

DATED

2011

**(1) THAMES WATER UTILITIES LIMITED**

**(2) THE LONDON BOROUGHS OF EALING, GREENWICH, HAMMERSMITH &  
FULHAM, HOUNSLOW, LAMBETH, LEWISHAM, NEWHAM, RICHMOND upon  
THAMES, SOUTHWARK, TOWER HAMLETS, WANDSWORTH,  
THE CITY OF LONDON CORPORATION,  
THE COUNCIL OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA  
and  
WESTMINSTER CITY COUNCIL**

**(3) THE GREATER LONDON AUTHORITY**

**THAMES TUNNEL PROJECT**

**MEMORANDUM OF UNDERSTANDING REGARDING PLANNING**



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## Contents

Clause	Name	Page
1	Definitions and Interpretation .....	2
2	Purpose and Legal Status and Duration of this Memorandum .....	3
3	Non Fetter of Discretion.....	5
4	Project Description .....	5
5	Vision .....	6
6	Process Objectives .....	6
7	General Obligations of Thames Water.....	7
8	General Obligations of the Authorities.....	8
9	specific Review of Draft Development Consent Order Application Documentation and Other Documentation and Other Actions .....	9
10	Reimbursement of Costs and Other Expenses Incurred by the Authorities.....	12
11	Dispute Resolution .....	14
12	Determination of Dispute as to costs .....	15
13	Confidentiality .....	15
14	Termination .....	15
15	Counterparts.....	15
<b>Schedule</b>	<b>Name</b>	<b>Page</b>
1	Addresses of the London Boroughs .....	16
2	Indicative Project Programme and Key Dates.....	18
3	Information Acts Protocol .....	19
<b>Execution Pages</b> .....		22
<b>Appendix</b>	<b>Name</b>	<b>Page</b>
1	Thames Tunnel Forum Terms of Reference.....	38
2	Approved Form of Fee Estimate - Clause .....	40

**DATED**

**of**

**2011**

**PARTIES**

- (1) **THAMES WATER UTILITIES LIMITED** whose registered office is situate at Clearwater Court Vastern Road Reading Berkshire RG1 8DB Registered Company number 2366661 ("**Thames Water**"); and
- (2) **THE LONDON BOROUGH OF EALING, GREENWICH, HAMMERSMITH & FULHAM, HOUNSLOW, LAMBETH, LEWISHAM, NEWHAM, RICHMOND upon THAMES, SOUTHWARK, TOWER HAMLETS, WANDSWORTH, THE CITY OF LONDON CORPORATION, THE COUNCIL OF THE ROYAL BOROUGH OF KENSINGTON and CHELSEA AND WESTMINSTER CITY COUNCIL** whose addresses are listed in Schedule 1 (the "**London Boroughs**")
- (3) **THE GREATER LONDON AUTHORITY** of City Hall The Queen's Walk More London SE1 2AA (the "**GLA**")

**RECITALS AND CONTEXT OF THE MEMORANDUM**

- (A) The UK is alleged to be in breach of the European Union Urban Waste Water Treatment Directive ("**UWWTD**") due to the unacceptable level of discharges of untreated wastewater from CSOs to the River Thames. Infraction proceedings for failure to comply with the UWWTD have been commenced against the UK Government by the European Commission.
- (B) Further to its statutory duties Thames Water must address the problem of discharges from the CSOs to the River Thames. It has been charged with doing this by the Government, by way of Ministerial statement on 22 March 2007. The Thames Tunnel has been identified by the Government as the preferred method to meet the UWWTD requirement to prevent unacceptable CSO discharges entering the River Thames, this was confirmed in the Ministerial Statement on 7 September 2010. Thames Water has an anticipated delivery date of 2020 for the Thames Tunnel and this has been communicated to the EU Commission, who are nevertheless proceeding with infraction proceedings.
- (C) Ministerial statements on 7 September and 16 November 2010 confirmed the intention to identify the Thames Tunnel as a Nationally Significant Infrastructure Project under the Planning Act that would consequently be the subject of an application to the Infrastructure Planning Commission for a Development Consent Order. That process requires that the application that Thames Water submits to the IPC must be comprehensive and complete. The application proposal for which consent is sought must address all issues relevant to the construction and operation of the Project. This includes the interface with areas of the Local Authorities through which the Project will pass. The application is to be submitted in 2012 by which point it is helpful for the Authorities and Thames Water to have agreed how the interface between Thames Tunnel construction and the Authorities' areas and concerns are to be managed. The applications, plans and the terms of the draft DCO in particular will need to reflect the outcome of those successful discussions.
- (D) The Parties wish to establish a framework for timely consultation review and comment during preparation of the Development Consent Order Application.

- (E) The Authorities consider that the proper discharge of their various statutory functions arising as a result of and relating to the Project will require the deployment and allocation of resources by the Authorities. Consequently the Authorities consider that it is in the public's best interest that they complete this Memorandum.
- (F) The Project is of importance and significance. Thames Water and the Authorities agree to work in a co-ordinated fashion to facilitate the efficient preparation of the proposed Development Consent Order Application including dealing with site specific issues while allowing for the provision of pre application advice from the Authorities or any of them at each stage in the process.
- (G) Nothing in this Memorandum shall be taken to predetermine or prejudice the proper consideration and determination of any consent or application or override or fetter the statutory powers duties or responsibilities of the Authorities or Thames Water.

## 1 DEFINITIONS AND INTERPRETATION

- 1.1 In this Memorandum the following words shall have the following meanings unless otherwise stated:

**"Authorities"** means the London Boroughs and the GLA.

**"Authorities Obligations"** means the obligations and objectives set out in Clause 8 (*General Obligations of the Authorities*).

**"Charging Principles"** means those principles set out in Clause 10 (*Reimbursement of Costs and other expenses incurred by the Authorities*)

**"Community Consultation Strategy"** means the strategy bearing that name published by Thames Water on/in 13 September 2010 that supplements the Statement of Community Consultation including any amendment, supplement or update to the strategy that may be published by Thames Water.

