

PINS document reference 6.2.4.3

APPENDIX PS4.3

**SECTION 106 AGREEMENT IN RESPECT OF THE CURRENT OPERATIONS AT
EAST NORTANTS RESOURCE MANAGEMENT FACILITY DATED 17
JANUARY 2013**

DATED 14th January **2013**

NORTHAMPTONSHIRE COUNTY COUNCIL

- and -

AUGEAN SOUTH LIMITED

**pursuant to Section 106 of the Town and Country Planning Act 1990
relating to land at the East Northants Resource Management Facility, Stamford Road,
Northamptonshire**

IPC document reference: WS010001/ENRMF/S106/Rev1

QUENTIN BAKER
Director of Legal Services
P O Box 104
County Hall
Northampton
NN1 1AW
(L/DCH/H-006718)

THIS AGREEMENT is made the 14th day of January 2013

BETWEEN:

NORTHAMPTONSHIRE COUNTY COUNCIL of County Hall Northampton NN1 1DN (hereinafter called "the Council") of the first part; and

AUGEAN SOUTH LIMITED whose registered office is at 4 Rudgate Court, Walton, Wetherby, LS23 7BF (hereinafter called "The Owner") of the second part.

WHEREAS

1. DEFINITIONS AND INTERPRETATION

1.1 In this agreement the following terms and expressions have the respective meanings given to them unless the context otherwise requires:

"the 1990 Act" means the Town and County Planning Act 1990 and any amending or replacing legislation for the time being in force

"the 2008 Act" means the Planning Act 2008 and any amending or replacing legislation for the time being in force

"the Application" means the application for the DCO to authorise the Development on the Land made under Section 30 of the 2008 Act by the Owner on 7 March 2012

"Commence" means the carrying out of a material operation (as defined in Section 56(4) of the 1990 Act) excluding any operations relating to soil investigations or works in respect of land contamination archaeological investigations site clearance division of services receipt and erection of construction plant and equipment the erection of temporary fencing hoardings and erection of site compound buildings and "Commence" and "Commenced" shall be construed accordingly.

"Community Fund" means the fund established by the Council pursuant to the Section 106 Agreement dated 5TH November 2010 and to be used only for the Specified Purposes

"the Development"	means the development at the ENRMF on the Land and described in Schedule [A] of the DCO
"DCO"	means the development consent order to be made under the 2008 Act pursuant to the Application
"the ENRMF"	means the East Northants Resource Management Facility, Stamford Road, Kings Cliffe, Peterborough, PE8 6XX
"the Existing Planning Permissions"	means the existing planning permissions on the Land namely 12/00029/WAS, 12/00030/WAS and 12/00031/WAS
"the Existing Section 106 Agreement"	means the Section 106 Agreement dated 16 th October 2012 and entered into by Augean South Limited and Northamptonshire County Council in respect of planning application references 12/00029/WAS, 12/00030/WAS and 12/00031/WAS
"the Highways Contribution"	means a contribution of five thousand pounds (£5,000) per year for the Highway Purposes
"the Highway Purposes"	means highway maintenance and improvement of Stamford Road to the north of the Land
"the NID"	means the National Infrastructure Directorate or any other body which supersedes it
"the Land"	means the area shown edged red on the plan attached to this Agreement
"LLW"	means solid radioactive waste up to a maximum specific activity of 200 becquerels per gram (Bq/g)

"the Previous Planning Permission"

means the planning permission on the Land for the disposal of LLW in respect of planning application reference EN/09/01269/NCC as granted by the Secretary of State on 24th May 2011 (APP/K2800/A/10/2126938)

"Specified Purposes"

means the approved objects listed in regulation 33(2) (c), (d), (da), (e) and (f) of the Landfill Tax Regulations 1996 (as may be amended from time to time) and all or any reasonable costs (including salaries and reasonable expenses) associated with facilitating and running any such projects under regulation 33(2) (c), (d), (da) or (e)

1.2 In this Agreement (unless the context otherwise requires):

1.2.1 the words "including" and "include" and words of similar effect shall not be deemed to limit the general effect of the words which precede them

1.2.2 obligations undertaken by a party which comprises more than one person shall be deemed to be made by them jointly and severally

