

DATED

2025

(1) THE COUNCIL OF THE CITY OF MANCHESTER

- and -

(2) THE CHERRY TREE TRUST

GRANT AGREEMENT

Relating to works being undertaken at
Newall Green Primary School, Firbank Road, Wythenshawe,
Manchester, M23 2YH

THIS AGREEMENT is made on

2025

BETWEEN:

- (1) **THE COUNCIL OF THE CITY OF MANCHESTER** of Town Hall, Albert Square, Manchester, M60 2LA (the "**Council**"), and
- (2) **THE CHERRY TREE TRUST** a company limited by guarantee (company number 09795288) whose registered office is at Newall Green Primary School, Firbank Road, Newall Green, Wythenshawe, Manchester, M23 2YH (the "**Trust**")

each a "Party" and together the "Parties"

BACKGROUND

- A The Council has received a high needs provision capital funding allocation from the Department for Education.
- B The Council has agreed to provide some of this capital funding to the Trust to deliver a 30 place special education needs ("SEN") unit at the School in readiness for additional pupils to be admitted in September 2025. The Trust will procure the Project and be responsible for its successful delivery.
- C The Council has in exercise of its powers under the Localism Act 2011 and the terms and conditions of this Agreement agreed to make payments by way of Grant to the Trust towards the Eligible Costs incurred by the Trust in connection with the Project.

IT IS AGREED:

1 Definitions

In this Agreement the following expressions shall have the following meanings:

Changes	means any material changes to the nature and/or scope of the Project once the Project Plan has been approved by the Council;
Contractor	means the contractor(s) engaged by or on behalf of the Trust to deliver of the Works;
Effective Date	means the date of this Agreement;

Eligible Costs	means the costs reasonably and properly incurred in connection with the Project;
EIR	means the Environmental Information Regulations 2004;
FOIA	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or relevant government department, and for these purposes "Information" has the meaning given under s84 of the FOIA;
Grant	means the monies which the Council shall make available to the Trust towards Eligible Costs up to the Maximum Commitment;
Maximum Commitment	means the maximum amount of £458,000 (four hundred and fifty-eight thousand pounds) excluding VAT;
Project	Means the delivery of a 30 place SEN unit at the School, comprising three specialist classrooms, a sensory room and a breakout room created within the existing footprint of the school alongside other modifications of existing facilities and the development of outdoor area equipment to support the new unit.
Project Plan	means a plan that sets out how the Trust is proposing to deliver the Project and spend the Grant;
Request for Information	a request for Information relating to this Grant Agreement under the FOIA or EIR;
SCA	means the Subsidy Control Act 2022;
School	means Newall Green Primary School, Firbank Road, Newall Green, Wythenshawe, Manchester, United Kingdom, M23 2YH;
Works	means any works of a structural or physical nature at the School including but not limited to building modifications in connection with delivering the Project;

2 Interpretation

2.1 In this Agreement:

- (a) references to any statute or sub-ordinate legislation in this Agreement include references to any amendments or replacements to the statute or sub-ordinate legislation that may be enacted from time to time;
- (b) reference to the Trust shall be deemed to include its employees, members, agents and subcontractors unless the context otherwise requires;
- (c) references to clauses or schedules are references to clauses in or schedules to this Agreement and references to paragraphs are references to paragraphs in the schedule in which those references are made and references to this Agreement include the schedules to this Agreement; and
- (d) references to the singular include the plural and vice versa.

3 Commencement and Duration

- 3.1 This Agreement shall take effect on the Effective Date and shall continue in full force and effect until the Parties have fulfilled their respective obligations under the Agreement.

4 Council Funding

- 4.1 The Parties acknowledge and agree that the Council shall not be liable for any payment of Grant under this Agreement until the following conditions have been met to the reasonable satisfaction of the Council:
 - (a) the Trust has provided a Project Plan to the Council;
 - (b) the Council has agreed the Project Plan including the specification and/or scope of the Works;
 - (c) the Trust has entered into a contract for the Works with the Contractor;
 - (d) the requirement for the provision of collateral warranties in favour of the Council in accordance with clause 11 is satisfied.
- 4.2 Subject to the Trust complying with the terms and conditions set out in this Agreement, the Council shall make available to the Trust the Grant towards Eligible Costs.
- 4.3 The Council shall pay the Grant to the Trust in accordance with clause 6.
- 4.4 The Grant shall not exceed the Maximum Commitment.

