



2021

(1) CONWY COUNTY BOROUGH COUNCIL

and

(2) DENBIGHSHIRE COUNTY COUNCIL

FUNDING AGREEMENT

relating to the capital expenditure costs of development of the
Meadow Lodge Children's Assessment Centre

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M3 3AA**

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BETWEEN

- (1) **CONWY COUNTY BOROUGH COUNCIL** of Bodlondeb, Bangor Road, Conwy, LL32 8DU ("**Conwy**"); and
- (2) **DENBIGHSHIRE COUNTY COUNCIL** of Wynnstay Road, Ruthin, LL15 1YN ("**Denbigh**").

BACKGROUND

- (A) Conwy has agreed to procure the Works for a building that is intended to become the Centre, and which is subsequently to be operated, managed and ongoing costs funded on terms to be agreed between the Parties and also Betsi Cadwaladr University Health Board (the "**Board**").
- (B) The Parties acknowledge that prior to this Works procurement by Conwy the Parties must agree the basis on which the costs of the Works are to allocated between the Parties.
- (C) The terms on which that allocation of costs has been agreed are set out below. The operational and ongoing funding arrangements of the Centre following completion of the Works shall be the subject of a separate agreement.

TERMS AGREED:

1. Definitions and interpretation

1.1 The following definitions and rules of interpretation apply in this Agreement (including the Background):

"Applicable Law"	any and all applicable laws, regulations or guidance and any applicable and binding judgment of a relevant court of law;
"Business Day"	a day other than a Saturday, Sunday or public holiday in England and Wales when banks in London are open for business;
"CAPEX Items"	those items of capital expenditure which relate to the design and build of the Centre and which are identified in the Schedule;
"Centre"	the building that is intended to be constructed at the Property pursuant to the Works Contract, and then operated as a children's assessment centre;
"Commencement Date"	the date of this Agreement;
"Contractor"	the contractor appointed under the Works Contract by Conwy following the Tender Process;
"Fund"	the Integrated Care Fund;

"Maximum CAPEX Value"	£2,687,524 (two million six hundred and eighty-seven thousand five hundred and twenty-four pounds), inclusive of VAT;
"Party"	a party to this agreement (and "Parties" will be construed accordingly);
"Property"	the land known as Meadow Lodge Cottage and Meadow Lodge, 247 Abergele Road, Old Colwyn, Colwyn Bay LL29 9YF;
"Tender Cost"	the cost (including any provisional/contingency sums) agreed by Conwy with the contractor(s) to be appointed to undertake the Works pursuant to the Tender Process;
"Tender Cost Condition"	the condition by which the Tender Cost is confirmed or approved in accordance with clause 2;
"Tender Process"	the formal legal process for the procurement of the Works such procurement to be on the basis of the Works Contract;
"VAT"	value added tax chargeable under the Value Added Tax Act 1994;
"Works"	the design and construction of the Centre; and
"Works Contract"	a fixed price contract for the Works.

- 1.2 References to **"clauses"** are to the clauses of this Agreement. Clause headings shall not affect the interpretation of this Agreement.
- 1.3 A reference to **"this Agreement"** or to any other agreement or document referred to in this Agreement is a reference to this agreement (executed as a deed) or such other agreement or document as varied or novated (in each case, other than in breach of the provisions of this Agreement) from time to time.
- 1.4 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.5 A reference to a statute or statutory provision or to Applicable Law:
- 1.5.1 shall include all subordinate legislation made from time to time under the same; and
- 1.5.2 is a reference to the same as amended, extended, superseded or consolidated from time to time.
- 1.6 A reference to **"writing"** or **"written"** includes email (including all attachments) but not communication by SMS or similar text messaging facilities.

- 1.7 An obligation on a Party not to do and/or omit to do something includes an obligation not to allow that thing to be done and/or omitted to be done.
- 1.8 Any words following the terms "**including**", "**include**", "**in particular**", "**for example**" or any similar expression shall be construed as illustrative and shall not limit the generality of the related general words.