**"CSO"** means combined sewer overflow.

**"Development Consent"** means consent as defined under section 31 of the Planning Act.

**"Development Consent Order (DCO) Application"** means a development consent order application in respect of the Project to be submitted to the IPC by Thames Water which subject to the acceptance by the IPC complies with the requirements of Section 55 of the Planning Act and is also in Thames Water's view compliant with Section 55 of the Planning Act.

**"EIA"** means environmental impact assessment.

**"EIA Scoping Report"** means the report on the intended scope of the environmental impact assessment of the Project prepared by Thames Water and provided to the Authorities with a request for their opinion on the appropriate scope for that assessment of the Project.

**"Information Acts Protocol"** means the protocol as set out at Schedule 3 for handling requests for information made to the Authorities under the Freedom of Information Act 2000 or the Environmental Information Regulations 2004.

**"Infrastructure Planning Commission" or "IPC"** means the body corporate of that name established under section 1(1) of the Planning Act and any other such appointed government body with the function of receiving the Development Consent Order Application.

**"London Boroughs"** means the London Boroughs of Ealing, Greenwich, Hammersmith & Fulham, Hounslow, Lambeth, Lewisham, Newham, Richmond upon Thames, Southwark, Tower Hamlets, Wandsworth, The City of London Corporation, The Council of the Royal Borough of Kensington and Chelsea and Westminster City Council.

**"Parties"** means Thames Water and the Authorities and shall include their successors and assigns from time to time and "Party" shall be construed accordingly.

**"Planning Act"** means the Planning Act 2008 and subsequent amendments.

**"Process Objectives"** means the objectives set out in Clause 6 (*Process Objectives*).

**"Project"** means the project envisaged by Thames Water referred to in Clause 4 (*Project Description*).

**"Project Programme"** means the indicative programme for submission of the Development Consent Order Application set out in Schedule 2 (*Indicative Project Programme and Key Dates*).

**"Statement of Community Consultation"** means the statement published by Thames Water in the Evening Standard on 13 September 2010 under section 47 of the Planning Act including any amendment or update to the Statement that may be published by Thames Water under section 47.

**"Thames Tunnel"** means the Project.

**"Thames Tunnel Forum"** means the group established for coordinating the consultation process for the Project that comprises Thames Water, representatives from the Authorities, other part-London stakeholders, environmental bodies, the London Business Community and voluntary sector organisations the terms of reference for which are attached as Appendix 1.

**"Thames Water's Obligations"** means the obligations and objectives set out in Clause 7 (*General Obligations of Thames Water*).

**"UWWTD"** means the EU Urban Wastewater Treatment Directive.

**"Vision"** means the vision set out in Clause 5 (*Vision*).

**"Working Days"** means Monday to Friday each week but excludes Christmas Day, Boxing Day, Good Friday and bank holidays.

## 2 **PURPOSE AND LEGAL STATUS AND DURATION OF THIS MEMORANDUM**

- 2.1 This Memorandum is entered into by Thames Water and the Authorities voluntarily further to and reflecting the circumstances and aspirations recorded in the Recitals at paragraphs (A) to (G) above.

- 2.2 This Memorandum sets out the objectives for the Project in so far as they relate to the Authorities' involvement in the Development Consent Order Application process with procedural arrangements to seek to ensure that timely consultation, scrutiny, review and comment of draft application documentation and other matters during the Development Consent Order Application process can be achieved, having full regard to each Party's various duties, but in the case of the Authorities, subject to Clauses 3.1 and 3.3 below. Its purpose is to set out the manner in which the Project is being taken forward to the extent relevant to each Party's responsibilities.
- 2.3 The Parties agree that the overall objective of the Memorandum is to secure the timely and rigorous preparation of the Development Consent Order Application in accordance with the processes and procedures in the 2008 Act and the regulations, policy and procedure issued further to the 2008 Act including the preparation of the environmental statement as part of the EIA of the Project and the consideration of other draft documentation that will form part of the Development Consent Order Application without fettering any Party's ability to discharge their statutory functions, community engagement or leadership.
- 2.4 The intention of the Parties is to provide a framework that:
- (a) allows the Project Programme to be met and managed efficiently and effectively;
  - (b) results in an efficient interface between the Parties in relation to the Project generally and the preparation of the Development Consent Order Application and the Project Programme;
  - (c) secures meaningful and timely feedback to consultation documents or other material that Thames Water issues to the Authorities for comment in the process of preparing Development Consent Order Application;
  - (d) respects the duties and discretions of Thames Water including, but not limited to, the Development Consent Order Application;
  - (e) respects the duties and discretions of the Authorities in considering the Project and the Development Consent Order Application, including, but not limited to, preparation of any reports and obtaining of appropriate committee and / or officer authorisations;
  - (f) establishes a stable team of suitably experienced and senior representatives to provide the interface between Thames Water and the Authorities and between the Authorities;
  - (g) allows for more efficient project management, easier dispute avoidance and resolution in respect of the Development Consent Order Application and in working in accordance with the Project Programme;
  - (h) either sets out (with variations under permitted circumstances), or provides a mechanism for reaching consensus on, a set of objectives and milestones to be achieved.
- 2.5 This Memorandum does not cover works and/or applications that are not included within or part of the Development Consent Order Application.
- 2.6 Save for any payment due to an Authority further to the terms of Clause 10 the terms of this Memorandum shall lapse and be of no further effect upon acceptance

of the Development Consent Order Application by the IPC as a valid application for Development Consent for the Project further to section 55 of the Planning Act.

- 2.7 Thames Water confirms that after the submission of the Development Consent Order Application it shall review the desirability of entering a further Memorandum of Understanding concerning ongoing work directly related to the Authorities' consideration of the Development Consent Order Application and in that regard will work with the Authorities to understand their resource requirements in respect of the Project having regard to the desirability of the objectives of this Memorandum continuing to be met. For the avoidance of doubt however nothing in this clause will require Thames Water to fund:
- 2.7.1 the statutory duties of the Authorities in respect of a submitted application for development consent;
- 2.7.2 any work that the Authorities receive funding from another source of statutory or other derivation (including fees payable under statutory authority for the discharge of requirements on a development consent order (imposed further to section 120(1) of the Planning Act 2008)).