5 Conditions

- 5.1 The Trust may not use the Grant for any activities other than for the Project, or as approved in writing by the Council acting reasonably.
- 5.2 The Trust shall secure delivery of the Project and shall ensure at all times that the Project is delivered by the Trust and its Contractor(s):
- (a) in accordance with the provisions of this Agreement; and
 - (b) in a proper and professional manner in accordance with good industry practice; and
 - (c) in compliance with all legal and statutory requirements (including but not limited to procurement of contractors/professional consultants in accordance with Public Contract Regulations 2015 where applicable, and relevant health and safety legislation); and
 - (d) in all respects to the reasonable satisfaction of the Council; and
 - (e) in accordance with any reasonable instructions of the Council.
- 5.3 The Trust shall not make any Changes to the Project without the prior written consent of the Council (not to be unreasonably withheld or delayed).
- 5.4 The Trust shall obtain all necessary consents (in so far as they remain to be obtained) as soon as practicable after the Effective Date.

6 Financial Arrangements

- 6.1 Subject to the Trust having complied with the provisions of this Agreement and subject to clauses 6.2 and 6.3, the Council shall pay the Grant to the Trust as follows:
- (a) payments will be made to the Trust within 30 working days of receipt of a payment request.
 - (b) such payment request shall include:
 - (i) an invoice for payment by the Trust in respect of the Eligible Costs incurred to date, an up to date Project Plan and projected costs to completion of the Works; and
 - (ii) any documentation and supporting evidence as the Council may reasonably require to verify the Eligible Costs incurred by the Trust.
- 6.2 In order for any payment to be released, the Council will require the Trust to:
- (a) have signed and returned a copy of this Agreement to the Council;

- (b) have provided the appropriate bank details; and
- (c) be in compliance with the terms and conditions of this Agreement.

- 6.3 The Council reserves the right to withhold all or any payments of the Grant if the Council has reasonably requested information or documentation from the Trust and this has not been received by the Council in the timescales reasonably required or is not to the Council's reasonable satisfaction.
- 6.4 Without prejudice to the Council's rights under clause 10, in the event that the Trust has used all or part of the Grant for any purpose other than towards the Project, the Trust shall re-pay to the Council an amount in respect of the Grant that has been so misused on demand by the Council, which amount shall be a debt due by the Trust to the Council.
- 6.5 Notwithstanding any other provision of this Agreement, the Council shall only be liable to pay to the Trust under this Agreement such sums which in the aggregate (taking into account sums previously paid under this Agreement) do not exceed the Maximum Commitment.

7 Managing the Grant

- 7.1 Each Party must notify the other of:
- (a) the nominated person who will act as the Party's authorised representative; and
 - (b) the contact details of the authorised representative and any deputies.
- 7.2 The Council may ask the Trust to clarify information provided to it and the Trust shall comply with any such reasonable request.
- 7.3 The Trust must notify the Council as soon as reasonably practicable that an underspend is forecast. Any underspend of Grant funds must be returned to the Council.
- 7.4 If an overpayment of the Grant has been made, the Council will be entitled to recover the overpayment.
- 7.5 The Trust may not without the prior written consent of the Council (not to be unreasonably withheld or delayed) vire funds between this Grant and other grants made to the Trust by the Council.
- 7.6 The Trust's Treasurer, Finance Officer, or equivalent will ensure that appropriate professional arrangements are put in place for the management of the Grant and the

reporting of expenditure. The Treasurer, Finance Officer, or equivalent should take all necessary steps to ensure that the Grant is accounted for and monitored separately from the Trust's other funding streams.

- 7.7 The Trust must maximise value for money and shall act in a fair, open and non-discriminatory manner in all purchases of goods, works and services.
- 7.8 In procuring any goods, works or services using Grant monies, the Trust shall follow its own procurement guidelines and comply with any applicable procurement legislation.

