Examining Authority’s Second Written Round of Questions and Requests for Information
Response from Thames Water

LB Southwark - S106
Doc Ref: APP74.15
DATED [●]

(1) THE MAYOR AND BURGesses OF
THE LONDON BOROUGH OF SOUTHWARK
as the Council

(2) THAMES WATER UTILITIES LIMITED
as the Developer

DRAFT

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 Chambers Wharf, London SE16
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DATED [●]

PARTIES

(1) [THE MAYOR AND BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK] of 160 Tooley Street London SE1 2TZ (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 and the highway authority for the purposes of the Highways Act 1980 for the area within which the Land is situated and is a Development Borough.

(B) The Developer has a freehold interest in the Site registered under title number [●].

(C) The Developer submitted the Application to the Secretary of State on 28 February 2013 for the DCO and the Application was accepted by the Secretary of State on 27 March 2013 under section 55 of the 2008 Act.

(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:

- they are necessary to make the Development acceptable in planning terms;
- they are directly related to the Development; and
- they are fairly and reasonably related in scale and kind to the Development.

(E) It is intended that the Developer will be the undertaker for the purposes of the DCO.

(F) 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

(G) This Agreement is intended to be enforceable by the Council and subject to Clause 2 (Land Bound), Clause 4 (Conditionality) and Clause 13 (Release and Lapse) to be binding on the Developer, and on the Land, and the Developer’s Successors to that land.

OPERATIVE PROVISIONS

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 and Clause the planning obligations in this Agreement bind the Land set out in Schedule 3.

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 the DCO submitted by Thames Water Utilities Limited to the Secretary of State (application reference number WW010001);

“Bevington Street Play Space Contribution” means the sum of [£[●]] Index Linked to be paid by the Developer to the Council in accordance with [●] towards the provision of temporary play space for teenagers on Bevington Street including MUGA, fencing and seats [in accordance with the [●]];

“Borough” means the London Borough of Southwark;

“CE Fund Contribution” means the sum of £[[●]] Index Linked payable by the Developer to the Council in accordance with [●] for the purposes of mitigating the residual effects of the Project on the local community in the vicinity of the Site and to be administered by the CLWG in accordance with the provisions at [●]:

(a) £[●] on or before Implementation;

(b) £[●] on or before one year of the Implementation Date;

(c) [●] on or before two years of the Implementation Date;

(d) [●] on or before three years of the Implementation Date;

(e) [●] on or before four years of the Implementation Date;

Note: We will need to add/amend the definitions when the substance of the obligations is being negotiated. We have set out the general definitions we would expect to see but clearly they will need to be amended as necessary.
(f) [●] on or before five years of the Implementation Date; and

(g) [●] on or before six years of the Implementation Date;

“Chambers Street Footway Contribution” means the sum of £[●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards temporary improvements to both footways along Chambers Street, including the removal of redundant crossovers and levelling of the surface of the footways;

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

“Construction Phase Completion Date” means the date on which the Developer completes the DCO Works as authorised by the DCO;

“Council” means the party of the first part hereto which shall include its successors to its functions from time to time;


“CLWG” means a working group to be convened in accordance with the requirements of Schedule 4 (The Community Liaison Working Group);

“DCO” means the order in the form as may ultimately be made by the Secretary of State if he is minded to issue development consent to the Application;

“DCO Works” means the works authorised by the DCO at or around the Site;

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

“Development" means the Thames Tideway Tunnel comprising 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;

"EMH Play Improvements Contribution" means the sum of £[●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards provision of temporary play improvements to Edwards Manor House [in accordance with the [●]];

"Foreshore Sites" means Putney Bridge Foreshore, Chelsea Embankment Foreshore, Albert Embankment Foreshore, Victoria Embankment Foreshore, Blackfriars Bridge Foreshore, King Edward Memorial Park Foreshore as indicated for information purposes only on the Overview Site Plan at the Appendix to this Agreement;

"GLA" means the Greater London Authority;

"Implementation" means commencement of development pursuant to the DCO by the carrying out of a “material operation” within the meaning of section 155 of the 2008 Act save that for the purposes of this Agreement the term shall not include works of demolition, surveys, site clearance, works of archaeological or ground investigation or remediation (and in this Agreement “Implement” and “Implemented” shall be construed accordingly);

["Index" means the RPI all items excluding mortgage interest (RPIX) published by the Office for National Statistics or the BCIS General Building Cost Index - published by the Royal Institution of Chartered Surveyors (RICS) to be applied in accordance with clause 8;] [Specific index applicable across the Development to be confirmed.]