### **3 NON FETTER OF DISCRETION**

- 3.1 The Authorities will at all times operate within their statutory powers and duties and in accordance with the legislation to which they are subject. No decision, advice, observation, consultation response, representation or submission by the Authorities in respect of the Project or the Development Consent Order Application, pursuant to their statutory powers and duties under the Planning Act or otherwise, including, but without limitation, Act of the United Kingdom Parliament, European Union legislation and principles of common law, shall be in any way prejudiced or fettered by the existence of this Memorandum.
- 3.2 Thames Water will at all times operate within its statutory powers and duties and in accordance with the legislation to which it is subject. No decision in respect of the Project shall be in any way prejudiced or fettered by the existence of this Memorandum. Nor shall this Memorandum be treated as formal policy so far as Thames Water's other dealings are concerned either in relation to the Project or any other part of Thames Water's business.
- 3.3 The parties also acknowledge that the existence of this Memorandum (or the interpretation of it) in no way predetermines any element of the process of achieving the requisite consents for the Project (including but not limited to any Development Consent Order Application and pre-application consultation) or the description of the Project.

### **4 PROJECT DESCRIPTION**

- 4.1 The proposed Project will involve the installation of a main tunnel running from Acton Storm Tanks in West London to either Beckton STW or Abbey Mills Pumping Station in East London and a number of connection tunnels for the interception storage of and transfer discharges of stormwater from existing CSOs that would absent the Project enter the River Thames.
- 4.2 The Project is not yet accurately defined in terms of: the precise tunnel route and alignment; the tunnel drive and reception sites; CSO interception sites; and sites needed for its construction and operation. Therefore for the purposes of this Memorandum, where 'the Project' is used, it refers to the finalised content of the Development Consent Order Application.

- 4.3 The Project includes any associated and ancillary development that Thames Water includes within the draft Development Consent Order submitted as part of the Development Consent Order Application.

## 5 **VISION**

- 5.1 For the purpose of this Memorandum, the aims of the Project are to achieve the following:

- (a) compliance with the UWWTD in respect of CSO discharges to the River Thames;
- (b) compliance with construction and operational safety and security requirements;
- (c) the efficient and effective and fully resourced involvement of the Authorities in the preparation of the Development Consent Order Application;
- (d) a proper assessment and scrutiny of environmental, social and economic effects of the Project established through a robust evidence base;
- (e) the management of the effects of the Project on individuals and communities and the natural and built environment and an understanding of the measures that are reasonably required to mitigate the effects of the Project on individuals and communities and the natural and built environment having regard to the statutory duties and obligations of the Parties including requirements to be included in the draft Development Consent Order forming part of the Development Consent Order Application and any necessary planning obligations to be entered with the Authorities or any of them further to and in accordance with the provisions of Section 106 of the Town and Country Planning Act 1990 and Section 174 of the Planning Act;
- (f) promotion of effective, efficient and meaningful community engagement in the development of the design of the Project including any necessary mitigation for identified effects of the Project prior to submission of the Development Consent Order Application; and
- (g) submission by Thames Water of the proposed Development Consent Order Application to the IPC according to the Project Programme.

## 6 **PROCESS OBJECTIVES**

- 6.1 In return for the various commitments and obligations given in Clauses [7 to 10] the Parties agree to:

- (a) the mutual commitment of resources to meet the Vision and the Process Objectives and the processing of documentation relevant to the Development Consent Order Application in accordance with the Project Programme;
- (b) provide meaningful feedback in a timely manner and in accordance with the terms of the Memorandum to assist the process of preparing the Development Consent Order Application;

- (c) mutual participation along with other stakeholders and interested parties as may be necessary in meetings to enable progress of the Development Consent Order Application to be monitored and considerations and potential issues common to the Project, across administrative boundaries, to be identified, discussed and resolved wherever practicable;
- (d) generally act with reasonable care and skill including responding to requests as soon as reasonably practicable in order to achieve the submission by Thames Water of the Development Consent Order Application according to the Project Programme;
- (e) use their reasonable endeavours to comply with the Process Objectives.

6.2 These Process Objectives may be updated from time to time with the consent of the Parties.

## 7 **GENERAL OBLIGATIONS OF THAMES WATER**

7.1.1 In return for the Council observing the Council Obligations, Thames Water agrees to use its reasonable endeavours to:

- (a) continue to organise and convene meetings of the Thames Tunnel Forum in accordance with the terms of reference for the Forum as set out at Appendix 1;
- (b) comply with the Process Objectives and to help facilitate the other Parties' compliance with the Process Objectives;
- (c) comply with Clause 9 (*Review of Draft Development Consent Order Application Documentation and Other Documentation and Other Actions*) of this Memorandum.
- (d) pay the Authorities costs properly incurred and invoiced in accordance with the arrangements for the Reimbursement of Costs and other expenses incurred by the Authorities (Clause 10 *Reimbursement of Costs and Other Expenses Incurred by the Authorities*);
- (e) carry out public consultations and consult with the Authorities, other stakeholders and the public in accordance with Thames Water's "Statement of Community Consultation" and Community Consultation Strategy for the Project;
- (f) to observe the terms of the Information Act Protocol;
- (g) provide constructive input into pre-application discussions with the Authorities (or any of them);
- (h) provide agendas for meetings 5 Working Days in advance of the relevant meeting, and where there are substantive documents relevant to the agenda, to issue such documents in advance of meetings not later than the date on which it circulates the agenda for that meeting;
- (i) provide a copy of a Thames Water team directory, identifying the lead individuals and their responsibilities, to other Parties within ten working days of the date of this Memorandum, and to keep such team directory up to date (updates to be issued to the Authorities as and when necessary); and

- (j) provide robust project management of all relevant processes related to the Development Consent Order Application;

7.1.2 Thames Water will employ a person to manage the various activities required by this Memorandum. That person will in particular:

- (a) act as the lead contact for Thames Water in its dealings with the Authorities further to the terms of this Memorandum;
- (b) collect the comments and other documents the Authorities are to issue under the terms of the Memorandum;
- (c) manage and monitor performance of Thames Water and the Authorities against the requirements and stipulations of this Memorandum; and
- (d) collate contact details for the Parties and issue them further to clauses 7.1.1(i) and 8(m) of this Memorandum.

