

**Dated**

**2009**

**The Mayor and Burgesses of the London Borough of Barnet**  
**and**  
**The North London Waste Authority**

**Sale and purchase agreement**

Land at Pinkham Way Barnet London

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# Sale and purchase agreement

Dated 2009

## Parties

- (1) **The Mayor and Burgesses of the London Borough of Barnet** of North London Business Park Oakley Road South London N11 1NP (the **Corporation**) and
- (2) **North London Waste Authority** established under the Waste Regulation and Disposal (Authorities) Order 1985 (S.I. 1985/1884) of The Town Hall Judd Street London WC1H 9LP (the **Authority**)

## Agreed terms

### 1 Definitions and interpretation

In this Agreement the following words and expressions have the meaning specified unless the context requires otherwise.

#### 1.1 Definitions

**1994 Act** means the Law of Property (Miscellaneous Provisions) Act 1994;

**Access Way** means access to the Depot Land and Yellow Land agreed in writing between the parties both acting reasonably;

**Access Way Works** means those parts of the Enabling Works which relate to the Access Way;

**Actual Enabling Works Cost** means the actual cost incurred by the Enabling Works Contractor on the Relevant Date;

**Advertising Licence** means the licence attached at Annex 5

**Amended Costed Control Option** means the amended costed control option provided for in clause 2.13;

**Authority's Solicitors** means Bevan Brittan LLP of Fleet Place House 2 Fleet Place Holborn Viaduct London EC4M 7RF (Ref: JN/IC/86449-5);

**Chancel Search Fee** means the sum of £2,355.75 payable to Conveyancing Liability Solutions Limited;

**Chancel Search Insurance** means insurance in accordance with the attached policy in the name of London Borough of Barnet to include successors in title for a level of indemnity of £3,000,000 for commercial property for property of between 5 and 10 acres;

**Completion** means actual completion of the sale which is the subject of this Agreement;

**Completion Date** means 10 working days from the satisfaction of the Conditions

**Precedent;**

**Conditions** means the Standard Commercial Property Conditions (Second Edition) and **Condition** means any one of them;

**Conditions Precedent** means the Costed Control Option Condition and the DEFRA Consent;

**Conditions Precedent Long Stop Date** means 31 October 2010;

**Contract Rate** means the contact rate specified in the Conditions, as amended by this Agreement;

**Corporation's Depot** means a vehicle storage and maintenance facility and ancillary functions as envisaged by the Costed Control Option;

**Corporation's Percentage** means 26%;

**Corporation's Solicitor** means the Head of Legal, London Borough of Barnet North London Business Park Oakleigh Road South London NW11 1NP;

**Costed Control Option Condition** means confirmation by the Authority of the Amended Costed Control Option in accordance with clause 2.13;

**Costed Control Option** means a report setting out the location, layout, services, ground preparation and access to the Corporation's Depot as attached at Annex 2 ;

**DEFRA** means the Department of Environment, Food and Rural Affairs (or such successor body taking in the current statutory role);

**DEFRA Consent** means the Authority obtaining the consent of DEFRA and the Project Revenue Group of HM Treasury of the Authorities outline business case;

**Deposit** means the sum of One Million Two Hundred and Eight Thousand Four Hundred and Twenty Pounds (£1,208,420.00);

**Depot Land** means the land shown tinted blue on the Plan;

**Designated Route** means the route for the Access Way agreed in writing between the Authority and the Corporation both acting reasonably;

**Enabling Works** means :

1	Site Clearance
2	Create site access for construction, install site fencing (if required) and site utilities (e.g. water, electricity, foul drainage)
3	Earthworks – cut re-used on-site as fill treatment of material for re-use on site, volume and weight for each of the following categories: Inert Non-hazardous Hazardous
4	Earthworks – cut disposed off-site, volume and weight for each of the following categories:

	Inert Non-hazardous Hazardous
5	Retaining structures
6	Construct main spine road
7	Install site utilities and services (power (for Depot site), telecoms, potable water, foul drainage)

**Enabling Works Amended Costed Control Option** means the cost of the Enabling Works contained within the Amended Costed Control Option ("EWACCO");

**Enabling Works Contractor Warranty** means a warranty from the Enabling Works Contractor in a form agreed by the parties acting reasonably;

**Enabling Works Cost** means the cost of the Enabling Works as detailed in the Amended Costed Control Option as increased in accordance with Schedule 9 or the Actual Enabling Works Cost whichever is lower;

**Enabling Works Payment Date** means the date calculated in accordance with Schedule 2;

**Enabling Works Depot Land Option** means the Enabling Works carried out by the Enabling Works Contractor on the Depot Land in accordance with Schedule 2;

**Enabling Works Contractor** means the contractor appointed by the Authority to carry out the Enabling Works;

**Environment** means any land including but without limitation surface land, sub surface strata, any seabed or riverbed and any natural or manmade structures, water, including but without limitation, coastal and inland water, surface water, ground water, water in drains and sewers and air including but without limitation air within the building and other natural or manmade structures above or below ground;

**Environmental Laws** means all or any applicable law (whether civil, criminal or administrative) including without limitation common law, statutes, statutory instruments, treaties, regulations directives, decisions, by-laws, circulars, codes, orders, notices, demands, decrees, injunctions, resolutions, the judgment of any government, quasi government, supranational federal state or local government, statutory or regulatory body, court agency or association or any other person or body in any jurisdiction with regard to the pollution, protection, preservation, restoration, or otherwise of the Environment or harm to or the protection of human health or the health of animals or plants including but without limitation laws relating to public and workers' health and safety emissions, discharges or releases of noise or any other pollutants or contamination or industrial, radioactive, dangerous, toxic or hazardous substances or waste (whether in solid, semi-solid or liquid form or in the form of a gas or vapour) into the Environment or otherwise relating to the manufacture, processing, use, treatment, storage, distribution, disposal, transport or handling of such substances or waste;

**Ground Investigation Report** means the report to be procured by the Authority in

accordance with the Ground Investigation Scope of Works;

**Ground Investigation Scope of Works** means the works set out in Schedule 8;

**Ground Investigation Surveyor** means the surveyor appointed by the Authority to carry out the Ground Investigation Report;

**Ground Investigation Warranty** means the collateral warranty to be provided by the Ground Investigation Surveyor in substantially the form attached at Annex 1;

**Hogweed Letters** means the correspondence between the Corporation and TCM attached at Annexure 3;

**Non-Returnable Deposit** means the Corporation's legal and surveyor's costs properly and reasonably incurred in preparing and completing this Agreement estimated to be not more than £45,000;

**Overriding Interests** means interests that override registered dispositions (as defined in schedule 3 to the Land Registration Act 2002) or interests the status of which is preserved as overriding by schedule 12 to the Land Registration Act 2002;

**Plan** means the drawing attached hereto;

**Property** means the freehold property at Pinkham Way Barnet London and shown edged red on the Plan and being part of the property registered at HM Land Registry with title absolute under title number AGL188459;

**Price** means the sum of Twelve Million Eighty-four Thousand Two Hundred Pounds (£12,084,200.00);

**Services Works** means those parts of the Enabling Works which relate to the installation of utilities and services to the Depot Land;

**Transfer** means a transfer in the form attached to this Agreement at Annex 5;

**VAT** means value added tax as charged in accordance with the provisions of the Value Added Tax Act 1994 (VATA) and regulations made under it (or any amendment or re-enactment of it) or any equivalent tax or duty which may be imposed in substitution for it or in addition to it at the rate applicable from time to time.

**Yellow Land** means the land shown tinted yellow on the Plan;

## 1.2 Interpretation

- 1.2.1 References in this Agreement to any legislation are to that legislation as it may have been extended, modified, amended, re-enacted or replaced at the date upon which its construction is relevant for the purposes of this Agreement and not as originally enacted or as at the date of this Agreement.



- 1.2.2 References generally to legislation include statutory instruments, regulations and other derivative legislation and any regulation or other legislation of the European Union that is directly applicable in England and Wales and include existing legislation and those that come into effect during the perpetuity period.
- 1.2.3 References to writing or written includes faxes but not e-mail.
- 1.2.4 The headings above the clauses and the contents pages of this Agreement are for reference only and do not affect its construction.
- 1.2.5 Any reference to a clause or schedule without further designation will be a reference to a clause or schedule of this Agreement.
- 1.2.6 Any reference to the perpetuity period is to the period of 80 years commencing on the date of this Agreement and that period is the perpetuity period for the purposes of the Perpetuities and Accumulations Act 1964.

## **2 The Conditions Precedent**

- 2.1 Except in relation to the provisions listed in clause 2.2 the Conditions Precedent must be satisfied before this Agreement comes into force and effect.
- 2.2 The provisions referred to in clause 2.1 are:-
  - 2.2.1 clause 1 (Definitions and interpretation)
  - 2.2.2 this clause 2 (the Conditions Precedent);
  - 2.2.3 clause 3 (Rights of Rescission);
  - 2.2.4 clause 5 (Deposit); and
  - 2.2.5 clause 13 (General Provision)
  - 2.2.6 clause 19 (Notices)
  - 2.2.7 clause 22 (Termination or Default)
  - 2.2.8 Schedule 7 (General Provisions)
- 2.3 The Authority may at any time waive the DEFRA Consent, in which event the DEFRA Consent shall be deemed to have been satisfied on the date such waiver is notified in writing by the Authority to the Corporation.
- 2.4 Subject to DEFRA's approval of the Authority's outline business case being obtained, the Authority shall at its own expense use reasonable endeavours to secure the consent of HM Treasury such as to satisfy the DEFRA Consent.
- 2.5 The Authority will keep the Corporation reasonably informed of the progress of its endeavours to secure the consent of HM Treasury such as to satisfy the DEFRA Consent, and in particular (but without limitation) shall as soon as reasonably

practicable notify the Corporation in writing when it has received, and supply to the Corporation reasonable evidence of, such consent.