["Index Linked” means the amount of any sum referred to in this Agreement increased by reference to the change in the Index from the date of this Agreement until the time of payment and “Indexed” shall be construed accordingly;]

"Jamaica Road Crossing Contribution" means the sum of £[●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards the plans to remove the Lower Road Gyratory as part of wider improvements to provide safer cycle routes in the areas and to the extent that such plans relate to the Development;

"Land” means the land described in Schedule 3 of this Agreement;

"Local Labour Report” means a written monitoring report (based on averages over the [3] 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);

(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;

[“Local Schools” means St Michael’s Secondary School, Riverside Primary School and St Joseph’s Primary School in the vicinity of the Site;]

[“Local Schools Mitigation Measures” means a plan of mitigation measure [to be agreed between the Developer and the Council (in consultation with Local Schools)] [as set out at Appendix [●]];]

“Lower Road Gyratory Contribution” means the sum of £[●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards the provision of pedestrian crossing facilities at Jamaica Road [in accordance with the [●]];}

“Main Tunnel” means works nos. 1a to 1d at Schedule 1 to the DCO;

“Main Tunnel Drive Sites” means Carnwath Road Riverside, Kirtling Street and Chambers Wharf;

“Monitoring Officer” means an employee of the Council who will act as the first point of contact within the Council for local residents, the Developer and the Contractor, will liaise with the Developer and the Contractor to ensure the requirements of the DCO and associated policies are met, and will monitor compliance with the obligations under this Agreement;

“Monitoring Officer Contribution” means the sum of [●] Index Linked payable by the Developer to the Council in accordance with [●] towards the costs of appointing and employing the Monitoring Officer to be paid in seven instalments:

(a) [●] on or before Implementation;

(b) [●] on or before one year of the Implementation Date;

(c) [●] on or before two years of the Implementation Date;

(d) [●] on or before three years of the Implementation Date;
(e) [●] on or before four years of the Implementation Date;
(f) [●] on or before five years of the Implementation Date; and
(g) [●] on or before six years of the Implementation Date;

“NCN4 Riverside Quietway Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards improvements to the NCN4/Riverside Quietway [as agreed and shown on [●]];

“Non-Statutory Offsite Mitigation and Compensation Agreement” means the deed of agreement to be entered into between the Developer and the Development Boroughs (and the associated unilateral undertaking provided to the Development Boroughs pursuant to section 106 of the 1990 Act) in relation to securing the obligations of the Developer to comply with the non-statutory offsite mitigation and compensation policies relating to the Development;

“PLA” means the Port of London Authority;

“Plans” means the plans attached to this Agreement at the Appendix and comprising the Overview Site Plan (Parts 1 to 4) and the Site and Construction Phase Plan;

“Project” means the authorised project as defined in and to be authorised by the DCO in relation to the Site;

“Project Hub” means an allocated space to be provided during the Construction Phase at the Development Site of Chambers Wharf by the Contractor to be used for:
(a) training space for health and safety training, and for basic skills classes including English language classes, and internet resources for prospective and actual workers;
(b) office space for project staff including the SEM, SCEM, administration, security, and skills/ job brokerage staff (and the SEM and SCEM established by the contractors for the works at the Development Sites at Albert Embankment Foreshore, Blackfriars Bridge Foreshore, Shad Thames Pumping Station, Earl Pumping Station, Deptford Church Street, King Edward Memorial Park Foreshore and Bekesbourne Street; and
(c) a base for community liaison and outreach activities;

