Examining Authority’s Second Written Round of Questions and Requests for Information

Response from Thames Water

LB Newham - S106
Doc Ref: APP74.12
DATED [●]

THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF NEWHAM
as the Council

THAMES WATER UTILITIES LIMITED
as the Developer

AGREEMENT PURSUANT TO SECTION 106 OF THE TOWN AND COUNTRY
PLANNING ACT 1990 AND SECTION 111 OF THE LOCAL GOVERNMENT ACT 1972
in relation to the development at Beckton Sewage Treatment Plant
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DATED [●]

PARTIES

(1) THE MAYOR AND BURGESSES OF LONDON BOROUGH OF NEWHAM of Newham Dockside, 1000 Dockside Road, London E16 2QU (the “Council”)

(2) THAMES WATER UTILITIES LIMITED, a company incorporated in England with registered number 02366661 whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB (the “Developer”)

BACKGROUND

(A) The Council is the relevant planning authority for the purposes of section 106 of the 1990 Act for the area within which the Land is situated.

(B) The Developer is the owner of the freehold interest in the Existing TWUL Land.

(C) The Developer submitted the Application to the Secretary of State on 28 February 2013 and the Application was accepted by the Secretary of State on 27 March 2013.

(D) The Council is satisfied that the obligations in this Agreement are compliant with Regulation 122 of the CL Regulations 2010 and that they meet the following tests:

   (a) they are necessary to make the Development acceptable in planning terms; and

   (b) they are directly related to the Development; and

   (c) they are fairly and reasonably related in scale and kind to the Development.

(E) The Developer has agreed that the Development shall be carried out only in accordance with the DCO and the rights and obligations set out in this Agreement.

(F) This Agreement is intended to be enforceable by the Council and subject to Clause 2 (Land Bound), Clause 4 (Conditionality) and Clause 11 (Release and Lapse) to be binding on the Developer, and on the Land, and the Developer’s Successors to that land.

OPERATIVE PROVISIONS

Restart Numbering Applied

1 STATUTORY POWERS

1.1 This Agreement entered into by deed contains planning obligations that are development consent obligations for the purposes of section 106 of the 1990 Act and is entered into pursuant also to section 111 of the Local Government Act 1972 and section 1 of the Localism Act 2011 and all other powers so enabling.

1.2 It is acknowledged by the parties that the obligations contained within this Agreement are enforceable by the Council as local planning authority against:
(a) The Developer in respect of its Qualifying Interest in the Land as bound under Clause 2 (Land Bound) of this Agreement; and

(b) The Developer’s Successors to its Qualifying Interest in the Land as bound under Clause 2 (Land Bound) of this Agreement.

2 LAND BOUND

Subject to Clause 4 (Conditionality), Clause 11 (Release and Lapse) and Clause 7 (Legal Costs) the planning obligations in this Agreement bind the Land set out in Schedule 3 (Land).

3 INTERPRETATION

3.1 In this Agreement unless the context otherwise requires the following terms (arranged in alphabetical order) shall have the following meanings:

“1990 Act” means the Town and Country Planning Act 1990 (as amended);

“2008 Act” means the Planning Act 2008 (as amended);

“Application” means the application for development consent made pursuant to the 2008 Act submitted by or on behalf of the Developer to the Secretary of State to which the Secretary of State has allocated reference number WW010001;

“Construction Phase” means the period from Implementation of the Development until the Construction Phase Completion Date;

“Contractor” means for the purposes of this Agreement the contractor appointed to carry out the works comprising the Development at the Development Site located at Beckton Sewage Treatment Works and at Abbey Mills Pumping Station;

“Council” means The London Borough of Newham;

“DCO” means the order granting development consent for the Development to be made under the 2008 Act pursuant to the Application;

“Developer” means Thames Water Utilities Limited and any Successors and statutory assignees;

“Development” means the development and associated development described in Part 1 of Schedule 1 of the DCO and any other development authorised by the DCO which is development within the meaning of Section 32 of the Planning Act 2008;


“Development Sites” means each of the worksites at Acton Storm Tanks, Hammersmith Pumping Station, Barn Elms, Putney Embankment Foreshore, Dormay Street, King George’s Park, Carnwath Road Riverside, Falconbrook Pumping Station, Cremorne Wharf Depot, Chelsea Embankment Foreshore, Kirtling Street, Heathwall Pumping Station, Albert Embankment Foreshore, Victoria Embankment Foreshore, Blackfriars Bridge Foreshore, Shad Thames Pumping Station, Chambers Wharf, Earl
Pumping Station, Deptford Church Street, Greenwich Pumping Station, King Edward Memorial Park Foreshore, Bekesbourne Street, Abbey Mills Pumping Station, and Beckton Sewage Treatment Plant;