- 2.6 Following the date of this Agreement the Authority will carry out the Ground Investigation Report in accordance with the Ground Investigation Scope of Works.
- 2.7 Once the Ground Investigation Report has been completed then the Authority shall provide the Corporation with a copy of the results of the Ground Investigation Report, along with all reasonable supporting documentation, to allow the Corporation to fully consider it.
- 2.8
- 2.8.1 Within 6 weeks of receipt of the Ground Investigation Report from the Authority the Corporation will update the figures contained within the Costed Control Option and submit a revised Costed Control Option to the Authority ("the Revised Costed Control Option").
- 2.8.2 Within 28 days of receipt of the Ground Investigation Report the Corporation will pay the Corporation's Percentage of the cost of the Ground Investigation Report.
- 2.9 If the Authority approve the Revised Costed Control Option following receipt in accordance with clause 2.8.1 then the Authority shall confirm this in writing to the Corporation within 6 weeks and the date of such confirmation shall be the date of satisfaction of the Revised Costed Control Option Condition.
- 2.10 If the Authority do not approve the Revised Costed Control Option then the Authority must notify the Corporation within 6 weeks that they do not accept the contents of the Revised Costed Control Option and wish to refer the Revised Costed Control Option to the Expert to determine in accordance with Schedule 7 and both parties agree that they will be bound by the decision of the Expert and that the satisfaction of the Costed Control Option Condition shall be the date the Expert's decision on the Revised Costed Control Option is communicated to the parties.
- 2.11 If the Corporation have not updated the Costed Control Option and supplied the Revised Costed Control Option to the Authority within the 6 week period provided in clause 2.8.1 the Authority may refer the Costed Control Option and the Ground Investigation Report to the Expert in accordance with Schedule 7 and the date of determination by the Expert will be the date of satisfaction of the Costed Control Option Condition.
- 2.12 If the Authority fail to notify the Corporation if they approve the Revised Costed Control Option or do not approve the Revised Costed Control Option in accordance with clause 2.9 then the Authority is deemed to accept the Revised Costed Control Option provided by the Corporation and the date of deemed approval shall be the date of satisfaction of the Costed Control Option Condition.
- 2.13 Following approval of the Revised Costed Control Option in accordance with clause 2.9, determination of the Costed Control Option in accordance with clause 2.10 or

clause 2.11 or deemed approval in accordance with clause 2.12 then the ascertained figures will become the Amended Costed Control Option.

- 2.14 As soon as reasonably practicable following exchange of this Agreement, the Authority will send a cheque to the Corporation for the 74% of the Chancel Search Fee. Following receipt of the cheque the Corporation will apply for the Chancel Search Insurance as soon as reasonably practicable and upon receipt of the policy details will forward these to the Authority.

### **3 Rights of rescission**

- 3.1 The Corporation and the Authority shall have the right to rescind this Agreement by giving written notice of rescission to the other if the Conditions Precedent have not been satisfied by the Conditions Precedent Longstop Date and upon service of such a notice this Agreement shall then immediately cease to have effect.

- 3.2 In the event that at the date of the Conditions Precedent Longstop Date the Revised Costed Control Option has been referred to the Expert in accordance with clause 2, then the Conditions Precedent Longstop Date shall be extended by the period of time it takes the Expert to deliver his decision to allow the Costed Control Option Condition to be satisfied.

- 3.3 If this Agreement is rescinded pursuant to Clause 3.1:

3.3.1 the rescission shall be without prejudice to the rights of either party against the other in respect of any previous breach of their obligations under this Agreement, but otherwise neither party shall have any claim against the other;

3.3.2 the Authority shall cancel any registration of the Agreement, withdraw any official search with priority made in respect of the Property and return the title and other documents relating to the property supplied by the Corporation.

### **4 Sale and purchase**

#### **4.1 Agreement to sell**

The Corporation will sell and the Authority will buy the Property at the Price on the terms of this Agreement.

#### **4.2 Transfer as a whole etc.**

The Authority cannot require the Corporation to:

4.2.1 transfer the Property or any part of it to any person other than the Authority;  
or

4.2.2 transfer the Property in more than one parcel or by more than one transfer;  
or

4.2.3 apportion the Price between different parts of the Property.

**5 Deposit**

5.1 On or before the date of this Agreement the Authority shall pay the Deposit to the Corporation's Solicitor.

5.2 The Deposit shall be paid to the Corporation's Solicitor as stakeholders for the Corporation and shall be returnable to the Authority, except the Non-Returnable Deposit, in any circumstances if this Agreement is rescinded pursuant to clause 3. The Non-Returnable Deposit shall be retained and released to the Corporation in the event of rescission of this Agreement pursuant to Clause 3.

5.3 The Deposit shall be paid by direct credit or by a conveyancer's client account cheque drawn on a clearing bank.

5.4 Standard Condition 2.2 shall not apply.

**6 VAT**

6.1 The Corporation has not opted to tax the Property and no VAT will be payable on the Price.

6.2 All payments (other than the Price but otherwise including monetary consideration and the provision of non-monetary consideration) due under this Agreement from the Authority are exclusive of any VAT and where any such payment is the consideration for a taxable supply for VAT purposes, the consideration is to be increased by the amount of VAT which is chargeable on that supply.

**7 Completion**

**7.1 Date**

The sale of the Property will be completed on the Completion Date.

**7.2 Indemnity**

7.2.1 The Transferor covenants with the Transferee that the Transferor will comply with the covenants obligations and conditions contained in:

- (a) the Road Maintenance Agreement dated 12 June 2001 between 1) The Mayor and Burgesses of the London Borough of Barnet and 2) The Mayor and Burgesses of the London Borough of Haringey
- (b) the Bridge Agreement dated 6 August 1993 between 1) The Secretary of State for Health and 2) The Mayor and Burgesses of the London Borough of Barnet

and will indemnify the Transferee against all actions, claims, demands and proceedings taken or made against the Transferee and all costs, damages, expenses, liabilities and losses incurred by the Transferee arising from any

future breach or observance or non-performance of those covenants and conditions.

- 7.3 Notwithstanding the usual provisions with regards to vacant possession in the Conditions the Corporation agrees that they will prior to Completion terminate the Advertising Licence (in so far as it relates to the Property) and ensure that any hoarding is removed prior to completion.

**7.4 Receipt of funds**

The money due on Completion will be deemed to have been received when the bank or banks to which it was transferred notify the Corporation's Solicitor that it has been received and the Authority has released the money unconditionally to the Corporation.

**7.5 No agency presumed**

Unless expressly agreed in writing to the contrary, the Corporation's Solicitor will not be deemed to be acting as the Authority's Solicitors' agent in relation to Completion.

**7.6 Deeds delivery method**

Unless the Authority's Solicitors collect the deeds and documents to which the Authority is entitled on Completion under this Agreement, the Corporation's Solicitor will send them to the Authority's Solicitors by special delivery post or by document exchange or by hand and neither the Corporation nor the Corporation's Solicitor will be liable for their loss in transit.

**7.7 Timing**

The Corporation will not be required to complete before 9.30 am or after 5.30pm on a working day nor at any time on a day which is not a working day.

**7.8 Variation of Conditions about Completion**

7.8.1 Condition 8.1.1 is varied by the deletion of the words: *completion date is twenty working days after the date of the contract but.*

7.8.2 Condition 8.1.2 is varied by the deletion of 2.00 pm as the stipulated time and the substitution of 1.00 pm.

7.8.3 Condition 8.4 is varied by the addition of a new paragraph (d) to read:  
  
*the other sums to be paid or allowed on completion that are mentioned in this contract.*

7.8.4 For the purposes of Condition 8.7, direct credit is to be to the Corporation's bank account or to such other account as the Corporation directs.

7.8.5 Condition 2.2.1 is varied by deletion of the words *a deposit of 10% of the purchase price* and replacing them with the words:

*the deposit.*

## **8 Transfer**

### **8.1 Form of transfer**

The transfer to the Authority will be in the form of the Transfer.

### **8.2 Duplicate transfer**

The Authority and the Corporation will execute the transfer in duplicate and on Completion the Authority will procure that the duplicate Transfer is delivered to the Corporation's Solicitor.

## **9 Title**

### **9.1 Title guarantee**

The Corporation sells the Property with full title guarantee.

### **9.2 Authority's declarations as to title**

The Authority admits and agrees that:

9.2.1 the Corporation has supplied to the Authority official copies of the registers maintained at HM Land Registry under title number AGL188459 timed at 13:55:26 on the 28 August 2009.

9.2.2 the Authority is deemed to have investigated and accepted that title,

9.2.3 the Authority will raise no requisitions or objections concerning that title other than the usual pre-completion requisitions; and

9.2.4 Condition 6.3.1 does not apply to this Agreement.

## **10 Matters affecting the property**

### **10.1 Certain conditions disapplied**

10.1.1 Conditions 3.1.1 and 3.1.2 do not apply to this Agreement.

10.1.2 Condition 3.1.3 is varied by deleting the words *a matter covered by Condition 3.1.2* and replacing them with the following:

*a matter subject to which the Property is sold*

### **10.2 Encumbrances**

The Corporation will sell the Property free from encumbrances other than:

10.2.1 any matters contained or referred to in the entries or records made in registers maintained by HM Land Registry as at 13:55:26 on 28 August 2009 under title number AGL188459;

- 10.2.2 any matters discoverable by inspection of the Property before the date of this Agreement;
- 10.2.3 any matters which the Corporation does not and could not reasonably know about,
- 10.2.4 any matters disclosed or which would have been disclosed by the searches and enquiries which a prudent buyer would have made before entering into this Agreement;
- 10.2.5 public requirements;
- 10.2.6 Overriding Interests which the Corporation is not aware of and could not reasonably have been aware of.

### 10.3 **Authority's deemed knowledge**

The Authority is deemed to have full knowledge of the matters referred to in clause 10.2 and will not raise any enquiry, objection, requisition or claim in respect of any of them unless the Corporation were aware of any information relating to the matters in clause 10.2 but did not disclose them despite enquiries made in that regard by the Authority.

## 11 **Conditions**

### 11.1 **Incorporation of conditions**

Part 1 of the Conditions are incorporated into this Agreement and apply to the sale effected by it so far as they are:

- 11.1.1 applicable to a sale by private treaty,
- 11.1.2 not varied by or inconsistent with the express terms of this Agreement and
- 11.1.3 applicable to freehold property.