[“RPS Garden Mitigation Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards the relocation of the vegetable garden and the installation and maintenance of a green living wall at Riverside Primary School;]

[“RPS Indoor Sports, Recreation and Music Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] 1 towards soundproofing and associated ventilation works to up to 3 rooms at Riverside Primary School;]

“RPS TA Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards facilitating lessons in alternative outside spaces, including the provision of the necessary teaching support, at Riverside Primary School, and payable in seven instalments:
(a) [●] on or before Implementation;
(b) [●] on or before one year of the Implementation Date;
(c) [●] on or before two years of the Implementation Date;
(d) [●] on or before three years of the Implementation Date;
(e) [●] on or before four years of the Implementation Date;
(f) [●] on or before five years of the Implementation Date; and
(g) [●] on or before six years of the Implementation Date;

“RPS Wellbeing Impact Mitigation Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards improving wellbeing of the school environment for pupils at Riverside Primary School as agreed in the Riverside Primary School Mitigation Measures, and payable in seven instalments:

(h) [●] on or before Implementation;
(i) [●] on or before one year of the Implementation Date;
(j) [●] on or before two years of the Implementation Date;
(k) [●] on or before three years of the Implementation Date;
(l) [●] on or before four years of the Implementation Date;
(m) [●] on or before five years of the Implementation Date; and
(n) [●] on or before six years of the Implementation Date;

“Safer Routes to School Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards improvements to safety measures on the routes near the vicinity of the Site to the Local Schools and the promotion of sustainable travel patterns;

“Secretary of State” means the secretary of state for the Departments of Communities and Local Government and of Environment, Food and Rural Affairs;

“Site” means the land known as Chambers Wharf and for the purpose of identification only shown edged dashed in black on the Ownership Plan;

“SJPS Wellbeing Impact Mitigation Contribution” means the sum of [●] Index Linked to be paid by the Developer to the Council in accordance with [●] towards improving wellbeing of the school environment for pupils at St Joseph’s Primary School as agreed in the St Joseph’s Primary School Mitigation Measures, and payable in seven instalments:

(a) [●] on or before Implementation;
(b) [●] on or before one year of the Implementation Date;
(c) [●] on or before two years of the Implementation Date;
(d) [●] on or before three years of the Implementation Date;
(e) on or before four years of the Implementation Date;

(f) on or before five years of the Implementation Date; and

(g) on or before six years of the Implementation Date;

[“SMSS Indoor Sports, Recreation and Music Contribution” means the sum of
[●] Index Linked to be paid by the Developer to the Council in accordance with [●] 1
towards soundproofing and associated ventilation works to up to 6 rooms at St
Michael’s Secondary School; ]

“SMSS Wellbeing Impact Mitigation Contribution” means the sum of [●] Index
Linked to be paid by the Developer to the Council in accordance with [●] towards
improving wellbeing of the school environment for pupils at St Michael’s Secondary
School as agreed in the St Michael’s Secondary School Mitigation Measures, and
payable in seven instalments:

(a) on or before Implementation;

(b) on or before one year of the Implementation Date;

(c) on or before two years of the Implementation Date;

(d) on or before three years of the Implementation Date;

(e) on or before four years of the Implementation Date;

(f) on or before five years of the Implementation Date; and

(g) on or before six years of the Implementation Date;]

“Summary Local Labour and Services Report” means a written monitoring
report summarising the contents of the Labour Reports produced over the preceding
[3 (three)] 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);

“Thames Path Landscaping Contribution” means the sum of [●] Index Linked to
be paid by the Developer to the Council in accordance with [●] towards landscaping
and visual improvements along the Thames Path in the vicinity of the Site (and
including Bermondsey Wall Street and the open space on Worseley Street and Jacobs
Street) to include for seating, litter bins and new tree planting [in accordance with
the [●]];}

“Workforce” means the workers to be employed in carrying out the Project during
the Construction Phase Period and whose place of work is at the Site

“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” [and others] shall include [its]
[their] respective successors in title to the Land and [its] [their] 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 and references to “Doc Ref” are to the documents bearing that reference in the Application or examination proceedings;

3.4 References in this Agreement to the “Council” shall include any successor to its functions as local planning authority [and any other – see Recital A to the extent relevant].

