

**DATED** \_\_\_\_\_ **2015**

**NOTTINGHAMSHIRE COUNTY COUNCIL**

**-and-**

**HARWORTH ESTATES INVESTMENTS LIMITED**

**- and -**

**BILSTHORPE WASTE LIMITED**

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**AGREEMENT AND  
PLANNING OBLIGATION**

Under Section 106

Town and Country Planning act 1990

Relating to land at Bilsthorpe Business Park, off Eakring Road, Bilsthorpe, Nottinghamshire

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**WALKER MORRIS**

King's Court  
12 King Street  
LEEDS  
LS1 2HL  
Tel: 0113 2832500  
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Ref: CAS/PEE.195-1

**THIS AGREEMENT** is made the                    day of                    2015

**BETWEEN: -**

- (1) **NOTTINGHAMSHIRE COUNTY COUNCIL** of County Hall, Loughborough Road, West Bridgford, Nottingham, NG2 7QP (“**County**”) of the first part; and
- (2) **HARWORTH ESTATES INVESTMENTS LIMITED** (Company No. 7532134) whose registered office is situate at AMP Technology Centre, Advanced Manufacturing Park, Brunel Way, Catcliffe, Rotherham S60 5WG (“**Owner**”) of the second part; and
- (3) **BILSTHORPE WASTE LIMITED** (Company No. 07705693) whose registered office is situate c/o Harworth Estates Property Group Limited of AMP Technology Centre, Advanced Manufacturing Park, Brunel Way, Catcliffe, Rotherham S60 5WG (“**Developer**”) of the third part

together "**the Parties**" and reference to "**Party**" shall be construed accordingly.

## **1 DEFINITIONS AND INTERPRETATION**

1.1 In this Agreement the following words and phrases have the following meanings unless the context otherwise demands: -

<b>"1990 Act"</b>	means the Town and Country Planning Act 1990 as amended;
<b>"Agreement"</b>	means this Deed of Agreement;
<b>"Appeal"</b>	means the call-in appeal (PINS Reference No. APP/L3055/V/14/3001886) in relation to the Secretary's of State's decision to call-in the Application under his powers in Section 77 of the 1990 Act;
<b>"Application"</b>	means the planning application validated by the County on 29 November 2013 and given reference 3/13/01767/CMW (County reference ES/2950) for the grant of planning permission for the proposed development of the Bilsthorpe Energy Centre (BEC) to manage unprocessed and pre-treated waste materials through the construction and operation of a Plasma Gasification Facility, Materials

Recovery Facility and Energy Generation Infrastructure together with supporting infrastructure;

**"Commencement of Development"**

means the date upon which the Development shall commence by the carrying out on the Land pursuant to the Planning Permission of a material operation as specified in Section 56 of the 1990 Act **Save That** the term "*material operation*" shall not include operations in connection with any work of or associated with demolition site clearance remediation works environmental investigation site and soil surveys erection of contractors work compound erection of site office erection of fencing to site boundary laying of any access road or service media and reference to "**Commence Development**" shall be construed accordingly;

**"Council"**

means Newark & Sherwood District Council of Kelham Hall, Kelham, Newark, Nottinghamshire NG23 5QX;

**"CIL"**

means the Community Infrastructure Levy introduced by sections 205-225 of the Planning Act 2008;

**"Development"**

means the development of the Land in accordance with the Planning Permission;

**"Employee Travel Information Pack"**

means the information pack to be provided to each employee of the Development which shall include information on public transport, walkways and cycleways in Bilsthorpe which provide access to the Land;

**"Energy Centre"**

means the part of the Development consisting of the energy centre to manage unprocessed and pre-treated waste materials;

**"First Occupation"**

means the first Occupation of the Development excluding all subsequent occupation;

**"HGV"**

means a mechanically propelled road vehicle that is: -

1. of a construction primarily suited for the carriage

of goods or burden of any kind; and

2. designed or adapted to have a maximum weight exceeding 7,500 kilograms when in normal use and travelling on a road laden;