### 11.2 **Further conditions disapplied**

- 11.2.1 Part 2 of the Conditions do not apply to this Agreement.
- 11.2.2 The following Conditions in Part 1 of the Conditions do not apply to this Agreement: Conditions 1.3, 1.4, 3.3, 4, 5, 6.4.2, 8.3, 10, 11 and 12.

### 11.3 **Contract rate**

The contract rate is four per centum per annum above the base rate from time to time of Co-operative Bank plc.

### 11.4 **Condition 1.2**

Condition 1.2 is varied by adding to the end of it: *where the buyer or the guarantor is more than one person, the seller may release or compromise the liability of any of*

*them under this contract or grant time or indulgence with affecting the liability of any other of them.*

**11.5 Condition 6.6.3**

Condition 6.6.3 is varied by deleting the words *covered by Condition 3.1.2* and replacing them with the words: *subject to which the Property is sold*.

**12 Risk and insurance**

**12.1 Risk passes on Completion**

With effect from Completion, the Property is at the Authority's risk and the Corporation is under no obligation to the Authority to insure the Property and for the sake of clarity the parties agree that this means that the Authority shall not be liable to provide security personnel or fencing for the Property until completion.

**12.2 Damage etc. does not delay completion**

No damage to or destruction of the Property, nor any deterioration in its condition, however caused, will entitle the Authority either to any reduction of the Price or to refuse to complete or to delay Completion

**12.3 Variation of conditions**

Condition 7.1.2(g)(ii) is varied by deleting the word *immediately*.

**12.4 Authority's acknowledgements**

The Authority acknowledges that:

12.4.1 the Property has been used for or in connection with potentially contaminative uses by the Corporation and/or previous occupiers, and

12.4.2 the Authority has been provided with copies of all the environmental information listed in Schedule 6

12.4.3 that as a consequence the Authority is deemed to have full knowledge of the previous uses of the Property and will raise no requisition or objection in relation to those uses.

**12.5 Authority accepts information at own risk**

12.5.1 The Corporation accepts no responsibility for the content, quality or accuracy of any of the environmental information provided and the Authority relies upon it at its own risk.

12.5.2 Notwithstanding clause 12.5.1 the Corporation shall continue to comply with its obligations contained within the Hogweed Letters (which shall include but shall not be limited to payment of the sum of £15,982 plus VAT and



allowing access to the Property and Depot Land) and the Corporation will enforce all of the obligations contained in the Hogweed Letters on behalf of the Authority (including but not limited to the continued treatment at the Hogweed)

**12.6 Condition reflected in price**

The Authority acknowledges that the Price takes account of the present condition of the Property including any remediation work which may need to be undertaken.

**12.7 Buyer's indemnity**

The Authority hereby agrees with the Corporation that it will not make any claim against the Corporation in respect of the condition or content of the Property or the Depot Land or any part thereof or in respect of any liability it may suffer or incur (whether under any Environmental Laws, common law or otherwise) in respect of the same howsoever arising or in respect of any materials deposited thereon or therein at any time prior to the date of this Agreement.

**13 General provisions**

**13.1 Access for Interim Works**

Following exchange of this Agreement and pending Completion the Authority shall have access on a non-exclusive basis to the Property and the Depot Land in order to carry out intrusive investigations, surveys and site clearance as appropriate ("the **Interim Works**") but only on the following terms:

13.1.1 The Corporation gives the Authority permission (for itself and its contractors) from the date of this Agreement in common with the Corporation and all others authorised by the Corporation so far as is not inconsistent with the permission given to enter the Property and the Depot Land in order to carry out the Interim Works.

13.1.2 This shall not operate or be deemed to operate as a demise of the Property or the Depot Land, nor shall the Authority have or be entitled to any estate right or interest in the Property or the Depot Land or in any materials in or upon it and the Corporation will retain the exclusive possession management and control of the Property and the Depot Land.

13.1.3 Access to the Property and the Depot Land shall be permitted by the Corporation at all times on reasonable prior notice.

13.1.4 The Authority (and its contractor) is not entitled to use the Property and the Depot Land for any purpose, including (without prejudice to the generality of the foregoing) to carry out any works to the Property or the Depot Land, other than the Interim Works which have been approved by the Corporation.

13.1.5 The carrying out of the Interim Works is entirely at the Authority's own risk.

- 13.1.6 The Authority will not do or permit or suffer to be done on the Property and/or the Depot Land anything which may be or may become a legal nuisance, to the Corporation or the Corporation's tenants or the owners or occupiers of any adjoining land or neighbouring premises.
- 13.1.7 The Authority will not do or permit or suffer to be done anything whereby the policy or policies of insurance in respect of the Property and the Depot Land may become void voidable or prejudicially affected. PROVIDED that details of such insurance are notified to the Authority.
- 13.1.8 The Authority will comply (and procure compliance by its contractor) with any reasonable and proper regulations as to the use of the Property and the Depot Land as the Corporation may notify at any time.
- 13.1.9 The Authority shall maintain appropriate insurance cover with a reputable insurance company (or procure that such insurance is maintained by those undertaking the Interim Works on the Authority's behalf) to cover any such losses, costs and/or liabilities that might arise for which the Authority has indemnified the Corporation pursuant to clause 13.1.12. Such insurance shall have a limit of indemnity of £5 million for each and every claim arising out of the Authority's obligations under this licence.
- 13.1.10 The Authority will make good any damage caused to the Property and the Depot Land to the Corporation's reasonable satisfaction.
- 13.1.11 The Authority will reinstate any Interim Works carried out on demand by the Corporation to the Corporation's reasonable satisfaction in the event that the Authority does not proceed to completion of the purchase of the Property.
- 13.1.12 During the Interim Works the Authority will keep the Corporation indemnified against:
- (a) all liabilities incurred by the Corporation;
  - (b) all damage and loss suffered by the Corporation;
  - (c) all damages compensation and penalties awarded against the Corporation;
  - (d) all claims demands actions and proceedings made or brought against the Corporation; and
  - (e) all costs disbursements and expenses incurred by the Corporation arising directly or indirectly out of any act or omission of the Authority or any persons on the Property and the Retained Land expressly or impliedly with the Authority's authority or as a consequence of any breach or non-performance of the undertakings by or to be performed by the Authority under this agreement.

PROVIDED THAT:

- i the Corporation shall not compromise or settle any such claims costs proceedings or demands without the prior written consent of the Authority and shall permit the Authority to defend the same in the name of the Corporation at the Authority's expense; and
- ii the Corporation shall as soon as practicable give written notice to the Authority of all such claims costs proceedings or demands being threatened brought made or lodged against the Corporation in respect of such matters;
- iii the maximum liability of the Authority under this clause 13.1.12 shall be limited to £5,000,000 in relation to any claim or series of claims from one event or series of connected events;
- iv notwithstanding the existence of this indemnity, the Corporation shall use best endeavours to mitigate its loss;

**13.2 User of Depot Land and Yellow Land**

Subject to and apart from the rights specifically granted to the Authority contained in the Transfer nothing herein contained or implied shall impose any restriction on the user by the Corporation of the Depot Land and Yellow Land or any other land or buildings not comprised in this Agreement nor give the Authority the benefit of or the right to enforce or to have enforced or to prevent the release or modification of any covenant agreement condition or stipulation entered into by any licensee lessee or tenant of the Corporation in respect of the Depot Land and Yellow Land or any other land not comprised in this Agreement or as to prevent or restrict in any way development of the Depot Land and Yellow Land or any other land not comprised in this Agreement. The Authority shall not be entitled to any right of access or light or air to buildings erected on or to be erected on the Property which would restrict or interfere with the free use of the Depot Land and Yellow Land or any other adjoining or neighbouring land for building or any other purpose.

**13.3 Compliance with Legislation**

The Authority agrees with the Corporation that both in relation to the Property and in relation to compliance with its obligations hereunder in relation to the Depot Land to comply with the requirements of any legislation including (but without prejudice to the generality of the foregoing) Environmental Laws and any other of the obligations imposed by law or by any bylaws applicable to the Property and/or the Depot Land or the use of either.

**14 Continuing obligations**

Each of the obligations undertaken by the parties to this Agreement will (unless already performed) continue in full force and effect notwithstanding completion.

15      **Planning**

Following Completion the parties will comply with the planning provisions contained in Schedule 1.

16      **Enabling Works**

Following Completion the parties will comply with the Enabling Works provisions contained in Schedule 2.

17      **Contracts (Rights of Third Parties) At 1999**

17.1    **No intended third party benefits**

Nothing in this Agreement is intended to confer any benefit on any person who is not a party to it

17.2    **Parties free to vary agreement**

The parties may, by agreement in writing, rescind or vary this Agreement without the consent of any third party to whom the right of enforcement of any of its terms has been expressly provided.

18      **Entire agreement**

18.1    **Previous agreements superseded**

This Agreement is the entire agreement and understanding of the parties and supersedes any previous agreement between them relating to the subject matter of this Agreement.

18.2    **No warranty relied on**

The Authority acknowledges and agrees that in entering into this Agreement, it does not rely on and will have no remedy in respect of any statement, representation, warranty, collateral agreement or other assurance (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly set out in this Agreement or in any written replies which the Corporation's Solicitor has given to any enquiries raised in writing by the Authority's Solicitors before the date of this Agreement. Nothing in this clause will, however, operate to limit or exclude any liability for fraud.

18.3    **Duplicate parts form one contract**

This Agreement may be executed in any number of duplicate parts all of which taken together will on exchange constitute one contract.

## 19 Notices

### 19.1 Notices to be written

Any notice given under this Agreement must be in writing and signed by or on behalf of the party giving it and must be served by delivering it personally or sending it by pre-paid first class post or special delivery post or fax to the address, and for the attention of the relevant party, as follows:

#### 19.1.1 to the Corporation at:

##### **London Borough of Barnet**

North London Business Park, Oakleigh Road South, London N11 1NP  
marked for the attention of: Head of Legal and quoting the reference  
RG005-2634/GXG;

and

[REDACTED], Property Services & Valuation Department  
London Borough of Barnet, North London Business Park  
Oakleigh Road South, London N11 1NP

#### 19.1.2 to the Authority at:

##### **North London Waste Authority**

Lee Valley Technopark, Unit 360, Ashley Road,  
Tottenham, London N17 9LN

marked for the attention of: [REDACTED], Deputy Director of Procurement  
or at the Authority's Solicitors, quoting the reference IC/JN/86449-5.

