



dated 22 AUGUST 2023

The Council of the City of Manchester
and
The Secretary of State for Education
and
Star Academies

Section 106 Agreement

relating to land at Bignor Street in the City of Manchester

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Agreement

dated 22 AUGUST 2023

at 15.28

Parties

- (1) **The Council of the City of Manchester** of Town Hall, Albert Square, Manchester (the **Council**) of the first part,
- (2) **The Secretary of State for Education** of Sanctuary Buildings, Great Smith Street, London SW1P 3BT (the **Owner** which expression shall include the successors in title and assigns of the Owner) of the second part, and
- (3) **Star Academies** (company registration number 07353849) whose registered office is situated at Shadsworth Road, Blackburn, Lancashire, BB1 2HT (the **Trust**)

Introduction

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Land is situated and is minded to grant the Planning Permission subject to the completion of this Agreement
- (B) The Council is the registered proprietor with title absolute of the freehold of the Land and other land registered at the Land Registry under title number GM846264 but is not entering into the planning obligations contained in this Agreement in this capacity
- (C) The Owner is the owner of an equitable estate in the Site through a lease (the **Lease**) dated with today's date that is pending registration at the Land Registry (the **Owner's Equitable Estate**)
- (D) The Owner has the benefit of a development agreement (**Development Agreement**) entered into with the Council and the Trust on 18 AUGUST 2023. Under the Development Agreement the Owner agrees to grant to the Trust an assignment of the Lease upon practical completion of the Development
- (E) The Trust has an equitable interest in the Land by virtue of the agreement in the Development Agreement by the Owner to grant to the Trust an assignment of the Lease upon practical completion of the Development
- (F) The Owner has submitted the Application to the Council in relation to the proposed Development and the parties have agreed to enter into this Agreement in order to secure the planning obligations contained in this Agreement
- (G) The Council resolved on 1 June 2023 that it was minded to grant the Planning Permission subject to the prior completion of this Agreement
- (H) The planning purpose of this Agreement is to improve the amenity of land in the locality of the Land with benefit for occupiers of the Development and to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations. In particular the obligations are directed at mitigating the loss of sports

facilities that will be caused by the Development The Council is satisfied that the obligations in this Agreement are.

- (i) necessary to make the Development acceptable in planning terms (including where appropriate, obligations necessary to mitigate the adverse impacts of the Development in accordance with the development plan for the area and other material considerations),
 - (ii) directly related to the Development, and
 - (iii) fairly and reasonably related in scale and kind to the Development,
- and in any event will secure other planning benefits

Agreed terms

1 Definitions and interpretation

1.1 In this Agreement unless the context otherwise requires the following words and expressions and phrases shall have the meanings hereby ascribed to them

Act shall mean the Town and Country Planning Act 1990 (as amended),

Above Ground Construction shall mean any works of construction of the Development above the ground floor slab level,

Agreement shall mean this agreement,

Application means the application for full planning permission registered by the Council on 23 January 2023 under reference 135936/FO/2023 for the Development,

Cheetham Park MUGA shall mean the MUGA referred to as the Cheetham Park MUGA and more particularly described in Schedule 2,

Commencement Date shall mean the date upon which the Development is commenced by the carrying out of a material operation as defined in section 56(4) of the Act but disregarding for the purposes of this Agreement the following operations

- (a) demolition,
- (b) site clearance,
- (c) ground investigations,
- (d) remedial work in respect of any contamination or other adverse ground conditions;
- (e) diversion and laying of services,
- (f) site survey works,
- (g) temporary access construction works,
- (h) archaeological investigations, and

- (i) erection of any temporary fences, advertisements, site notices and hoardings around the Site,

and **Commence Development, Commencement** and **Commencement of Development** shall have the corresponding meaning;

Commencement Notice means written notice given by the Owner to the Council within five (5) Working Days of Commencement of Development stating that Commencement of Development has taken place and specifying the date of Commencement,

Development means the erection of a part single, part two storey building to form a purpose built primary school (Class F 1) with associated open space, landscaping, boundary treatment and other infrastructure works,