<b>"HGV Routing Strategy"</b>	means a strategy relating the routing of HGV's between the Land and the surrounding highway network that is to be agreed as part of the Travel Plan and as is indicatively shown at Figure TP6 of the Travel Plan subject to any variations that may be agreed between the Owner and the County from time to time;
<b>"Index"</b>	means the All Items Retail Price Index published by the Office for National Statistics contained in the Monthly Digest of Statistics (or contained in any official publication substituted therefore) or such other index as may from time to time be published in substitution therefore;
<b>"Index Figure"</b>	means the Index for the month preceding the date upon which the Heritage Interpretation Scheme Contribution is paid;
<b>"Index Linked"</b>	means each payment has been adjusted by applying thereto the percentage change in the Index from the date hereof to the Index Figure;
<b>"Interest"</b>	means interest 4% above base rate of Barclays Bank from time to time;
<b>"Heritage Interpretation Scheme Contribution"</b>	means the sum of £16,000.00 (sixteen thousand pounds) Index Linked to be paid to the County by the Owner and applied by the County towards the provision of four interpretation panels to include associated research into the content and location of the interpretation panels, the design, installation and 10 years future maintenance of the interpretation panels the need for which is required in order to assist mitigating impacts of the Development;

<b>“Land”</b>	means all that land at Bilsthorpe Business Park, off Eakring Road, Bilsthorpe, Nottinghamshire shown for identification purposes only edged red on Plan 1;
<b>"Occupation"</b>	means occupation for the purposes permitted by the Planning Permission but not including occupation by personnel engaged in the construction, fitting out or decoration or occupation for marketing or display or occupation in relation to security operations and reference to <b>"Occupied"</b> and <b>"Occupy"</b> shall be construed accordingly;
<b>"Planning Obligations"</b>	means the planning obligations to be observed and performed by the Owner as set out in this Agreement;
<b>"Plan 1"</b>	means the plan marked 'Plan 1' annexed to this Agreement;
<b>"Plan 2"</b>	means the plan marked 'Plan 2' annexed to this Agreement;
<b>“Planning Obligations”</b>	means the obligations, conditions and stipulations set out in the First Schedule and reference to <b>"Planning Obligation"</b> shall be construed accordingly;
<b>“Planning Permission”</b>	means a planning permission granted pursuant to the Application substantially in the form attached as the Third Schedule to this Agreement;
<b>“Secretary of State”</b>	means the Secretary of State within the Department for Communities and Local Government or any substitute or any Inspector appointed by him;
<b>"Statutory Undertaker"</b>	means any company corporation board or authority at the date of this Agreement authorised by statute to carry on an undertaking for the supply of telephone and television communications electricity gas water or drainage and any authorised successor to any such undertaking;
<b>“Travel Plan”</b>	means the Interim Travel Plan dated 9 August 2013 prepared by Axis in accordance with the DfT guidance

'The Essential Guide to Travel Planning' and 'Good Practice Guidelines: Delivering Travel Plans through the Planning Process' attached as the Fourth Schedule to be implemented by the Owner in accordance with paragraph 3 of the First Schedule being the objectives and initiatives to be undertaken to manage and monitor the delivery of sustainable travel to and from the Development to include, inter alia, the HGV Routing Strategy and amended as necessary by prior written agreement with the County;

**"Travel Plan Commencement Date"**

means the date that the Development is first Occupied;

**"Travel Plan Co-ordinator"**

means a travel plan co-ordinator or travel plan co-ordinators to be appointed by the Owner and approved in writing by the County in relation to the Travel Plan;

**"Wader Mitigation Area"**

means the areas shown shaded yellow on Plan 2;

**"Wader Mitigation Plan"**

means the wader mitigation plan dated 14 September 2015 prepared by Argus Ecology attached as the Fifth Schedule to be implemented by the Owner in accordance with paragraph 2 of the First Schedule being the objectives and initiatives to be undertaken to monitor and address likely adverse effects on ground nesting waders within the Wader Mitigation Area as a consequence of the Development;

**"Working Day"**

means any day except Saturday Sunday or a bank holiday and reference to **"Working Days"** shall be construed accordingly.

