

DATED 27<sup>th</sup> June 2011

NORFOLK COUNTY COUNCIL

- and -

BIFFA WASTE SERVICES LIMITED

- and -

OLIVER WILLIAM ARNOLD & HANNAH RACHEL IRENE ARNOLD

- and -

CEMEX UK OPERATIONS LIMITED

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**AGREEMENT**

Under Section 106 of the  
Town and Country Planning Act 1990  
relating to land at Reepham Road Attlebridge

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Head of Law  
Norfolk County Council  
County Hall  
Martineau Lane  
Norwich  
NR1 2DH

NS/28318

LLC Registered  
5/7/11

THIS AGREEMENT is made by Deed the 27<sup>th</sup> day of June 2011

**B E T W E E N:**

- (1) **NORFOLK COUNTY COUNCIL** of County Hall Martineau Lane Norwich (the "County Council")
- (2) **BIFFA WASTE SERVICES LIMITED** (Company No. 946107) of Coronation Road Cressex High Wycombe Bucks HP12 3TZ (the "Developer")
- (3) **OLIVER WILLIAM ARNOLD** and **HANNAH RACHEL IRENE ARNOLD** of Spring Farm Felthorpe Norfolk NR10 4DT (the "Owners")
- (4) **CEMEX UK OPERATIONS LIMITED** (Company No. 658390) of Cemex House Coldharbour Lane Thorpe Egham Surrey TW20 8TD ("the Tenant")

**AND RECITES:**

- (1) The Developer is the freehold owner of part of the land registered at the Land Registry under Title Numbers NK334874 and NK165000 ("the Developer's Land"). The Developer's Land is shown coloured blue on the attached plan ("the Plan")
- (2) The Developer's Land is subject to an Agreement for Lease dated 9 November 2005 in favour of the Tenant.
- (4) The Owners are the freehold owners of the remainder of the Land ("the Owners' Land") being part of land registered at the Land Registry under Title Number NK339254 and the Developer has the benefit of an option to acquire an interest in such land under an Option Agreement dated 9 November 2005 and made between Biffa Waste Services Limited (1) CEMEX UK Operations Limited (2) ("Option Agreement").
- (5) The application site ("the Land") comprises both the Developer's Land and the Owners' Land and is shown edged red on the Plan.

- (6) The County Council is a Local Planning Authority within the meaning of the Town and Country Planning Act 1990 (the "Act") for the area within which the Land is situated
- (7) The Developer has made application to the County Council (reference C/5/2008/5015) (the "Application") in accordance with the Act and the Orders and Regulations for the time being in force thereunder for planning permission to develop the Land by excavations to create engineered and contained landfill void for the disposal of non hazardous and inert waste, with the deposit of extracted material to form an advance landscaping scheme and proposed restoration works; retention of access; site reception building area including car parking areas; modular buildings (for use as reception office, managers office, meeting room, mess room and kitchen, stores and toilet), generator and septic tank, erection of materials recovery facility for the recovery, bulking and transfer of direct delivered sourced segregated dry material and co mingled recyclables, retention of existing site reception area; retention of modular buildings, leach ate plant, weighbridge, landfill gas electricity generator, flare compound and associated infrastructure works (the "Development")
- (8) Subject to completion of this Agreement the County Council have resolved to grant planning permission for the development pursuant to the Application (the "Planning Permission")
- (9) The obligations created by this Agreement are planning obligations within the meaning of Section 106 of the Act (as amended) and are enforceable by the County Council

- (10) for the purposes of this Agreement "Commencement" shall mean the date on which a material operation is carried out as defined in section 56(4) of the Act and "Commence" and "Commenced" shall be construed accordingly
- (11) for the purposes of this Agreement "the Drains" shall mean the surface water drainage system detailed in the Environmental Statement Attlebridge, Volume 2, version A.0 07514290223 dated July 2008, Chapter 6 Water Resources and Flood Risk dated July 2008 and the Flood Risk Assessment contained in Volume 3 of the Environmental Statement Attlebridge at Appendix ES6.4 reference 07514290223.536/A.0 dated July 2008 and as amended by the Environmental Statement Attlebridge Volume 7, version A,0 08514290351 and the revised Flood Risk Assessment reference 08514290351.512/A.1 dated March 2010 contained in Appendix ES6.4 and the associated approved drawings submitted as part of the Application