Director means the Council's Director of Planning, Building Control and Licensing,

Expert means a professional expert in town planning, who is a Chartered Member of the Royal Town Planning Institute with a minimum of ten (10) years post-qualification experience,

Index shall mean the number of the General Index of Retail Prices (All Items) for the specified month produced by the Office for National Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore,

Index Linked means increased in accordance with the following formula calculated on the date (the **Specified Date**) upon which the amount due under the Planning Obligations is paid

A is the sum obtained using the formula $A = B \times (C / D)$ provided that (C / D) shall always be greater than or equal to 1,

and B, C and D are defined as

B is £505,253 73 (five hundred and five thousand two hundred and fifty three pounds and seventy three pence),

C is Inflation for the month closest to the Specified Date and which has been published by the Specified Date, and

D is Inflation for the month in which this Agreement is dated,

the Inflation Increase will be equal to A minus B

Interest means interest at 4% (four percent) above the base lending rate of the Bank of England from time to time;

Land means the land known as land bound by Taverton Drive, Heywood Street and Brentfield Avenue forming part of HM Land Registry Title Number GM846264 as shown edged red on the Plan,

Management Fee shall mean 15% (fifteen percent) of the Planning Application fee which equates to £2,148 30 (two thousand one hundred and forty eight pounds and thirty pence) to be used for the purpose of the management and monitoring of the Planning Obligations,

MUGA means a Multi-Use Games Area and **MUGAs** shall be construed accordingly;

Plan means the plan attached to this Agreement at Appendix 1,

Planning Obligations shall mean the obligations of the Owner specified in Schedule 1 to this Agreement,

Planning Permission means the planning permission to be granted by the Council in respect of the Application,

Replacement Playing Field shall mean the creation of a playing field equal to 2 023 m² at Boggart Hole Clough and more particularly referred to in Schedule 2,

Smedley Playing Fields MUGA shall mean the MUGA referred to as the Smedley Playing Fields MUGA and more particularly described in Schedule 2,

Sports Facilities Contribution shall mean the sum of £505,253 73 (five hundred and five thousand two hundred and fifty three pounds and seventy three pence) (Index Linked) to be paid to the Council in accordance with the provisions contained in Schedule 1 who shall utilise the sum towards the cost of carrying out any of the works detailed in paragraphs 1 to 4 of Schedule 2,

Stakeholder Account shall mean an account held by the Council's City Treasurer and his authorised officers at Barclays Bank plc in which the monies paid under the Planning Obligations are held;

VAT means value added tax chargeable under the Value Added Tax Act 1994 and any similar replacement tax and any similar additional tax, and

Working Day means any day except Saturday, Sunday or a bank holiday and reference to **Working Days** shall be construed accordingly

1 2 In this Agreement, unless otherwise indicated

1 2 1 clause headings shall not affect the interpretation of this Agreement,

1 2 2 a reference in this Agreement to an act of Parliament or to any order, regulation, statutory instrument or the like shall include a reference to any amendment or re-enactment of the same,

1 2 3 words importing the masculine gender include the feminine gender and vice versa and words in the singular include the plural and vice versa and words *importing individuals shall be treated as importing corporations and vice versa*,

1 2.4 any headings or side notes are for ease of reference only and shall not affect the construction of this Agreement,

- 1 2 5 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,
- 1 2 6 if any party to this Agreement comprises more than one party then that party shall be jointly and severally liable under this Agreement,
- 1 2 7 words denoting an obligation on a party to this Agreement to do any act, matter or thing include an obligation to procure that it be done and words placing a party to this Agreement under a restriction include an obligation not to permit or allow infringement of that restriction,
- 1 2 8 unless the context otherwise requires, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time,
- 1 2 9 unless the context otherwise requires, a reference to a statute or statutory provision shall include any subordinate legislation made from time to time under that statute or statutory provision,
- 1 2 10 a reference to **writing** or **written** excludes faxes and e-mail, and
- 1 2 11 references to clauses and Schedules are to the clauses and Schedules of this Agreement