8 Retention of Records and Monitoring

- 8.1 The Trust must:
- (a) maintain and operate effective monitoring and financial management systems;
 - (b) keep a proper record of all expenditure relating to the Project;
 - (c) retain all accounting records relating to this for a period of at least two years after completion of the Project. Accounting records include original invoices, receipts, minutes from meetings, accounts, deeds, and any other relevant documentation, whether in writing or electronic form; and
 - (d) upon reasonable prior notice allow the Council to inspect and take copies of those document and records referred to in this clause 8 at any reasonably time and upon reasonable notice.
 - (e) provide such information as the Council requests to enable both the Trust and the Council to comply with the SCA and provide copies to the Council when required to do so.
- 8.2 The Trust shall supply such other information as may reasonably be required by the Council regarding the Project.
- 8.3 The Trust shall comply with the requirements of 8.1(a) and permit inspection by the Council of such systems upon reasonable prior notice pursuant to clause 9.

9 Audit and Inspection

- 9.1 The Trust, without charge, shall permit any officer or officers of the Council, external funding and/or auditing bodies (i.e. National Audit Office or Audit Commission) or their nominees, to visit its premises and/or inspect any of its activities and/or to examine and take copies of its books of account and such other documents or

records which in such officers' view may relate to the use of the Grant. In addition, examinations may be carried out into the economy, efficiency and effectiveness with which the Grant has been used. The Council shall endeavour, but is not obliged, to provide notice of its intent to conduct an audit.

- 9.2 The value and purpose of the Grant shall be identified separately in the Trust's accounts.

10 Termination and repayment of Grant

- 10.1 The Council shall be entitled to terminate this Agreement immediately by giving notice in writing to the Trust if the Trust commits a material breach of any of its obligations under this Agreement and, in the case of a breach which is capable of remedy, fails to remedy the same within 14 (fourteen) working days after receipt of such notice, giving full particulars of the breach and requiring it to be remedied. For the avoidance of doubt a material breach shall include, inter alia, a breach of clauses 5.2 and 5.3, and not using the Grant for the Project.
- 10.2 The Council shall be entitled to terminate this Agreement forthwith by written notice to the Trust in the event that:
- (a) any meeting of creditors of the Trust is held or any arrangement or composition with or for the benefit of its creditors (including any voluntary arrangement as defined in the Insolvency Act 1986) is proposed or entered into by or in relation to the Trust;
 - (b) if a supervisor, receiver, administrator, administrative receiver or other encumbrancer takes possession of or is appointed over or any distress, execution or other process is levied or enforced (and is not discharged within five working days) upon the whole or any substantial part of the assets of the Trust;
 - (c) the Trust ceases to operate the School or to carry on its business or are or become unable to pay its debts within the meaning of Section 123 Insolvency Act 1986;
 - (d) if a petition is presented, or a meeting is convened for the purpose of considering a resolution, for the making of an administration order, the winding up, bankruptcy, or dissolution of the Trust; or
 - (e) any event analogous to any of the foregoing occurs in any jurisdiction.

- 10.3 Upon the termination of this agreement in accordance with clauses 10.1 and 10.2, a reasonable proportion of the amount of any Grant made shall become immediately repayable to the Council.
- 10.4 On termination of this Agreement for any reason, the Trust shall as soon as reasonably practicable return to the Council any unused funds (unless the Council gives its written consent to their retention) then in its possession in connection with this Agreement.
- 10.5 Any termination of this Agreement will be without prejudice to any other rights or remedies of the parties under this Agreement or at law and will not affect any accrued rights or liabilities of the parties at the date of termination.
- 10.6 If the Trust cease to comply with any of the conditions set out in this agreement, or if there is a finding of non-compliance with the SCA relating to the Grant by a relevant authority, the Council may in its absolute discretion reduce, suspend, or withhold Grant payments or require all or any part of the Grant to be repaid.
- 10.7 If the Trust ceases to maintain the additional school places from September 2025, the Council may in its absolute discretion reduce, suspend, or withhold Grant payments or require all or any part of the Grant to be repaid except where the cessation is as a result of:
- (a) a reduction in pupils stating a preference for the School; or
 - (b) the School not being a reasonable alternative to a preferred school.
- 10.8 The Trust must repay the amount concerned within 30 (thirty) days of receiving the demand for repayment. The liability to meet such a demand shall be enforceable as a contractual debt.

11 Collateral Warranties

- 11.1 The Trust shall procure that the Contractor shall provide (and that the Contractor shall procure the provision from its sub-contractors, consultants and sub-consultants) collateral warranties in favour of the Council as a funder and landowner in a form approved by the Council.
- 11.2 The Trust shall ensure the Contractor(s) and any professional consultants (if applicable) has adequate insurance coverage (including but not limited to public liability insurance) in place and shall provide evidence of such insurance to the Council on request.