1.2.3 words importing persons shall include firms, companies and bodies corporate and vice versa

1.2.4 words importing the singular shall include the plural and vice versa

1.2.5 words importing the masculine gender include the feminine gender and vice versa and words importing the neuter gender include the masculine and/or feminine gender

1.2.6 the headings and page numbers throughout this Agreement are for convenience only and shall not be taken into account in the construction and interpretation of this Agreement

1.2.7 references to a numbered clause, schedule, paragraph or appendix are references to the clause, schedule, paragraph or appendix to this Agreement so numbered

- 1.2.8 any reference to any statutory provision shall be deemed to include any subsequent re-enactment or amending provision
- 1.2.9 an obligation to do something includes an obligation to procure it to be done
- 1.2.10 an obligation not to do something includes an obligation not to allow it to be done
- 1.2.11 where in any other part of this Agreement an expression or word is defined or expressed to have a particular meaning in such part the word or expression so defined shall have the same meaning throughout this Agreement unless the contrary intention is expressly stated.
- 1.2.12 No failure or delay by the Council to exercise any right power or remedy will operate as a waiver of it nor will any partial exercise preclude any further exercise of the same or of some other right or power of the relevant Council officers.

2. RECITALS

- 2.1 The Council is the local planning authority for the Development by whom the planning obligations contained within Schedule 1 hereto are enforceable.
- 2.2 The Owner is the freehold owner of the Land free from encumbrances.
- 2.3 The Owner has submitted the Application to the NID for consent to carry out the Development on the Land.
- 2.4 Policy CMD 14 of the Northamptonshire Minerals and Waste Development Framework, Control and Management of Development, Development Plan Document (June 2011) provides that where there are issues that cannot be resolved through the imposition of planning conditions, the planning authority will seek to negotiate planning obligations and enter into legal agreements with developers in order to provide benefits to compensate the local community affected by the development (where appropriate).
- 2.5 Whereas the Council acknowledges that the technical evidence demonstrates that the risks to health or the environment as a result of the controlled and properly regulated disposal of LLW on the Land are small and tolerable, there may remain perceptions in the local community that there are associated potential impacts. The Community Fund provides

positive financial support for various social and economic projects in the local community in order to counter-balance any perceived impacts of the Development together with any negative perceptions within the local community from the presence of LLW on the Land.

2.6 Nothing in this Agreement constitutes an obligation to grant the DCO.

NOW THIS AGREEMENT made in pursuance of Section 106 of the Act (as amended) Section 111 of the Local Government Act 1972 and all other enabling powers **WITNESSES** as follows:

3 STATUTORY PROVISIONS

3.1 This Agreement is executed as a Deed and the planning obligations contained in this Agreement are planning obligations for the purposes of Section 106 of the Act and this Agreement is made pursuant to Section 111 of the Local Government Act 1972 and Section 2 of the Local Government Act 2000 and in pursuance of all other powers enabling the parties hereto respectively

3.2 The planning obligations contained in this Agreement shall be enforceable by the Council

3.3 The planning obligations are intended to run with the Land so as to bind successive owners of every part of the Land

4 COMMENCEMENT AND CONTINUANCE

4.1 Without prejudice to the position of the Owner or the Council on the Application the covenants and obligations contained in this Agreement (with the exception of the clause 8 which shall take effect on the completion of this Agreement) shall be conditional and shall not have effect unless and until:

4.1.1 the DCO is made; and

4.1.2 the service of a written notice upon the Council by the Owner that the Development is to be commenced pursuant to the DCO on the Land.

4.2 The planning obligations in this Agreement shall lapse and cease to be binding upon the Owner for the time being of the Land if the DCO shall lapse without being implemented or be quashed or revoked.

4.3 Upon this Agreement having effect pursuant to clause 4.1 above and PROVIDED THAT a period of at least six weeks has expired without any party lodging proceedings by a claim for judicial review pursuant to Section 118 of the 2008 Act challenging the granting of the DCO:

4.3.1 The Existing Planning Permissions shall be revoked by the Council pursuant to its powers under Section 97 of the 1990 Act; and

4.3.2 all of the obligations in the Existing Section 106 Agreement will be superseded by the obligations in this Agreement and the Council shall ensure that any entry made in the Register of Local Land Charges is cancelled or otherwise record the fact that the Existing Section 106 Agreement has come to an end and no longer affect the site.