2 **Statutory provisions**

- 2 1 This Agreement is made in pursuance of section 106 of the Act, section 111 Local Government Act 1972, section 1 Localism Act 2011 and all other powers and enactments which may give validity hereto and facilitate the enforcement of the obligations and provisions herein contained
- 2 2 The Owner consents to this Agreement and to the Owner's Equitable Estate in the Land being bound by this Agreement pursuant to section 111 Local Government Act 1972 and covenants with the Council in the terms set out in Schedule 1 The Owner acknowledges and agrees that upon it deriving a registered legal title in the Land its interest in the Land will be bound by the covenants set out in Schedule 1 those covenants being planning obligations under section 106 of the Act and enforceable by the Council

3 **Conditionality**

- 3 1 The provisions of this Agreement (other than this clause which shall be of immediate effect) shall be of no effect until this Agreement has been dated
- 3 2 Subject to clause 3 3 this Agreement comes into effect on the date of this Agreement
- 3 3 The Planning Obligations set out in Schedule 1 are conditional on and will take effect on the Commencement Date, save for those Planning Obligations expressed to be complied with prior to Commencement of Development which shall take effect upon the issue of the Planning Permission

4 **Covenants by the Council**

The Council covenants with the Owner to

- 4.1 observe and perform the covenants, restrictions and obligations contained in Schedule 2, and
- 4.2 to issue the Planning Permission on the date hereof

5 **Miscellaneous**

- 5.1 The Owner covenants with the Council to pay to the Council on the date hereof the Council's reasonable and proper legal costs in connection with the preparation, negotiation and completion of this Agreement and for the avoidance of doubt receipt by the Council of the payment of such sum shall not create any lawyer-client type contractual relationship between the Council and the Owner nor absolve the Owner from any liability or obligation imposed upon it by the terms of this Agreement or by statute or at common law
- 5.2 The Owner covenants with the Council to pay to the Council on the date hereof the Management Fee
- 5.3 Nothing herein contained or implied shall prejudice or affect the rights, powers, duties and obligations of the Council in exercise of its functions as a local authority and the rights, powers, duties and obligations of the Council under all public and private statutes, byelaws, orders and regulations may be fully and effectually exercised in relation to the Land or any part thereof and any works executed thereon as if this Agreement had not been executed by the Council and in particular nothing in this Agreement shall restrict the Council and any other authority from exercising powers of compulsory purchase in respect of any part of the Land
- 5.4 No failure or delay by the Council to exercise any right, power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy
- 5.5 The obligations in this Agreement are not binding on or enforceable against any statutory undertaker or other person who acquires any part of the Land or any interest in it for the purposes of supplying utilities or public transport services
 - 5.5.1 if the Owner or any person disposes of their/its entire interest in the Land, that Owner or person will be released from its obligations in this Agreement which will no longer be enforceable against that Owner or person in relation to the Land, and
 - 5.5.2 the release of any Owner or any person under clause 5.5.1 is without prejudice to any subsisting liability for any antecedent breach or antecedent failure to comply with its obligations arising before parting with that interest
- 5.6 The obligations in this Agreement (with the exception of clause 3) shall cease to have effect if, before Commencement, the Planning Permission should
 - 5.6.1 expire,

5 6 2 be varied or revoked other than at the request of the Owner (save for any amendment pursuant to section 96A of the Act) save for any modification of any condition of the Planning Permission in relation to the time limit for Implementation brought about by any statute, statutory provision or subordinate legislation, or

5 6 3 be quashed following a successful legal challenge

5 7 If any provision of this Agreement shall be prohibited by or adjudged by a court to be unlawful, void or unenforceable such provision shall to the extent required be severed from this Agreement and rendered ineffective as far as possible without modifying the remaining provisions of this Agreement and shall not in any way affect any other circumstances or the validity or enforcement of this Agreement

5 8 Any approval given by the Council under this Agreement or for the purposes of this Agreement shall not be deemed to be approval for any other purpose whatsoever