“GLA” means the Greater London Authority;

“Implementation” means commencement of development pursuant to the DCO by the carrying out of a “material operation” (as defined in section 56(4) of the 1990 Act) save that for the purposes of this Agreement the term shall not include works of demolition, surveys, site clearance or works of archaeological or ground investigation (and in this Agreement “Implement” and “Implemented” shall be construed accordingly);

“Land” means the land described in Clause 2 (Land Bound) of this Agreement and detailed in Schedule 3 (Land);

“Local Labour Report” means a written monitoring report (based on averages over the [3][6] months preceding the date of the report) to include the following:

(a) the percentage of those recruited, employed, engaged and/or hired under the Contractor’s construction package who are living within the Development Boroughs;

(b) the percentage of those recruited, employed, engaged and/or hired under the Contractor’s construction package and are working at a Main Tunnel Drive Site who are living within the Borough in which the Main Tunnel Drive Site is located;

(c) the percentage of those recruited, employed, engaged and/or hired under the Contractor’s construction package who are living within the Development Boroughs;

(d) the number of apprentices (of minimum 6-month duration) employed as part of the Contractor’s construction package (and a cumulative total of all apprentices who have been employed); and;

(e) any associated information to inform the relative numbers and percentages being reported to demonstrate that the Contractor (and its sub-contractors) are complying with its obligations for local employment and skills as required by the Developer

(f) rates of staff turnover and conversion rates of apprentices into ongoing employment by the Contractor;

(g) monitoring information in relation to the Contractor’s workforce (age/ethnicity/residence/disabilities/previous employment) save that employees would only be expected to provide such details on a voluntary basis;

(h) an assessment on their future employee requirements; and

(i) such information relating to the procurement of local goods and services as agreed in writing with the Developer to inform the Summary Local Labour and Services Report;

“Main Tunnel” means works nos. 1a to 1d at Schedule 1 to the DCO;
"Main Tunnel Drive Sites" means the worksites at Carnwath Road Riverside, Kirtling Street, Chambers Wharf and Greenwich Pumping Station;

"PLA" means the Port of London Authority;

"Plans" means the plans attached to this Agreement and comprising the Overview Site Plan (Parts 1 to 4) and the Ownership Plan;

"Project Hub" means an allocated space within the Main Drive Site at Greenwich Pumping Station provided for the Contractor which provides space health and safety and basic skills classes and as a base for community liaison and outreach activities and for the SEM and SCEM;

"River Thames" means so much of the River Thames, the Thames estuary, rivers, streams, creeks, watercourses and the sea as is within PLA's limits described in paragraph 2 of Schedule 1 of the Port of London Authority Act 1968;

"SCEM" means Supply Chain Engagement Manager as set out in more detail in paragraph 3(a)(vii) of paragraph 1 (Local Labour);

"SEM" means Skills and Employment Manager as set out in more detail in paragraph 3(a)(vi) of Schedule 1, Part 1 (Employment and Skills);

"Successor" means any person deriving title from the Developer in respect of its Qualifying Interest and for the purposes of Section 106(3)(b) of the 1990 Act shall include any person to whom powers are transferred further to Article 9 of the DCO.

"Summary Local Labour and Services Report" means a written monitoring report summarising the contents of the Labour Reports produced over the preceding 6 (six) month period against the whole of the Development, and providing such information on the procurement of local goods and services as agreed between the Developer and the Council;

"Target Beneficiary Groups" includes local residents, unemployed people, other disadvantaged groups including ex-offenders, and groups which are currently underrepresented in the workforce (for example in terms of age, ethnicity, gender and/or disability);

"Working Day(s)" means a day other than a Saturday or Sunday or public holiday in England.

3.2 References in this Agreement to the “Developer” shall include its Successors and its respective successors in respect of its Qualifying Interest in the Land and its assigns.

3.3 References to “Work Nos” or to a “Work No” are references to the works forming part of the Development listed in Schedule 1 of the DCO;

3.4 References in this Agreement to the “Council” shall include any successor to its functions as local planning authority.

3.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.

3.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.
3.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.

3.8 References to the singular shall include the plural and vice versa.

4 CONDITIONALITY

The obligations in this Agreement (save for the covenant in Clause 7 (Legal Costs)) are unless otherwise specified conditional upon:

4.1 the grant of the DCO; and

4.2 Implementation of the DCO by the Developer or a person authorised by it.

5 DEVELOPER’S COVENANTS

The Developer COVENANTS with the Council that it will observe and perform the covenants on its part contained in Schedule 1 (Developer’s Covenants).