2. Preliminary Steps

- 2.1 Promptly following the Commencement Date Conwy shall initiate the Tender Process and as soon as practicable (within the lawful parameters of the Tender Process) Conwy will obtain the Tender Cost. Conwy shall promptly notify the other Parties in writing with the details of the Tender Cost.
- 2.2 The Tender Cost Condition shall be satisfied in the following circumstances:
 - 2.2.1 the Tender Cost does not make the overall cost of the design and build of the Centre exceed the Maximum CAPEX Value; or
 - 2.2.2 the Tender Cost does make the overall cost of the design and build of the Centre exceed the Maximum CAPEX Value, but the Parties agree either:
 - 2.2.2.1 a basis on which one or more of the Parties will be responsible for, and to fund, the excess out of its or their own resources; or
 - 2.2.2.2 revision(s) to the specification for the Centre which reduce the Tender Costs such that the Maximum CAPEX Value is not exceeded; or
 - 2.2.2.3 a combination of clauses 2.2.2.1 and 2.2.2.2,following the process in clause 2.3.
- 2.3 If the Tender Cost does not make the overall cost of the design and build of the Centre exceed the Maximum CAPEX Value, then:
 - 2.3.1 Conwy shall, within 5 Working Days of the initial notification of the same, notify the other Parties;
 - 2.3.2 the Parties shall as soon as practicable discuss and seek to resolve where possible a basis for funding the excess and/or working with the tenderer(s) in agreeing adjustment to the specification of the Centre to reduce or remove the excess within 20 Working Days following such notification by Conwy;
 - 2.3.3 if within the time period in clause 2.3.2 either:
 - 2.3.3.1 the Parties agree a basis for funding the excess; or
 - 2.3.3.2 the Parties agree a revised specification (with the tenderer(s)) that removes the excess; or
 - 2.3.3.3 a combination of the above,

then the Tender Cost Condition shall be satisfied;

2.3.4 if the Parties do not agree a basis for funding the excess and/or revision to the specification of the Centre sufficient to reduce the excess, within the time period set out in clause 2.3.2 (or such longer period, if any, as may be agreed in writing between the Parties), then the Tender Cost Condition shall not be satisfied and this Agreement shall automatically terminate.

2.4 Following:

2.4.1 satisfaction of the Tender Cost Condition; and

2.4.2 approval from the Welsh Government as to the provision and availability of grant funding through the Fund for the design and build of the Centre at least up to the Maximum CAPEX Value,

Conwy shall enter into the Works Contract.

3. Funding Commitment

Each Party agrees to take all reasonable steps to ensure that any allocations that it may receive or be allocated under the Fund are directed towards Conwy to support the design and build of the Centre, including the payment obligations of Conwy under the Works Contract and recompense for or otherwise fund any other CAPEX Items.

4. Centre Funding and Governance

4.1 Following completion of the Works Contract, the Parties acknowledge that the operation of the Centre shall be subject to separate funding and governance arrangements (together in part with the Board) which the Parties agree to put in place as soon as reasonably practicable, and in any event in advance of completion of the Works (subject only where relevant to any arrangements to be agreed with the Board).

4.2 The separate funding and governance arrangements between the Parties shall include (among other things):

4.2.1 as between Conwy and Denbigh the ongoing funding of the administrative operation and maintenance of the Centre (to be agreed between them);

4.2.2 governance arrangements relating to:

4.2.2.1 the methodology by which children from the Conwy and Denbigh regions are granted pathway access to the medical services to be provided at the Centre;

4.2.2.2 the staffing both of medical and other personnel and the management of those staff (and in respect of which the Parties acknowledge that it is the intention that the Board shall be responsible for (and for the costs of) medical staff to be provided to undertake work at or in connection with the Centre).

5. Confidentiality

- 5.1 Each Party undertakes that it shall not disclose to any person any confidential information concerning the business or affairs of the other Party, except as permitted by clause 5.3.
- 5.2 Each party may disclose the other party's confidential information:
- 5.2.1 to those of its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the Party's rights or carrying out its obligations under or in connection with this Agreement. Each Party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other Party's confidential information comply with this clause 6;
- 5.2.2 as may be required by law (including the Freedom of Information Act 2004 and the Environmental Information Regulations 2004), a court of competent jurisdiction or any governmental or regulatory authority.
- 5.3 No Party shall use another Party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Agreement.