5 9 Nothing in this Agreement prohibits or limits the right to develop any part of the Land in accordance with a planning permission, other than the Planning Permission, granted after the date of this Agreement, whether or not pursuant to an appeal

5 10 All acts required to be undertaken by the Owner under this Agreement or as incidental to this Agreement shall in all respects be at the cost of the Owner

6 **Cancellation of entries**

6 1 On the written request of the Owner at any time after each or all of the obligations have been performed or otherwise discharged the Council will issue a written confirmation of such performance or discharge

6 2 Following the performance and full satisfaction of all the terms of this Agreement or if this Agreement is determined pursuant to clause 5 the Council will on the written request of the Owner cancel all entries made in the local land charges register in respect of this Agreement

7 **Disputes**

7 1 In the event of any dispute arising in connection with any of the terms of this Agreement other than a dispute involving the construction or interpretation of the terms of this Agreement or the enforcement of any decision pursuant to this clause, the same shall unless the Council and the Owner otherwise agree be referred to an Expert to be appointed by agreement between the Council and the Owner

7 2 If the Council and the Owner are unable to agree on the appointment of an Expert within 30 (thirty) days of one party serving notice on the other calling for the appointment of an Expert then an Expert shall be appointed on the application of either party to the President for the time being of the Royal Town Planning Institute

7 3 Any reference of a dispute to an Expert shall if the parties are agreed in writing be deemed to be a reference to an expert (and not to an arbitrator) whose decision shall be final and binding (save for manifest error) but shall otherwise be deemed to be a reference to an arbitrator pursuant to the Arbitration Act 1996 and any statutory amendment variation substitution or re-enactment thereof

7.4 Any party to this Agreement shall be entitled to submit to the Expert representations and cross-representations with such supporting evidence as they shall respectively consider necessary and the Expert shall have regard thereto in making his decision which shall be delivered in writing. The reference of any dispute shall include authority to determine the relevant timescales for the submission of representations and in what manner all the costs of the referral shall be paid

8 **Third Parties**

No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Rights of Third Parties) Act 1999 **provided that** this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.

9 **Interest on late payment**

If any sum payable to the Council under the terms of this Agreement is not paid at the time specified herein the party responsible for making the payment shall pay to the Council Interest on such sum calculated on a daily basis and compounded quarterly from the due date until payment and such amount shall be recoverable by action as a liquidated sum

10 **Notice**

10.1 Any notice to be given under this Agreement must be in writing and must be

10 1 1 delivered by hand, or

10 1 2 sent by pre-paid first class post or other next working day delivery service

10 2 Any notice to be given under this Agreement must be sent to the relevant party as follows

10 2 1 to the Council at Planning and Building Control Department, Ref.135936/FO/2023, Manchester City Council, PO Box 532, Town Hall, Manchester M60 2LA,

10 2 2 to the Owner at the address shown above marked for the attention of the Head of Free Schools Capital and the Head of Property (Legal),and

10 2 3 to the Trust at the address shown above,

or as otherwise specified by the relevant party in notice in writing to each other party

10 3 Any notice given in accordance with clause 10 1 and 10 2 will be deemed to have been received

10 3 1 if delivered by hand, on signature of a delivery receipt or at the time the notice or document is left at the address provided that if delivery occurs before 9 am on a Working Day, the notice will be deemed to have been received at 9 am on that day, and if delivery occurs after 5 pm on a Working Day, or on a day which is not a Working Day, the notice will be deemed to have been received at 9 am on the next Working Day, or

10 3 2 if sent by pre-paid first class post or other next working day delivery service, at 9 am on the second Working Day after posting

10 4 The Owner agrees with the Council to give the Council immediate written notice of any change in ownership of any of its interests in the Land occurring before all the Planning Obligations under this Agreement have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Land or unit of occupation purchased by reference to a plan

10 5 The Owner warrants that as far as it is aware no person other than the Owner has a legal or equitable interest in the Land except for the Council who retains the freehold interest in the Land and the Trust who has an equitable interest under the Development Agreement The Owner hereby indemnifies the Council in respect of any loss that arises should there be any breach of this warranty