6 COUNCIL’S COVENANTS

The Council COVENANTS with the Developer that it will observe and perform the covenants on its part contained in Schedule 2 (Council’s Covenants).

7 LEGAL COSTS

The Developer COVENANTS with the Council that it will no later than the date of this Agreement pay £[●] towards the Council’s reasonable legal costs and, in addition, VAT thereon (except for VAT for which the Council is entitled to credit or repayment from HMRC) in connection with the preparation and completion of this Agreement.

8 INTEREST ON LATE PAYMENTS

Any payment due from the Developer under this Agreement which is not paid on the due date shall be payable with interest calculated at the rate of 4% above the base lending rate from time to time of Barclays Bank plc.

9 VAT

9.1 All consideration set out in this Agreement is exclusive of VAT.

9.2 If VAT is, or becomes, properly chargeable on any supply made pursuant to this Agreement, the recipient of that supply shall pay to the supplier an amount equal to such VAT in addition to the consideration for that supply, against receipt of a valid VAT invoice. The recipient of any such supply shall pay to the supplier an amount equal to any VAT which is chargeable in respect of the supply in question on the later of:

(a) the day on which the consideration for the supply is paid or given; and

(b) production of a proper VAT invoice.

9.3 Where a person (the “payer”) has paid an amount to any other person (the “payee”) on the basis that the payee was entitled to that amount under Clause 9.2
above, but the payee was not properly entitled to the whole or part of that amount under that Clause, then:

(a) if the payee has not accounted for such amount (or such part thereof) to HMRC, the payee shall forthwith repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer; or

(b) if the payee has accounted for such amount (or such part thereof) to HMRC, the payee shall, if, when and to the extent that it receives repayment or credit for such amount from HMRC, repay such amount (or such part thereof) to the payer and issue an appropriate credit note to the payer.

10 COMMUNITY INFRASTRUCTURE LEVY

If after the date of this Agreement there shall be enacted any “tax” related to the grant of the DCO (whether the community infrastructure levy or otherwise) and the terms of such tax mean that any obligations under this Agreement or under any condition attached to the Permission change or that the Developer must pay a sum to any person (whether HM Government or to the Council or otherwise) which would duplicate, add to or overlap with any obligation of a party under this Agreement then the parties agree that the terms of this Agreement may at the election of the party affected be modified to such extent (if any) as is necessary to provide terms which are financially and practically no less advantageous and no more onerous than the terms of this Agreement as at the date that they are entered into.

11 RELEASE AND LAPSE

11.1 Subject to Clause 11.6 the parties agree that the Developer shall not be liable for a breach of any of its obligations under this Agreement or obligations relating to any part of the Land after it has parted with all of its interests in the Land or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

11.2 It is further agreed that this Agreement shall lapse and be of no further effect if:

(a) the DCO lapses without having been Implemented; or

(b) the DCO is amended or repealed otherwise than with the consent of the Developer; or

(c) the DCO is quashed following a successful legal challenge (in which case any money paid to the Council pursuant to an obligation in this Agreement shall be returned to the Developer).

11.3 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission or development consent (other than the DCO) granted (whether or not on appeal) after the date of this Agreement.

11.4 Any obligation under the terms of this Agreement which is expressed to be binding on a particular area of land shall be binding on the Developer’s Successors but only insofar as they are Successors to that area of land or relevant part of it and on the basis that such Successors benefit from Clause 11.1 in (mutatis mutandis) the same way as the Developer.

11.5 No Successor to the Developer shall be liable for any breach of any obligation which occurs in relation to any area of the Land which that Successor does not own or control or which is carried out by any person other than that Successor.
11.6 Where upon the transfers by the Developer of its powers under the DCO to a Successor pursuant to Article 9 of the DCO the Developer retains a Qualifying Interest, the parties agree that the Developer shall only be released from its obligations under this Agreement upon the Successor entering into a planning agreement pursuant to section 106 of the Act whereby the Successor covenants to observe and perform the obligations in this Agreement.

11.7 Upon the performance discharge or other fulfilment of the covenant obligations (or any of them) of the Developer, any Successor, or the Council under the terms of this Agreement such covenant obligation or obligations shall absolutely cease and determine save in respect of any antecedent breach.

11.8 The Council agrees that (subject to it first being paid a reasonable administration fee not exceeding £50) it will confirm in writing the extent of the obligations which the Developer has discharged at the date of the request as soon as is reasonably practicable after receipt of a written request from the Developer or a person on its behalf.

