

DATED

2022

SURREY COUNTY COUNCIL

and

THE COUNCIL OF THE BOROUGH OF GUILDFORD

and

THAMES WATER UTILITIES LIMITED

Agreement pursuant to Section 106 of the Town and Country Planning Act 1990 relating to land at Slyfield Industrial Estate, Moorfield Road, Guildford, Surrey GU1 1RR

DRAFT

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DIRECTOR OF LAW AND GOVERNANCE
Legal Services
Woodhatch Place
11 Cockshot Hill
Reigate, Surrey
RH2 8EF

REF: Legal/RA/110613

This Deed is made this day of 2022

Between:

- (1) **SURREY COUNTY COUNCIL** of Woodhatch Place, 11 Cockshot Hill, Reigate, Surrey RH2 8EF (“**the County Council**”)
- (2) **THE COUNCIL OF THE BOROUGH OF GUILDFORD** the principal administrative office of which is at Millmead House, Millmead, Guildford, Surrey GU2 4BB (“**the Owner**”)
- (3) **THAMES WATER UTILITIES LIMITED** (Company Registration Number 02366661) whose registered office is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB (“**the Applicant**”)

Recitals

- A. The County Council is the minerals and waste planning authority for the purposes of the Act for the area within which the Application Site is situated.
- B. The Owner is the freehold owner of the Application Site and GBC SANG Land (together being “the Obligation Land”) registered at the Land Registry under Title Numbers SY608216, SY793571 and SY612973.
- C. The Applicant has entered into a conditional contract dated 30 April 2019 to purchase the Application Site from the Owner.
- D. The Applicant submitted the Application to the County Council which was registered under reference 2021/0209 on 21 January 2022.
- E. The baseline onsite biodiversity value is 23.95 BNG Units. To achieve 10% net gain in biodiversity value for the Development, a total of 26.35 BNG Units in total must be provided in relation to the Development.
- F. The parties to this Deed hereto have agreed to enter into this Deed and hereby agree and declare that (insofar as the same are relevant) the tests and requirements set out in Regulation 122 of the CIL Regulations have been satisfied in this regard.

NOW THIS DEED WITNESSES as follows:

1. Interpretation

In this Deed:

- 1.1. Words importing the masculine include the feminine and vice versa.
- 1.2. Words importing the singular include the plural and vice versa.
- 1.3. Words importing persons include companies and corporations however incorporated or established and vice versa.
- 1.4. Any reference to a clause, schedule or plan is to a clause, schedule or plan in or attached to this Deed.
- 1.5. Any reference to a colour or letter is to a colour or letter on the plan(s) attached to this Deed.
- 1.6. In the absence of a contrary provision any reference to a statute includes any statutory modification or re-enactment of it and every statutory instrument, direction, specification made or issued under the statute or deriving validity from it.
- 1.7. References to any party to this Deed shall include the successors in title to that party and to any person deriving title through or under that party and in the case of the County Council the successors to its functions as minerals and waste planning authority.
- 1.8. The headings are for reference only and shall not affect construction.
- 1.9. References to “including” mean “including, without limitation”.

2. Definitions

It is hereby agreed between the parties to this Deed that the following expressions have the following meanings:

<p>“Act”</p>	<p>means the Town and Country Planning Act 1990 as amended;</p>
<p>“Application”</p>	<p>means the full application validated on 21 January 2022 given planning reference number 2021/0209 for the construction and operation of a new sewage treatment works and associated above and below ground infrastructure, including new final effluent and storm water outfall, and new transfer tunnel;</p>
<p>“Application Site”</p>	<p>means the land to the north east of Slyfield Industrial Estate, Moorfield Road, Guildford, Surrey GU1 1RR and being all parts of the land as shown edged red on Plan 1;</p>
<p>“Application Site Biodiversity Offsetting Scheme”</p>	<p>means a scheme demonstrating how 8.8 BNG Units will be achieved on the Application Site (including the duration for which the ongoing</p>