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.

3.9 In the event of any conflict between the provisions of this Agreement and any document annexed to this Agreement, the terms, conditions and provisions of this Agreement will prevail.

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 either 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.
INDEXATION OF FINANCIAL CONTRIBUTIONS

Where any financial contribution in this Agreement is to be “Indexed” then the amount of the contribution after application of the Index shall be calculated according to the formula:

Amount after indexation = A x B/C

Where:

A = the amount to be varied;
B = the Index at the date at which the amount is due to be paid; and
C = the Index [at the date of this Agreement].

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 3% above the base lending rate from time to time of Barclays Bank plc.

VAT

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

10.2 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.

10.3 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 10.2 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

Note: Where Agreements can only be settled in draft (subject to a contractual commitment) the indexation start date would be the date of the contractual commitment.
(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.

11 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.

12 METHOD OF PAYMENTS

The Developer will pay all payments pursuant to this Agreement by way of BACS transfer into [confirm account details] or such other account as the Council shall nominate unless otherwise agreed between the parties.

13 RELEASE AND LAPSE

13.1 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 (including Qualifying Interests) or the part in respect of which the breach arises (as the case may be) save in either case for antecedent breaches.

13.2 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 in a material way that renders the Development incapable of being Implemented or prevents further development due to viability (in each case to be evidenced to and accepted in writing by the Council) 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).

13.3 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.

13.4 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 13.1 in (mutatis mutandis) the same way as the Developer.
13.5 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.

13.6 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.

13.7 Upon the Construction Phase Completion Date the Developer shall cease to be liable to comply with any of its obligations under this [Part X of Schedule 1] and shall from that date cease to be liable for any breach of the same save for any antecedent breach relating to these obligations.

13.8 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.

14 LOCAL LAND CHARGE

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

14.2 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.

15 NOTICES

15.1 [The Developer shall notify the Council:

(a) prior to Implementation, of the anticipated date of Implementation pursuant to the DCO (and this obligation shall apply again if Implementation does not occur on the notified date)

(b) within 7 days of the actual date of Implementation; and

(c) 2 weeks before the Construction Phase Completion Date.

15.2 [The Developer shall give written notice to the Council:

(a) within 10 Working Days of the Developer paying any sum of money required to be paid pursuant to this Agreement; and

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3 Note: These will be the construction only obligations.
15.3 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 The Chief Executive"; and

(b) on the Developer at the address shown above marked “For the attention of Company Secretary” [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 (a) to (b) above.

15.4 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.

16 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.

17 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.

18 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.

19 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.
20  DISPUTE RESOLUTION

20.1  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.

20.2  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 20.1, 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 20.1 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.

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

20.4  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.

20.5  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.

20.6  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.

21  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.

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 subcontractors to use their reasonable endeavours to:

(i) achieve a target of at least 20% of employees working at the Main Tunnel Drive Sites are living in each of the respective Development Boroughs where the Main Tunnel Drive Sites are located;

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

(iii) 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

(iv) 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 1 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 3 (three) 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 and new entrant 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;
(B) 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 [(and 6 months prior to Implementation)] to submit and obtain approval by the Council (and in consultation with the London Borough of Tower Hamlets and the London Borough of Lewisham) of an Employment and 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 shall include (but not be limited to) apprenticeships and traineeships;

(C) include an agreed method statement based on working with the Council setting out how the provisions of the Employment and Skills Plan are to be achieved (to include as far as is reasonably practicable preferred access to local job-ready candidates sourced through local job-brokerage channels)

(D) forecast and report to the Council on the Contractor’s Procurement Tracker and provide an initial forecast of employee requirements in relation to its contract package;