1.2 Clause headings and contents list are for reference only and shall not affect the construction of this Agreement.

1.3 The Schedules and Plans shall be incorporated into and form part of this Agreement.

- 1.4 Where more than one person is included in the expressions "the County" and "the Owner" and "the Developer" agreements and obligations expressed to be made or assumed by such party are made or assumed and are to be construed as made or assumed by all such persons jointly and each of them severally.
- 1.5 Any covenant by the Owner and or the Developer not to do any act or thing shall be deemed to include a covenant not to cause permit or suffer the doing of that act or thing.
- 1.6 The masculine and the feminine and neuter gender include each of the other genders and the singular includes the plural and vice versa.
- 1.7 A reference to an Act of Parliament refers to the Act and shall include any modification, extension or re-enactment of that Act for the time being in force and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.
- 1.8 A reference to a clause sub-clause schedule paragraph or recital (or any part of them) shall (unless the context otherwise requires) be references to a clause sub-clause schedule paragraph or recital contained in this Agreement.
- 1.9 Unless this Agreement states otherwise, any reference to any legislation (whether specifically named or not) includes any modification, extension, amendment or re-enactment of that legislation for the time being in force and all instruments, orders, notices, regulations, directions, byelaws, permissions and plans for the time being made, issued or given under that legislation or deriving validity from it.

## 2 **RECITALS**

- 2.1 The County is a local planning authority for the purposes of Part 3 of the 1990 Act and is the highway authority for the area within which the Land is situated and is the authority by whom the obligations created in the First Schedule are enforceable.
- 2.2 The Owner is freehold owner of the Land and the Wader Mitigation Area registered with HM Land Registry under title registration numbers NT346242 (which title also includes land that is not the subject of the Application) and NT419911.
- 2.3 The Developer has an interest in the Land by way of an agreement to acquire a leasehold interest and rights thereover contained in an option for lease dated 14 August 2011 as varied on 5 December 2012 and 9 January 2014 and made between the Owner and the Developer.

- 2.4 The Application was submitted to the County on behalf of the Developer for planning permission for the Development.
- 2.5 On 18 November 2014 the County's Planning and Licensing Committee resolved to grant conditional planning consent for the Development subject to the completion of this Agreement and conditions.
- 2.6 By letter dated 19 December 2014 the Council was notified that the Secretary of State had decided to call-in the Application.
- 2.7 The Parties are prepared to enter into this Agreement on the terms and conditions set out below.
- 2.8 The Owner by entering into this Agreement does so to create planning obligations in respect of the Land in favour of the County pursuant to Section 106 of the 1990 Act and to be bound by and observe and perform the covenants agreements conditions and stipulations hereinafter contained on the terms of this Agreement.

### 3 **OPERATIVE PROVISIONS**

- 3.1 This Agreement is a planning obligation made in pursuance of Section 106 of the 1990 Act as substituted by Section 12 of the Planning and Compensation Act 1991 and to the extent that the covenants in this Agreement are not made under Section 106 of the 1990 Act they are made under Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and Section 1 of the Localism Act 2011 and all other powers so enabling.
- 3.2 Subject to Clause 3.4 the Owner covenants with the County with the intent that the covenants in the First Schedule shall attach to the Land and each and every part of it and bind its successors in title to it.
- 3.3 The County covenants with the Owner to comply with its obligations in the First Schedule (as applicable) and the Second Schedule.
- 3.4 The Planning Obligations shall not become effective until: -
- 3.4.1 The Planning Permission has been granted by the Secretary of State; and
- 3.4.2 Except where otherwise stated in this Agreement the Commencement of Development.