### 19.2 Deemed time of receipt

Any such notice will be deemed to have been received:

19.2.1 if delivered personally, at the time of delivery provided that if delivery occurs before 9.00 am on a working day the notice will be deemed to have been received at 9.00 am on that day, and if delivery occurs after 5.00 pm on a working day, or on a day which is not a working day, the notice will be deemed to have been received at 9.00 am on the next working day.

19.2.2 in the case of pre-paid first class or special delivery post on the working day after posting,

19.2.3 in the case of fax, at the time of transmission.

**19.3 Proof of service**

In proving service it will be sufficient to prove that delivery was made or that the envelope containing the notice was properly addressed and posted as a prepaid first class or special delivery letter or that the fax message was properly addressed and transmitted, as the case may be.

**19.4 E-mail**

A notice given under this Agreement will not be validly served if sent by e-mail.

**19.5 Condition 1.3 disapplied**

This clause 19 replaces Condition 1.3.

**20 Publicity**

**20.1 Confidential Agreement**

The parties will keep in confidence the full details of this Agreement and the fact that there are, or have been, discussions between the parties concerning the sale of the Property.

**20.2 Regulatory disclosure permitted**

Clause 20.1 will not apply to the extent that either party is obliged by law or by the London Stock Exchange or other regulatory body to disclose any information, but where possible it will, before making that disclosure, advise the other party of its intention to disclose any information.

**20.3 Disclosure to financiers**

Clause 20.1 will not prevent disclosure to a party's advisers, DEFRA, HM Treasury, bankers or financiers on a confidential basis.

**21 Registration**

**21.1 Restrictive covenants**

The Authority will apply to HM Land Registry in the form prescribed by the Land Registration Rules 2003 for a notice of the restrictive covenants contained in the Transfer to be entered in the registers of the Authority's title maintained at HM Land Registry promptly following Completion and in any event within 1 month of the date of Completion.

**21.2 Easements**

The Corporation consents to a notice of the easements contained in the Transfer being entered in the registers maintained at HM Land Registry and will at the request and cost of the Authority complete the relevant parts of the relevant form prescribed by the Land Registration Rules 2003 to confirm its consent under this clause.

### 21.3 Authority to inform Corporation when application is complete

The Authority will notify the Corporation as soon as it has been registered at HM Land Registry as proprietor of the Property and all other applications to HM Land Registry mentioned in this clause have been completed and will give the Corporation a copy of the title information document issued by HM Land Registry on completion of such registration(s).

## Rescission and determination of Agreement

### 22 Termination on default

#### 22.1 Event of Default

22.1.1 For the purposes of this clause an Event of Default occurs if:

- (a) the Authority becomes Insolvent (defined below);
- (b) the Authority suffers Insolvency Proceedings (defined below);

#### 22.1.2 Meaning of Insolvent

In this clause in relation to any person **Insolvent** means any of:

- (a) being unable or admitting inability to pay debts as they fall due;
- (b) suspending payments of any debts;
- (c) the value of assets being less than liabilities (taking into account contingent and prospective liabilities); or
- (d) a moratorium being declared for the whole or any part of indebtedness.

#### 22.1.3 Meaning of Insolvency Proceedings

In this clause in relation to any person **Insolvency Proceedings** means the taking of any corporate action, legal proceedings or other procedure or steps in relation to any of:

- (a) suspension of any payments;
- (b) moratorium of any indebtedness;
- (c) winding-up;
- (d) dissolution, administration, or reorganisation (by way of voluntary arrangement, scheme of arrangement or otherwise) except (in the case of a corporation) solvent liquidation or reorganisation;
- (e) composition, compromise, assignment, or arrangement with any creditor;

- (f) appointment of a liquidator (except on a solvent liquidation), receiver, administrative receiver, administrator, compulsory manager or similar officer for the person or any part of its assets;
- (g) (in the case of an individual) appointment of a trustee in bankruptcy or a provisional receiver or similar officer for that individual or any part of his assets; or
- (h) the enforcement of any security or distraint by anyone over any assets.

## 22.2 **Corporation may rescind**

On the occurrence of an Event of Default, the Corporation may, in addition to any other rights and remedies it may have, rescind this Agreement by giving notice to the Authority to that effect.

## 22.3 **Effect of rescission**

If the Corporation rescinds this Agreement:

22.3.1 the Authority's interest in and its rights in relation to the Property will terminate, and

22.3.2 the Corporation will retain all rights and remedies against the Authority for breach of obligations under this Agreement before the rescission.

## 23 **Schedules**

The parties shall each comply with any obligations on their respective parts contained in the Schedules to this Agreement.

\_\_\_\_\_  
Signed by

For and on behalf of the Corporation

\_\_\_\_\_  
Signed by

For and on behalf of the Authority





## Schedule 1

### Provisions for obtaining planning permissions

#### 1 Definitions

In this schedule the following additional definitions apply:

**Act** the Town and County Planning Act 1990;

**Authority's Onerous Conditions** means any condition imposed in a planning permission (outline or detailed) applied for under this Schedule or required in a Planning Agreement regulating the development or use of the Property which in a material and substantial way would prevent the Authority from performing its function as a waste authority on or from the Property and in particular (but without prejudice to the generality of the foregoing) any condition which:-

- Would prevent operational deliveries to the Property on any day of the week, including Bank Holidays, between the hours of 0800 to 1800;
- Restricts the size of waste carrying vehicles to a size that is smaller than would usually be used for the optimal construction and operation of the site as a 240ktpa waste treatment facility;
- Unreasonably restricts vehicle movements, including vehicle routes and times, to preclude the optimal construction and operation of the site as a 240ktpa waste treatment facility;
- Imposes a restriction on any noise emitted from the operation of the site that exceeds the requirements of BS 4142:1997 "Method for rating industrial noise affecting mixed residential and industrial areas", and requires the plant to be less than 10dB above the prevailing background  $L_{A90}$  at residential properties;
- Imposes a restriction on any noise emitted from the construction of the waste facility should comply with the requirements within BS 5228-1:2009 "Code of practice for noise and vibration control on construction and open sites - Part 1:Noise" and BS 5228-2:2009 "Code of practice for noise and vibration control on construction and open sites - Part 2:Vibration", and requires noise levels to be less than 75dB  $L_{Aeq, T}$  at residential properties;
- Imposes an odour restriction on the operation of the waste facility that exceeds 30 ouE/m<sup>3</sup> at residential properties;
- Imposes any unreasonable restriction on the erection of buildings appropriate to the use of the Property for waste management;
- Requires a contribution to any S106 obligations or Community Infrastructure Levy that exceeds a total value of £1M;
- Requires the Authority to obtain the agreement of a third party in respect of land outside the Property, other than statutory undertakers and the highway authority;
- Requires the payment of any sums of money to any third party landowner or occupier;
- Requires the transfer or dedication of land to any third party (except for the local highway authority) unless such dedication does not adversely affect the

operation of the site.

Provides for an area of development of less than 8.5 acres.

**Counsel** leading counsel experienced in planning matters of not less than ten years call and who is a member of the Planning and Environmental Bar Association;

**Community Infrastructure Levy** as provided for Part 11 of the Planning Act 2008;

**Corporation's Outline Planning Application** an application for outline planning permission for the Depot Land;

**Corporation's Detailed Planning Permission** the grant of the planning permission applied for in the Corporation's Detailed Planning Application;

**Corporation's Onerous Conditions** means any Condition imposed in a planning permission (whether outline or detailed) applied for under this schedule or required in a Planning Agreement regulating the development or use of the Depot Land which in a material and substantial way would prevent the Corporation from performing its function as a local authority on or from the Depot Land and in particular (but without prejudice to the generality of the foregoing) any condition which:-

- Would prevent operational movement of vehicles to and from the Depot Land on any day of the week, including Bank Holidays, between the hours of 0600 to 1800;
- Would prevent work on the maintenance of vehicles on the Depot Land on any day of the week, including Bank Holidays, between the hours of 0600 to 2300;
- Restricts the size of vehicles to a size that is smaller than would usually be used for the optimal construction and operation of the Depot Land as a Local Authority vehicle and maintenance depot;
- Unreasonably restricts vehicle movements, including vehicle routes and times, to preclude the optimal construction and operation of the Depot Land as a Local Authority vehicle and maintenance depot;
- Imposes a restriction on any noise emitted from the operation of the Depot Land that would prevent the Depot Land being used as a Local Authority vehicle and maintenance depot;
- Imposes a restriction on any noise emitted from the construction of the Depot Land should comply with the requirements within BS 5228-1:2009 "Code of practice for noise and vibration control on construction and open sites - Part 1:Noise" and BS 5228-2:2009 "Code of practice for noise and vibration control on construction and open sites - Part 2:Vibration", and requires noise levels to be less than 75dB  $L_{Aeq,T}$  at residential properties;
- Imposes an odour restriction on the operation of the Depot Land;
- Imposes any unreasonable restriction on the erection of buildings appropriate to the use of the of the Depot Land as a Local Authority vehicle and maintenance depot;
- Requires a contribution to any S106 obligations or Community Infrastructure Levy that exceeds a total value of £500,000;

- Requires the Corporation to obtain the agreement of a third party in respect of land outside the Depot Land, other than statutory undertakers and the highway authority;
- Requires the payment of any sums of money to any third party landowner or occupier;
- Requires the transfer or dedication of land to any third party (except for the local highway authority) unless such dedication does not adversely affect the operation of the site.

Provides for an area of development of less than 3.5 acres.

**Deemed Refusal** if the Local Planning Authority has not given a Planning Refusal or Outline Planning Permission within a reasonable time for determining the Outline Planning Application in accordance with the Act then the parties acting reasonably will agreed a date by which the permission is deemed to be refused.