12 Insurance

The Trust shall ensure that it has adequate insurance coverage (including but not limited to public liability insurance) in place and shall provide evidence of such insurance to the Council on request.

13 Liability and Indemnity

- 13.1 The Council accepts no liability to the Trust or to any third party for any costs, claims, damage or losses arising from the carrying out of the Project, howsoever they are incurred, except to the extent that they arise from personal injury or death which is caused by the Council's negligence.
- 13.2 Subject to clause 13.1 the Council's liability under this Agreement is limited to the payment of the Grant.

14 Amendments to the Agreement

- 14.1 This Agreement sets out the entire agreement between the Parties. It replaces all previous negotiations, agreements, understandings and representations between the Parties, whether oral or in writing.
- 14.2 Any amendments to this Agreement shall only be valid if they are in writing and signed by an authorised representative of both Parties.

15 Freedom of Information

- 15.1 The Trust acknowledges that the Council is subject to the requirements of the FOIA and the Environmental Information Regulations and shall assist and cooperate with the Council to enable it to comply with these Information disclosure requirements.
- 15.2 The Trust shall:
 - a) transfer any Request for Information relating to the Project to the Council as soon as practicable after receipt and in any event within two working days of receiving a request for Information;
 - b) provide the Council with a copy of all Information relating to a Request for Information in its possession or power in the form that the requires within five working days (or such other period as the Council may specify) of the Council requesting that Information; and
 - c) provide all necessary assistance as reasonably requested by the Council to enable it to respond to a request for Information within the time for compliance set out in section 10 of the FOIA or regulation 5 of the Environmental Information Regulations.

- 15.3 The Council shall be responsible for determining at its absolute discretion whether Information:
- a) is exempt from disclosure in accordance with the provisions of the FOIA or the Environmental Information Regulations;
 - b) is to be disclosed in response to a request for Information, and in no event shall the Trust respond directly to a request for Information unless expressly authorised to do so by the Council.
- 15.4 The Trust acknowledges that the Council may, acting in accordance with the Secretary of State for Constitutional Affairs' Code of Practice on the discharge of public authorities' functions under Part 1 of FOIA (issued under section 45 of the FOIA, November 2004), be obliged under the FOIA or the Environmental Information Regulations to disclose Information:
- a) without consulting with the Trust, or
 - b) following consultation with the Trust and having taken its views into account.
- 15.5 The Trust shall ensure that all Information produced in the course of this Agreement is retained for disclosure and shall permit the Council to inspect such records as requested from time to time.

16 Confidentiality and Data Protection

For the purposes of this clause:

- (a) **"Confidential Information"** means information of a confidential nature, including but not limited to information relating to the operations, plans, intentions, know-how, copyright and other intellectual property rights, software, market opportunities, strategies, customers and potential customers, competitors and potential customers, business and/or financial affairs of the Parties;
- (b) **"Data Protection Legislation"** means (i) the General Data Protection Regulation (EU 2016/679) the Law Enforcement Directive (EU) 2016/680) and any applicable national implementing Laws as amended from time to time (ii) the Data Protection Act 2018 to the extent that it relates to processing of personal data and privacy; (iii) all applicable Law about the processing of personal data and privacy (including but not limited to the Data Protection Act 2018) including where applicable the guidance, best practise and codes of practice issued by the Information Commissioner as amended or superseded from time to time;

- (c) **“Disclosing Party”** means the Party disclosing Confidential Information; and
- (d) **“Receiving Party”** means the Party receiving Confidential Information.

16.1 Each Party agrees to keep Confidential Information disclosed to it by the other Party strictly confidential and not to use any such Confidential Information for any purpose other than for purposes directly related to the provision of the Grant. The Receiving Party will restrict access to Confidential Information of the Disclosing Party to such of its employees as need to know the same for the purposes set out in this clause and will not disclose any such Confidential Information to any third party without the prior written consent of the Disclosing Party and, in the event that such disclosure is permitted, the Receiving Party will procure that such third party agrees to be bound by the terms of this clause in relation to such Confidential Information. The requirements of this clause will not apply to the disclosure of information which:

- (a) at the time of disclosure is in the public domain in the form supplied otherwise than through a breach of this Agreement; or
- (b) was lawfully within the possession of the Receiving Party prior to its disclosure by the Disclosing Party Provided that the source of such information was not bound by obligations of confidentiality in respect of such information; or
- (c) the Receiving Party is required to disclose by law and/or any court of competent jurisdiction or any governmental or regulatory body.