## 8 **GENERAL OBLIGATIONS OF THE AUTHORITIES**

The Authorities agree to use their reasonable endeavours to:

- (a) attend and contribute to the meetings of the Thames Tunnel Forum;
- (b) comply with the Process Objectives and to assist the other Parties compliance with the Process Objectives;
- (c) to comply with Clauses 9 (*Review of Draft Development Consent Order Application Documentation and Other Documentation and Other Actions*) and 10 (*Reimbursement of Costs and Other Expenses Incurred by the Authorities*);
- (d) support and assist Thames Water in engaging communities and assisting those communities themselves so that they understand how and when they can engage in the process of preparing the Development Consent Order Application and support Thames Water and its initiatives to engage those communities further to the Statement of Community Consultation and the Community Consultation Strategy or any necessary revision or amendment to the Statement of Community Consultation and / or the Community Consultation Strategy for the Project;
- (e) work with the community and statutory agencies to assess the adequacy of Thames Water's "Statement of Community Consultation" for the Project and to provide related advice to the Infrastructure Planning Commission further to section 55(4) of the Planning Act if requested by the IPC and/or in accordance with any response it makes to the consultation report pursuant to Section 37(7) of the Planning Act;
- (f) engage and participate in a co-ordinated fashion in pre-application discussions with Thames Water;
- (g) if Thames Water has issued documents in advance of a meeting further to Clause 7.1.1(h) to provide Thames Water with all documents relevant to the purpose of that meeting between the Parties not less than two Working Days prior to that meeting occurring or at such other time as may be agreed in writing by the Parties;

- (h) provide Thames Water with all documents relevant to the purpose of that meeting between the Parties with the substantive response of the Authority or Authorities to that meeting issued further to clause 9.4 or at such other time as may be agreed in writing by the Parties;
- (i) provide proactive communications capacity to co-ordinate requests for information by the media, and pursuant to the Environmental Information Regulations 2004 and the Freedom of Information Act 2000 on behalf of the Authorities in accordance with the Information Acts Protocol and to observe the terms of the Information Acts Protocol;
- (j) provide robust project management of all relevant processes related to the Development Consent Order Application;
- (k) respond substantively to all written communications and telephone calls other than those provided for or covered by the provision of Clause 9.4 with or from the other Parties within 10 working days of receipt, and to respond to all other communications associated with this Memorandum promptly and in any case within 20 working days from receipt or in either case within such other time as may be agreed by the Parties, or in both instances in accordance with such other timetable as the Authorities or any of them may agree with Thames Water (in respect of agreement with individual Authorities agreement shall be limited to Thames Water and the relevant Authority);
- (l) notify Thames Water no later than 10 working days prior to any Council, cabinet or public committee meeting at which any report of matter relevant to the Project will be considered, and provide all parties with the relevant minutes (which for the avoidance of doubt may be in draft form) or action points arising within 20 working days (minutes provided in draft will be provided in their final form upon adoption by the relevant Authority); and
- (m) provide a copy of a full team directory, identifying the lead individuals and their responsibilities, to the other Parties within 10 working days of the date of this Memorandum, and to keep such team directory up to date (updates to be issued to the Authorities as and when necessary).

## 9 **SPECIFIC REVIEW OF DRAFT DEVELOPMENT CONSENT ORDER APPLICATION DOCUMENTATION AND OTHER DOCUMENTATION AND OTHER ACTIONS**

- 9.1 Thames Water shall from time to time issue the following for review and comment by the Authorities:
  - 9.1.1 drafts of the documents or parts of those documents that will form part of the Development Consent Order Application; and
  - 9.1.2 other documentation produced to facilitate and/or inform the process of preparing the Development Consent Order Application; and
  - 9.1.3 may from time to time request the Authorities to participate in meetings and workshops concerning the Project including the Thames Tunnel Forum.
- 9.2 Thames Water will provide to the Authorities a predicted timetable for issue of documentation and the holding of meetings and workshops including the Thames Tunnel Forum further to Clause 9.1 within fifteen Working Days of this

Memorandum and will review and if necessary update it and provide these updates in writing to the Authorities for the purpose of Clause 10.

- 9.3 Thames Water will use its reasonable endeavours to give not less than 10 Working Days notice of the issue of documentation or the holding of meetings and workshops further to Clause 9.1 provided that Thames Water shall not be prevented from issuing documentation or holding a meeting or workshop under this Clause 9 by virtue of not being able to give that period of notice but in those circumstances the Parties will take account of whether this clause has been complied with when agreeing the timeframe for provision of comment on documents or meetings and workshops held issued further to Clause 9.1 under Clause 9.4.
- 9.4 Thames Water and the Authorities shall use their reasonable endeavours to agree timeframes for the review of documentation issued or responses to meetings and workshops held further to Clause 9.1 by the Authorities and the provision of responses to Thames Water having regard to the Project Programme and Clause 10 (*Reimbursement of Costs and other expenses incurred by the Authorities*). The following minimum and maximum periods for the provision of written responses shall apply unless (in the case of Clauses 9.4.2 to 9.4.4) the Parties agree in writing to waive them or agree such longer periods as the Parties may at their individual discretion agree:
- 9.4.1 for documents issued under Clauses 9.1.1 or 9.1.2 any minimum period established by statute or prescribed by regulation or specified by Thames Water as a period longer than the minimum period (where Thames Water is able to specify such longer period); and
- 9.4.2 for other documents issued under Clause 9.1.1 the period shall be 15 to 20 Working Days; or
- 9.4.3 for other documents issued under Clause 9.1.2 the period shall be 10 to 15 Working Days; or
- 9.4.4 for meetings or workshops held further to Clause 9.1.3 the period shall be 5 to 10 Working Days (but where Thames Water has confirmed in advance of the due date for documents that only an agenda will be issued in advance of the relevant meeting or workshop under clause 7.1.1 (h) the period will be 10 to 15 Working Days).
- 9.4.5 Without prejudice to Clauses 9.4.2 to 9.4.4 Thames Water may ask the Authorities or an Authority to consider a shorter time period for responses than that specified in those clauses in which case the Authorities or the Authority in question shall give reasonable consideration to the request and their ability to comply with it. The timeframe specified in Clauses 9.4.2 to 9.4.4 shall only be amended if the relevant Authorities or Authority confirm their agreement to the request from Thames Water in writing.
- 9.5 The Authorities shall use their reasonable endeavours to provide their response to documents issued and meetings or workshops held further to Clause 9.1 in accordance with the timeframes agreed further to Clause 9.4.
- 9.6 The Authorities responses to documents issued or meeting and workshops held under Clause 9.1 shall be provided in writing unless otherwise agreed in writing by Thames Water.