	management of the land will need to take place) and as may be varied from time to time with the written agreement of the County Council;
“Biodiversity Offsetting Scheme”	means the Application Site Biodiversity Offsetting Scheme and GBC SANG Land Biodiversity Offsetting Scheme, or each of them as the context requires;
“BNG Units”	means a unit of biodiversity value as calculated using the DEFRA metric 3.0 published by the Secretary of State for the Department of the Environment Food and Rural Affairs for that purpose or the most recent version;
“CIL Regulations”	means the Community Infrastructure Levy Regulations 2010;
“Commencement Date”	means the date of Commencement of Development;
“Commencement of Development”	means the carrying out of a Material Operation in respect of the Development and the words “Commence Development” and “Development Commences” shall be construed accordingly;
“Deed”	means this document when it is duly executed, dated and delivered;
“Development”	means the development of the Application Site pursuant to the Planning Permission;
“GBC SANG Land”	means the land shown edged [green] on Plan 2 (or such other land as may be approved by the County Council as part of the approval of the Biodiversity Offsetting Scheme);
GBC SANG Land Biodiversity Offsetting Scheme	means a scheme demonstrating how 17.55 BNG Units will be achieved on the GBC SANG Land (including the duration for which the ongoing management of the land will need to take place) and as may be varied from time to time with the written agreement of the County Council;
“Material Operation”	means a material operation pursuant to the Planning Permission on the Application Site pursuant to Section 56(4)(a)-(e) of the Act provided that for the avoidance of doubt a Material Operation shall be deemed not to have taken place for the purposes of this Deed by any: <ul style="list-style-type: none"> a. surveying;

	<ul style="list-style-type: none"> b. demolition works; c. ground investigation; d. archaeological investigations; e. site clearance and decontamination works; f. site preparation including earth moving laying and connection of sewers and services; g. the formation of accesses; h. the erection of fences and hoardings and the creation of a site compound. <p>for the avoidance of doubt, the undertaking of a Material Operation is considered to be the Commencement of Development pursuant to the Planning Permission;</p>
“New STW”	means the new sewage treatment facility authorised and to be constructed as part of the Development;
“Obligation Land”	means the Application Site and the GBC SANG Land;
“Plan 1”	means the plan attached to this Deed and marked “Plan 1”;
“Plan 2”	means the plan attached to this Deed and marked “Plan 2”;
“Planning Permission”	means the planning permission granted pursuant to the Application;
“Section 73 Consent”	means a planning permission granted pursuant to section 73 of the Act which varies and/or removes any condition(s) subject to which the Planning Permission and/or any subsequent planning permission pursuant to section 73 of the Act was granted;
“Start of Commissioning ”	means the start of testing of treatment processes at the New STW.

3. Statutory Authorities

3.1. This Deed is made in pursuance of:

3.1.1. section 106 of the Act;

3.1.2. section 111 of the Local Government Act 1972;

3.1.3. section 1 of the Localism Act 2011; and

3.1.4. all other enabling powers.

4. Statutory Functions

4.1. Nothing contained or implied in this Deed shall prejudice or affect the rights, powers, duties and obligations of the County Council in the exercise of its functions as minerals and waste planning authority or under any public or private statute bylaw or regulation.

5. Conditionality

5.1. Save for the provisions of clauses 1-17 (inclusive), and Part 1 of Schedule 1 which shall come into effect immediately upon the completion of this Deed this Deed is conditional upon:

5.1.1. the grant of Planning Permission; and

5.1.2. the Commencement of Development;

5.2. If the Planning Permission expires prior to the carrying out of a Material Operation or at any time be revoked or modified without the agreement of the Owner and/or the Applicant this Deed shall forthwith determine and cease to have effect.

5.3. If the Planning Permission is quashed then this Deed shall absolutely determine and become null and void.

6. Planning Obligations

6.1. The obligations contained in this Deed are planning obligations for the purposes of Section 106 of the Act and are enforceable by the County Council.

6.2. The Owner and the Applicant covenant to comply with the planning obligations contained in this Deed. The obligations contained in this Deed are entered into by the Owner and the Applicant with the intention that they should bind their interests in the Obligation Land as provided by Section 106 of the Act.

6.3. The County Council covenants with the Owner and the Applicant to perform the obligations contained in clause 17 of this Deed.

7. Liability For Obligations

7.1. No person shall be liable for any breach of any of the planning obligations or other provisions of this Deed after it shall have parted with its entire interest in the Obligation Land or the part in respect of which the breach relates but without prejudice to liability for any subsisting breach arising prior to parting with such interest.

7.2. The obligations under this Deed shall not be binding on nor enforceable against any statutory undertaker (other than the Applicant) which acquires any part of the Obligation Land or an interest in it for the purposes of its statutory undertaking.

