

DRAFT

Agreement relating to tariff arrangements within Milton Keynes

Dated **2007**

Urban Regeneration Agency (known as English Partnerships)
(the Agency)

The Borough of the Council of Milton Keynes
(the Council)

Agreement relating to tariff arrangements within Milton Keynes

Dated 2007

BETWEEN:

- (1) **Urban Regeneration Agency** (known as **English Partnerships**) (the **Agency**) of Central Business Exchange, 414-428 Midsummer Boulevard, Central Milton Keynes, MK9 2EA

AND:

- (2) **The Borough of the Council of Milton Keynes** (the **Council**) of Civic Offices, 1 Saxon Gate East, Milton Keynes, MK9 3AG

together **the Parties**

Recitals

- A The Agency has as its main objective to secure the regeneration of land in England and has been given statutory powers under the Milton Keynes (Urban Area and Planning Functions) Order 2004 and is tasked by Government with promoting sustainable communities in the Milton Keynes Urban Development Area (**UDA**) and has formed the Milton Keynes Partnership Committee (**MKPC**) as the delivery vehicle for these objectives.
- B The Council is represented on the MKPC by elected members.
- C The Council is also the highway authority for local roads by virtue of the Highways Act 1980, the education authority, the authority responsible for the majority of local infrastructure and has general responsibilities as regards the well being of people within the Council's area.
- D The Parties have agreed that the comprehensive sustainable development of the UDA is best achieved by imposing agreed tariff payments on developers to fund the required infrastructure.
- E The Parties have agreed that the Business Plan will outline the infrastructure to be provided in the UDA.
- F The Parties have agreed to use reasonable endeavours to provide local infrastructure in accordance with the Delivery Plan.
- G The Council agrees to provide items of infrastructure in accordance with its Annual Capital Programme subject to such items being Fully Funded.
- H It is necessary that landowners within the UDA are satisfied that the tariff payments made pursuant to the Framework Agreement shall result in the timely provision of local and strategic infrastructure for their development sites and the purpose of this Agreement is to set out in legally binding terms how this is to be achieved.
- I The Office of the Deputy Prime Minister (**ODPM**) has seen a copy of this Agreement and has agreed that the Agency may be bound by the covenants contained herein.

It is agreed:

1 Definitions and Interpretations

1.1 Definitions

In this Agreement where the context admits the following expressions shall have the following meanings:

Annual Capital Programme means an annual programme which contains the list of projects which the Council will carry out as part of its budget and which shall contain a list of items of infrastructure which have been agreed by the Agency and the Council as Fully Funded and which are to be delivered by the Council

Business Plan means the business plan produced by MKPC which, inter alia, details a tariff approach to planning obligations whereby developers contribute to a central fund for infrastructure which is relevant to development taking place within the UDA and sets out an indicative timetable for delivery including any revisions or modifications of the business plan following each annual review carried out in accordance with its terms

Delivery Plan means a five year rolling capital programme of delivery of the items of infrastructure identified in the Business Plan

Expert means a person with not less than ten years recent and relevant experience of the matter in dispute

Framework Agreement means an agreement entered into by the Council and the Agency and landowners in the Milton Keynes expansion area which sets out the tariff approach to apply to development in those areas

Full Funding means full payment of the total costs of delivering an item of infrastructure whether Jointly Funded or Tariff Only Funded and **Fully Funded** shall be construed accordingly

General Fund Revenue Account means the Council's main revenue account from which revenue payments are made and which is funded principally from Council tax and non-domestic rates

Jointly Funded means Full Funding from the tariff and one or more than one Third Party Source

Tariff Only Funded means Full Funding from the tariff only

Third Party Source means a source of capital funding for the provision of items of infrastructure provided that the source shall exclude the Council's General Fund Revenue Account and the tariff

1.2 Interpretation

1.2.1 Any covenant by the Parties not to do any act or thing shall be deemed to include an obligation not to permit or suffer such act or thing to be done by another person where knowledge of the actions of the other person is reasonably to be inferred.

1.2.2 References to any statute include any statutory extension, modification, amendment or re-enactment of such statute and any subordinate instruments, regulations or orders made pursuant to it.

1.2.3 Any notice, approval, consent, direction, authority, agreement, action or expression of satisfaction required to be given, reached or taken by any Party under this Agreement or any

response requested to any such notice, approval, consent, direction, authority, agreement, action or expression of satisfaction shall not be unreasonable or unreasonably withheld or delayed.

- 1.2.4 The headings in this Agreement are for ease of reference only and shall not affect the construction of this Agreement.
- 1.2.5 Where reference is made to a Clause, Paragraph or Recital such reference is a reference to a clause, paragraph, recital in this Agreement.
- 1.2.6 In this Agreement the singular includes the plural and vice versa and the masculine includes the feminine and vice versa.
- 1.2.7 References in this Agreement to the Parties include each Party's respective statutory successors or successors in title and assigns (except where the contrary is expressly provided).