- 9.7 The Authorities if they wish to do so may identify a lead Authority or Authorities to co-ordinate responses in relation to documents issued under Clause 9.1 and the various topics which will be covered in the documentation and which are relevant to the preparation of the environmental statement as part of the EIA for the Project as part of the Development Consent Order Application including the following:
- (a) support the process of complying with and meeting the terms of this Memorandum and supporting the Authorities involvement in the Thames Tunnel Forum in which case the relevant employee of the authorised Authority shall work with the Co-ordinator appointed by Thames Water under clause 7.1.2;
  - (b) any revision that may be necessary to the Statement of Community Consultation consulted on and published under section 47 of the Planning Act and any related changes to the Community Consultation Strategy;
  - (c) odour and air management strategy for the Project;
  - (d) the approach to the assessment of noise and vibration effects that may arise from the project and the design of noise and vibration mitigation for the Project (as necessary);
  - (e) Code of Construction Practice and Construction Plan for the Project;
  - (f) Transportation and Transport Management Plan for the Project;
  - (g) the approach to land and townscape design and mitigation.

The purpose of identifying lead Authority is to enable the Authorities to respond to Thames water in a co-ordinated manner further and subject to Clause 9.8.

- 9.8 The lead Authority identified under Clause 9.7 shall arrange meetings with the other Authorities, and if necessary Thames Water (save that if Thames Water does not attend then minutes of the meeting shall be submitted to Thames Water within 5 Working Days of that meeting), for the purpose of providing the Authorities response to documentation issued or meetings and workshops under Clause 9.1. The lead Authority shall be responsible for providing the Authorities response further to Clause 9.6 taking account of the comments made at meetings held under this Clause 9.8 and the individual points made by the other Authorities to the lead Authority in writing PROVIDED THAT an Authority may provide a separate response to documentation issued under Clauses 9.1 further to Clause 9.6 to the extent it is inconsistent with or contains further information to the response provided by the lead Authority further to this Clause 9.8. In the event that a meeting is held under this Clause between Authorities, then the periods set out in Clauses 9.4.2 to 9.4.4 shall each be increased by 5 Working Days.
- 9.9 In the course of discharging their obligations under Clause 9.1 Thames Water and the Authorities shall use their reasonable endeavours to discuss, draft and agree (subject to Clause 3) the following matters:
- 9.9.1 the requirements in connection with the Project subject to which development consent should be granted (further to Clause 120(1) of the Planning Act) and which will be included in the draft development consent order to be included in the draft Development Consent Order Application;

9.9.2 heads of terms for any planning obligations Thames Water would be prepared to enter with the Authorities or an Authority further to section 106 of the Town and Country Planning Act 1990 (as amended by section 174 of the Planning Act);

9.9.3 statements of common ground in respect of the matters and topics listed at Clause 9.7 or any other matters that are relevant to the Development Consent Order Application

## 10 **REIMBURSEMENT OF COSTS AND OTHER EXPENSES INCURRED BY THE AUTHORITIES**

### 10.1 **Charging Principles**

10.1.1 Subject to the remainder of this Clause 10, any funding arrangements entered into between Thames Water and the Authorities or any of them shall be in accordance with the following principles:

- (a) the Authorities shall designate officers, or where resources of the necessary expertise or experience are not available may internally engage external consultants, and provide other appropriate resources and carry out other actions needed to secure the proper consideration of the Development Consent Order Application and its submission in accordance with the Project Programme further to their obligations under Clauses 8 (General Obligations of the Authorities) and 9 (Review of draft Development Consent Order Application Documentation and Other Documentation) and the Vision and the Process Objectives;
- (b) where external consultants are engaged by the Authorities the relevant Authority shall give Thames Water 15 working days notice of the appointment;
- (c) the sole basis for charging is to enable the Authorities to recover resources and costs expended by them to achieve submission of the Development Consent Order Application in accordance with the Project Programme;
- (d) the charging relates exclusively to each Authority's recovery of its costs for the provision of services further to Clause 10.1.1(a) that it is authorised but not required (by an enactment) to provide;
- (e) the payments are on a not-for profit basis (year by year) and, taking one year with another, the income from the charges for such services must not exceed the cost to the Authority of providing them;
- (f) there shall be full transparency with regard to costs incurred;
- (g) the Authorities and each individual one of them shall use all reasonable endeavours to keep costs payable by Thames Water under this Memorandum to a minimum including but not limited to:
  - (i) where practicable sharing resources between each Authority and avoiding the duplication and overlap of resources;
  - (ii) appointing a single person to coordinate work on behalf of the Authorities;
  - (iii) making the best use of the resources and expertise available within the Authorities and the information available to them;

- (h) regard shall be had to whether an Authority is providing or meeting a Lead Authority role under clause 9.7;
- (i) Authorities will estimate their costs and expenses for approval by Thames Water under clause 10.2 on a reasoned and reasonable worst case basis;
- (j) Thames Water shall not have to pay for any work undertaken by the Authorities or an Authority that Thames Water has not given its prior approval to under the provisions of this Clause 10.