(iii) prior to Implementation to submit and obtain approval by the Council (and in consultation with the London Borough of Tower Hamlets and the London Borough of Lewisham) a Supply Chain Plan and to comply with the agreed plan during the Construction Phase;

(iv) provide the Council with the Local Labour 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;

(v) provide details of all job vacancies in relation to their proposed work on the Development and to share vacancies with the Council;

(vi) 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;
(vii) to provide space within the Main Drive Site at Chambers Wharf for a Project Hub;

(viii) to employ a Skills and Employment Manager ("SEM") to be based at the Project Hub who will:

(A) have responsibility for managing implementation of the Employment and Skills Plan in accordance with the agreed method statement;

(B) work to maximise the number of contractor and supply chain employees drawn from the Target Beneficiary Groups;

(C) provide expert advice on workforce training and skills;

(D) liaise with the Council at an early stage to agree effective means of SEM deployment during the Construction Phase and feed into the Skills Planning Group;

(E) provide a single point of contact for matters relating to employment and skills for the Development and liaise with other job brokerage agencies and skills providers as appropriate; and

(F) liaise with other business support agencies and stakeholders such as Job Centre Plus, other local authorities and the Chamber of Commerce;

(ix) 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 Construction Phase of the Development, and will

(A) 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);

(B) 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;

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Part 2

**Local Schools and Education Mitigation**

1 **Local Schools Mitigation**

[The Developer covenants to the Council that it shall ensure the implementation of the Local Schools Mitigation Measures;]
2 **Riverside Primary School**

(a) The Developer covenants with the Council:

(i) that prior to Implementation, the Developer shall pay to the Council:

(A) [the RPS Garden Mitigation Contribution;]

(B) first tranche of the RPS TA Contribution;

(C) [the RPS Indoor Sports, Recreation and Music Contribution;] and

(D) the first tranche of the RPS Wellbeing Impact Mitigation Contribution;

(ii) that the Developer shall pay to the Council the remaining tranches of the RPS TA Contribution and the RPS Wellbeing Impact Mitigation Contribution in accordance with the details set out in Clause 3.1 of this Agreement;

3 **St Michael’s Secondary School**

(a) The Developer covenants with the Council:

(i) that prior to Implementation, the Developer shall pay to the Council:

(A) [the SMSS Indoor Sports, Recreation and Music Contribution; and]

(B) the first tranche of the SMSS Wellbeing Impact Mitigation Contribution;

(ii) that the Developer shall pay to the Council the remaining tranches of the SMSS Wellbeing Impact Mitigation Contribution in accordance with the details set out in Clause 3.1 of this Agreement;

4 **St Joseph’s Primary School**

(a) The Developer covenants with the Council:

(i) that prior to Implementation, the Developer shall pay to the Council the first tranche of the SJPS Wellbeing Impact Mitigation Contribution;

(ii) that the Developer shall pay to the Council the remaining tranches of the SJPS Wellbeing Impact Mitigation Contribution in accordance with the details set out in Clause 3.1 of this Agreement;

**Part 3**

**Transport Mitigation**

1 The Developer covenants with the Council that prior to Implementation, the Developer shall pay to the Council:

(a) The Chambers Street Footway Contribution;

(b) The NCN4 Riverside Quietway Contribution;

(c) the Safer Routes to School Contribution;

(d) the Jamaica Road Crossing Contribution; and
(e) the Lower Road Gyratory Contribution;

**Part 4**

**Landscaping and Local Amenity**

1 The Developer covenants with the Council that prior to Implementation, the Developer shall pay to the Council:

(a) The EMH Play Improvements Contribution;

(b) The Thames Path Landscaping Contribution; and

(c) the Bevington Street Play Space Contribution;

**Part 5**

**Council Resourcing**

1 The Developer covenants with the Council:

(a) that prior to Implementation, the Developer shall pay to the Council the first tranche of the Monitoring Officer Contribution; and

(b) that the Developer shall pay to the Council the remaining tranches of the Monitoring Officer Contribution in accordance with the details set out in Clause 3.1 of this Agreement;

