

DATED _____ 201[]

- and -

- and -

THE OXFORDSHIRE COUNTY COUNCIL

BOND
relating to obligations in []

P G Clark
County Solicitor
Oxfordshire County Council
County Hall
New Road
Oxford OX1 1ND

THIS BOND dated the _____ day of _____ 20[]

MADE BETWEEN

(1) [_____] (Company number [_____]) whose registered offices are situate at [_____] (“the Owner”)

(2) [_____] (Company number [_____]) whose registered office is situate at [_____] (“the Surety”)

(3) **THE OXFORDSHIRE COUNTY COUNCIL** of County Hall ,New Road, Oxford (“the Council”)

PRELIMINARY AND DEFINITIONS

1. **“The Adjustment Triggers”** are as listed in Column 1 of Table 2 attached
2. **“Agreement”** means the Agreement dated the [_____] day of [_____] 20[] between the [Owner] and the Council
3. **“The Assessment Commitments”** means those Commitments listed in Column 2 of Table 2 attached which the Council will assess further to Clause 8 at the relevant Adjustment Trigger
4. **“The Bond Sum”** means the sum of £10,870,000¹ subject as provided in Clause 8
5. **“Commitments”** means the obligations pursuant to the Agreement to pay the County Contributions and as applicable to carry out the School Works all as summarised in Table 1 attached

¹ If Primary School Option B applies and Primary Education Contribution Land Payment 2 has been made early i.e. prior to 45th Occupation this will be reduced to £7.93m

6. **“County Contributions”** means the payments to be made to the Council as set out in the Agreement comprising the following sums and defined in the Agreement as follows:

“Adult Day Care Contribution”	£379,784 Index Linked
“Adult Learning Contribution”	£10,377 Index Linked
“Childrens Centre Contribution”	£12,921 Index Linked
“Cycle Path A417 Contribution”	£505,571 Index Linked
“Library Contribution”	£69,051 Index Linked
“Primary Education Contribution Land”	£8,003,492 Index Linked
“Primary Education Contribution Direct Delivery”	£1,450,303 Index Linked
“Public Transport Contribution”	£1,376,045 Index Linked
“Rights of Way Contribution”	£55,558 Index Linked
“RTI Equipment Contribution”	£86,872 Index Linked
“Secondary Education Contribution”	£6,220,364 Index Linked
“Special Education Needs Contribution”	£205,981 Index Linked
“Temporary School Accommodation Contribution”	£351,735 Index Linked
“Traffic Order Contribution”	£25,992 Index Linked
“Travel Plan Monitoring Fee”	£15,800 Index Linked
“Waste Management (Strategic) Contribution”	£221,230 Index Linked
“Youth Support Contribution”	£15,506 Index Linked

7. **“Replacement Bond”** shall mean a bond

7.1. for the Bond Sum adjusted in accordance with Clause 8;

7.2. in substantially the same form as this Bond;

- 7.3. from a reputable financial institution approved by the Council acting reasonably;
- 7.4. to take effect no later than the expiry of this Bond and which is valid for no less than five years
8. **“School Works”** means the works which the Owner is obliged to execute and complete in accordance with the terms and conditions of Schedule 7 of the Agreement for the provision of a primary school at Primary School Site in the event that Primary School Option A applies
9. **“SUDS Default Payment”** means a payment to be made further to Paragraph 6 of Schedule 6 to the Agreement
10. Words and expressions defined in the Agreement shall have the same meaning in this Agreement unless otherwise provided
11. In the event that the Owner is under an obligation to undertake the School Works Commitment [] (Primary Education Payment (Land) 2 and Primary Education Payment (Land) 3) shall be deemed to be fully satisfied and Commitment [] (Primary Education Payment (Land) 4) shall be deemed to be partially satisfied to the sum of £[] Index Linked on Completion (as defined in the Standard Conditions (Schools)) of the Primary School and Commitment [] (Primary Education Payment (Land) 4) shall be deemed to be fully satisfied on the issue of the Defects Liability Certificate (as defined in the Standard Conditions (Schools)) in respect of the Primary School