16.2 The Parties acknowledge that damages may not be an adequate remedy in respect of a breach of this clause and that equitable reliefs including injunctions and orders for specific performance may be appropriate for the enforcement of this clause.

16.3 Upon termination or expiry of this Agreement, the Receiving Party will immediately deliver to the Disclosing Party Confidential Information in written form or stored in an electronic database relating to the Disclosing Party which the Disclosing Party has requested be returned and destroy any documents (including any stored in an electronic database) to the extent that such documents include any Confidential Information, together with any copies thereof, the return of which has not been requested, within seven days of such termination or expiry.

16.4 Each Party shall with its obligations under the Data Protection Legislation when carrying its respective requirements under this Agreement.

17 VAT

The Grant is believed to be outside the scope of VAT (Value Added Tax) but if any VAT shall become chargeable in respect of the Grant the Grant shall be inclusive of any irrecoverable VAT and exclusive of recoverable VAT.

18 Severance

If any provision of this Agreement is held by any Court or any other competent authority to be void or unenforceable in full or in part all other provisions hereof and the remainder of the provision shall remain in full force and effect

19 Headings

Headings contained in this Agreement are for reference purposes only and should not be incorporated into the Agreement and shall not be deemed to be any indication of the meaning of the clauses to which they relate.

20 Waiver

Any delay on the part of either Party in enforcing any term or condition right or remedy in respect of this Agreement shall not be deemed to be a waiver of any right or remedy whatsoever of that Party.

21 Costs

Each of the Parties shall pay its own costs and expenses incurred in connection with the preparation of this Agreement.

22 Assignment and Transfer

The Trust shall not assign or sub-transfer the whole or any part of this Agreement or any rights under Agreement without the prior consent in writing of the Council.

23 Variations

This Agreement may only be varied by a written agreement signed by authorised representatives of each Party.

24 Counterparts

- 24.1 This Agreement may be executed in any number of counterparts, and by the Parties on separate counterparts, but shall not be effective until each Party has executed at least 1 (one) counterpart.

- 24.2 Each Party agrees that the delivery of this Agreement by electronic transmission, including copies of the executed signature pages via pdf, shall have the same force and effect as delivery of original signatures and that each Party may use such copies of the executed signature pages as evidence of the execution and delivery of this Agreement by both Parties.
- 24.3 This Agreement may be signed by any party by electronic signature (whatever form the electronic signature takes) and this method of signature is as conclusive of such party's intention to be bound by this Agreement as if signed by each party's manuscript signature.
- 24.4 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

25 No Partnership or Agency

This Agreement shall not create any partnership or joint venture between the Council and the Trust nor any relationship of principal and agent, nor authorise any Party to make or enter into any commitments for or on behalf of the other Party.

26 Notices

- 26.1 All notices, invoices and other communications relating to this Agreement shall be in writing and in English and shall be served by a Party on the other Party at its address shown at the head of this Agreement.
- 26.2 Notices delivered hereunder shall be deemed to be delivered:
- (a) if delivered by hand, upon receipt; or
 - (b) if sent by pre-paid registered first class post (providing it is not returned as undelivered to the sender), 2 (two) working days after posting

27 Contract (Rights of Third Parties) Act 1999

No person who is not a Party to this Agreement shall have the right to enforce any its terms.

28 Governing Law

This Agreement shall be subject to and construed in accordance with English Law and subject to the exclusive jurisdiction of the courts of England and Wales.

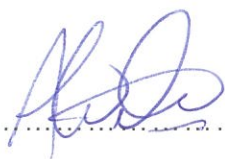
IN WITNESS whereof the Parties have executed this Agreement as a Deed on the day and year above written

**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:

**EXECUTED AND DELIVERED as a DEED
by THE CHERRY TREE TRUST**
acting by two Directors:

Director 1 Signature:



Print Name: **ANDREW WILBY TRUST CHAIR.**

Director 2 Signature:



Print Name: **DAVID THOMAS TRUSTEE**