- 3.5 In this Agreement the expressions "the Owner" and "the Developer " shall where the context so admits be deemed to include their respective successors in title and assigns and the expression "the County" shall include its respective successor authority.
- 3.6 The Planning Obligations restrictions covenants limitations and obligations in this Agreement relate to and are binding in their entirety upon the Owner and their successors in title and assigns and their interest in the Land and save as otherwise provided shall bind and run with the Land and each and every part of it and subject to clause 3.14 may be enforced against the Owner and where applicable its successors in title by the County as if such persons had been an original covenanting Party in respect of the interest or estate for the time being held by them in the Development.
- 3.7 If the terms of any conveyance transfer or other disposal (including any contract thereof) cannot be agreed by the Owner and the County and / or any dispute or difference arises between the parties as to their respective rights duties or obligations under this Agreement or as to the failure of the County to give or confirm its consent agreement or approval where required under this Agreement or as to any other matter or thing arising out of or connected with the subject matter of this Agreement or any failure to agree upon any matter it shall be dealt with as follows: -
- 3.7.1 in the case of any legal requirements how contributions payable under this Agreement are to be spent the same shall be referred to an independent Solicitor experienced mediator or arbitrator of at least fifteen years standing who shall be appointed in default of agreement between the Owner and the County as the case may be by the President of the Law Society or his deputy to be decided as provided below;
- 3.7.2 in the case of any matter relating to the Travel Plan the same shall be referred to a highway and transportation engineer of at least fifteen years standing who shall be nominated in default of agreement between the Owner and the County by the President for the time being of The Chartered Institution of Highways & Transportation or his / her deputy to be decided as provided below;
- 3.7.3 in the case of any matter relating to the Wader Mitigation Plan the same shall be referred to an independent ecologist and / or an independent chartered surveyor of at least fifteen years standing who shall be nominated in default of agreement between the Owner and the County by the President for the time being of the British Ecological Society and / or the President for the time being of the Royal Institution of Chartered Surveyors as the case may be or his / her deputy to be decided as

provided below; and

- 3.7.4 any matter referred to an independent solicitor or civil engineer or highway and transportation engineer or independent ecologist or independent chartered surveyor in accordance with the foregoing provisions shall be decided by such person as an expert not as an arbitrator and such independent person (“**Expert**”) shall consider the written submissions of the parties and his determination shall be made in writing and in each case be final and binding on such parties and the costs of such determination shall be paid as the expert shall direct.
- 3.8 If the Planning Permission shall expire before the Commencement of Development or shall at any time be modified (without the consent of the Owner) or revoked this Agreement shall terminate and cease to have effect and the County shall on written request from the Owner remove any entry relating to this Agreement from the Register of Local Land Charges.
- 3.9 Nothing in this Agreement shall prohibit or limit the right to develop any part of the Land in accordance with a planning permission (other than the Planning Permission) granted after the date of this Agreement.
- 3.10 Except where expressly stated to the contrary where under this Agreement any approval consent certificate direction authority agreement action or expression of satisfaction is required to be given or reached or taken by any Party or any response is requested any such approval consent certificate direction authority agreement action or expression of satisfaction or response shall not be unreasonable or unreasonably withheld or delayed provided that nothing in this Agreement shall prejudice or affect the rights powers duties and obligations of the County in the exercise of their statutory functions and the rights powers duties and obligations of the County under private or public statutes byelaws orders and regulations may be as fully and effectively exercised as if they were not parties to this Agreement.
- 3.11 The obligations hereby created shall be registered as a Local Land Charge by the County.
- 3.12 No person who is not a party to this Agreement may enforce any terms hereof pursuant to the Contracts (Right of Third Parties) Act 1999 provided that this clause shall not affect any right of action of any person to whom this Agreement has been lawfully assigned or becomes vested in law.
- 3.13 The Owner agrees that all payments to be made pursuant to the obligations set out in this Agreement shall at the date at which payment is made be Index Linked from the date of this Agreement.