**Development** the provision of waste recycling and treatment facilities on the Property and of a Corporation depot on the Depot Land and of the Access Way to the Depot Land over the Designated Route;

**Expert Reference** a reference to the Expert under paragraph 1.1 of Schedule 7 requesting a determination as to whether or not an Outline Planning Permission is a Satisfactory Decision;

**Local Planning Authority** the local planning authority for the area in which the Property is situated;

**Onerous Conditions** means any Authority's Onerous Condition and any Corporation's Onerous Condition

**Outline Planning Application** an application for outline planning permission for the Development;

**Outline Planning Permission** means the grant of the outline planning permission applied for in the Outline Planning Application;

**Planning Agreement** an agreement affecting the Depot Land and/or the Property (whether or not also affecting other property) made pursuant to section 106 of the Act and/or section 33 of the Local Government (Miscellaneous Provisions) Act 1982 and/or section 38 and/or 278 of the Highways Act 1980 and/or section 104 of the Water Industry Act 1991 or an agreement with any competent authority or body relating to other services;

**Planning Refusal** a refusal of the Outline Planning Permission applied for in the Outline Planning Application (including a deemed refusal arising under section 78(2) of the Act) or the making of a Outline Planning Permission which is not a Satisfactory Decision in accordance with the terms of this Schedule;

**Planning Requirement** the obligation of the Authority referred in paragraph 2;

**Satisfactory Decision** an Outline Planning Permission which is either free from Onerous Conditions or which the Corporation and Authority elects to treat as being free from

Onerous Conditions;

**Secretary of State** the Secretary of State for Communities and Local Government or other minister or authority for the time being having or entitled to exercise the powers now conferred upon the Secretary of State for Communities and Local Government by sections 77 and 79 of the Act.

## **1 Definition of the Planning Condition**

1.1 The Planning Requirement is the obtaining of a Satisfactory Decision by the Authority by 31 December 2012.

1.2 Upon the issue of an Outline Planning Permission the Authority shall provide full details of the same to the Corporation and confirm if it contains any Authority's Onerous Conditions or if it is a Satisfactory Decision.

1.3 Within 20 working days of being notified of the Outline Planning Permission the Corporation shall serve notice on the Authority indicating whether or not the Corporation considers the same to be a Satisfactory Decision in so far as it relates in respect of the Depot Land and if no notice is received then the Outline Planning Permission is deemed to be free from Corporation's Onerous Conditions.

1.4 The Planning Requirement will be discharged on the earlier of:-

1.4.1 the date of service of a notice by the Corporation on the Authority confirming that a Satisfactory Decision has been received PROVIDED that the Corporation has received confirmation from the Authority in respect of paragraph 1.2 of this Schedule; and

1.4.2 the expiry of the period set out in this Schedule without the Corporation serving notice on the Authority that the Outline Planning Permission is not a Satisfactory Decision; and

1.4.3 (in the event that an Expert Reference is made) the date upon which the Expert determines that the Planning Decision is a Satisfactory Decision.

1.4.4 In the event that there is a Deemed Refusal in accordance with the date of such Deemed Refusal.

1.5 If either the Authority or the Corporation serves notice indicating that the Outline Planning Permission is not a Satisfactory Decision and either party considers the other has not acted reasonably in serving such a notice either party may make an Expert Reference.

## **2 Application and negotiations for outline planning permission**

2.1 The form and content of the Outline Planning Application and any change thereto will be prepared by and at the cost of the Authority but before submission must be approved (approval not to be unreasonably withheld or delayed) in writing by the Corporation within 28 days of the submission of the Outline Planning Application by the Authority to the Corporation and if approval or non-approval by the Corporation is

not received by the Authority within 28 days then such approval by the Corporation shall be deemed.

- 2.2 Subject to prior compliance with paragraph 2.1 the Authority will at its own expense apply to the Local Planning Authority for Outline Planning Permission by 31<sup>st</sup> December 2010 (and provide the Corporation with a full copy of the Outline Planning Application) and will use reasonable endeavours to obtain the Outline Planning Permission.
- 2.3 The Authority will not make any material amendment to the Outline Planning Application after it has been submitted without the prior written approval of the Corporation (such approval not to be unreasonably withheld or delayed) PROVIDED that the Corporation shall not be deemed to be unreasonable if it withholds consent on the basis that the giving of consent would result in a Corporation's Onerous Condition.
- 2.4 Before and/or following the submission of the Outline Planning Application for Outline Planning Permission the Authority will, if requisite or desirable in order to obtain the Outline Planning Permission, enter into discussions or negotiations with the Local Planning Authority.
- 2.5 The Authority may in consequence of discussions or negotiations with the Local Planning Authority, if it appears requisite or desirable in order to obtain the Outline Planning Permission, amend or withdraw and immediately submit a fresh Outline Planning Application, subject to the prior written approval of the Corporation in the same manner as paragraph 2.1.

**3 The Authority to pursue the application diligently and keep the Corporation informed**

In pursuing the Outline Planning Application and conducting discussion or negotiation with the Local Planning Authority the Authority will:

- 3.1 Use reasonable and commercially sensible endeavours to obtain the Outline Planning Permission as soon as reasonably practicable;
- 3.2 keep the Corporation fully informed of all applications the progress of applications correspondence meetings negotiations proposals and proceedings; and
- 3.3 allow the Corporation to attend at such meetings and to participate at them.

**4 Co-operation of the Corporation**

- 4.1 The Corporation will co-operate with the Authority and use all reasonable endeavours to assist the Authority to discharge the Planning Requirement, but in so doing the Corporation may not act (save as provided for in this paragraph) independently of the Authority.
- 4.2 Without affecting the general operation of paragraph 4.1 the Corporation will, if it is necessary to do so to procure the grant of the Outline Planning Permission, enter into any Planning Agreement in its capacity as owner of the Depot Land in such form as

the Corporation shall (acting reasonably) approve as being reasonable in the circumstances but if so then:

4.2.1 it must be stipulated in the Planning Agreement that the planning obligations are to become operative only if the development to which they relate is begun and that the Corporation is in any event to be relieved from all liability for them after the Corporation has parted with all interest in the Depot Land;

4.2.2 the Corporation will be liable for obligations which attach to the implementation of the Planning Permission insofar as it relates directly to the Depot Land and the use of the Depot Land;

4.2.3 the Authority will be liable for obligations which attach to the implementation of the Planning Permission insofar as it relates directly to the Property and the use of the Property;

4.2.4 the Authority will indemnify the Corporation against such liability as may arise under or in respect of the provisions of the Planning Agreement which arise from the implementation of the Outline Planning Permission insofar as it relates to the development of the Property;

4.2.5 the Corporation will indemnify the Authority against such liability as may arise under or in respect of the provisions of the Planning Agreement which arise from the implementation of the Outline Planning Permission insofar as it relates to the development of Depot Land

4.2.6 the Corporation and the Authority will co-operate in dealing with any liability which arises from the Outline Planning Permission and which is not split between the Property and the Depot Land and any liability for payments under any Planning Agreement shall be dealt with as set out as follows:

4.2.6.1 in relation to transport related obligations - a percentage based on estimated vehicle movements as contained in Outline Planning Permission;

4.2.6.2 other cases as in the Corporation's Percentage

4.3 Any dispute as to the allocation of liability under the terms of paragraphs 4.2.2 and 4.2.3 may be referred to the Expert.

## **5 Planning Refusal and Appeal**

5.1 In the event of a Planning Refusal the Authority may appeal against a Planning Refusal and a Deemed Refusal and shall be obliged to do so if Counsel (instructed either jointly by the Corporation and the Authority or by either party alone in the event of default by either party of any obligation to join in any application) advises that there is more than a 50% chance of success and where the Authority appeals:-

5.1.1 It will do so at its own expense; and

5.1.2 It is obliged to continue unless advised by Counsel that there is a less than 50% chance of success in which case the Authority may (but is not obliged to) withdraw the appeal.

5.2 The Authority and the Corporation will prosecute the appeal with all due diligence and will conduct its part in the appeal proceedings in a good and efficient manner.

5.3 In prosecuting the appeal the Authority and the Corporation will:

5.3.1 keep the other fully informed of all relevant information about the appeal including all correspondence, notifications, instructions to and advice of Counsel evidence of expert and other witnesses, and the dates of any inquiry hearing or for the submission of written representations, and

5.3.2 both the Authority and the Corporation shall be allowed to attend at conferences with Counsel and other relevant meetings.

## **6 Time limits**

6.1 If the Planning Requirement has not been discharged by 31 December 2012 then the Authority and the Corporation shall use reasonable endeavours to agree a further planning application to maximise the value of both the Depot Land and the Property and if agreement on such revised planning application cannot be reached by 31 December 2013 then the Corporation can apply for their own planning for the Depot Land and for the sake of clarity, the Authority is able to apply for any planning permission they wish for the Property.

6.2 If at the 31 December 2012 the Authority has appealed or the Secretary of State has called in the application for Outline Planning Permission but the Secretary of State (or an inspector acting on his authority) has not then issued his determination or decision then the provisions of paragraph 6.1 will not apply until 31 December 2013 following Planning Refusal or determination by the Secretary of State which refuses planning then the provisions of paragraph 6.1 shall then apply (in respect of which there shall be no further extension) or, if earlier, a Planning Refusal.

## **7 Notices and notification**

Notice or notification required to be given under the provisions of this schedule in must be in writing and in accordance with clause 19.

## **8 Corporation's Detailed Planning Application**

The Corporation cannot submit the Corporation's Detailed Planning Application until the earlier of 31 December 2013 and a Satisfactory Decision in so far as it relates to the Depot Land.