6. Termination

- 6.1 This Agreement shall terminate either:
- 6.1.1 pursuant to clause 2.3.4; or
- 6.1.2 upon fulfillment by the Parties of all of their respective obligations under this Agreement.
- 6.2 Any provision of this Agreement that expressly or by implication is intended continue in force on or after termination of this Agreement shall remain in full force and effect.
- 6.3 Termination of this Agreement shall not affect any rights, remedies, obligations or liabilities of the Parties that have accrued up to the date of termination, including the right to claim damages or under an indemnity in respect of any breach of this Agreement which existed at or before the date of termination.

7. General Provisions

- 7.1 *Entire agreement*
- 7.1.1 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 7.1.2 Each Party agrees that in entering into this Agreement it does not rely on any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

7.1.3 Nothing in this clause shall limit or exclude any liability for fraud.

7.2 No variation of this Agreement shall be effective unless it is in writing, refers to this Agreement and is signed by each Party (or its authorised representative).

7.3 A waiver of any right or remedy under this Agreement or at law or in equity is only effective if given in writing and signed by the Party waiving such right or remedy and shall not be deemed a waiver of any subsequent breach or default. No failure or delay by a Party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

7.4 Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of any other Party, or authorise any Party to make or enter into any commitments for or on behalf of the other Party (save for the commitment by Conwy to enter into the Works Contract on the terms specified by this Agreement).

7.5 Each party shall execute and deliver such documents and perform such acts as may reasonably be required for the purpose of giving full effect to this Agreement and shall use all reasonable endeavours to procure that any necessary third party shall do the same.

7.6 *Notices*

7.6.1 A notice given to a Party under or in connection with this Agreement shall be in writing and sent to the party at the address or to the fax number or email address notified in writing to the other Parties.

7.6.2 The following table sets out methods by which a notice may be sent and, if sent by that method, the corresponding deemed delivery date and time:

Delivery method	Deemed delivery date and time
Delivery by hand	On signature of a delivery receipt or, if not signed for, at the time the notice is left at the address
Pre-paid first class post	09:00 on the second Working Day after posting
Signed-for next working day delivery service	At the time recorded by the delivery service
Fax	At the time of transmission
Email providing the sender does not receive an error message or out of office message in response to such email	(1) If the email is sent with "delivery receipt" functionality enabled, at the time specified in any relevant delivery receipt

	<p>(2) If (1) does not apply but the recipient acknowledges receipt within three hours after the email was sent, at the time of such acknowledgment</p> <p>If neither (1) nor (2) applies, three hours after the time of sending (as evidenced by the sender's email application)</p>
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7.6.3 For the purpose of clause 7.6.2 and calculating deemed receipt, if deemed receipt would occur outside Business Hours, receipt is deemed to take place at 09:00 on the next Business Day.

7.6.4 This clause 8.6 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

7.7 This Agreement may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute a single agreement.

7.8 Transmission of:

7.8.1 an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by fax; or

7.8.2 the executed signature page of a counterpart of this Agreement (in PDF, JPEG or other agreed format) together with a full copy of the final agreed version of this Agreement by email,

shall take effect as delivery of an executed counterpart of this Agreement. If either method of delivery is adopted, without prejudice to the validity of the agreement thus made, each party shall provide the others with the original of such counterpart as soon as reasonably possible.

7.9 No one other than a Party to this Agreement shall have any right to enforce any of its terms.

7.10 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

In witness whereof this Agreement has been executed as a Deed on the date first stated above.

SCHEDULE

CAPEX Items

Capital Expenditure		
Design Fees, Demolition and Survey Costs to date	£269,866	
Project Management/Supervision, QS and M & E Design Review Fees to completion	£132,537	
Construction Cost	£2,115,853	
Contingency (8%)	£169,268	
TOTAL CAPITAL EXPENDITURE		£2,687,524
Deduct ICF Grant 2019/20	£198,593	
Deduct ICF (Paradise)	£655,000	
Deduct ICF 2021/2022	£1,833,931	
TOTAL AVAILABLE FUNDING		£2,687,524
FUNDING SURPLUS/DEFICIT		-£0

EXECUTED as a **DEED** (but not delivered until the date first stated above) by **CONWY COUNTY BOROUGH COUNCIL** by the affixing of its common seal

**AUTHORISED
SIGNATORY**

Signature:

EXECUTED as a **DEED** (but not delivered until the date first stated above) by **DENBIGHSHIRE COUNTY COUNCIL** by the affixing of its common seal

**AUTHORISED
SIGNATORY**

Signature: