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

Response from Thames Water

LB Lambeth - S106
Doc Ref: APP74.8
DATED [*]

LONDON BOROUGH OF LAMBETH
as the Council

THAMES WATER UTILITIES LIMITED
as the Developer

[Transferee]¹
[Owner]²

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 Albert Embankment Foreshore

¹ The transferee will be a party where Article 34 rights have been already been transferred under Article 9 at the date this Agreement is entered into.
² Where at TW's discretion it may be appropriate to join in a superior title owner
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PARTIES

(1) The LONDON BOROUGH OF LAMBETH of Lambeth Town Hall, Brixton Hill, London SW2 1RW (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 ("Thames Water") [and]

(3) [Transferee]

(4) [Owner]

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) [Recite ownership details for the Land. This will be updated. Land is currently owned by Crown, Duchy of Cornwall (subject to leases on Camelford House and Tintagel House) and PLA].

(C) Thames Water 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:-

They are necessary to make the Development acceptable in planning terms; and

They are directly related to the Development; and

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) Thames Water and the Council entered in a deed of agreement under which they agreed to enter into this Agreement subject to the satisfaction of certain conditions, and those conditions have now been satisfied. [The rights and obligations of the Developer pursuant to that deed of agreement were transferred to the IP by a Deed of Transfer dated [●].]

(G) This Agreement is intended to be enforceable by the Council and subject to Clause 2 (Land Bound), Clause 3 (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.

(H) The DCO was made by the Secretary of State on [●].
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.

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:

1.2.1 The Developer in respect of its [their] Qualifying Interest in the Land as bound under Clause 2 (Land Bound) of this Agreement; and

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

2 LAND BOUND

2.1 Subject to Clause 4 (Conditionality) and Clause 12 (Release and Lapse):

2.1.1 The planning obligations in Schedule 1, Part 1 (Employment and Skills) of this Agreement bind the DCO Land until the Construction Phase Completion Date; and

2.1.2 The planning obligations in Schedule 1, Part 2 (Public Realm) and Schedule 1, Part 3 (Maintenance of Public Realm) and Schedule 3 (Public Realm Maintenance Plan) of this Agreement are intended to bind the Future TWUL Land.

Operation of the Development

2.2 The Developer shall notify the Council in writing of the intended Construction Phase Completion Date.

2.3 Where the Developer acquires part or all of the Permanent Acquisition Land the Developer covenants to the Council that on or prior to the Construction Phase Completion Date it will enter into a deed (“Operational Confirmatory Deed”) in favour of the Council for the purposes of ensuring that the Future TWUL Land will form part of the Land for the purposes of this Agreement and will be bound by the obligations set out in Schedule 1, Part 2 (Public Realm) and Schedule 1, Part 3 (Maintenance of Public Realm) and Schedule 3 (Public Realm Maintenance Plan) of this Agreement.

2.4 The Council agrees and acknowledges that it will enter into a further agreement anticipated by Clause 2.3 if and when requested to do so by the Developer.

2.5 The Developer covenants with the Council that it shall not dispose of its interests in the Permanent Works Land until it has entered into the Operational Confirmatory Deed in accordance with Clause 2.3 of this Agreement.

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;

“Council” means the London Borough of Lambeth;

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

“Construction Phase Completion Date” means the date at which the Developer ceases to have a Qualifying Interest in the DCO Land subject to the requirements in Article 34 of the DCO;

“Contractor” means for the purposes of this Agreement the contractor appointed to carry out the works comprising the Development at the Development Site of Albert Embankment Foreshore;

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

“DCO Land” means the land shown hatched and edged in black on the Site and Construction Phase Plan and described in Schedule 3, Part 1 (DCO Land);

“Developer” means Thames Water Utilities Limited/the Transferee3 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 the worksites at Acton Storm Tanks, Hammersmith Pumping Station, Barn Elms, Putney Embankment Foreshore, Dormay Street, King George’s Park, Carnwarth 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;

“Future TWUL Land” means such part of the Permanent Acquisition Land as shown shaded dark grey and edged in red on the Site and Operation Land Plan and described in Schedule 3, Part 2 (Future TWUL Land);

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3 Where powers have been transferred to the Transferee at the date this Agreement is entered into
“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, works of archaeological or ground investigation or remediation;

[“Transferee” means a body to whom all or any rights are transferred pursuant to the preliminary agreement];

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

“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 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;

(c) 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; and

(d) an assessment of their future employee requirements; and

(e) 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 Carnwarth Road Riverside, Kirtling Street, Chambers Wharf and Greenwich Pumping Station;

“Operational Confirmatory Deed” means a Deed substantially in the form of that set out at Appendix 2;

“Permanent Acquisition Land” means that part of the DCO Land which is defined for permanent acquisition in the DCO;

“PLA” means the Port of London Authority;

“Plans” means the plan attached to this Agreement and comprising the Overview Site Plan (Parts 1 to 4), the Site and Construction Plan, the Site and Operational Plan;

“Project Hubs” means an allocated space within the Main Drive Sites at Kirtling Street in the London Borough of Wandsworth and Chambers Wharf in the London Borough of Southwark provided for the Contractor which provides space for health

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4 This will be relevant where the Transferee is not a party.

5 Note: This land is shown on the Land Acquisition Plans in the DCO as land for permanent works.
and safety and basic skills classes and as a base for community liaison and outreach activities and for the SEM and SCEM;

“Public Realm” means that part of the Land which the Developer identifies for public use subject to the provisions of Schedule 1, Part 2 (Public Realm) and Schedule 1, Part 3 (Maintenance of Public Realm);

“Qualifying Interest” means such interest in the land sufficient to meet the requirements of Section 106(1) of the 1990 Act which shall include the Developer’s status as undertaker for the purposes of the DCO in accordance with the provisions of paragraph 10 (3) of Schedule 19 of the DCO whereby the undertaker is deemed to be a person interested in the DCO Land for the purposes of Section 106(1) of the 1990 Act;

“SCEM” means Supply Chain Engagement Manager as set out in more detail in Schedule 1, Part 1 (Employment and Skills);

“SEM” means Skills and Employment Manager as set out in more detail in 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 set out in paragraph 1 (Local Labour) of Schedule 1, Part 1 (Employment and Skills);

“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 [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.

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 the giving of written notice to the Council of the intention to Implement the DCO; or

4.3 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 2% 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 METHOD OF PAYMENTS

The Developer will pay the Council’s legal costs pursuant to Clause 7 (Legal Costs) by way of BACs transfer into [Council to confirm account] or such other account as the Council shall nominate.

12 RELEASE AND LAPSE

12.1 Subject Clause 12.6, 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 (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.

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

12.2.1 the DCO lapses without having been Implemented; or

12.2.2 the DCO is amended or repealed otherwise than with the consent of the Developer; or

12.2.3 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).

12.3 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.
12.4 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 12.1 in (mutatis mutandis) the same way as the Developer.

12.5 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.

12.6 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.

12.7 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.

12.8 Upon the Construction Phase Completion Date the Developer shall cease to be liable to comply with any of its obligations under this Schedule 1, Part 1 (Employment and Skills) and shall from that date cease to be liable for any breach of the same save for any antecedent breach relating to these obligations. 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.

13 LOCAL LAND CHARGES

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

13.2 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.

14 NOTICES

14.1 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:

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

14.1.2 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 14.1.1 to 14.1.2 above.

14.2 Any such notice shall be deemed to have been received as follows:
• If delivered by hand, upon delivery on all relevant addresses;
• If sent by first class post, on the second Working Day after the date of posting.

15 **NO FETTER ON DISCRETION**

Save as permitted by law, 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 or the Developer.

16 **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.

17 **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.

18 **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.

19 **[COVENANTS BETWEEN THE OWNER AND THE DEVELOPER]**

19.1 (Subject to Clause 19.2) the Developer **COVENANTS** with the Owner that it will observe and perform the obligations in Schedule 1 (Developer’s Covenants) of this Agreement and will indemnify the Owner against any breach or non-observance of any of them.

19.2 The Owner **AGREES** that the indemnity in Clause 19.1 shall not apply in the event that the Owner causes or permits the Implementation of the DCO without the prior written consent of 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

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6 **Note:** This provision may need to be included where TW’s interest in the land arises from an option or a conditional contract.
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.

22 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

Unless otherwise agreed in writing with the Council the Developer covenants with the Council as follows:

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 1 apprentice to be employed at any time during the period of the construction contract.

(iv) 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;
(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 [National Skills Academy for 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) to employ a Skills and Employment Manager(s) ("SEM") to be based at the Project Hubs who will:

(A) within 3 months of being appointed by the Developer produce and employ a Training and Employments Skills Plan in consultation with the Council’s Economic Development Officers ("EDO") which will have regard to similar plans promoted by Construction Skills-CITB and/or National Skills Academy for Construction.
(B) work closely with the EDO (or the Council’s nominated agents or brokers) to identify and recruit suitable local applicants;
(C) 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;
(D) 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;

(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;

(ii) to employ a Supply Chain Engagement Manager ("SCEM") to be based at the Project Hubs who will have responsibility to engage with local businesses to maximise opportunities arising from the Development and who will:

(A) develop a Local Procurement Plan in consultation with the EDO (and having taken reasonable account of their comments) how opportunities will be provided for local businesses to bid/tender for the provision of goods and services relating to the Development;
(B) notify the EDO where practicable one month in advance of tendering contracts to clarify how local procurement under the Local Procurement Plan will operate and what actions, if any may be expect from the EDO;

(C) on notification of the Council attend “fit to supply” events, opportunity days and “meet the buyer” events

(iv) provide 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.

4 Contract procurement

(a) That the Developer shall use and shall require the Contractor to use the South London procurement Network, [MTW Associates] and the online procurement portal Competefor to advertise contracts for the Development;
Part 2
Public Realm

Restart Numbering Applied

1

Status of the Public Realm at Albert Embankment Foreshore

(a) Following completion of the Development at Albert Embankment Foreshore including completion of the laying out of the landscaping on the Land the Developer shall serve a notice on the Council identifying the area of the Land to be made available for public use in accordance with the provisions of this Schedule 1, Part 2 (Public Realm) ("Public Realm").

(b) Following the service of the Developer’s notice pursuant to paragraph 1(a) the Developer shall on a permissive basis only permit access to members of the public over the Public Realm subject to the General Access Conditions set out in paragraph 2 (General Access Conditions).

(c) No part of the Public Realm shall be dedicated as public rights of way.

2

General Access Conditions

(a) The Developer may suspend access to the all or any part of the Public Realm on the occurrence of any of the circumstances described in paragraph 2(a)(i) to paragraph 2(a)(viii) in accordance with the provisions set out at paragraph 2(b):

(i) where in the reasonable opinion of the Developer it is necessary to enable maintenance, repair or renewal of the whole or any part or parts of the Development;

(ii) where in the reasonable opinion of the Developer it is necessary to enable the development, renewal, redevelopment, modification or demolition of the whole or part or parts of the Development;

(iii) where in the reasonable opinion of the Developer the manner or nature of use of the Public Realm by the public represents:

(A) a threat to the operational integrity or security of the Development or its ability to meet its duties as a statutory sewerage and water undertaker or an unacceptable risk to the health and safety of individuals within those areas; or

(B) a nuisance that is causing the Developer to alter the way it maintains the Development as a result of the nature or manner of the use of that area of the Land;

(iv) where in the reasonable opinion of the Developer there would be a risk to the health and safety of the general public using or intending to use the Public Realm;

(v) where in the reasonable opinion of the Developer, it is necessary to protect ecological features or to protect or maintain flood defences or for the purposes of navigation and for the avoidance of doubt if the Developer is required by any competent authority (including Natural England, the Environment Agency, the Marine Management Organisation and the Port of London Authority) to suspend access then the opinion of the Developer shall be deemed reasonable;
(vi) where in the reasonable opinion of the Developer it is necessary in order to protect the Developer's property or the property of a third party;

(vii) where in the reasonable opinion of the Developer it is necessary in order to undertake essential maintenance, repair, cleaning or renewal and resurfacing works on the Land;

(viii) for one day per year to assert rights of proprietorship preventing public rights from coming into being by means of prescription or other process of law.

(b) Subject to paragraph 2(c) and paragraph 2(d) where the Developer intends to suspend access to the Public Realm for any of the reasons listed in paragraph 2(a) the following provisions shall apply:

(i) The Developer shall use reasonable endeavours to provide notice of the suspension of access to the Public Realm (and where suspension applies to part only of the Public Realm such notice to include identification of that part) to the Council seven Working Days in advance of the first day of suspension or in the case of urgency as soon as practicable thereafter specifying:

(A) why access is being suspended by reference to the reasons set out at paragraph 2(a); and

(B) the expected duration of the suspension and date of reopening.

(ii) The Developer shall use all reasonable endeavours to post notice of the suspension of access at the entrance and exit to the suspended area of Public Realm seven (7) Working Days in advance of the first day on which access will be suspended or in the case of urgency as soon as practicable thereafter specifying the details set out in paragraphs paragraph 2(b)(i)(A) and paragraph 2(b)(i)(B) and shall maintain those notices for the duration of the suspension of access to the Public Realm.

(c) Where access to the Public Realm or any part of it is suspended for any reason set out in paragraph 2(a) the Developer shall re-open the Public Realm or the relevant part of it as soon as it is reasonably safe and practicable to do so following the resolution of the issue and/or works identified in the Developer's notice served pursuant to paragraph 2(b)(i) and shall serve notice of the same on the Council.

(d) If the Public Realm is closed to the public for more than 100 days or 10 occasions during a period of 1 year and the Council so requests in writing the Developer shall:

(i) within 30 days (or such other period as may be agreed) of a request pursuant to this paragraph 2(d) submit a feasibility study to the Council reporting options that may secure public access to the Public Realm on a more consistent basis and avoiding the need for such frequent suspension of public access;

(ii) within 14 days (or such other period as may be agreed) of the receipt of the feasibility study by the Council hold a meeting with them in order to discuss the options set out in the feasibility study;

(iii) within 6 weeks (or such other period as may be agreed) of the meeting referred to at paragraph 2(d)(ii) the actions identified at the meeting shall be undertaken.
Part 3
Maintenance of Public Realm

Restart Numbering Applied

1 Maintenance of the Public Realm

(a) Prior to completion of the Development on the Land the Developer will submit to the Council a strategy for the long term maintenance and care of the Public Realm in accordance with the requirements in Schedule 1, Part 2 (Public Realm) ("PR Maintenance Plan")

(b) The Developer shall ensure that the Public Realm is maintained to the standard agreed in the PR Maintenance Plan.

(c) The Developer may delegate its responsibilities for the PR Maintenance Plan to a third party (the identity of which shall be notified in writing to the Council) SAVE THAT the Developer shall remain liable for ensuring that the Public Realm is maintained to the standard agreed in the PR Maintenance Plan.

(d) The Developer acknowledges that the Council may at any time serve written notice on the Developer requiring it to delegate the responsibilities for the PR Maintenance Plan to the Council subject to an agreement to be entered into between the Developer and the Council ("Delegation Agreement").

(e) Upon receipt of the notice from the Council under paragraph 1(d) the Parties shall use reasonable endeavours to agree the Delegation Agreement which may include for the following terms:?

   (i) Provisions for termination of any existing arrangements or contract relating to the delegation of the Developer’s responsibilities for the PR Maintenance Plan;

   (ii) Such financial arrangements generally as may be agreed;

   (iii) Specific obligations upon the Council to maintain in accordance with the PR Maintenance Plan and otherwise to protect the interests of the Developer; and

   (iv) Provisions for the Council to release the Developer in respect of its obligations pursuant to paragraph 1(b) and paragraph 1(c) of this Schedule.

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7 This is drafted on the assumption that it may not be possible to agree detailed terms with the Council at this stage. Should this be possible, this section can be expanded and made more specific. Included in that could be more detail on the mechanism for payments, the need for the Council to enter into a deed of variation to the section 106 Agreement stating that it will not enforce the maintenance obligations against the Developer for as long as the maintenance is delegated to the Council.
Schedule 2
Council’s Covenants

The Council covenants with the Developer [and (as a separate covenant) with [●]] 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

Part 1
DCO Land

The land hatched and edged in black on the Site and Construction Phase Plan.

Part 2
Future TWUL Land

Such parts of the Permanent Acquisition Land as shaded dark grey and edged in red on the Site and Operational Land Plan SAVE THAT the extent of the Future TWUL Land to be bound by the obligations at Schedule 1, Part 2 (Public Realm) and Schedule 1, Part 3 (Maintenance of Public Realm) of this Agreement is to be confirmed with the Operational Confirmatory Deed to be entered into between the Developer and the Council pursuant to Clause 2.3 of this Agreement.
Schedule 4
Public Realm Maintenance Plan

Restart Numbering Applied

1 Definitions

“Building Elements” means such structures which are located within the Public Realm and where agreed that they are included within the scope of the PR Maintenance Plan, and including electrical and control kiosks, other amenity kiosks, undercroft areas, boundary walls, stone flood defence parapet walls, permanent site hoardings

“Ecological Elements” means dedicated areas for nesting birds within the Public Realm, including constructed bird houses and bat boxes

“Lighting Elements” to include lampstands, wall or surface mounted lamps located within the Public Realm

“Paving Elements” means such hard surfacing forming pathways, steps or other publically accessible areas within the Public Realm and comprising individual paving units, resin bound surfaces, or timber decking

“Perimeter Fencing” means such fencing or enclosures surrounding the Public Realm or parts of the Public Realm and including gates and gateways, railings and balustrades

“Play Areas” mean dedicated areas within the Public Realm for use by children and including permanently installed play equipment, and areas within the Public Realm containing outdoor gym equipment

“regular” for the purposes of this Schedule means at such seasonal or periodic intervals as are required in relation to the specific operation

“routine” for the purposes of this Schedule means as often as reasonably necessary and may be as often as daily or weekly

“Street Furniture” to include benches or other forms of seating, litter bins, bird baths, bollards, metal pergolas located within the Public Realm

“Ventilation Columns” means the ventilation structures forming part of the Development located within the Public Realm

“Water Features” includes freestanding fountains and other ornamental water features within the Public Realm

2 General routine maintenance and cleaning

(a) To maintain in a safe sound and clean condition at all times:

(i) All Paving Elements, including:

(A) Routine cleaning (sweeping and/or jet wash cleaning as appropriate), removal of litter and gum removal;

(B) Routine surface cleaning and clearance of associated drainage channels and gullies;
(C) Regular leaf clearance;
(D) Surface clearance of snow from pathways and application of surface gritting

(ii) All Street Furniture, including:
(A) Routine cleaning (including checking and cleaning of fixings), removal of bird faeces, sanding of splinters caused by vandalism damage or wear and tear, removal of graffiti;
(B) Regular deep cleaning with water jets and detergent;

(iii) All Plays Areas, including:
(A) Routine cleaning (including checking play equipment for safety), removal of dangerous objects, removal of litter, removal of bird faeces, sanding of splinters caused by vandalism damage or wear and tear, removal of graffiti;
(B) Routine checking of play surfaces and regular sweeping;
(C) Routine checking of perimeter fencing and removal of litter;

(iv) All Water Features, including:
(A) Routine cleaning (including checking for safety hazards);
(B) Maintaining such marginal plantings as considered appropriate for an attractive and balanced habitat;
(C) Routine checking of pumps and nozzles to ensure they are operating correctly;

(v) All Building Elements, including:
(A) Routine cleaning of surfaces and removal of graffiti from areas accessible by the public;
(B) Regular cleaning with water jets from ground level;

(vi) All Perimeter Fencing, including:
(A) Routine removal of litter, relevant surface cleaning and removal of graffiti;

(vii) All Ventilation Columns, including routine cleaning of surfaces and removal of graffiti from areas accessible by the public.

3 Landscaping maintenance and reinstatement

(a) To maintain the planted and landscaped areas of the Public Realm in good condition at all times, including:
**Planted terraces, ornamental shrubbery beds and ornamental hedges. Raised and in-ground planters, planted pergolas**

(i) Routine inspection and clearing of weeds, non-required and litter;

(ii) Routine pruning to maintain groups of planting within the original scheme layout;

(iii) Pruning of ornamental hedges no less than 2 times per year or after flowering;

**Herbaceous perennial planted areas, SUDS features, green screens, ground cover, green roofs**

(iv) Routine inspection and clearing of weeds, non-required seedlings and litter;

(v) Regular pruning to maintain groups of planting within the original scheme layout, and where relevant lift and divide overcrowded plants and replant to fill gaps;

(vi) Regular forking and digging over of soil to incorporate organic matter and to apply slow release fertilisers;

(vii) Regular clearance of leaves and die-back materials;

**Bulb features**

(viii) Application of selective weedkiller for the purposes of weed control to be applied only after vegetative stems have been allowed to die back after the flowering season;

(ix) Once bulbs have died back, cutting and removal of stems and application of slow release fertiliser;

**Inter-tidal planting**

(x) Routine pruning and thinning of planting;

(xi) Routine weeding and removal of litter and clearance of drains;

**Trees (including new and existing trees, street trees, ornamental or feature trees**

(xii) Regular removal of litter from within tree canopies;

(xiii) Regular lifting and cleaning of tree grilles, securing of guards and adjusting tree ties and/or guys;

(xiv) Routine weeding and removal of debris from around the base of trees and tree pits;

(xv) Where trees overhang footpaths or vehicular access routes, regular trimming of the canopy to ensure clear sight lines and suitable clearance for pedestrians and vehicles;

(xvi) To carry out pruning of mature trees no less than every 5 years;
Turfed or grassed areas (including reinforced turf)

(xvii) Routine turf cutting (by ride on or pedestrian mower as appropriate) (with arisings removed) to ensure maximum grass height of 50mm (and to include edgings as required);

(xviii) Routine strimmer cleaning of edgings around objects within the turfed area;

(xix) Bi-annual (spring and autumn) application of fertiliser;

(xx) Aeration to a depth of 75-100 mm, and scarification to be carried out at least 4 times per year;

(xxii) Biannual (spring and autumn) application of fertiliser;

(xxii) Regular spot treatments of broad-leaved weeds by selective weedkiller;

(xxii) Regular topdressing and overseeding of bare areas;

Wildflower meadows

(xxiii) Mowing early in the season, and then following flowering, cut all areas and allow arisings to remain in situ to allow for the dropping of seeds, and after 5 days following cutting remove arisings and re-cut the area;

(xxiv) Routine control of pernicious weeds only to be removed by hand;

(xxv) Routine clearance of build up of leaves only;

(xxvi) Allow for overseeding at the end of each season and rake as necessary to expose bare areas which are to be seeded at approximately 5kg/ha and then rolled in;

Green screens

(xxvii) Routine inspection to check stability and assessment of all fixings;

(xxviii) Regular pruning to maintain plant health including weeding and removal on non-required seedlings;

(xxix) Regular assessment and adjustment as necessary to the irrigation to optimise use and application.

3 Non-cyclical repairs and renewals

(a) To carry out repairs and to repaint and/or renew finishes (including re-painting) to Street Furniture, Lighting Elements, Perimeter Fencing, Ventilation Elements at such reasonable intervals as considered necessary to ensure the Public Realm is in good and clean condition;

(b) To regularly inspect the condition of the Paving Elements, and to make such repairs and/or renewal (including removal and disposal of existing materials) against a programme of cyclic renewal;

(c) To annually clean filters relating to pumps for water features;

(d) To annually drain relevant water features and clean the surfaces and leave sealed an inoperative for the winter period;
(e) To visit and inspect stairlifts on monthly basis, and carry out an annual maintenance service;

[Not included in this schedule: surveys, brown roofs, public toilets, bandstands, replacement of M&E components to water features, specified replacement of street furniture; any references to maintenance of carriageways or public highway]
Executed as a deed by the LONDON BOROUGH OF LAMBETH 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

[Attestation by other parties]
Appendix 1

Plans

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

Site and Construction Plan – plan showing extent of the Development Site at Albert Embankment Foreshore and the DCO Land.

Site and Operational Land Plan – plan showing the extent of the Development Site at Albert Embankment and the Future TWUL Land

[other agreed plans]
Appendix 2

Operational Confirmatory Deed

DATE:

PARTIES

(1) THAMES WATER UTILITIES LIMITED (Company No [●]) whose registered office is at [●] (the “Developer and for the purposes of this Confirmatory Deed the “Covenanter”) [and]

(2) [OWNERS OF FREEHOLD AND LEASEHOLD INTERESTS OTHER THAN THE OWNER of [ADDRESSES]] (“[●] ”)

(3) The LONDON BOROUGH OF LAMBETH of Lambeth Town Hall, Brixton Hill, London SW2 1RW (the “Council”)

BACKGROUND

(A) This Operational Confirmatory Deed is supplemental to a planning agreement made under section 106 of the 1990 Act between the Developer (1) and the Council (2) [and [●] (3)] (the “Principal Deed”) on [●] and is itself made under (inter alia) the said section 106 of the 1990 Act and any Construction Phase Confirmatory Deeds entered into between the Developer (1) and the Council (2) [and [●] (3)]

(B) This Operational Confirmatory Deed is supplemental to the Principal Deed.

(C) Words and phrases used in this Operational Confirmatory Deed bear the same meaning in this Operational Confirmatory Deed as under the Principal Deed.

(D) Clause 2.1 of the Principal Deed provides that the planning obligations set out in the Principal Deed are intended to bind the Developer in its capacity as having a Qualifying Interest on the DCO Land and Future TWUL Land and on the Developer’s Successors to the DCO Land and Future TWUL Land.

(E) Clause 2.2 of the Principal Deed provides that the Developer provides notice in writing to the Council of the Construction Phase Completion Date.

(F) Clause 2.3 of the Principal Deed provides that where the Developer is to acquire part or all of the DCO Land (the “Future TWUL Land”) the Developer covenants to the Council that on or prior to the Construction Phase Completion Date the Developer shall execute a deed in favour of the Council so as to bind such parts of the Future TWUL Land with the planning obligations in Parts 2 and 3 of Schedule 1 and Schedule 3 of the Principal Agreement.

(G) The Developer has acquired the freehold/long leasehold interest the Future TWUL Land details of which are set out in Part 1 of the Schedule.

(H) This Operational Confirmatory Deed is entered into by the Developer [and [the other owners of freehold or leasehold interests in such parts of the Future TWUL Land as may be necessary to enable effective enforcement of the terms of the Principal Deed]] in favour of the Council in order to bind (subject to [●] in the Principal Deed) the such parts of the Future TWUL Land as are vested in them with the obligations set out in Parts 2 and 3 of Schedule 1 and Schedule 3 of the Principal Deed.
OPERATIVE PROVISIONS

1 DEFINITIONS AND INTERPRETATION

Restart Numbering Applied

1.1 In this Operational Confirmatory Deed:

[any definitions needed?]

1.2 [Where in this Operational Confirmatory Deed there are defined terms not included in clause 1.1 above then they shall have the same meaning as in clause 3.1 of the Principal Deed and clauses 3.2 to 3.9 of the Principal Deed shall apply to the interpretation of this Operational Confirmatory Deed.] [Terms defined in this Operational Confirmatory Deed shall have the same meaning as in Clause 3.1 of the Principal Deed unless expressly stated otherwise.]

1.3 Where provisions of the Principal Deed are deemed to be incorporated in this Operational Confirmatory Deed reference to the Developer in the Principal Deed shall be deemed to be reference to the Covenanter.

2 DECLARATION AND COVENANT

2.1 The Covenanter declares and covenants with the Council that all its interests in the Future TWUL Land as set out in the Part 1 of the Schedule to this Agreement are bound by and subject to the obligations of the Developer in Parts 2 and 3 of Schedule 1 and Schedule 3 of the Principal Deed.

2.2 The Covenanter declares and covenants with the Council to comply with the obligations of the Developer in relation to the Future TWUL Land contained in Parts 2 and 3 of Schedule 1 and Schedule 3 of the Principal Deed (which shall be deemed to be incorporated in this Operational Confirmatory Deed) as if the same were set out in full in this Operational Confirmatory Deed provided that the Covenanter shall have no liability in relation to any breaches of obligations in the Principal Deed committed by others before the date of this Operational Confirmatory Deed.

2.3 The Council declares and covenants with the Covenanter to comply with the obligations of the Council pursuant to Clause 6 of the Principal Deed (which shall be deemed to be incorporated in this Operational Confirmatory Deed) as if the same were set out in full in this Operational Confirmatory Deed.

2.4 The parties to this Operational Confirmatory Deed declare and acknowledge that the Principal Deed continues in full force and effect notwithstanding the execution of this Confirmatory Deed save that:

2.5 The obligations on the part of the Covenanter contained in this clause 2 (Declaration and Covenant) of this Operational Confirmatory Deed are planning obligations for the purpose of section 106 of the 1990 Act and are enforceable by the Council as local planning authority against the Covenanter and so as to bind the Covenanter’s interest in the Future TWUL Land with the obligations of the Developer in Parts 2 and 3 of Schedule 1 and Schedule 3 of the Principal Deed.

Note: This will relate to operational obligations
3 CONTRACTIONS (RIGHTS OF THIRD PARTIES) ACT 1999

The parties to this Operational Confirmatory Deed do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

This Operational Confirmatory Deed has been entered into on the date stated at the beginning of this Operational Confirmatory Deed.

[execution blocks to add]

SCHEDULE

Part 1

FUTURE TWUL LAND

Such parts of the DCO Land as marked [●] on the [●] plan and comprising [●]

Part 2

[Set out details of Developer’s ownership]