## **Schedule 2**

### **Enabling Works**

- 1 Prior to the agreeing the scope of the Enabling Works the Authority shall provide the Corporation with a copy of such proposed scope and the Corporation shall have 28 days to approve the scope or refer them to the Expert in accordance with Schedule 7. In the event that the Corporation has neither approved or referred the scope within 28 days of receipt from the Authority then the Corporation's approval shall be deemed.
- 2 Prior to the appointment of the Enabling Works Contractor the Authority shall provide the Corporation with a copy of such proposed appointment and the Corporation shall have 28 days to approve the appointment or refer it to the Expert in accordance with Schedule 7. In the event that the Corporation has neither approved or referred the appointment within 28 days of receipt from the Authority then the Corporation's approval shall be deemed.
- 3 The Authority shall appoint the Enabling Works Contractor to carry out the Enabling Works and as part of such appointment will require the Enabling Works Contractor to issue a practical completion certificate upon completion of the Enabling Works ("Certificate of Practical Completion") and following the issue and service of the Certificate of Practical Completion on the Corporation the Corporation shall pay the Enabling Works Cost.
- 4 Following receipt of the Enabling Works Cost by the Authority from the Corporation the Authority will provide the Corporation with the Enabling Works Contractor Warranty.
- 5 The Authority will complete the Enabling Works by the later of 36 months from the date of the grant of the Outline Planning Permission or 31 October 2013. ("the Enabling Works Completion Date").
- 6 The Authority will carry out the Enabling Works with all due diligence and in a good and workmanlike manner as soon as reasonably practicable but in any event the Authority will complete the Enabling Works on a date being no later than Enabling Works Completion Date.
- 7 The Authority will notify the Corporation of completion of the Enabling Works within five working days of such completion.
- 8 The Authority will use reasonable endeavours to carry out the Access Way Works to an adoptable standard.
- 9 Subject to the Corporation paying the costs in paragraph 10 of this Schedule the Authority will from practical completion of any Access Way :
  - 9.1 keep the Access Way maintained in good and substantial repair and condition;
  - 9.2 pay without delay all and any charges costs duties rates taxes demands and other assessments due in respect of the Access Way;

- 9.3 effect and maintain insurance cover against death or loss, injury or damage to any person (including trespassers) using the Access Way on such terms and at such level of cover as is reasonable in all the circumstances and produce to the Corporation within ten working days of demand satisfactory evidence of such cover and payment of the most recent premium; and
- 9.4 such costs shall be known as the "Access Way Costs";
- 10 The Corporation shall on demand pay the Corporation's Percentage of Access Way Costs.
- 11 The Authority will use reasonable endeavours to carry out the Service Works keeping the Corporation fully informed of progress in this respect.
- 12 From practical completion of the Service Works the Authority will subject to the Corporation paying the costs contained in paragraph 13 of this Schedule 2:
- 12.1 keep the same maintained in good and substantial repair and condition;
- 12.2 pay without delay all and any charges costs duties rates taxes demands and other assessments due in respect of those parts of the Service Works.
- 12.3 such costs to be known as the "Service Works Costs"
- 13 The Corporation will pay on demand the Corporation Percentage of the Service Works Costs.
- 14 In the event that the Authority has not completed the Enabling Works within three months of the Enabling Works Completion Date then the Corporation will have licence to enter the Property (and such licence will subsist so long as is necessary without any obligation on the Corporation to act in a timely manner) for the Corporation to procure the completion of the Enabling Works but any action on the part of the Corporation under the terms of this paragraph 14 shall be without prejudice to the ongoing liability of the Authority to comply with paragraphs 5 to 9 above.
- 15 The licence granted by the Authority to the Corporation to enter upon the Property shall extend to and include the Corporation's agents, subcontractors, workmen and all other persons authorised by it or them with or without all necessary materials, implements, office huts equipment and tools for the purposes of carrying out and/or completing the Enabling Works.
- 16 Where the Authority is in default of its obligation under paragraphs 1 to 5 of this Schedule and the Corporation exercises its right under this Schedule to carry out and/or complete the Enabling Works the Authority shall within 20 working days of demand pay to the Corporation all of its proper costs incurred in carrying out the Enabling Works above the costs contained in the Amended Costed Control Option.

## Schedule 3

### Overage Provisions

#### 1 Definitions

In this Schedule the following additional definitions apply:

**Base Acreage** means 9.2 acres of the Property (or following the making of a Planning Acreage Payment such higher figure as shall be calculated in accordance with paragraph 2.1 of this Schedule);

**Developable Land** means those parts of the Property upon which development can take place pursuant to a planning permission and for the avoidance of doubt does not include areas for planting, ecology and landscaping;

**Overage period** means the period from the date of Completion to the 31 December 2020;

**Planning Acreage Payment** means a sum equal to £1.3135 million per acre (applied pro-rata in respect of part of an acre) of Developable Land in excess of the Base Acreage payable in accordance with paragraph 2;

#### 2 Planning Acreage Payment

In the event that a planning permission (or when taken together more than one planning permission) for the Property is granted (or in respect of which a resolution to grant is made) during the Overage Period which gives consent for development of part of the Property for development purposes above the Base Average, which was included in the Transfer of the Property to the Authority for the purposes of ecology the Authority thereby increasing the Base Acreage of Developable Land the Authority shall pay the Corporation the Planning Acreage Payment as additional consideration for the Property within a 40 day period of such grant (which for the avoidance of doubt such payment date may be a date after the expiry of the Overage Period);

- 2.1 this provision will be applied on each occasion that a planning permission is granted (or a resolution to grant made) during the Overage Period with the total of Developable Land being recalculated (if appropriate) on each occasion
- 2.2 more than one Planning Acreage Payment may be due under this Schedule 3 but following the making of a Planning Acreage Payment the Base Acreage shall be revised upwards to the total acreage of Developable Land upon which that Planning Acreage Payment has been calculated (and such revision shall be repeated as often as may be necessary)
- 2.3 Under no circumstances shall the application of this Schedule 3 lead to any payment being due from (or repayable by) the Corporation to the Authority.

## Schedule 4

### Corporation's Right of Pre-emption

#### 1 Definitions

In this Schedule the following additional definitions apply:

**Disposition** includes a conveyance transfer sale of a legal interest lease tenancy licence to occupy mortgage or charge but neither a mortgage nor a charge shall be a Disposition if (when applying for registration of that charge) the chargee also applies for a restriction in a form referred to under rule 91 of the Land Registration Rules 2003 (as set out in schedule 4 of the said rules) to the effect that no disposition by the proprietor of that charge is to be registered without the consent of the Corporation

and **dispose** of or **disposal of** has a corresponding meaning.

**Disposition Price** means the aggregate of the Price paid by the Authority on Completion, the Stamp Duty Land Tax paid by the Authority on the Price. (excluding VAT) and the cost of any works incurred by the Authority on the Property and the Depot Land (excepting any costs which relate to planning) at the time of the Disposition;

**Exempted Disposition** means a Disposition of part of the Property:

- (a) to a local authority or other statutory body pursuant to a planning obligation within the meaning of Section 106 of the TPCA 1990;
- (b) to a statutory body or service supply company for an electricity substation gas governor pumping station water pumping station or other statutory services which have been or are to be constructed or installed in or on the Property;
- (c) to a highway authority for the purpose of adoption of the roads and footpaths and cycle ways to be constructed on the Property;

**Notice of Intention** means a notice given by the Corporation to the Authority pursuant to paragraph 4.3 that the Corporation intends to exercise the pre-emption right contained within this Schedule

**Offer Notice** means the form of notice signed by and served by the Authority pursuant to paragraph 4

**Pre-emption** means the right granted to the Corporation by paragraph 2

**Pre-emption Completion Date** means the twentieth working day after the date of service by the Corporation on the Authority of the duplicate Offer Notice with the

acceptance statement signed by the Corporation

**Pre-emption Event** has the meaning given in paragraph 3

**Pre-emption Period** means the earlier of 21 years from the date of this Agreement and the date of a grant of a lease, licence or interest in the Property to a contractor of the Authority who will be carrying out the waste management function of the Authority at the Property.

## **2 Grant of the Pre-emption**

2.1 In consideration of One Pound (£1.00) paid by the Corporation to the Authority (receipt of which is acknowledged) the Authority grants to the Corporation the right following the occurrence of a Pre-emption Event during the Pre-emption Period to buy the freehold interest in the whole of the Property at the Disposition Price

2.2 The consideration is not refundable to the Corporation in any circumstances but will be deducted from the balance of the Disposition Price due on completion if the Corporation completes the purchase of the Property

## **3 Pre-emption Event**

3.1 A Pre-emption Event occurs when the Authority decides to make a Disposition other than Exempted Disposition:

- 3.1.1 whether by means of a single transaction or by a number of separate transactions whether or not at the same time
- 3.1.2 whether before or after it has negotiated terms for a Disposition to someone other than the Authority

3.2 If the Disposition is to be carried out by a number of transactions the Pre-emption Event occurs when the decision is made in relation to the first transaction

3.3 The Authority shall not make a Disposition during the Pre-emption Period unless the procedure set out in paragraph 4 has been carried out

## **4 Pre-emption procedure**

4.1 The Authority shall give the Offer Notice in duplicate to the Corporation immediately after a Pre-emption Event occurs. The Offer Notice shall be served upon the Head of Legal (or Solicitor to the Corporation) at the Corporation's main office, which at the date of this Agreement is the address set out at the head of this Agreement and in clause 19.1.1

4.2 The Offer Notice shall be in the form set out in Schedule 5 and shall specify the Disposition Price

4.3 Following receipt of the Offer Notice by the Corporation from the Authority the Corporation shall have the period of 40 days to provide the Authority with a Notice of Intention and in the event that the Corporation fail to provide the Authority with a Notice of Intention within the 40 day period the Pre-emption right contained in paragraph 4 of this Schedule shall cease and be extinguished in relation to the premises comprised in the Disposition and the Authority shall be free to make the Disposition free from the Pre-emption and for the avoidance of doubt the Pre-emption

shall continue in respect of the remainder of the Property until the expiry of the Pre-emption period.