4.4 In the event that a claim for judicial review is lodged pursuant to Section 118 of the Act challenging the granting of the DCO and following the completion of those proceedings the DCO is not quashed clauses 4.3.1 and 4.3.2 shall then take effect.

4.5 In the event that the Council seeks to revoke the Existing Planning Permissions pursuant to clause 4.3.1 above the Owner shall give notice pursuant to Section 99(1) (b) of the 1990 Act that they do not object to an order revoking the Existing Planning Permissions and further the Owner covenants that it will not make any claim for compensation consequent on such revocation pursuant to Section 107 of the 1990 Act.

5 COVENANTS

5.1 The Owner covenants to perform and observe the Planning Obligations set out in Schedule 1.

5.2 The Council covenants to perform and observe the obligations set out in Schedule 2.

6 DISPOSAL OF INTEREST IN LAND

The Owner and all subsequent owners of the Land shall cease to be bound by the provisions of this Agreement forthwith upon disposal of their respective interest in the Land or any part thereof and shall not be liable for any breach of this Agreement occurring whilst it or they shall have no interest in the Land or the part thereof in respect of which such breach occurs.

7 LOCAL LAND CHARGE

7.1 The Owner acknowledges that this Agreement may be registered as a local land charge in the Register of Local Land Charges maintained by the District Council.

7.2 Where the Agreement comes to an end under Clause 4.2 above or otherwise ceases to have effect, any entry made in the Register of Local Land Charges shall be cancelled or otherwise record the fact that it has come to an end and no longer affects the site

8 PAYMENT OF THE COUNTY COUNCIL'S STANDARD FEE

On the execution hereof the Owner shall pay to the Council the Council's standard legal charge in this matter amounting to the sum of £1,500.00.

9 FURTHER PLANNING PERMISSIONS AND DEVELOPMENT CONSENTS

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

10 VARIATION OF THIS AGREEMENT

10.1 This Agreement may be varied only by deed between the parties hereto or their respective successors in title and assigns.

10.2 For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 it is hereby **AGREED AND DECLARED** that the parties to this Agreement (and their respective successors in title) may rescind or vary this agreement without the consent of any third party.

11 APPROVALS, CONSENTS, ETC

11.1 All approvals certificates consents agreements satisfactions confirmations or calculations (or anything of a similar nature) that may be requested by the Owner and/or given by the Council or its officers in accordance with this Agreement shall be in addition to any other approvals consents agreements or confirmations that may be required by the Act or by any other statute or regulations.

11.2 All such approvals consents agreements satisfactions confirmations or calculations shall not be unreasonably withheld or delayed by the Council or its relevant officers.

12 BALANCE OF AGREEMENT HAVING EFFECT

In the event that any part of this Agreement may be subject to challenge review deletion or otherwise rendered null/void or voidable the balance of the said Agreement shall remain in full force and effect

13 NOTICES

Notices required to be given or served under this Agreement shall be addressed to the parties at their addresses referred to in the Commencement of this Agreement

14 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

For the purposes of (inter alia) the Contracts (Rights of Third Parties) Act 1999 nothing in this Agreement is intended to confer any benefit upon or create rights in favour of any party other than the parties executing this Agreement and their respective successors in title

15 PAYMENT

15.1 Unless otherwise provided the date for payment (the "Due Date") of any sum payable under any provision of this Agreement shall be the date on which payment becomes due under such provision or (in the case only where payment does not have to be made except following a demand or notification by the Council of the sum payable) the date 7 days after the making of such demand or notification

15.2 Where payment of any sum payable as aforesaid is made after the Due Date interest shall be payable from the Due Date until the date of actual payment and shall be added to and form part of such sum at the rate of four per cent above the base rate for the time being of the Bank of England

16 RESOLUTION OF DISPUTES (OTHER THAN MEANING OR CONSTRUCTION)

16.1 In the event of any dispute or difference arising between the parties hereto touching or concerning any matter or thing arising out of this Agreement (other than a dispute or difference touching or concerning the meaning or construction of this Agreement) such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and his decision shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

16.2 In the absence of agreement between the parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to sub clause 16.1 above or as to the appropriate professional body within fourteen days after any party has given to the other parties to the dispute or difference a written request to concur in the professional

qualifications of the person to be appointed pursuant to sub clause 16.1 above then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the parties to the dispute or difference and his costs shall be payable by the parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the parties to the dispute or difference in equal shares.