8. Notices

- 8.1. Any notice to be given hereunder shall be in writing and shall either be delivered personally or sent by first class pre-paid post. The addresses for service on the parties to this Deed shall be those stated in this Deed or such other address in England for service as any party to this Deed shall previously notify in writing.
- 8.2. Each notice served in accordance with clause 8.1 hereof shall be deemed to have been given or made and delivered if by delivery when left at the relevant address or if by letter two working days after posting by first class prepaid or four working days if by second class prepaid post.

9. General

- 9.1. The headings appearing in this Deed are for ease of reference only and shall not affect the construction of this Deed.
- 9.2. For the avoidance of doubt the provisions of this Deed (other than those contained in this sub clause) shall not have any effect until this document has been dated.
- 9.3. References to statutes by-laws, regulations, orders and delegated legislation shall include any statute, by-law, regulation, order or delegated legislation re-enacting or made pursuant to the same.
- 9.4. References to the Owner includes references to its successors in title as owner of the Application Site or any part thereof and this Deed shall bind such successors in title of the Application Site or any part thereof.
- 9.5. Insofar as any clause or clauses of this Deed are found (for whatever reason) to be invalid illegal or unenforceable then such invalidity illegality or unenforceability shall not affect the validity or enforceability of the remaining provisions of this Deed.
- 9.6. Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not at appeal) after the date of this Deed.

10. Local Land Charges

- 10.1. This Deed is a Local Land Charge and shall be registrable as such in the Local Land Charges Register provided that if the Planning Permission is not granted or expires unimplemented, or is revoked, or if all obligations under this Deed have been discharged then the registered charge shall be treated as having ceased to have effect under rule 8 of the Local Land Charges Rules 2018 or any statutory re-enactment thereof and the registration shall be cancelled on application.

11. **Contracts (Rights Of Third Parties) Act 1999**

- 11.1. It is not intended that the provisions of this Deed shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not party to this Deed (other than by the Owner and its successors in title and assigns and any successor to the County Council's functions).

12. **Costs**

- 12.1. Prior to the completion of this Deed the Applicant shall pay the County Council its reasonable costs incurred in the preparation of this Deed.

13. **Jurisdiction**

- 13.1. This Deed is governed by and interpreted in accordance with the law of England.

14. **Dispute Resolution**

- 14.1. All disputes or differences arising out of this Deed or as to the rights or obligations of the parties to this Deed under it or in connection with its construction shall be referred to a person acting as an expert (hereinafter referred to as the "**Expert**") being a person with the relevant experience of the matter in dispute whose identity will be agreed between the parties to this Deed or, failing agreement, within 21 days by an Expert to be appointed at the request of any party by the President of The Royal Institution of Chartered Surveyors as the case may be having due regard to any representations made to him as to the appropriate qualifications of such Expert.

- 14.2. It is further agreed that:-

- 14.2.1. the determination of the Expert will be final and binding on the parties to this Deed save in the case of manifest error or fraud;
- 14.2.2. the parties to this Deed will be entitled to make representations and counter representations in accordance with such timetable as the Expert shall direct; and
- 14.2.3. the Expert's costs will be borne in such proportions as he may direct failing which each party will bear its own costs of the reference and determination and an equal proportion each of the Expert's costs.

15. **Severability**

- 15.1. Each clause, sub-clause, schedule or paragraph shall be separate, distinct and severable from each other to the extent only that if any clause, sub-clause, schedule or paragraph becomes or is invalid because of a change of circumstances or any other unforeseen reasons or if any one or more of such clause, sub-clause, schedule or paragraph shall be held by the Courts to be void for any reason whatsoever but would be valid if severed or any wording was deleted or

any time period reduced or scope of activities or area covered diminished then any modifications necessary to ensure such clause, sub-clause, schedule or paragraph be valid shall apply without prejudice to any other clause, sub-clause, schedule or paragraph contained herein.

16. The Owner's and the Applicant's Covenants

- 16.1 The Owner and the Applicant covenant with the County Council to comply with the obligations in Schedule 1 to this Deed.

17. The County Council's Covenants

- 17.1. The County Council covenants with the Owner and the Applicant where an approval, permission, consent, discharge, release or other form of authorisation is required from the County Council under this Deed, such approval, permission, consent or authorisation shall not be withheld or delayed.