12 LOCAL LAND CHARGE

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

12.2 Upon the satisfaction of the terms of this Agreement the Council shall at the request of the Developer procure that all entries in the register of local land charges relating to them shall be removed or marked as discharged as soon as is reasonably practicable.

13 NOTICES

13.1 Any notices required to be served by one party on another under this Agreement shall be served by first class prepaid recorded delivery post or by hand (providing proof of delivery is always obtained) in the following manner:

(a) on the Council at the address shown above marked “For the attention of [●]”; and

(b) on the Developer at the address shown above marked “For the attention of [●]” [and bearing reference “[●]”];

save that any of the parties may by written notice notify the other parties of an alternative address and/or reference for the service of subsequent written notices in which case those details shall be substituted for the details in Clauses 13.1(a) to 13.1(b) above.

13.2 Any such notice shall be deemed to have been received as follows:

(a) if delivered by hand, upon delivery on all relevant addresses;

(b) if sent by first class post, on the second Working Day after the date of posting.

14 NO FETTER ON DISCRETION

Nothing in this Agreement shall be taken to be or shall operate so as to fetter or prejudice the statutory rights powers discretions and responsibilities of the Council, Developer, the PLA or the GLA.
SEVERABILITY

It is agreed that if any part of this Agreement shall be declared unlawful or invalid by a Court of competent jurisdiction then (to the extent possible) the offending provisions will be severed from the Agreement and the remainder of this Agreement shall continue in full force and effect.

CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Notwithstanding the provisions of the Contracts (Rights of Third Parties) Act 1999 no part of this Agreement shall be enforceable by a third party who is not a party to the Agreement and for the avoidance of any doubt the terms of the Agreement may be varied by agreement between the parties without the consent of any third party being required.

WAIVER

No waiver (whether express or implied) by the Council of any breach or default by the Developer in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the said terms and conditions or from acting upon any subsequent breach or default in respect thereto by the Developer.

DISPUTE RESOLUTION

18.1 In the event of any dispute or difference arising between the parties arising out of this Agreement such dispute or difference may be referred to an expert, being an independent and fit person holding professional qualifications appropriate in light of the subject matter of the dispute, to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications.

18.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the expert to be appointed pursuant to Clause 18.1, or as to the appropriate professional body, within ten Working Days after any party has given to the other parties to the dispute or difference a written request to concur in the professional qualifications of the expert to be appointed pursuant to Clause 18.1 then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference. Such solicitor shall act as an expert and his decision as to the professional qualifications of such person, or as to the appropriate professional body, shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

18.3 The expert shall act as an expert and not as an arbitrator.

18.4 The expert shall be appointed subject to an express requirement that he reaches his decision and communicates it to the parties within the minimum practicable timescale allowing for the nature and complexity of the dispute and in any event not more than forty six Working Days from the date of his appointment to act.

18.5 The expert shall be required to give notice to each of the said parties inviting each of them to submit to him within ten Working Days of his appointment written submissions and supporting material and shall afford to each of the said parties an
opportunity to make counter submissions within a further fifteen Working Days in respect of any such submission and material and the expert's decision shall be given in writing within twenty Working Days from receipt of any counter submissions or in the event that there are no counter submissions within twenty-one Working Days of receipt of the written submissions and supporting material with reasons and in the absence of manifest material error the expert's decision shall be final and binding on the said parties.

18.6 The expert may award the costs of the dispute resolution in such proportions as he see fit but in the absence of an express award to this effect the costs of the dispute resolution shall be borne by the parties to the dispute in equal shares.

19 JURISDICTION

This Agreement is governed by and interpreted in accordance with English law and the parties agree to submit to the exclusive jurisdiction of the English courts.

20 COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which is an original and all of which together evidence the same agreement.

This Deed has been executed as a deed and delivered on the date stated at the beginning of this Deed.
Schedule 1
Developer’s Covenants

Part 1
Employment and Skills

Unless the Council agrees otherwise in writing with the Developer and provided always that the Developer (and its agents employees contractors and sub-contractors) shall not be required to do or refrain from doing anything that would result in anti-competitive business practices or anything which is not in accordance with any law rule or regulation (whether domestic or otherwise) during the Construction Phase and for the purposes of the Development the Developer covenants with the Council:

1 Local Labour

(a) That the Developer shall require its Contractors and their sub-contractors to use reasonable endeavours to:

(i) achieve a cumulative target of 25% of employees who live within the Development Boroughs across the Development Sites;

(ii) achieve a target of at least 30% of employees working in relation to river transport who live within Greater London, Kent, or Essex (or any or all of those Counties); and

(iii) ensure the employment of at least one apprentice for every 50 employees across the duration of the construction contracts for the Development, with such arrangements being based on the following:

(A) apprenticeships to be based on a 6-month minimum period;

(B) the total number of apprenticeships to be calculated by the average number of employees estimated for each contract package multiplied by the estimated contract duration against 6-month or 12-month apprenticeship placements; and

(C) a minimum of one apprentice to be employed at any time during the period of the construction contract.