- 4.4 Following service of the Notice of Intention by the Corporation pursuant to paragraph 4.3 the Pre-emption shall be exercisable by the Corporation signing the statement of acceptance at the foot of the Offer Notice and serving it on the Authority at any time within six months after service of the Offer Notice on the Corporation accompanied by or preceded by payment of the deposit in accordance with paragraph 5
- 4.5 On the valid exercise of the Pre-emption the Authority shall sell and the Corporation shall buy the Property at the Disposition Price on the terms of this Schedule
- 4.6 If the deposit is not paid in accordance with clause 4.3 the purported exercise of the Pre-emption is ineffective
- 4.7 The Offer Notice may not be withdrawn or varied before the expiry of the period for acceptance of the offer
- 4.8 The parties shall do all things necessary to ensure that the exercise of the Pre-emption constitutes an enforceable agreement for sale and purchase in accordance with the Law of Property (Miscellaneous Provisions) Act 1989 Section 2 or any statutory re-enactment or modification of it for the time being in force

## **5 Deposit**

The Corporation shall on or before exercising the Pre-emption pay a deposit of 10% of the Disposition Price to the Authority or Authority's Solicitors as stakeholders by direct credit or a banker's draft drawn on and by a clearing bank

## **6 Failure to exercise the Pre-emption**

If the Corporation rejects or fails to accept the offer contained in the Offer Notice the following provisions apply:

- 6.1 The Authority may at any time within 9 months after the earlier of the date of rejection or expiry of the time for acceptance of the offer make a Disposition of the Property or any part of it to a third party at a purchase price or for valuable consideration not less than that specified in the Offer Notice (or in the case of a Disposition of part of the Property at the appropriate proportion) and otherwise on the same terms as are contained or incorporated in the Offer Notice
- 6.2 If such Disposition is completed the Pre-emption shall cease and be extinguished in relation to the premises comprised in the Disposition
- 6.3 If the Disposition is of less than the whole of the Property the Pre-emption shall continue in respect of the remainder of the Property until the expiry of the Pre-emption Period
- 6.4 If the Disposition does not take place within the period specified in paragraph 6.1 or having taken place is never completed the Pre-emption shall continue in respect of the whole of the Property until the expiry of the Pre-emption Period
- 6.5 For the purposes of paragraph 6.4 a Disposition takes place on exchange of contracts for the Disposition if there is one or otherwise on completion of the Disposition
- 6.6 The Authority shall deliver to the Corporation copies certified by a solicitor to be true copies of:

- 6.6.1 the Disposal contract within 7 working days of it being entered into and
- 6.6.2 the draft transfer to the third party at least 7 working days before the intended completion date

7 **Pre-emption Completion**

Completion of the sale and purchase and payment of the balance of the Disposition Price shall take place on the Pre-emption Completion Date at the offices of the Authority's Solicitors or where they may reasonably direct

8 **Title guarantee**

The Authority sells with full title guarantee

9 **Possession**

The Property is sold with vacant possession on completion

10 **Title**

Title to the Property is registered at H M Land Registry with absolute title under a title number to be allocated and in relation to such title the Authority shall provide to the Corporation official copies of the items referred to in rules 134(1)(a) and (b) and 135(1)(a) of the Land Registration Rules 2003 except charges or incumbrances registered or protected on the register which are to be discharged or overridden at or before completion and the Corporation or the Corporation's Solicitors having been supplied with such copies prior to the date of service of the Offer Notice the Corporation shall be deemed to purchase with full knowledge of the title in all respects and shall not raise any requisitions or make any objection in relation to the title except as to matters or events occurring after the date of the Offer Notice

11 **Encumbrances**

11.1 The Property is sold subject and (where appropriate) with the benefit of the matters contained or referred to in the property and charges registers of the title number to be allocated except for any financial charges

11.2 The Corporation or the Corporation's Solicitors having been supplied with copies of the property and charges registers and the matters contained or referred to in the registers prior to the date of service of the Offer Notice the Corporation shall be deemed to purchase with full notice and knowledge of the same and shall not raise any requisition or make any objection in relation to them

12 **Matters affecting the Property**

The Property is sold subject to the following matters:

12.1 all local land charges whether registered or not before the date of this Agreement and all matters capable of registration as local land charges whether or not actually so registered

12.2 all notices served and orders demands proposals or requirements made by any local public or other competent authority whether before or after the date of this Agreement

12.3 all actual or proposed charges notices orders restrictions agreements conditions contraventions or other matters arising under the enactments relating to town and country planning and environmental law

12.4 all easements quasi-easements rights exceptions or other similar matters whether or not apparent on inspection or disclosed in any of the documents referred to in this Agreement

### 13 **Registration**

13.1 The Authority consents to registration of a notice of this Agreement in the charges register of the Authority's title to the Property (when registered) and shall do all things necessary to enable a notice under the Land Registration Act 2002 Section 32 to be registered

13.2 If the Pre-emption expires the Corporation shall forthwith cancel any registrations made by it in any registers to protect this Agreement and by way of security appoints the Authority its attorney for the purpose of effecting such cancellations

13.3 If a Disposition is made to a third party in accordance with paragraph 6 then subject to the Corporation having received the documents mentioned in clause 6.6 the Corporation on request by the Authority will deliver to the Authority's solicitors before the intended completion date a signed application form to cancel any relevant registration in relation to the subject matter of that Disposition and the Authority's solicitors shall hold that application to the order of the Corporation until actual completion of that Disposition

### 14 **Insurance**

14.1 Until the Pre-emption is exercised the Authority shall insure the Property against the risks listed in paragraph 14.2 with underwriters or insurers of repute in the full cost of rebuilding and reinstating the Property including VAT professional fees and shoring up site clearance and incidental expenses and will lay out the proceeds of such insurance in rebuilding or reinstating the Property

14.2 The risks are fire storm tempest earthquake lightening explosion riot civil commotion malicious damage impact by vehicles and by aircraft and articles dropped from aircraft flood damage and busting or overflowing of water pipes and tanks and terrorism and environmental damage

### 15 **VAT**

15.1 The Authority will have opted to tax the Property and so VAT will be payable on the Disposition Price.

15.2 All payments (other than the Disposition Price but otherwise including monetary consideration and the provision of non-monetary consideration) due under this Agreement from the Corporation are exclusive of any VAT and where any such payment is the consideration for a taxable supply for VAT purposes, the consideration is to be increased by the amount of VAT which is chargeable on that supply.

### 16 **Merger on completion**

The provisions of this schedule shall not merge on completion of the transfer of the Property by the Authority to the Corporation so far as they remain to be performed



## Schedule 5

### Form of Offer Notice

Offer

To:

From:

Property: (‘the Property’)

This notice is given in accordance with the terms of Schedule 4 of the Agreement dated  
made between The Mayor and Burgesses of the London Borough of Barnet (1) and  
North London Waste Authority (2) relating to the Property (‘the Agreement’)

- 1 As required by paragraph 4 of the Agreement North London Waste Authority OFFERS to sell the Property to you at the price of
- 2 The other terms of the sale are contained in the Agreement and are incorporated in this offer

Dated

Signed by

#### Acceptance

- 1 The Mayor and Burgesses of the London Barnet ACCEPT the offer to sell the Property contained in the Offer Notice of which this is a duplicate and
- 2 [enclose the deposit of £..... (*insert details of cheque draft or as the case may be*) (or) have paid the deposit of £..... to (*seller's solicitors*) by (*insert method of payment*)]

Dated

Signed

## **Schedule 6**

### **Environmental Information**

Proposed Refuse & Recycling Depot at Pinkham Way - Option 6 (Dwg. 261230 Rev 00), Mott McDonald, Jun-09

Pinkham Way Design Control Option, Gardiner & Theobald LLP, Jun-09

Friern Barnet Former Sewage Works - Botanical Survey, Jacobs, Jun-09

Former Friern Barnet Sewage Works - Bat Surveys, Jacobs, Jun-09

Friern Barnet Former Sewage Works Development Feasibility - Land Quality, Jacobs, May-09, FINAL

Appendices to Friern Barnet Former Sewage Works Development Feasibility - Land Quality, Jacobs, Feb-08

Appendices to Friern Barnet Former Sewage Works Development Feasibility - Land Quality, Jacobs, Apr-09, PRELIMINARY

Appendices to Friern Barnet Former Sewage Works Development Feasibility - Land Quality, Jacobs, Apr-09, PRELIMINARY

Friern Barnet Former Sewage Works Reptile Survey, Jacobs, Jun-09

Great Crested Newt Survey at Friern Barnet, Jacobs, Jun-09

Friern Barnet Former Sewage Works - Badger Survey Report, Jacobs, May-09

Habitat Suitability Index Assessment at Friern Barnet, Jacobs, Apr-09

Friern Barnet Former Sewage Works - Invasive Weed Summary Report, Jacobs, May-09

CCTV Report, Jacobs, Jun-09

Friern Former Sewage Works Site - Land Quality Assessment Phase One: Initial Investigation, Jacobs, Mar-08

Friern Barnet Sewage Works - Land Quality Assessment Phase II: Environmental and Geotechnical Site Investigation Report, Jacobs, Apr-08, REVISED

Friern Barnet Sewage Works Site, Barnet - Development Constraints Report, Jacobs, Apr-08

Giant Hogweed letter, TCM, Mar-09

## **Schedule 7**

### **General Provisions**

- 1.1 If:
- 1.1.1 the parties are unable to agree upon the determination of the quantum of any sum or valuation or any monetary obligation due from one party to the other in connection with this agreement;
  - 1.1.2 the parties are unable to agree upon whether or not a Planning Decision is a Satisfactory Decision or if there shall be a dispute under paragraph 5.3 of Schedule 1
  - 1.1.3 there shall be a dispute or difference of the type referred to in paragraph 10 of Schedule 2
- the dispute or difference shall be referred to an independent person (the "Expert") who shall act as an Expert and not as an arbitrator and whose decision in relation to the matter in dispute shall be final and binding upon the parties.
- 1.2 The procedure for the appointment of the Expert in accordance with this paragraph shall be as follows.
- 1.2.1 The party wishing the appointment to be made shall give notice to that effect to the other party and with such notice shall give details of the matters in dispute which it wishes to refer to an Expert.
  - 1.2.2 If within 21 days from the service of the notice by the party wishing to refer a matter to an Expert the parties have failed to agree upon the identity of the person to be appointed as the Expert then the party that gave notice pursuant to paragraph 1.2.1 may apply to the president for the time being of the Royal Institution of Chartered Surveyors (the "Appointing Authority") to appoint a person to act as an Expert to determine the matters in dispute requesting that the appointment be made within 21 days of receipt of the request by the Appointing Authority.
  - 1.2.3 No person shall be appointed to act as an Expert under this Agreement unless he is a chartered surveyor of more than ten year's standing and experience in relation to the matter in dispute.
  - 1.2.4 The person identified to act as an Expert shall confirm within 14 days whether or not he is willing and able to accept the appointment.
  - 1.2.5 In the event that the Expert so appointed does not confirm his availability to act within 14 days or refuses the appointment then either party may request the Appointing Authority to suggest an alternative appointment until a person so identified confirms that he is willing and able to accept the appointment.