IN WITNESS of the above the parties have executed this Deed as a deed and the same has been delivered by them or on their behalf on the above date

THE COMMON SEAL of
NORTHAMPTONSHIRE COUNTY
COUNCIL was hereto affixed in the
presence of: [REDACTED]



Authorised Signatory
(the Officer appointed for that purpose)

SIGNED AS A DEED by AUGEAN
SOUTH LIMITED in the presence of:-

Director

Director/Secretary



SCHEDULE 1

OBLIGATIONS

LLW COMMUNITY FUND CONTRIBUTION

1. Subject to the provisions of paragraph 2 below, for each tonne of LLW accepted on the Land the Owner will pay five pounds (£5) to the Council for immediate deposit in to the Community Fund.
2. The Owner will only be obliged to make one annual payment to the Council for deposit in the Community Fund which will be payable on the 1st April to satisfy the obligation in paragraph 1 above which shall be calculated by reference to the total tonnage of LLW that has been accepted in that preceding calendar year.
3. If the Council requests the Owner to do so, the Owner shall provide a quarterly report to the Council setting out information on the amount of LLW received in that preceding quarter.
4. For the avoidance of doubt the first payment to be made pursuant to paragraph 2 of this Schedule 1 shall be in respect of all LLW accepted on the Land pursuant to either the Previous Planning Permission, the Existing Planning Permissions or the DCO during the preceding calendar year before that payment falls due.

HIGHWAY CONTRIBUTION

5. The Owner shall pay to the Council the Highway Contribution annually on 29 June taking effect pursuant to clause 4.1 of this Agreement with a final payment to be made in the year 2026

