

DATED 1 FEBRUARY 2016

14/AP/0000

THE MAYOR AND THE BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK
as Council

THAMES WATER UTILITIES LIMITED
as Undertaker

BAZALGETTE TUNNEL LIMITED
as Infrastructure Provider

6620-A

**DEED OF VARIATION TO A SECTION 106 UNILATERAL UNDERTAKING DATED 12
FEBRUARY 2014 PURSUANT TO SECTIONS 106 AND 106A OF THE TOWN AND
COUNTRY PLANNING ACT 1990, SECTION 111 OF THE LOCAL GOVERNMENT ACT
1972 AND SECTION 2 OF THE LOCAL GOVERNMENT ACT 2000**

relating to the development Chambers Wharf and Shad Pumping Station associated with the
Thames Tideway Tunnel

SCANNED ON

15 DEC 2017

PLANNING (10)

**BERWIN
LEIGHTON
PAISNER**

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PLANNING (G)
12 DEC 2012
SCANNED ON

DATED

1 FEBRUARY 2016

PARTIES

- (1) **THAMES WATER UTILITIES LIMITED**, a company incorporated in England with registered number 02366661 whose registered office is at Clearwater Court Vastern Road Reading Berkshire RG1 8DB (the "**Undertaker**")
- (2) **THE MAYOR AND BURGESSES OF LONDON BOROUGH OF SOUTHWARK** of 160 Tooley Street London SE1 2TZ (the "**Council**")
- (3) **BAZALGETTE TUNNEL LIMITED**, company incorporated in England with registered number 09553573 whose registered office is at The Point 37 North Wharf Road London W2 1AF ("**Infrastructure Provider**")

BACKGROUND

- (A) The Council is the local planning authority for the purposes of sections 106 and 106A of the 1990 Act for the area and is also the local highway authority for the area in which the Land is situated, and is a Development Borough.
- (B) The Undertaker entered into a section 106 agreement planning obligation by means of unilateral undertaking on 12 February 2014 in favour of the Council and in connection with the construction of Development pursuant to the DCO (the "**Original 106 Undertaking**").
- (C) The Undertaker entered into a supplemental section 106 planning obligation by means of unilateral undertaking on 18 November 2014 in favour of the Council in compliance with the obligation in clause 2.2 of the Original 106 Undertaking (the "**Construction Phase Confirmatory Deed**").
- (D) On 24 August 2015 Bazalgette Tunnel Limited (the "**Infrastructure Provider**") was licensed by Ofwat with responsibility to construct the Development. In association with the Ofwat licence, the Undertaker transferred all of the powers of the DCO, in accordance with Article 9(1) of the DCO, subject to the limitations in Article 9(3) and 9(4) of the DCO, to the Infrastructure Provider.
- (E) As a consequence of the Ofwat Licence and the transfer of the DCO Powers, the Infrastructure Provider is a Successor as defined by the Original 106 Undertaking and bound jointly and severally with the Undertaker by the obligations of the Undertaker in the Original 106 Undertaking and the Covenantor in the Construction Phase Confirmatory Deed.
- (F) The parties have agreed to enter into this Agreement to reflect amendments agreed between the parties to certain definitions referred to in the Original 106 Undertaking, on the terms set out in this Agreement.

OPERATIVE PROVISIONS

1 INTERPRETATION

- 1.1 Save as specified below, the terms in this Undertaking shall have the same meaning as given in the Original 106 Undertaking.
- 1.2 In this Agreement unless the context otherwise requires the following term shall have the following meaning:

"Original 106 Undertaking" means the section 106 unilateral undertaking dated 12 February 2014 entered into by the Undertaker in favour of the Council in respect of the Land;

"Construction Phase Confirmatory Deed" means the supplemental section 106 planning obligation dated 18 November 2014 entered into by the Undertaker (as Covenantor) in favour of the Council in respect of the Land.

- 1.3 References in this Agreement to "the Undertaker" shall include its respective successors in title to the Land and its assigns.
- 1.4 References in this Agreement to "the Council" shall include any successor to its functions as local planning authority or local highway authority as applicable.
- 1.5 References in this Agreement to any statutes or statutory instruments include any statute or statutory instrument amending, consolidating or replacing them respectively from time to time in force and references to a statute include statutory instruments and regulations made pursuant to it.
- 1.6 The clause headings in this Agreement are for convenience only and do not form part of the Agreement.
- 1.7 References to clauses paragraphs schedules or recitals shall (unless the context otherwise requires) be references to clauses paragraphs and schedules or recitals in this Agreement.
- 1.8 References to the singular shall include the plural and vice versa.

2 **STATUTORY POWERS**

This Agreement entered into by deed is a planning obligation for the purposes of sections 106 and 106A of the Act and is entered into pursuant also to Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and it is acknowledged by the parties that the obligations contained within it are enforceable by the Council as such.