11 **VAT**

Each amount stated to be payable by the Council or the Owner to the other under or pursuant to this Agreement is exclusive of VAT (if any)

12 **Jurisdiction**

This Agreement shall be governed by and interpreted in accordance with the laws of England

13 **Local Land Charge**

This Agreement is a local land charge and shall be registered as such by the Council

14 **Registration of Lease**

The Owner covenants with the Council

14 1 to apply to register the Lease as soon as reasonably practicable after the date of this Agreement and to use its best endeavours to deal with all Land Registry requisitions in relation to the Owner's Equitable Estate to enable it to be registered with legal title at the Land Registry,

14 2 not to withdraw their application for registration of their interest in the Land, and

14 3 to supply the Council with a copy of the completion of registration documentation within 5 (five) Working Days of receipt from the Land Registry

15 **The Trust**

The Trust hereby agrees to the Owner entering into the Planning Obligations contained in this Agreement and acknowledges that the Trust's interest in the Land upon their attaining a legal estate in the Land will be bound by the planning obligations in this Agreement

This Agreement has been executed as a deed by the parties and is delivered and takes effect on the date stated at the beginning of it

Schedule 1

The Planning Obligations

Part 1

General

- 1 The Owner covenants with the Council
- 1 1 to serve the Commencement Notice,
- 1 2 to further notify the Council within five (5) Working Days of
 - 1 2 1 the date of Commencement of Development, and
 - 1.2 2 the date that the Above Ground Construction commences

Part 2

Financial Contributions

- 1 The Owner covenants with the Council
- 1 1 to pay to the Council the Sports Facility Contribution before or immediately upon commencement of the Above Ground Construction,
- 1 2 not to Commence Above Ground Construction until the Owner has paid the Council the Sports Facility Contribution in accordance with paragraph 1 ~~2~~¹ above

Schedule 2

The Council's Covenants

The Council hereby covenants with the Owner as follows

- 1 To use the Sports Facilities Contribution towards the cost of
 - 1 1 funding any feasibility study required to assess the feasibility of providing the proposed Cheetham Park MUGA and Smedley Playing Fields MUGA, and if either are feasible, and
 - 1 2 the design, delivery and ongoing maintenance of whichever of the proposed Cheetham Park MUGA and Smedley Playing Fields MUGA,
 - 1 3 pitch specification for bringing an area of informal greenspace at Boggart Hole Clough into use as a Replacement Playing Field as informed by a feasibility study dated January 2023
- 2 That the Cheetham Park MUGA shall
 - 2 1 be located in Cheetham Park, Manchester,
 - 2 2 be a maximum size of 1,559m²,
 - 2 3 focus on the provision of
 - 2 3 1 a box cricket facility in which the distance between the running crease and batting crease shall approximately 11 metres situated within a court that should be no less than 28 metres and no more than 30 metres in length and no less than 10.5 metres and no more than 12 metres in width with a height, subject to any planning restrictions that may be imposed, of between 4 to 4.5 metres,
 - 2 3 2 sports lighting subject to any planning requirements,
 - 2 3 3 artificial grass construction suitable for use for either recreational football or cricket, and
 - 2 3 4 an enclosed MUGA style construction enclosing the cricket nets to provide protection to other users of Cheetham Park or of nearby roads or residences or businesses from cricket ball strikes
- 3 That the Smedley Playing Fields MUGA shall
 - 3 1 be located in the Smedley Playing Fields in Manchester,
 - 3 2 be a maximum size of 1,623m², and
 - 3 3 focus on the provision of a MUGA that accommodates both football and basketball
- 4 That subject to obtaining any necessary planning and other consents and to its feasibility studies determining that the two MUGAs' are feasible the Council will deliver the Cheetham Hill MUGA and Smedley Playing Fields MUGA and replacement playing field at Boggart Hole Clough within 5 (five) years of the date upon which the Above Ground Construction commences or the date of receipt by the Council of the Sports Facilities Contribution,

whichever is the later **provided that** the parties hereto may acting reasonably agree to the provision of an alternative use of the Sports Facilities Contribution or part of it on schemes that are deemed by the parties hereto as being at least as beneficial to the community in quantitative and qualitative terms as the MUGAs' and replacement playing field and are to be delivered within the same time scale as is set out in this paragraph 4 and are located within the vicinity of the Land

