan in writing no later than the first August on Year One (1) year (2) year (3) year (4) year (5) year (10) fifteen (15) twenty (20) twenty five (25) and year (30) to the District Council for written approval
- 1.2 To provide to the District Council evidence of compliance with any actions required by the District Council in its written response to the Provider on the Monitoring Report and Management Plan
- 1.3 To be responsible for the delivery management and monitoring of each part of the Habitat Site in accordance with the Management Plan a subject to paragraph 2 below.
- 1.4 Not to allocate any part of the Habitat Site as Biodiversity Units unless any required Habitat Site Creation Works for that part of the Habitat Site have been carried out.1.5 To be responsible for complying with all relevant regulations of the Act relating to the delivery and management of the Habitat Site.
- 1.6 To confirm in writing when the Habitat Creation Works for any part of the Habitat Site have been completed and for a period of thirty years after the completion of the Habitat Creation Works to manage and maintain the related part of the Habitat Site as Biodiversity Habitat in accordance with the Management Plan.
- 1.7 To pay the District Council the District Council Monitoring Fee no later than the first August of Year One
- 1.8 To pay the District Council the District Council Ecologist Monitoring Fee no later than the first August of each of the relevant years

2. Release of Habitat Site

- 2.1 For the avoidance of doubt any part of the Habitat Site that has been allocated shall cease to be subject to the provisions of this Agreement on the date that is thirty years after the date of the completion of the Habitat Works.
- 2.2 The Provider will provide to the District Council written notification advising if any part of the Habitat Site that has not previously been allocated will no longer be used for the purposes of habitat mitigation and such land shall cease to be subject to the terms of this Agreement upon provision of such notification.

3. Allocation

- 3.1 The Provider shall maintain a record to include details of the habitat types to be provided of the capacity of Biodiversity Units remaining within the Habitat Site and provide a copy of that record annually on 1 August commencing in Year One to the District Council until such time as all of the Biodiversity Units in the Habitat Site have been allocated, or until the parties agree that there shall be no further allocations of Biodiversity Units or until such time as the Provider provides notice pursuant to paragraph 2.2 of this Schedule that any remaining capacity in the Habitat Site will cease to be used for habitat mitigation.
- 3.2 The Provider shall not allocate any part of the Habitat Site as Biodiversity Units unless there is sufficient capacity remaining in the Habitat Site

SCHEDULE TWO

Obligations of the District Council

1. The District Council covenants with the Provider in the following terms

- 1.1 To provide to the Provider the Habitat Data Information Form on the first of August on Year One (1) year two (2) year three (3) year four (4) year five (5) year ten (10) year fifteen (15) year twenty (20) year twenty five (25) and year thirty (30)
- 1.2 Following receipt of both the Monitoring Report and the Management Plan the District Council will by the first of December of the relevant year provide a written response to the Provider with any comments on and or actions required to be taken by the Provider

SCHEDULE THREE

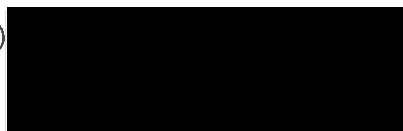
HABITAT SITE PLAN

The **COMMON SEAL** of)

CAMBRIDGESHIRE COUNTY)

COUNCIL was hereunto)

affixed in the presence of:)



979/23

Authorised Signatory

The **COMMON SEAL** of **SOUTH**)

CAMBRIDGESHIRE DISTRICT)

COUNCIL was hereunto affixed)

in the presence of:-)



08/18/20

Authorised Signatory