3 **CONDITIONALITY**

This Agreement shall come into effect on the date hereof.

4 **DEVELOPER'S COVENANTS**

- 4.1 The parties hereby agree and declare that the Original 106 Undertaking shall be varied as follows:

- 4.1.1 at clause 3.1 (Interpretation) of the Original 106 Undertaking the following definitions are deleted:

"Bevington Street Play Space Contribution"

"EMH Play Improvements Contribution"

- 4.1.2 at clause 3.1 (Interpretation) of the Original 106 Undertaking the following definitions are amended to read as follows:

"Contributions" means the Play Space for Teens Contribution, Community Enhancement Fund Contribution, Chambers Street Footway Contribution, Play

Improvements Contribution, Jamaica Road Crossing Contribution, Lower Road Gyrotory Contribution, Monitoring Officer Contribution, NCN4 Riverside Quietway Contribution, RPS Garden Mitigation Contribution, RPS Indoor Sports, Recreation and Music Contribution, RPS TA Contribution, RPS Wellbeing Impact Mitigation Contribution, Safer Routes to School Contribution, SJPS Wellbeing Impact Mitigation Contribution, SMSS Indoor Sports, Recreation and Music Contribution, SMSS Wellbeing Impact Mitigation Contribution, and Thames Path Landscaping Contribution;

"Thames Path Landscaping Contribution" means the sum of £300,000 (Three Hundred Thousand Pounds) BCIS Index Linked to be paid by the Undertaker to the Council in accordance with Schedule 1, Part 4 (Landscaping and Local Amenity) towards landscaping and visual improvements along the Thames Path in the Local Area and such improvements may include seating, litter bins and new tree planting;

"Jamaica Road Crossing Contribution" means the sum of £300,000 (Three Hundred Thousand Pounds) BCIS Index Linked to be paid by the Undertaker to the Council in accordance with paragraph 1(d) of Schedule 1, Part 3 (Transport Mitigation) towards a pedestrian crossing at the junction of Jamaica Road and Bevington Street, including the western side of the junction, and the inclusion of hatching on the junction crossing;

- 4.1.3 at 3.1 (Interpretation) of the Original 106 Undertaking the following new defined terms are to be inserted:

"Play Space for Teen Contribution" means the sum of £200,000 (Two Hundred Thousand Pounds) BCIS Index Linked to be paid by the Undertaker to the Council in accordance with paragraph 1(c) of Schedule 1, Part 4 (Landscaping and Local Amenity) towards the provision of temporary play space for teenagers in the Local Area including MUGA, fencing, seats and informal play;

"Play Improvements Contribution" means the sum of £400,000 (Four Hundred Thousand Pounds) BCIS Index Linked to be paid by the Undertaker to the Council in accordance with paragraph 1(a) of Schedule 1, Part 4 (Landscaping and Local Amenity) towards provision of temporary play improvements in the Local Area;

"Local Area" means the area bounded by the River Thames, Mill Street, West Lane and Jamaica Road;

- 4.1.4 at paragraph 1 of Part 4 of Schedule 1 the references **"EMH Play Improvements Contribution"** shall be replaced by **"Play Improvements Contribution"** and the references to **"Bevington Street Play Space Contribution"** should be replaced by **"Play Space for Teens Contribution"**.

- 4.2 For the avoidance of doubt, the Original 106 Undertaking and the Construction Phase Confirmatory Deed shall remain unaltered in all other respects and shall continue in full force and effect subject to the variations set out at Clause 4.1.1 to Clause 4.1.4 of this Agreement.

5 RELEASE AND LAPSE

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

5.2 It is further agreed that this Agreement shall lapse and be of no further effect if the circumstances referred to in Clause 11.2 of the Original 106 Undertaking transpire.

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

6 **LOCAL LAND CHARGE**

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

7 **SEVERABILITY**

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

8 **CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

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

9 **NOTICES**

Any notices required to be served by one party on another under this Agreement shall be served in accordance with Clause 13 (Notices) of the Original 106 Undertaking.

Delivered as a deed on the date of this document.

22779

EXECUTION PAGE

Executed as a deed by **THE MAYOR AND THE BURGESSES OF THE LONDON BOROUGH OF SOUTHWARK** by the affixing of its Common Seal in the presence of:

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)
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)



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)
)
)
Authorized Signatory
SCW

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

)
)
)
)

)
)
)
)
Authorized Signatory
[Signature]

Name of witness: *ANNE RICHARDS*

Signature of witness: *A Richards*

Address: *MONTEIG, REWARDS DRIVE, WINCHESTER*

Occupation: *CERTIFIED SURVEYOR*



2484897.

Executed as a deed by **BAZALGETTE TUNNEL LIMITED** by:

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)

Director *Mark Sneyd*

Director/Secretary

Andy Mitchell