- 5 That the Council shall provide written details of any expenditure incurred by the Council using the Sports Facilities Contribution received within 20 (twenty) Working Days of a written request to do so from the party/person who paid the Sports Facilities Contribution to the Council
- 6 In respect of the sums payable by the Owner to the Council under the Planning Obligations, the Council covenants with the Owner.
 - 6 1 to pay such sums into the Stakeholder Account and to hold such sums therein until the withdrawal of such sums as may be required for the purposes specified in the Planning Obligations,
 - 6 2 to use such sums withdrawn from the Stakeholder Account solely and exclusively for the purposes specified in the Planning Obligations,
 - 6 3 to repay to the Owner (here meaning the party or parties who shall have actually paid such sum) such amount of the sums which have not been expended excluding any such sums in respect of which though not yet expended the Council has contractually committed to expend in accordance with the provisions of this Agreement within five (5) years of the date of receipt by the Council of such payment or the date of commencement of Above Ground Construction (and where payment is made by instalments the date of receipt shall be deemed to be the date upon which the last instalment is received), whichever is the later, together with interest at the Bank of England base rate from time to time from the date of expiration of this 5 (five) year period (the **Retention Period**) to the date of refund, and
 - 6 4 upon receipt by the Council of a written request from the Owner received within the final year of the Retention Period to provide a written statement summarising what the sums received have been spent on and detailing any sums remaining unexpended within 21 (twenty one) days of the Council's receipt of such a request

THE COMMON SEAL of THE COUNCIL OF
THE CITY OF MANCHESTER was hereunto
affixed in pursuance of an Order of the
Council of the said City:-


Authorised Signatory



01121314

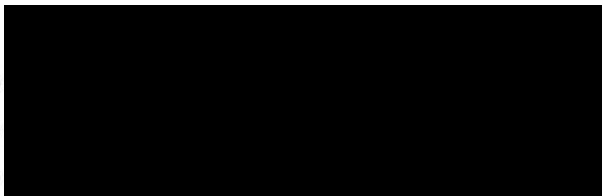
Executed as a deed by affixing the Corporate)
Seal of **THE SECRETARY OF STATE FOR**)
EDUCATION)
in the presence of:


Authorised Signatory

LYA NOON



Executed as a deed by)
STAR ACADEMIES)
acting by *SIR NOFTI HANID*, a director)
in the presence of: *PATEL CRE*)


Director

witness signature: 

name: *SADIA BEGUM*

address: 

occupation: *HEAD OF BUSINESS SUPPORT*

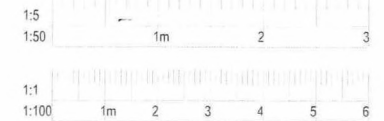
Appendix 1
Plan

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- Drawing not to be scaled
- Report Errors and Omissions to the Architect.
- Check all dimensions on site
- Drawing to be read in conjunction with the Health and Safety Plan and all relevant Risk Assessments



Rev. Date Dm. Chkd.

BOWKER SADLER ARCHITECTURE

Hatherlow House | Hatherlow | Romiley | Stockport | SK6 3DY
 0161 4067333 office@bowker-sadler.co.uk www.bowker-sadler.co.uk

Project
**Olive Primary School,
 Manchester**

Client
Conlon Construction Limited

Drawing
Site Location Plan

Scale	Sheet Size	Drawn	Checked	Date
1 : 1250	@ A3	SW	AC	8.12.22

Project No.	Originator	Zone	Level	Form	Discipline	Number	Revision
22-037	BSA	XX	XX	D	A	1000	

Status
Planning

Site Location Plan

1 : 1250

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