**Part 6**

**Community Enhancement**

1 The Developer covenants with the Council:

(a) that prior to Implementation, the Developer shall establish the Communities Liaison Working Group ("CLWG") in accordance with the provisions set out in Schedule 4 (The Community Liaison Working Group ) of this Agreement;

(b) that prior to Implementation and as soon as reasonably practically after the establishment of the CLWG to pay to the Council the first tranche of the CE Fund Contribution;

(c) that the Developer shall pay to the Council the remaining tranches of the CE Fund Contribution in accordance with the details set out in Clause 3.1 of this Agreement;
Schedule 2
Council’s Covenants

The Council covenants with the Developer as follows:

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.

2  **Contributions**
   (a) Not to use the Contributions other than for the purposes as detailed in this Agreement;
   (b) Where the Council and the Developer agree that the Developer is to undertake any works which are directly linked to the Contributions, to agree the costs of such works with the Developer and such costs to paid from the relevant Contribution either by deduction of the amount to be paid by the Developer or repayment to the Developer as agreed in writing between the Council and Developer;
   (c) In the event that all or any part of any of the Contributions remain unspent or uncommitted within [●] years from the date of the relevant payment to repay the relevant Contribution or any remaining part thereof to the person or body who made the payment together with accrued interest;

3  **Community Liaison Working Group**
   To assist with the establishment of the CLWG and to ensure that the Council complies with its obligations relating to the operation of the CLWG and administration of the CE Fund in accordance with the provisions in Schedule 4 (The Community Liaison Working Group).
Schedule 3
Land

The land shown hatched and edged in red on the Site and Construction Phase Plan.
Schedule 4
The Community Liaison Working Group

1 Membership

(a) Prior to the first meeting of the Community Liaison Working Group (the “CLWG”) further to paragraph 3(c) below the Developer will invite each of the following organisations to provide a representative to attend the CLWG:

(i) the Council;
(ii) Cleaner Greener Safer;
(iii) Community Infrastructure Project List;
(iv) [other organisations/constitution of the CLWG to be discussed]; and
(v) such other individuals and/or organisations as the Developer or the other members of the CLWG consider it necessary to invite from time to time for the purpose of discharging the purpose and objectives of the CLWG.

(b) The failure of any of the above organisations to nominate a representative to attend the CLWG, or the failure of that representative to attend a meeting of the CLWG, shall not prevent meetings of the CLWG being held in accordance with the terms of this Schedule.

2 The Purpose and Objectives of the Community Liaison Working Group

(a) The purpose and objectives of the CLWG are:

(i) to liaise on and discuss any issues including public consultation relating to the construction and operational effects of the Development at Chambers Wharf and to provide to members of the CLWG information concerning:

(A) the programme for and the progress of construction;
(B) forthcoming significant activities;
(C) procedures for notifying the local community of their occurrence;
(D) changes to the construction methodology or the proposals for the Development at Chambers Wharf that have the potential to have a significant effect on the local community;
(E) amendments to normal traffic arrangements in the vicinity of the Development at Chambers Wharf including proposals for the management of traffic during specific construction operations; and

(ii) to operate and administer the Community Enhancement Fund (the "CE Fund") in accordance with the provisions of Schedule 5 of this Agreement.
3 Meetings

(a) Save as provided for in paragraph 3(b) in respect of the operation and administration of the Community Fund, the CLWG will be chaired by the Developer’s appointed project programme manager ("PPM").

(b) When meeting to consider operation and administration of the Community Fund the CLWG will be chaired by a representative of the Council.

(c) The first meeting of the CLWG will occur not later than [timescales to be discussed] after the grant of the DCO and in any event at least [●] before the Implementation of the Development (subject to the CLWG agreeing a different frequency of meetings). The Developer will give not less than one month’s notice of the holding of that meeting to each of the organisations listed at paragraph 1(a) of this Schedule. At the same time as being provided with notice of the first meeting of the CLWG the Developer will issue an invitation for the organisations listed at paragraph 1(a) to identify their representative on the Group.