## 10.2 **Agreement of Costs**

10.2.1 Each Authority shall submit to Thames Water an estimate of its costs in responding to documentation submitted to it or meetings and workshops held further to Clause 9.1 or other work it feels it is reasonably necessary for it to undertake to achieve the Process Objectives PROVIDED THAT

- (a) the estimate shall be in the form attached at Appendix 2;
- (b) the estimate shall have regard to the principles established in Clause 10.1 in particular Clause 10.1 (i);
- (c) there will be no limit on the number of estimates an Authority may issue in any particular year but each Authority shall use its reasonable endeavours to submit no more than two estimates per year (1 April to 31 March) and will review any estimates submitted and approved further this clause 10.2 on a quarterly basis and report to Thames Water if they anticipate that the costs they incur will exceed the approved estimate.

10.2.2 Thames Water will approve or reject (in whole or in part) any estimate received by them within 14 days of receipt of that estimate (or such other timescale as otherwise agreed with the relevant authority) and will issue a purchase order number in respect of any approved estimate within 14 days of the relevant estimate being approved (or such other timescale as otherwise agreed with the relevant authority). The estimate submitted and agreed in writing by Thames Water shall be in advance of any such work being undertaken or consultants to undertake any such work being appointed.

10.2.3 In submitting an estimate further to Clause 10.2.1 the individual Authorities shall:

- (a) insofar as reasonably possible provide comprehensive estimates for all activity reasonably expected to be required to meet the Process Objectives and the Project Programme and will not submit invoices on a task by task basis;
- (b) use for the calculation of the costs likely to be incurred by them in respect of officers and others their published hourly rates (from time to time in force) for pre-application advice by the Authority ;
- (c) where work is to be carried out by consultants appointed by the Authorities the estimate submitted shall include the cost estimated by the consultant, the assumptions made by the consultation in calculating that estimated cost including hourly rates for individuals and the number of hours assumed necessary for the tasks to be undertaken as part of the consultant's appointment;

- (d) estimates submitted under Clause 10.2.3 may include allowance for administration costs associated with provision of services to meet the Project Objectives but such time will be specified in accordance with Clause 10.2.3;
  - (e) Thames Water shall confirm its agreement or otherwise of any estimate submitted by an Authority in writing and shall confirm in respect of any approved estimate:
    - (i) the approved purchase order number; and
    - (ii) the cap on the agreed level of costs approved further to the estimate supplied.
  - (f) notify Thames Water promptly as soon as it is reasonably expected that the anticipated resource expenditure required to complete any Work Package is likely to exceed the authorised expenditure limit for that Work Package.
- 10.2.4 For the avoidance of doubt Thames Water offers no commitment to fund any part of the Authorities' or an Authority's expenditure:
- (a) which exceeds the authorised expenditure limit for that Work Package unless and until Thames Water has approved such expenditure but notwithstanding the Authorities shall be free to continue with any work under such Work Package as it sees fit and at its own cost;
  - (b) where such expenditure would result in Thames Water exceeding its overall budget for the work being undertaken by the Authorities.

### 10.3 **Invoicing and payment**

- 10.3.1 An Authority may invoice Thames Water either quarterly in arrears (at the end of March, June, September and December in any calendar year) or monthly in arrears for work it has undertaken and completed further to an estimate approved under Clause 10.2. Any invoice submitted further to this Clause shall be accompanied by time sheets (or other evidence of the work completed) or consultant invoices and narratives or other written evidence as necessary to demonstrate that the work in respect of which the invoice is submitted has been completed.
- 10.3.2 Thames Water will pay any invoice validly submitted further to Clause 10.4.1 within thirty Working Days of that invoice being received.

### 10.4 **Legal Fees**

- 10.4.1 Thames Water will reimburse the Agreed Legal Fees to each relevant Authority.
- 10.4.2 "Agreed Legal Fees" are the reasonable and proper legal fees incurred by individual Authorities in completion of this MoU as supported by appropriate evidence of the time and resources applied and as agreed with Thames Water.

## 11 **DISPUTE RESOLUTION**

- 11.1 Where there is a dispute between Thames Water and the Authorities or a group of them that arises out of the terms of the MoU generally or which relates to the agreement of costs further to Clause 10 of the dispute, the dispute is in the first instance to be referred to:

- 11.1.1 Thames Water's Thames Tunnel Planning Projects Manager (Development) (or equivalent person) or its nominee and the relevant Authorities Head of Development Control (or equivalent position) or its nominee;

and in the event that resolution of the dispute cannot be achieved to:

- 11.1.2 the Chief Executives of the Authorities involved in the dispute or his or her nominee and the Managing Director of the Thames Tunnel Project or his nominee.

- 11.2 The Parties agree that any agreement reached further to paragraphs 11.1.1 or 11.1.2 shall be binding upon them.

- 11.3 Dispute resolution further to this paragraph shall not act as a fetter on the statutory role and responsibilities or powers of Thames Water or the Authorities.

## 12 **DETERMINATION OF DISPUTE AS TO COSTS**

The Parties agree that nothing in this Memorandum shall require Thames Water to fund any mitigation related to the Project. Such matters are to be dealt with separately as appropriate.

## 13 **CONFIDENTIALITY**

- 13.1 Information held by public authorities is subject to the provisions of the Freedom of Information Act 2000 and the Environmental Information Regulations 2004. Each Party will co-operate as may be necessary and practicable prior to and in order to fulfil any statutory obligations relating to the disclosure of information.

- 13.2 Although such bodies are not parties to this Memorandum the Parties may, wherever practicable, and subject to the agreement of such bodies, enter into an arrangement in which the bodies agree to work in accordance with the principles of this Memorandum with a view to achieving the Process Objectives, insofar as this is compatible with the powers, duties and responsibilities of the bodies concerned.