(b) That the Developer shall provide the Council with a Summary Labour and Services Report every 6 (six) months or such longer time period as agreed in writing between the Developer and the Council;

2 Skills Planning Group

(a) That the Developer will:

(i) Prior to Implementation establish a Skills Planning Group, to be maintained throughout the Construction Phase of the Development, whose purpose is to identify future training requirements and potential employer interventions, and which is to comprise a chair who is a senior member of the Developer’s project executive management team, and involve as needed at the Developer’s discretion:

(A) other representatives of the Developer;
representatives from the Developer’s contractors;

(C) representatives from Further Education (FE) colleges and

(D) representatives from other training organisers (including but not limited to the Tunnelling and Underground Construction Academy (TUCA) and the National Construction College); and

(E) may also seek assistance from other delivery and funding agencies such as Construction Skills-CITB and the Skills Funding Agency;

3 Contractor obligations

(a) That the Developer shall require its Contractor to:

(i) participate in the Skills Planning Group;

(ii) within 3 months of being appointed by the Developer to submit and obtain approval by the Council (including working closely with the Council and/or its nominated agents/brokers Newham Workplace) of a Training and Employments Skills Plan which will:

(A) have regard to similar plans promoted by Construction Skills-CITB and/or National Skills Academy for Construction;

(B) will set out a schedule of a range of opportunities and activities over the Construction Phase including various new entrant opportunities which should include (but not be limited to) apprenticeships and traineeships; and

(C) provide an initial forecast of employee requirements in relation to its contract package;

(iii) provide the Council with the Labour Return Report in relation to its contract package every 3 [three] months (or at such other intervals as may be agreed between the contractor and Council), and deliver a copy to the Developer;

(iv) provide details of all job vacancies in relation to their proposed work on the Development and further provide details on a monthly basis of ongoing or new job vacancies throughout the course of their contract with the Developer;

(v) provide details supply-chain opportunities within the Development as soon as reasonably practicable and in any event with a minimum of 1 weeks’ prior notice;

(vi) to employ a Skills and Employment Manager (“SEM”) to be based at the Project Hub who will have responsibility for job brokerage and outreach and will work to maximise the number of contractor employees drawn from the Target Beneficiary Groups;

(vii) to employ a Supply Chain Engagement Manager (“SCEM”) to be based at the Project Hub who will have responsibility to engage with local businesses to maximise opportunities arising from the Development;

(viii) to develop a Local Procurement Plan that sets out the relevant works packages and procurement methods, and an associated Procurement Method
Statement setting out how local businesses will be engaged in the context of similar activities being undertaken by the Council, and to include details of supplier and/or subcontract engagement activities (such as events for meeting the Contractor, procurement workshops or specific engagement with local business enterprises or trade associations);

(ix) to carry out one supplier and/or subcontract engagement activity (as identified in the Local Procurement Plan) for every 50 procurement packages under its contract with the Developer;

4 **Contract procurement**

(a) That the Developer shall use and shall require the Contractor to use the online procurement portal *Competefor* to advertise contracts for the Development.
Schedule 2
Council’s Covenants

The Council covenants with the Developer as follows:

Restart Numbering Applied

1 Acting Reasonably

It will at all times act reasonably and in particular (without prejudice to generality) where any approval or expression of satisfaction is required by this Agreement it will not be unreasonably withheld or delayed.
Schedule 3
Land

The land hatched and edged in red on the Ownership Plan and comprising [●]
EXECUTION PAGE

Executed as a deed by THE MAYOR AND THE BURGESSES OF THE LONDON BOROUGH OF NEWHAM by affixing its common seal in the presence of [Name of authorised signatory]:

[Common seal]

Authorised Signatory

Executed as a deed by THAMES WATER UTILITIES LIMITED by the affixing of its Common Seal in the presence of:

[Common seal]

Authorised Signatory
Appendix
Plans

Overall Site Plan (Parts 1 to 4) - Plans showing Main Tunnel and sites for information purposes only

Ownership Plan – plan showing extent of Development Site at Beckton Sewage Treatment Works and the Existing TWUL Land
Copyright notice

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Thames Water Utilities Limited
Clearwater Court, Vastern Road, Reading RG1 8DB

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