(d) Thereafter, meetings of the CLWG will be held [quarterly] until the Development has been Commissioned. Following Commissioning of the Development the CLWG will meet every six months for a period of five years from the Commissioning date of the Development (which shall be notified by the Developer to members of the CLWG) unless agreed otherwise by the members of the CLWG.

(e) Additional meetings of the CLWG may be arranged as necessary. Scheduled meetings may be cancelled by the Developer with the agreement of all members of the CLWG not less than 5 Working Days in advance of the relevant meeting.

(f) During the Construction Phase, any member of the CLWG shall be entitled to call (on reasonable grounds) a meeting of the CLWG by giving written notice of not less than five Working Days to each member of the CLWG (except in an emergency in which case such notice can specify an appropriate shorter period). In the event that any member of the CLWG gives notice of a meeting under this paragraph, the Developer will arrange for that meeting to be held in accordance with the terms of this Schedule to consider the matters specified in the notice of calling the meeting as requiring discussion.

(g) Meetings of the CLWG will be held at the Project Hub or such other location as is agreed by the members of the CLWG.

(h) The quarterly and half yearly meetings of the CLWG to be held under the terms of this Schedule will occur on [details to be discussed] unless otherwise agreed at the previous meeting of the CLWG or as agreed and notified in writing by the Developer to members of the CLWG after the last meeting of the CLWG.

(i) The Developer will prepare draft minutes of the meetings held by the CLWG within 10 Working Days of the meeting to which the minutes relate. The minutes will be circulated to all members of the CLWG. The minutes of any meeting of the CLWG will be approved at the next meeting of the CLWG after the meeting to which the minutes relate [and once approved the Developer will put the minutes on Project Website].

(j) The Developer will circulate the draft agenda for each meeting of the CLWG 10 Working Days in advance. Members of the CLWG may notify additional agenda items in advance of the relevant meeting of the CLWG in writing to the Developer. The Developer will include such items in the agenda for the relevant meeting of the CLWG.
(k) The Developer will meet the reasonable expenses of establishing and operating the CLWG (for example refreshments, administration costs etc.) but this does not include reimbursement or payment for the time representatives of any organisation attending the CLWG spend attending meetings of the CLWG or preparing for them or undertaking follow up work and actions in relation to such meetings.
Schedule 5
The Community Enhancement Fund

1 Duration

The Community Enhancement Fund (the “CE Fund”) will be available for distribution in accordance with the terms of this Schedule for the period from Implementation of the DCO until [●] (as notified under paragraph 3(d) of Schedule 4 (The Community Liaison Working Group)).

2 Purpose of the Community Enhancement Fund

(a) The CE Fund exists to provide for specific measures to benefit the local community arising in relation to aspects of the construction activities associated with the Development at Chambers Wharf [where the effects of such aspects are not dealt with under:

(i) the requirements imposed on the DCO; and/or
(ii) the planning obligations set out in this Agreement; and/or
(iii) the planning obligations set out in the Non-Statutory Offsite Mitigation and Compensation Agreement; and/or
(iv) which are to that extent unforeseen at the time of determination of the Application and the grant of the DCO.]

(b) Exceptional expenses incurred by the CLWG in operating the CE Fund may be reimbursed from the CE Fund at the agreement of those members of the Community Liaison Working Group listed at paragraph 5(a) of this Schedule. Items which fall into this category may include by way of example (and without limitation) site visits to examples of good practice or commissioning of specialist advice beyond the expertise of any of the members of the Community Liaison Working Group.

(c) Awards from the CE Fund may only be spent within the London Borough of Southwark.

4 Application for Grants from the CE Fund

(a) The following will be entitled to make applications to the CWLG for grants from the CE Fund to be applied for the purpose set out in their application:

(i) [to be discussed];
(ii) [●];
(iii) [●]
(iv) [●].