## 14 **TERMINATION**

- 14.1 Any Party may at any time and at its own discretion choose not to follow the arrangements set out in this Memorandum (and any of the processes that flow from it) with one or more of the Parties and withdraw from this Memorandum by giving not less than 10 working days notice in writing to the other Parties ("**Notice of Withdrawal**"). Where an Authority withdraws from this Memorandum, then Thames Water will pay costs incurred by that Authority up to the date of the Notice of Withdrawal, so long as in all cases such costs would otherwise have been payable by Thames Water pursuant to Clause 10.

- 14.2 If Thames Water serves a Notice of Withdrawal then it will pay the costs approved under Clause 10 incurred or committed by the Authorities or Authority at the date the Authorities or the relevant Authority received the Notice of Withdrawal so long as in all cases such costs would otherwise have been payable by Thames Water pursuant to Clause 10.

## 15 **COUNTERPARTS**

- 15.1 This Memorandum may be executed in any number of counterparts, which shall each constitute an original and together constitute one Memorandum.

**Schedule 1**  
**Addresses of the London Boroughs**

<b>LONDON BOROUGH</b>	<b>ADDRESS</b>
Ealing	Percival House, 14/16 Uxbridge Road, Ealing W5 2HL
Greenwich	Town Hall Wellington Street Woolwich SE18 6PW
Hammersmith & Fulham	Town Hall King Street Hammersmith London W6 9JU
Hounslow	Civic Centre Lampton Road Hounslow TW3 4DN
Lambeth	Town Hall London SW2 1RW
Lewisham	Town Hall Catford London SE6 4RU
Newham	Newham Dockside 1000 Dockside Road London E16 2QU
Richmond upon Thames	Civic Centre 44 York Street Twickenham Middlesex TW1 3BZ
Southwark	224/236 Walworth Road London SE17 1JE
Tower Hamlets	Town Hall Mulberry Place 5 Clove Crescent E14 2BG
Wandsworth	The Town Hall Wandsworth High Street London SW18 2PU
The City of London Corporation	Guildhall London EC2P 2EJ
Royal Borough of Kensington and Chelsea	The Town Hall Hornton Street London W8 7NX

Westminster	Westminster City Hall 64 Victoria Street London SW1E 6QP
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## **Schedule 2**

### **Indicative Project Programme and Key Dates**

- 1 Thames Tunnel Forum meetings to be held in accordance with the terms of reference for the Forum and other meetings associated with the environmental impact assessment of the Project:
  - 1.1 24 June 2011;
  - 1.2 21 September 2011; and
  - 1.3 quarterly thereafter.
- 2 Request for Environmental Impact Scoping Opinion published - end February 2011
- 3 Stage 1 Consultation Report published - end March 2011
- 4 Updated Statement of Community Consultation and Community Consultation Strategy published - Autumn 2011
- 5 Phase 2 Consultation commence and Phase 2 Proposed Scheme Report published - Autumn 2011
- 6 Phase 2 Consultation finishes - Early 2012
- 7 Preliminary Environmental Information published - Autumn 2011
- 8 Section 48 publicity - Summer 2012
- 9 Environmental Impact Statement completed - TBA
- 10 Heads of Terms for Planning Obligations agreed - TBA
- 11 Submission of Development Consent Order Application - TBA

The above dates offer a guide to how the timeframe might run for the Development Consent Order Application. They are not intended to capture each and every part of the Development Consent Order process and all dates may be subject to change due to various factors including (but not limited to) consultation responses and guidance from the IPC and other organisations.

### **Schedule 3**

#### **Information Acts Protocol**

## **2 BACKGROUND**

- 2.1 Under the Information Acts the Authorities may receive requests for disclosure of information it holds which may comprise information provided to it by Thames Water pursuant to this MoU, or be derived from such information (together, the “**Information**”).
- 2.2 The Authorities acknowledges that the risk of disclosure of such information by the Authorities might inhibit the degree, nature, quality, quantity of information that Thames Water provides to it under this MoU.
- 2.3 The Parties have agreed the terms set out in this Protocol as a means of addressing the concerns of Thames Water, whilst recognising the statutory position of the Authorities under the Freedom of Information Act 2000 and the Environmental Information Regulations 2004.
- 2.4 Thames Water will mark all Information that it provides to the Authorities and which it wishes the Authorities to consider under this Memorandum with the following wording;
  - 2.4.1 Written reports and other written documentation - “Draft - Confidential Information”;
  - 2.4.2 Plans and drawings - “This is an indicative working draft plan which has been produced for the purpose of confidential consultation only. Accordingly, the draft plan must not be copied, distributed or shown to any third party without the express written permission of Thames Water Utilities Limited. It provides an indication of sites that, following discussions with local authorities and other stakeholders, may be confirmed as being on the shortlist of construction sites for the proposed Thames Tunnel. Inclusion of a site on this draft plan should not be taken to mean that such site will be selected as a construction site to form part of the Thames Tunnel scheme.”

## **3 PROCESS**

- 3.1 The Authorities agree that Thames Water shall be consulted in all cases where disclosure of Information is being considered under the Information Acts.
- 3.2 Where the relevant Authority consider that refusal to disclose Information falls within a relevant exemption or exception under the Act and Regulations and the Authority is satisfied that the public interest in maintaining the exception outweighs the public interest in disclosing the information it shall refuse disclosure and notify Thames Water accordingly.
- 3.3 For the avoidance of doubt the final decision on whether to release the information shall rest with the relevant Authority

## **4 EXEMPTION AND EXCEPTIONS**

- 4.1 By way of background, the Freedom of Information Act includes a number of exemptions which if applicable permit the Authorities to withhold Information from disclosure, and the Environmental information regulations include similar, but different, exceptions.