18. Section 73 Consent

- 18.1. Unless otherwise required by the County Council, if a Section 73 Consent is granted by the County Council in relation to the Development, then with effect from the date that each such Section 73 Consent is granted:

18.1.1. the obligations in this Deed shall (in addition to continuing to bind the Application Site in respect of the Planning Permission) relate to and bind all subsequent Section 73 Consents and the Application Site itself without any further act by the Applicant, Owner or the County Council;

18.1.2. the definitions of Development, Application and Planning Permission in this Deed shall be construed to include reference to any applications under section 73 of the Act, the Section 73 Consent granted pursuant to any such application and the development permitted by such Section 73 Consent,

PROVIDED THAT:

nothing in this clause 18 shall fetter the discretion of the County Council in determining any application(s) under section 73 of the Act; and

to the extent that any of the obligations in this Deed shall have already been discharged at the date that any Section 73 Consent is granted they shall remain discharged for the purposes of the Section 73 Consent.

19. Further Owner Covenant

- 19.1. The Owner covenants with the Applicant not to carry out or permit the carrying out of any material operation (as defined in section 56(4) of the Act) pursuant to the Planning Permission without the prior written consent of the Applicant (such consent to be given entirely at the Applicant's absolute discretion) PROVIDED THAT this clause shall cease to have effect as

and when the freehold interest in the whole of the Application Site is transferred to the Applicant.

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SCHEDULE 1:

THE OWNER AND APPLICANT'S COVENANTS WITH THE COUNTY COUNCIL

Part 1: Written Notifications

1. The Owner and the Applicant covenant that before all the planning obligations in this Deed have been discharged to give the County Council written notice of any change in ownership of any of their interest in the Obligation Land or any part of it within 2 weeks thereof such notice to give details of the lessee, assignee or transferee's full name and registered office (if a company or usual address if not) together with the area of the Obligation Land in respect of which such disposition applies.
2. The Applicant shall notify the County Council (in writing) not less than 10 working days prior to the Start of Commissioning.

Part 2: Biodiversity

1. The Owner and the Applicant shall use reasonable endeavours to secure the provision on the Application Site of 8.8 BNG Units in relation to the Development.
2. The Owner shall use reasonable endeavours to secure the provision on the GBC SANG Land of 17.55 BNG Units in relation to the Development.
3. Within 18 months of the date of the Planning Permission:
 - a. the Applicant and the Owner shall submit the Application Site Biodiversity Offsetting Scheme to the County Council for approval; and
 - b. the Owner shall submit the GBC SANG Land Biodiversity Offsetting Scheme to the County Council for approval.
4. Unless otherwise agreed in writing with the County Council, planting shall be carried out as follows:
 - a. the Owner and the Applicant shall carry out planting on the Application Site in accordance with the Application Site Biodiversity Offsetting Scheme during or prior to the first available planting season following the Start of Commissioning; and
 - b. the Owner shall carry out initial planting on the GBC SANG Land in accordance with the GBC SANG Land Biodiversity Offsetting Scheme within the first available planting season following the County Council's approval under paragraph 3b or within 12 months of such approval, whichever is the later.

5. Following initial planting, the Application Site and the GBC SANG Land shall thereafter be managed in accordance with the relevant approved Biodiversity Offsetting Schemes.
6. Whenever the GBC SANG Land and the Application Site are in separate ownership:
 - a. the owner of the GBC SANG Land from time to time shall not have any responsibility or liability in respect of the implementation and management of the approved Application Site Biodiversity Offsetting Scheme on the Application Site including in respect of paragraphs 4 and 5 in so far as they relate to the Application Site; and
 - b. the owner of the Application Site from time to time shall not have any responsibility or liability in respect of the implementation and management of the approved GBC SANG Land Biodiversity Offsetting Scheme on the GBC SANG Land including in respect of paragraphs 4 and 5 in so far as they relate to the GBC SANG Land.

SCHEDULE 2: PLAN

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IN WITNESS whereof the parties hereto have hereunto set their hands and seals the day and year first before written

EXECUTED AS A DEED by affixing
THE COMMON SEAL of **SURREY
COUNTY COUNCIL**
In the presence of:

.....
Authorised signatory

EXECUTED AS A DEED by affixing
THE COMMON SEAL of **THE COUNCIL
OF THE BOROUGH OF GUILDFORD**
In the presence of:

.....
Authorised signatory

EXECUTED AS A DEED by affixing
THE COMMON SEAL of **THAMES
WATER UTILITIES LIMITED**
In the presence of:

.....
Authorised signatory