- 3.14 No party shall be bound by the terms of this Agreement or be liable for any breach of covenant contained in this Agreement: -
- 3.14.1 occurring after he or it has parted with his or its interest in the Land or the part in respect of which such breach occurs (but without prejudice to liability for any subsisting breach of covenant prior to parting with such interest);
  - 3.14.2 in respect of any part or parts of the Land in respect of any period during which it or they shall no longer have an interest in such part or parts of the Land;
  - 3.14.3 unless they hold an interest in the part of the Land in respect of which such breach occurs or held such an interest at the date of the breach; and
  - 3.14.4 if it is a Statutory Undertaker which has an interest in any part of the Land for the purposes of its undertaking.
- 3.15 The Developer shall pay to the County on completion of this Agreement the reasonable legal costs of the County incurred in the negotiation, preparation and execution of this Agreement.
- 3.16 The Owner agrees with the County to give the County immediate written notice of any change of ownership of any of its interests in the Land if applicable occurring before all the obligations under this Agreement have been discharged such notice to give details of the transferee's or lessees (as the case may be) full name and registered office (if a company or usual address if not) together with the area of the Land or Unit of occupation purchased by reference to a plan.
- 3.17 All notices served under or in connection with this Agreement shall be deemed to have been properly served if sent by recorded delivery to the principal address or registered office (as appropriate) of the relevant Party.
- 3.18 All consideration given in accordance with the terms of this Agreement shall be inclusive of any value added tax properly payable.
- 3.19 This Agreement is governed by and interpreted in accordance with the law of England and Wales and the parties submit to the non-exclusive jurisdiction of the courts of England and Wales.
- 3.20 The Parties to this Agreement have given due consideration to the requirements of Regulation 122 of the Community Infrastructure Levy Regulations 2010 (SI 2010 No. 948) and agree that the Planning Obligations it contains are: -

- 3.20.1 necessary to make the Development acceptable in planning terms;
- 3.20.2 directly and fairly related to the Development; and
- 3.20.3 fairly and reasonably related in scale and kind to the Development.
- 3.21 Any unexpended capital that is committed to a scheme that has been commenced or committed by contract in accordance with this Agreement will not be returned if committed prior to the expiry of the period for spending referred to in the First Schedule.
- 3.22 If the Secretary of State in his decision letter concludes that any of the Planning Obligations set out in the Agreement (or relevant part of a Planning Obligation) are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly expressly states in his decision letter that he attaches no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation(s) (or part of the Planning Obligation(s) as appropriate) shall from the date of the decision letter immediately cease to have effect and the Owners shall be under no obligation to comply with that Planning Obligation (or the relevant part of the Planning Obligation as appropriate).
- 3.23 Subject to clause 3.26, if the Secretary of State in his decision letter concludes that any of the Planning Obligations set out in the Agreement (or relevant part of a Planning Obligation) are incompatible with Regulation 123 of the Community Infrastructure Levy Regulations 2010 (as amended) and expressly states in his decision letter that he attaches no weight to that Planning Obligation in determining the Appeal then the relevant Planning Obligation(s) (or part of the Planning Obligation(s) as appropriate) shall from the date of the decision letter immediately cease to have effect and the Owners shall be under no obligation to comply with that Planning Obligation (or the relevant part of the Planning Obligation as appropriate).
- 3.24 If, after the date of this Agreement, but prior to the Planning Permission being issued by the Secretary of State, CIL is applicable to the Development then, so far as it is lawful to do so, the Parties to this Agreement shall use reasonable endeavours to agree variations to this Agreement with the intent that the Owner is not required to contribute (whether by financial contribution or in kind or both) more than once for any item of infrastructure (as defined by the Community Infrastructure Levy Regulations 2010 and / or as amended applied and / or supplemented by any relevant charging schedule adopted including any related document issued by the Council from time to time during the delivery of the Development) through both the terms of this Agreement and through CIL **PROVIDED THAT** Nothing in this clause 3.24 shall:-

- 3.24.1 fetter the discretion of the Council acting as local planning authority; nor
- 3.24.2 require the Council to act contrary to law in the charging, collecting or spending of CIL.

**IN WITNESS** whereof the parties hereto have executed this Agreement as a Deed the day and year first before written

## **FIRST SCHEDULE**

(“Owner's Planning Obligations”)

The Owner covenants with the County as follows: -

### **1. ECOLOGICAL OFF-SETTING**

- 1.1 Not to Commence Development until the Wader Mitigation Plan has been implemented to the satisfaction of the County Council (not to be unreasonably withheld) and to monitor and address any likely adverse effects on ground nesting waders as a consequence of the Development in accordance with the Wader Mitigation Plan subject to any variations that may be agreed between the Owner and the County from time to time.