2 Statutory Authorities

The Agency's covenants are made pursuant to its powers under the Leasehold Reform, Housing and Urban Development Act 1993 and the Council's covenants are made pursuant to section 111 of the Local Government Act 1972.

3 The Business Plan

- 3.1 The Agency covenants to use reasonable endeavours to agree with the Council the details of the Business Plan which relate to the Council's functions including:
 - 3.1.1 the items of infrastructure to be delivered by the Council;
 - 3.1.2 the costs of providing the items of infrastructure and the source of funding; and
 - 3.1.3 the implementation timetable for the items of infrastructure and the mechanism for their delivery.

4 Source of Funding

The Council and the Agency covenant with each other:

- 4.1 That they will agree the items of infrastructure which will be Tariff Only Funded.
- 4.2 That they will agree the items of infrastructure which will be Jointly Funded.
- 4.3 That for items which will be Jointly Funded they will agree the:
 - 4.3.1 identity of the Third Party Source;
 - 4.3.2 level of funding required from the Third Party Source; and
 - 4.3.3 timing of the funding.
- 4.4 To use reasonable endeavours to bid for Third Party Source funding for all infrastructure and for the avoidance of doubt it is **hereby agreed** that the Council is not in a position to guarantee that any such bids for Third Party Source funding will be successful.

5 Funding from the Tariff

The Agency covenants:

- 5.1 To give the Council a written commitment of when funding for Tariff Only Funded items will be made available.
- 5.2 To give the Council a written commitment of when funding for Jointly Funded items will be made available (and for the avoidance of doubt the timing of funding from the tariff may depend on the timing of the funding from the Third Party Source).
- 5.3 To provide the Council with Tariff Only Funding for items which are included in the Council's Annual Capital Programme in accordance with Clause 4.1.
- 5.4 To provide the Council with the difference between the estimated cost of providing an item of infrastructure which is to be Jointly Funded and the amount of funding which is agreed pursuant to Clause 4.3.2 to be provided from the Third Party Source in accordance with Clause 4.2.

6 Full Funding Commitment

- 6.1 The Council covenants to include:
 - 6.1.1 items for which there is Full Funding; and
 - 6.1.2 items which the Council in its absolute discretion wishes to include;in its Annual Capital Programme.
- 6.2 The Council covenants to provide infrastructure that is included as part of its Annual Capital Programme in accordance with that programme unless otherwise varied in consultation with the Agency

Provided that it is hereby agreed by the Parties that the Council is not under any obligation to deliver items of infrastructure in respect of which it has not received Full Funding

7 Delivery Plan

- 7.1 The Agency agrees that the Council cannot be required to deliver items of infrastructure identified in the Business Plan and Delivery Plan which are not also identified in the Annual Capital Programme.
- 7.2 The Council covenants to use reasonable endeavours to deliver Fully Funded items of local infrastructure in accordance with the Business Plan and Delivery Plan provided that the Council is not under any obligation to seek funding from any source other than the tariff and Third Party Sources.
- 7.3 The Agency covenants to use reasonable endeavours to deliver or procure the delivery of all local infrastructure.
- 7.4 The Agency covenants to agree with the Council the priority to give to items of infrastructure in the Delivery Plan which the Council has a statutory duty to provide.

8 Dispute Resolution

- 8.1 If there is any dispute in relation to the terms of this Agreement the Parties agree that the Chief Executive of the Council and the Chief Operating Officer of the Agency will use reasonable endeavours to resolve the dispute between themselves within one month.
- 8.2 If a dispute cannot be resolved between the Parties in accordance with Clause 8.1 it will be referred to an Expert appointed jointly by the Parties whose identity will be agreed between the Parties or in default appointed by the President or the Vice-President (or in either case their nominated deputy) for the time being of the Royal Institution of Chartered Surveyors on the application of either Party and it is further agreed that:
- 8.2.1 the Parties will be entitled to make representations and counter-representations in accordance with such timetable as the Expert shall direct;
- 8.2.2 the Expert shall give written reasons for his/her decision;
- 8.2.3 the Expert's costs will be borne in equal proportions by the Parties or in such other proportions as the Expert may direct; and
- 8.2.4 the Expert shall comply with any time limits or other directions agreed by the Parties on or before his/her appointment provided that if the Expert fails to comply with the time limits either Party may apply prior to the making of his/her decision for a fresh appointment to be made.

IN WITNESS whereof this Agreement has been executed as a Deed by the Parties but is not intended to have legal effect until it has been unconditionally delivered and dated

THE **COMMON SEAL** of
The **URBAN REGENERATION AGENCY** (known as English Partnerships)
was hereunto affixed in the presence of:

Authorised Signatory

THE **COMMON SEAL** of
The **BOROUGH OF THE COUNCIL OF MILTON KEYNES**
was hereunto affixed in the presence of :

Authorised Signatory