- 1.2.6 The parties shall within 21 days of the Expert confirming his willingness and ability to act jointly send a letter to the Expert containing the terms of his appointment including (inter alia) the following:
- (a) that the Expert shall not later than 14 days after the confirmation of his appointment call the parties to a meeting ("the directions meeting") at which he shall give directions as to the future conduct of the matter and shall from time to time give such further directions as he shall see fit;
  - (b) that the Expert shall make his determination as soon as reasonably practicable after receipt of all written or oral submissions which the Expert orders should be made and conclusion of such further work as the Expert shall consider necessary and in any event the Expert shall endeavour to issue his decision within three months of the directions meeting referred to above;
  - (c) that the Expert shall be entitled to obtain such independent legal or other expert advice as he may reasonably require and may obtain such secretarial assistance as is reasonably necessary;
  - (d) that the Expert shall give full written reasons for his determination.
- 1.3 For the avoidance of doubt, any person appointed to determine a dispute in accordance with this paragraph shall act as an expert and not as an arbitrator and the provisions of the Arbitration Act 1996 (as amended from time to time) and the law relating to arbitrations shall not apply to such expert or his determination or the procedure by which he reaches his determination.
- 1.4 The determination of the Expert shall be final and binding upon the parties.
- 1.5 The Expert shall be entitled to order that the costs of the reference of a dispute to him shall be paid by the parties in whatever proportions he thinks fit.
- 1.6 Save for submissions made orally to the Expert at a meeting at which all parties are present any other communications between any party and the Expert shall be made in writing and a copy thereof shall be provided simultaneously to all other parties.
- 1.7 No meeting between the Expert and a party shall take place unless all parties have had notice of such meeting and have been offered a reasonable opportunity to attend such meeting.
- 1.8 In the event that the appointed Expert shall at any time become incapable of acting upon the determination (through death or other form of incapacity whether physical or otherwise) then the procedure for appointing an Expert referred to in paragraphs 1.2.1 to 1.2.6 above shall be repeated.
- 2 If any sum which has become due under this Agreement is not paid within 10 working days of the date upon which it became payable then the paying party will pay interest on that sum at the rate of 4% above the base rate from time to time of Co-operative Bank plc from the date it became payable until it is paid.

- 3 For the avoidance of doubt if there is a reference to determine a dispute pursuant to paragraph 1.1.1 above such sum as shall be fixed as a result of the outcome of the Expert's decision as being the sum due under this Agreement shall nevertheless be payable (or be deemed to have become payable) at the date specified for payment in this Agreement (and interest shall be payable under paragraph 2 above from that date).

## Schedule 8

### Ground Investigation Scope of Works

The works comprise a ground investigation for the proposed development of the 6.81ha site of the former Friern Barnet Sewage Treatment Works (STW) on Pinkham Way by the North London Waste Authority and London Borough of Barnet.

The site is currently a plot of derelict land covered in scrubby vegetation and grassland with a network of paths and tracks across the site. Japanese Knotweed and Giant Hogweed have been identified at the site and mature stands of both are present in significant amounts in some areas. Historically the site contained a STW and two historical on-site landfills are recorded to have accepted 'deposited waste including inert waste'. Uncontrolled fly tipping has taken place at the site comprising abandoned cars, empty drums, tyres, electrical appliances, polythene and concrete lampposts for example.

A preliminary ground investigation was undertaken by Jacobs Engineering (UK) Ltd in 2008. Jacobs reported made ground of up to 10.3m thickness in the south eastern area of the site. Typically made ground is underlain by London Clay though a small section of the site along the northern boundary may be underlain by the River Terrace Deposits (RTD).

Based on the historic data and previous investigations, there is potential for a range of contaminants to be present in the soils on site, such as metals, hydrocarbons and asbestos, due to the former use of the site as a STW and landfill and the occurrence of uncontrolled fly tipping.

The intent of the ground investigations is as follows:

- Determine soil stratigraphy and parameters for foundation design
- Provide additional information regarding extent of buried foundations and structures.
- Determine ground water levels and flows across site.
- Determine the nature and extent of contamination within the made ground, upper strata and groundwater in order to determine the best means of soil reuse, treatment or disposal.
- Undertake gas monitoring to determine the gas regime across the site.
- Undertake a line and level survey of the culvert.

Scope of ground investigations:

- 22 trial pits to a maximum depth of 4mbgl
- 12 boreholes to a maximum depth of 30mbgl (terminating in the London Clay)
- Installation of gas and groundwater standpipes (detailed in Schedule 2)
- Six gas and three groundwater monitoring visits to be undertaken after completion of main ground investigations works
- Soil, groundwater and gas sampling and chemical analysis
- In situ and laboratory geotechnical testing, including soakaway tests
- Line and level survey of the culvert.

Significant enabling works are required, to be undertaken by the ground investigation contractor, in order to access many of the proposed locations due to the varying topography, invasive species, dense vegetation and other constraints.

## Schedule 9

### Calculation of Enabling Works Cost

<b>Actual Cost</b>	The actual cost incurred by the Enabling Works Contractor on the Relevant Date
<b>Additional Cost</b>	<p>The sum calculated in accordance with the following formula:</p> $AC = (BC \times RP) - BC$ <p>Where:</p> $AC = \text{Additional Cost}$ $BC = \text{Base Costs}$ $RP = \text{Relevant Percentage}$ <p>and worked examples are set out in Schedule 10 of this Agreement</p>
<b>Base Costs</b>	The sums which will be contained in the EWACCO for the Enabling Works
<b>Relevant Percentages</b>	$RP = 100 \times R/B$ <p>Where:</p> $RP = \text{Relevant Percentage}$ $R = \text{Review Value}$ $B = \text{Base Value}$ <p>Provided that if the Relevant Percentage is less than 1 (one), the Relevant Percentage will be deemed to be 1 (one)</p>
<b>Base Value</b>	The Index Figure published for the calendar month when the EWACCO is agreed or determined in accordance with clause 2.9 or 2.10 respectively
<b>Review Value</b>	The Index Figure published for the calculator month of the Relevant Date
<b>Relevant Date</b>	The Enabling Works Payment Date
<b>Index</b>	The General Building Cost Index published by the Building Cost Information Service of the Royal Institution of Chartered Surveyors
<b>Prevailing Rate</b>	The rate currently applicable at the Relevant Date for Landfill Tax under the Landfill Tax Act 1996 or any successor legislation which deals with tax for landfill

<b>Hazardous Waste</b>	Any waste which is not classed as Active Waste or Inactive Waste
<b>Inactive Waste</b>	Waste which attracts Landfill Tax at the lower rate as a consequence of being qualifying material under the Landfill Tax (Qualifying Material) Order 1996 pursuant to section 42(2) of the Finance Act 1996;
<b>Active Waste</b>	Waste which does not constitute Inactive Waste and which attracts Landfill Tax at the higher rate pursuant to section 42(1) of the Finance Act 1996;
<b>Retail Price Index</b>	The Retail Price Index or any official index replacing it
<b>Increase in the Retail Price Index</b>	The Retail Price Index for the calendar month when the EWACCO is agreed or determined in accordance with clause 2.13 multiplied by the Retail Price Index for the date 2 months before the Relevant Date

## 1. Enabling Works Cost

The Enabling Works Cost shall be calculated on appointment of the Enabling Works Contractor by taking the Enabling Works figures in the Amended Costed Control and revising them in accordance with the following:

- 1.1 Site Clearance cost in EWACCO plus the Additional Cost.
- 1.2 Create site access for construction, install site fencing (if required) and site utilities (e.g. water and foul drainage) cost in the EWACCO plus the Additional Cost.
- 1.3 Earthworks – cut re-used on-site, treatment of material for re-use on site, volume and weight for each of the following categories shall be the following :

### Inactive Waste

- i) the actual cost of the gate fee multiplied by the number of tonnes in the EWACCO multiplied by the Increase in the Retail Price Index; plus
- ii) Landfill Tax at the Prevailing Rate

### Active Waste

- i) the actual cost of the gate fee multiplied by the number of tonnes in the EWACCO multiplied by the Increase in the Retail Price Index; plus
- ii) Landfill Tax at the Prevailing Rate

### Hazardous Waste

- i) the actual cost of the gate fee multiplied by the number of tonnes in the EWACCO multiplied by the increase in the Retail Price Index; plus
- ii) Landfill Tax at the Prevailing Rate

- 1.4 Earthworks – cut disposed off-site, volume and weight for each of the following categories:

### Inactive Waste

- i) the actual cost of the gate fee multiplied by the number of tonnes in the EWACCO multiplied by the Increase in the Retail Price Index; plus
- ii) Landfill Tax at the Prevailing Rate



#### Active Waste

- i) the actual cost of the gate fee multiplied by the number of tonnes in the EWACCO multiplied by the Increase in the Retail Price Index; plus
- ii) Landfill Tax at the Prevailing Rate

#### Hazardous Waste

- i) the actual cost of the gate fee multiplied by the number of tonnes in the EWACCO multiplied by the Increase in the Retail Price Index; plus
- ii) Landfill Tax at the Prevailing Rate

- 1.5 Retaining structures in the EWACCO multiplied by the Increase in the Index
- 1.6 Construct main spine road in the EWACCO multiplied by the Increase in the Index.
- 1.7 Install site utilities and services, telecoms, potable water, foul drainage) in the EWACCO multiplied by the Increase in the Index.
- 1.8 Install electricity for Depot Land at the Actual Cost.

## **Annex 1**

### **Ground Investigation Warranty**

## **Annex 2**

### **Costed Control Option**

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## **Annex 3**

### **Hogweed Letters**

## **Annex 4**

### **Chancel Check Search**

**Annex 5**

**Transfer**

## **Annex 6**

### **Advertising Licence**