### **2. HERITAGE INTERPRETATION SCHEME**

- 2.1 Prior to the Occupation of the Energy Centre to pay the Heritage Interpretation Scheme Contribution to the County and not to Occupy the Energy Centre until the Heritage Interpretation Scheme Contribution has been paid to the County.

### **3. TRAVEL PLAN**

- 3.1 To use reasonable endeavours to implement and thereafter comply with the terms of the Travel Plan prior to Occupation of the Development in respect of those parts of the Travel Plan that are capable of being implemented prior to such Occupation and at all times during the period when the Development is Occupied in respect of the remainder of the Travel Plan **PROVIDED THAT** any failure on the part of the Owner to comply with this provision which is due to acts, events or other circumstances beyond the reasonable control of the Owner shall not constitute a breach of this Agreement.
- 3.2 Prior to the Travel Plan Commencement Date the Owner shall appoint a nominated Travel Plan Co-ordinator(s) in accordance with the provisions of the Travel Plan and notify the details of the Travel Plan Co-ordinator(s) to the County prior to the Travel Plan Commencement Date.
- 3.3 The Owner shall provide an Employee Travel Information Pack to all employees of the Development.
- 3.4 The Owner shall review the Travel Plan on the first anniversary of the Travel Plan Commencement Date and on each subsequent anniversary of the Travel Plan Commencement Date for an initial period of five years and such additional period as may

reasonably be required by the County and shall submit the results of such review to the County.

- 3.5 Following discussions with the County, the Owner shall have regard to any reasonable recommendations made by the County in relation to each annual review and incorporate, where reasonable, such recommendations. The Owner may not vary the Travel Plan without the prior approval of the County.

## **SECOND SCHEDULE**

("County's Covenants")

The County hereby covenants with the Owner: -

### **Heritage Interpretation Scheme**

- 1 To issue a receipt on request for the Heritage Interpretation Scheme Contribution.
- 2 Upon receipt to place the sum referred to in paragraph 1 of this Schedule in an interest bearing account or in separate accounts as the County shall in its discretion decide.
- 3 To apply the Heritage Interpretation Scheme Contribution towards the purposes specified in this Agreement the need for which directly arises from the Development and not to apply the Heritage Interpretation Scheme Contribution for any other purposes and the County shall (on the reasonable request of the payee or the payee's nominee) provide evidence that the monies have been so applied.
- 4 That in the event the Heritage Interpretation Scheme Contribution or any part or parts thereof is not expended or committed within ten years of the date of their receipt by the County then the sum or sums not expended plus interest accrued will be repaid to the Owner or its nominee.

### **Discharge of Obligations**

- 5 At the written request of the Owner the County shall provide written confirmation to the Owner of the discharge of the obligations contained in the First Schedule when satisfied that such obligations have been performed.



**THIRD SCHEDULE**  
("Draft Decision Notice")

**FOURTH SCHEDULE**

(“Travel Plan”)

**FIFTH SCHEDULE**  
("Wader Mitigation Plan")

**THE COMMON SEAL of** )  
**NOTTINGHAMSHIRE COUNTY COUNCIL** )  
was hereunto affixed in )  
the presence of:- )

Authorised Officer

**EXECUTED AS A DEED** (but not )  
delivered until the date hereof) by )  
**HARWORTH ESTATES** )  
**INVESTMENTS LIMITED** )  
acting by a director in the presence of: - )

Director

Signature of witness.....

Name (in BLOCK CAPITALS).....

Address.....

.....

.....

**EXECUTED AS A DEED** (but not )  
delivered until the date hereof) by )  
**BILSTHORPE WASTE LIMITED** )  
acting by a director in the presence of: - )

Director

Signature of witness.....

Name (in BLOCK CAPITALS).....

Address.....

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