- 4.2 This Protocol notes some of the likely key exemptions and exceptions, and the Authorities agree to consider each of these carefully.
- 4.3 **FOIA exemptions**
- 4.3.1 Section 22 - the Information is in draft form and will, once finalised, be published;
- 4.3.2 Section 24 - national security;
- 4.3.3 Section 36(2)(b)(ii) - disclosure would, or would be likely to, inhibit the free and frank exchange of views for the purpose of deliberation;
- 4.3.4 Section 41 - confidentiality; and
- 4.3.5 Section 43 - disclosure would, or would be likely to, prejudice the commercial interests of Thames Water or of the Authorities.
- 4.4 **EIR exceptions**
- 4.4.1 Regulation 12(4)(d) - material in the course of completion, unfinished documents and incomplete data;
- 4.4.2 Regulation 12(4)(e) - disclosure of internal communications;
- 4.4.3 Regulation 12(5)(c) - adverse effect on the intellectual property rights of Thames Water;
- 4.4.4 Regulation 12(5)(e) - adverse effect on the confidentiality of commercial information; and
- 4.4.5 Regulation 12(5)(f) - adverse effect on the interests of Thames Water, where Thames Water was not obliged to provide the Information, did not supply it such that the Authorities are entitled to disclose it and does not consent to its disclosure.
- 4.5 In any event, the Authorities will ask Thames Water:
- 4.5.1 whether it believes it would be likely to be harmed by release in any way if the Information and, if so, for what reasons;
- 4.5.2 the chances that the harm might occur;
- 4.5.3 the seriousness of the harm; and
- 4.5.4 whether the risk of harm will apply now or in the future.
- 4.6 If Thames Water wishes to make a case for non-disclosure of the Information it must set out its reasons objectively. A simple objection is not sufficient to help the Authorities make their decision.
- 4.7 Wherever there is a view that harm might be suffered, it is important to establish to which specific parts of the Information this applies, so that redaction (i.e. removal) of just that part of the Information can be considered by the Authorities. Thames Water might make out a case for withholding the whole of the Information too.
- 4.8 After this consultation, should the Authorities decide to disclose Information against the wishes of Thames Water, Thames Water shall be notified of the decision at

least 5 working days prior to disclosure. The notification will allow Thames Water the opportunity to consider legal action to prevent disclosure or to make further representations to the Authorities.

## **5 CONSULTING FOR REVIEWS OR APPEALS**

- 5.1 Thames Water must also be consulted where a decision on disclosure of Information supplied by them or related to them is subject to a request for internal review by the Authorities or an appeal to the Information Commissioner's Office or to the First-tier Tribunal (Information Rights) (formerly, the Information Tribunal).
- 5.2 Before a decision is taken by the Authorities to appeal to the Tribunal on a matter involving Thames Water, the Authorities will discuss with Thames Water if it is willing to be actively involved in the appeal and provide evidence to the Tribunal. The Parties may also agree to seek to join Thames Water as a party to the appeal.

**EXECUTION PAGE**

Signed on behalf of **Thames Water** )  
**Utilities Limited** by: )  
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**of Hammersmith and Fulham** by: )  
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**of Hounslow** by: )

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**of Lambeth** by:

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**of Newham** by: )

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**of Southwark** by: )

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**of Tower Hamlets** by: )  
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**Royal Borough of Kensington and** )  
**Chelsea** by: )  
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**Council** by: )  
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**Authority** by: )  
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## **Appendix 1**

### **Thames Tunnel Forum Terms of Reference**

#### **Purpose**

The Forum is the top-tier of the consultative process for the planning and delivery of the proposed Thames Tunnel.

#### **Membership**

The membership of the Forum will include:

- Chairman (Richard Aylard, Thames Water Director).
- Senior officer leadership from the local authorities likely to be affected by the proposed tunnel.
- Senior representatives from consent granting bodies and other pan-London statutory stakeholders.
- Senior representatives from environmental bodies.
- Representatives from the London business community.
- Representatives from London voluntary sector organisations.

The maximum membership of the Forum shall be 30 (excluding Thames Tunnel staff).

#### **Structure**

The Forum will be set up to discuss strategic pan-London issues, initiating various working sub-groups where needed. The sub-groups will take forward specific matters relating to working methods and practices and feed back to the Forum.

#### **Functions**

1. To facilitate understanding and promote communication across a wide variety of stakeholders with an interest in the Thames Tunnel.
2. To encourage agreement around interpretation of the policies, guidance and best practice behind the planning.
3. To ensure stakeholders are well informed and involved in the project's progress and are able to influence the thinking and direction of the project at both practical and strategic levels.
4. To promote open, constructive discussion between the Thames Water Project Team, the relevant London local authorities and pan-London stakeholders around planning and delivery.

#### **Activities**

The principal activities of the Forum are to:

- Share information and agree approaches for the planning and delivery of the Thames Tunnel with the project's stakeholders.
- Consider pan-London issues of principal and practice relating to the planning and delivery of the Thames Tunnel.
- Consider the development proposals for the Thames Tunnel in relation to other major works taking place along the route.
- Resolve differences of approach around the implementation of the site selection and consultation processes.
- Monitor and receive reports from the activities of the various sub-fora established.

### **Outputs**

The principal outputs of the high-level Forum will be:

- Regular information exchange and feedback on specific topics.
- Feedback on methodologies for the site selection and consultation processes and agreed interpretation.
- Feedback on approach to strategic matters relating to site planning and environmental permitting.
- Feedback on protocols for methods of working on development sites.

### **Conduct**

The chair will encourage full and frank debate, identify areas of consensus, summarise differences and the possible solutions emerging or needing to be investigated further.

The agenda and papers for meetings will be circulated not less than seven days prior to the meeting and minutes of the meeting will be taken and distributed two weeks after a meeting.

### **Meetings**

The Forum will meet at regular intervals. Initially, meetings will be held every three months. The frequency can be changed to meet the needs of Forum members.

**Appendix 2**  
**Approved Form of Fee Estimate - Clause**

Action	Start date / completion date	Total time allowed (hours)	Officer(s) responsible	Officer grades and cost per hour	Overall Cost

Assumptions underpinning the Fee Estimate and on which it depends:

1        ...

2        ...

3        ...

etc