NOW THIS DEED WITNESETH as follows:-

1. The Owner and the Surety are jointly and severally bound to the Council for the Bond Sum

2. The Council may prior to the expiry of this Bond call for the Surety to make payment of the sum outstanding (including interest payable pursuant to the Agreement) if the Owner shall fail to pay any part of the County Contributions or SUDS Default Payment due under the provisions of the Agreement
3. The Council may prior to the expiry of this Bond call for the Surety to make payment to the Council to satisfy and discharge the established and ascertained damages sustained by the Council if the Owner defaults in executing and completing the School Works in accordance with the provisions of the Agreement subject to a maximum liability of £[] Index Linked
4. The Council may prior to the expiry of this Bond call for the Surety to make payment of the Bond Sum in the event that by the date which is 6 months before the expiry of this Bond no Replacement Bond has been supplied to the Council []
5. Any claim hereunder shall be accompanied by a statement signed by the County Solicitor that the amount claimed represents the amount payable in accordance with the Agreement and that such payment then due has not been paid or that that the amount claimed represents the amount payable in accordance with this Bond or that a Replacement Bond has not been provided by the date which is 6 months before the expiry of this Bond And such statement shall be conclusive evidence (and admissible as such) that any sums stated therein are properly due and payable to the Council. Without prejudice to the generality of the foregoing none of the following shall be required:
 - 5.1. the Council being obliged to make any enquiry of the Owner or the Surely
 - 5.2. the need to take any legal action against the Owner

- 5.3. any proof of default or liability on the part of the Owner
6. The Surety shall within [14] days after service of any claim pay the Council the sum specified in such claim and shall not be entitled to delay or withhold payment for any reason notwithstanding any objection by the Owner or any other party Provided Always that the maximum aggregate liability of the Surety does not exceed the Bond Sum
7. The Council may make as many separate claims under this Bond as it considers appropriate provided that they shall not exceed in aggregate the Bond Sum and provided further that in each case the claim accords with the provisions of this Bond
8. Within two months of each Adjustment Trigger (which for the avoidance of doubt is not attained until any interest on late payments has been discharged) the Bond Sum shall be reassessed by the Council as follows
- 8.1. The Council shall calculate the relevant Assessment Commitments by index linking those Commitments to date of that Adjustment Trigger applying the relevant indices as set out in the Agreement
- 8.2. The Council shall then estimate when each of the Commitments comprised in the relevant Assessment Commitments shall be payable or as applicable be satisfied and adjust the sum calculated further to Clause 8.1 for that Commitment by allowing for future indexation compounded annually (applying the relevant index as set out in the Agreement) up to the estimated date of payment or as applicable satisfaction. In estimating the annual indexation rate to be applied the Council acting reasonably shall have regard to those matters which it considers relevant

8.3. The Council shall then aggregate the sums calculated further to Clause 8.2 for the relevant Assessment Commitments and if the aggregated sum is less than the Bond Sum the Bond Sum shall be reduced to that lesser amount

9. Without prejudice to the generality of clause 7 the obligations of the Surety under this Bond shall not be affected by any act, omission or matter which might (but for this clause) operate to release or discharge such obligations in whole or in part, including without limitation:

9.1. any time or waiver or accommodation or credit granted to the Owner or the Surety or any abstention from enforcing the Council's rights against the Owner or the Surety;

9.2. any variation of or amendment to the Agreement (and references to the Agreement in this Bond shall be references to the Agreement as so varied or amended from time to time) or in the extent or notice of the School Works;

9.3. any obligation on the part of the Owner being void;

9.4. the bankruptcy, liquidation or insolvency of the Owner or the presentation of a petition for the making of an administration order in respect of the Owner or the making of any such order or the appointment of (or giving of notice to appoint) an administrator in respect of the Owner;

9.5. any thing or matter that would or might have discharged or affected any liability if the Surety's obligation under this Bond had been secondary rather than primary

10. This deed gives no rights under the Contracts (Rights of Third Parties) Act 1999 but this does not affect any rights which are available apart from that Act

11. This Bond shall be valid from the date hereof and will remain valid until 5.00 pm on the **[this will be 5 years from the date of the bond]** when it will expire and cease to be of effect whether returned to the Surety for cancellation or not unless a prior claim has been received by the Surety at []

12. This Bond shall be governed by and construed in accordance with English law and the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising in connection with this Bond.

THIS BOND has been executed as a deed and is delivered the day and year first before written

[THE COMMON SEAL of)

OXFORDSHIRE COUNTY COUNCIL)

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was hereunto affixed in the)

presence of:-)

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THE COMMON SEAL of)

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was hereunto affixed in the)

presence of:-)

Director

Secretary

THE COMMON SEAL of)

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was hereunto affixed in the)

presence of:-)

Director

Secretary

EXECUTED and **DELIVERED** as a)

DEED by [])

acting by its duly authorised)

attorney in the presence of:)