(b) Applications to the CWLG for grants from the CE Fund must be made in writing and must specify at least the following information:

(i) the identity of the person or organisation making the application;
(ii) the project or purpose to which the grant would be applied if the application is successful, where it is located and which part of the community will benefit from it;

(iii) their case in support of the application having regard to the purpose for which the CE Fund has been established as described at paragraph 2(a) of this Schedule;

(iv) the amount of the grant they seek from the CE Fund (which at the application stage may be a reasonable estimate) provided that grants may not be awarded and made without final or confirmed costs being provided.

(c) Applications must be submitted at least [four weeks] in advance of the meeting of the CLWG at which the applicant wishes their application to be considered. Applications are to be submitted to the Council’s representative on the CLWG who will circulate the application to the other members of the CLWG within [5 Working Days] of receipt of the application.

(d) Subject to paragraph 4(c) applications will be considered at the first CLWG meeting after which the application was received provided that consideration of the application may be deferred to the next meeting of the CLWG in order to allow further time for CLWG members to consider or appraise the application before them. An application may not be deferred more than twice after which it must be determined in accordance with the provisions below (unless withdrawn by the applicant).

5 Determination of Applications to the CE Fund

(a) Applications for grants from the CE Fund will be determined by a vote amongst the representatives of the following members of the CLWG:

(i) [to be agreed];

(ii) [●];

(iii) [●];

(iv) [●].

(b) The other members of the CLWG shall not be entitled to vote on applications for grant from the CE Fund. However, they shall be entitled to comment, express opinions and advise on applications received by the CLWG.

(c) Each representative of the organisations listed at paragraph 5(a) nominated under paragraph 1 of Schedule 4 (The Community Liaison Working Group) shall have one vote on an application for a grant from the CE Fund that is before them.

(d) To be successful an application must receive a simple majority in support upon a private ballot of the CLWG members entitled to vote.

(e) No member of the CLWG shall in the event of tied vote have a casting vote.

(f) In the event of there being no simple majority in favour of an application then the application shall be deemed to have been refused.
6 Payment of Awards

(a) Subject to paragraphs 6(a)(i) to 6(a)(iii) below the Council shall not pay awards from the CE Fund totalling more than [●] pounds (£[●]) ("Normal Maximum Annual Sum") in each year following receipt of the Annual CE Fund Contribution from the Developer (each year to commence on the anniversary of receipt of the Annual CE Fund Contribution from the Developer by the Council) unless:

(i) an application for an award from the CE Fund exceeding the Normal Maximum Annual Sum for the year in which the application is made has been validly made to the CLWG; or

(ii) applications for awards from the CE Fund the total value of which exceed the Normal Maximum Award Amount for the year in which the applications are all made have been validly made to the CLWG; and

(iii) those members of the CLWG listed at paragraphs 4(a)(i) to 4(a)(iv) of this Schedule consent to the Normal Maximum Annual Sum being exceeded and jointly request in writing that the Council pay an award or awards exceeding the Normal Maximum Annual Sum for that year.

(b) Provided the conditions of payment set out in paragraph 6(c) below are met the Council shall pay grants from the CE Fund in respect of applications approved in accordance with paragraphs 5 and 6(a) of this Schedule.

(c) The “conditions of payment” are that the applicant provides to the Council written evidence that:

(i) it has the consent of all the land owners from whom consent is necessary in order to undertake the project in respect of which the grant from the CE Fund has been awarded; and

(ii) either:

(A) all the statutory permissions, consents and approvals that are necessary for that project to proceed have been obtained; or

(B) if the grant that has been awarded includes an allowance for the obtaining of such consents in the event that one or all of the required consents cannot be obtained the applicant will reimburse to the fund the balance of the grant that is made from the CE Fund to it if and when it becomes apparent that necessary consents will not be forthcoming.
EXECUTION PAGE

The Common Seal of THE MAYOR AND BURGESSSES OF THE LONDON BOROUGH OF SOUTHWARK was hereto affixed in the presence of:

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 Development Sites for information purposes only;

Site and Construction Phase Plan – plans showing the extent of the Development Site at Chambers Wharf and the Land (marked as Existing TWUL Land);
Copyright notice

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