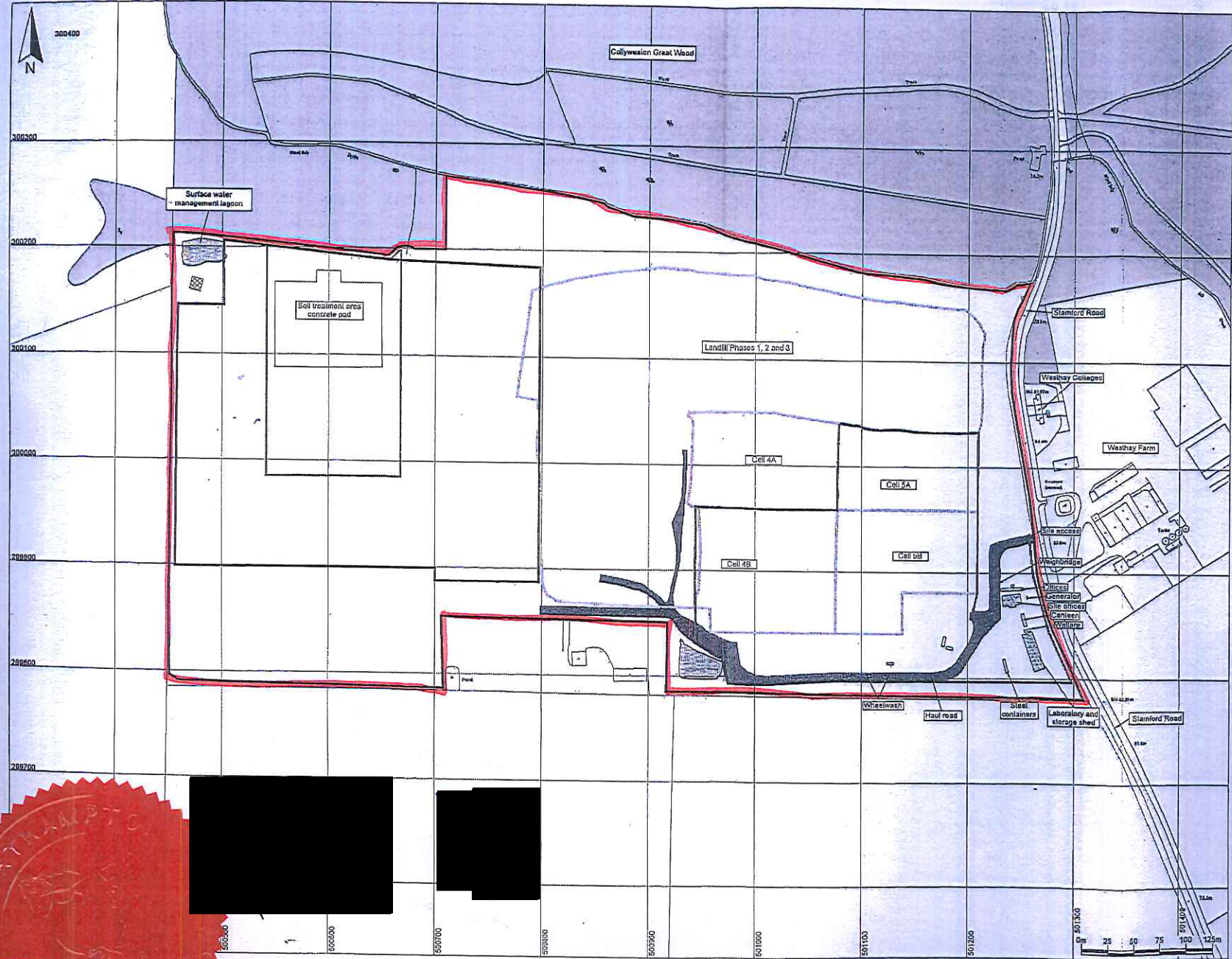
SCHEDULE 2

LLW COMMUNITY FUND










1. The Council shall continue to carry out all the necessary steps required to administer the Community Fund and shall secure prior approval from the Owner, such approval not to be unreasonably delayed or withheld, as to the appropriate set up and administration of the Community Fund PROVIDED THAT both the Owner and the Council shall be required to be a signatory for the release of any and all monies from the Community Fund.
2. The Council shall be responsible for the day to day administration of the Community Fund.
3. The Council shall only be entitled to use the monies in the Community Fund for the Specified Purposes AND PROVIDED THAT the project concerned must lie within a maximum 10 mile radius of the Land.
4. In respect of each project that the Council allocates monies to in accordance with paragraph 3 above the Council shall prepare and send a letter to the project coordinator confirming that the Owner is responsible for donating the relevant monies to that particular project.
5. The Council shall provide an annual report to the Owner setting out details of the relevant projects that monies have been allocated to from the Community Fund.
6. The Council shall allow the Owner to carry out an annual open book audit of the accounts for the Community Fund upon receipt of 21 days written notice of such request.

HIGHWAY CONTRIBUTION

7. The Council shall only use the Highway Contribution for the Highway Purposes.
8. In the event that all or any part of the Highway Contribution has not been expended by the Council in accordance with the provisions of paragraph 7 of this Schedule on completion of the Development such sums as remain unexpended shall be returned by the Council to the Owner together with interest thereon calculated at the rate of 2% above the base rate of Barclays Bank plc from the date of payment by the Owner.



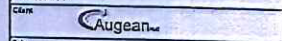
Key / Notes

-  Boundary of the East Northants Resource Management Facility (planning permission reference EN05/1264/C) and approximate boundary of Permit Number EPR/TP3-436/W for the hazardous waste landfill
-  Boundary of the soil treatment facility (planning permission references 07/0048/WAS opt. 07/0183/W/C)
-  Boundary of the LLW disposal area (Appeal reference APP/K28004/10/2128538/NW/F and planning application reference 06/00531/WAS) and approximate boundary of Permit Number CD6503 for LLW disposal
-  Approximate location of the currently consented landfill cell boundaries
-  Approximate boundary of Permit Number YP3134X/B for the soil treatment facility
-  Current haul roads
-  Woodland
-  Surface water collection areas
-  Existing gas flare compound

NOT TO SCALE

Rev	Status	Drn	App	Chk	Date
	Final	KR	SPS	LH	10/04/12

Site EAST NORTHANTS RESOURCE MANAGEMENT FACILITY



Note: The current site layout and the current planning permission boundaries

Figure ES2 Rev 12.500@A2

Drawing Ref: AL/RC/E04-12/16764
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