**NOW THIS DEED WITNESSES** as follows:

1. This Agreement is made in pursuance of Section 106 of the Act Section 111 of the Local Government Act 1972 and all other enabling powers
- 2.1 The Developer and the Owners **HEREBY JOINTLY AND SEVERALLY COVENANT** with the County Council to observe and perform the covenants set out in Schedules 1 2 and 3 PROVIDED THAT the Owners shall only be bound in so far as the obligations affect land within their ownership unless they commence or carry on the Development in which case they will be bound to the full extent of this Agreement
3. For the avoidance of doubt the parties hereto agree and declare that the Developer's Land is also bound by and will continue to be bound by the terms

of a Section 106 Agreement dated 27<sup>th</sup> February 1998 and made between the County Council of the first part, Hales Waste Control Limited of the second part and Atlas Aggregates Limited of the third part

4. The Developer hereby covenants with the Owners to indemnify the Owners and the Tenant against all costs claims and demands in respect of non-performance of any of the obligations contained herein
5. The Tenant acknowledges that its interest in the Land is bound by the terms of this Agreement PROVIDED THAT the Tenant shall only be bound in so far as its terms affect the Tenant's interest under the Option Agreement AND if the Tenant should commence or carries on the Development the Tenant will be bound to the full extent of this Agreement as to that part of the Land upon which it commences or carries out the Development under the Option Agreement
- 6.1 The parties will attempt in good faith to resolve any dispute or claim arising out of or relating to this Agreement promptly through negotiations between the respective senior executives of the parties who have authority to settle the same
- 6.2 If the matter is not resolved through negotiation the parties will attempt in good faith to resolve the dispute or claim through an Alternative Dispute Resolution ("ADR") procedure as recommended to the parties by the Centre for Dispute Resolution
- 6.3 If the matter has not been resolved by an ADR procedure within 28 days of the initiation of such procedure or if either party will not participate in an ADR procedure the dispute may be referred by either party to arbitration for decision by a person appointed by agreement between the parties or in

default of agreement by the President for the time being of the Institute of Civil Engineers who shall act as an expert and not as an arbitrator and whose decision shall be final and binding upon the parties

- 6.4 Nothing in this clause shall apply to the recovery of a liquidated sum or prevent the parties from commencing or continuing court proceedings
- 7.1 Without prejudice to the enforcement of restrictions and obligations against successors in title no party shall be liable for any breach of this Agreement if at the time the breach occurs they have no interest in the Land or that part of the Land in respect of which the breach occurs.
- 7.2 The County Council shall not be liable to any person under this Agreement after that person has parted with all interest in the land but without prejudice to any liability arising prior thereto
8. No waiver (whether express or implied) by the County Council of any breach of default by the Owners the Developer or their respective successors in title in performing or observing any of the terms and conditions of this Agreement shall constitute a continuing waiver and no such waiver shall prevent the County Council from enforcing any of the terms and conditions or from acting upon any subsequent breach or default in respect thereof by the Owners the Developer or their respective successors in title
9. If the Planning Permission is quashed revoked or expires without implementation then this Deed shall absolutely determine
10. The Owners and the Developer hereby covenant that they are the freehold owners of the Land to the extent of their respective interests and have full power to enter into this Agreement that the Land is free from all mortgages charges or other encumbrances and there is no person having any interest in

the Land other than those notified in writing to the County Council's Head of Law prior to the date hereof

11. The expressions "the County Council" "the Developer" "the Owners" and "the Tenant" shall include their respective successors and assigns as appropriate within the terms of Section 106 of the Act
12. The parties do not intend that any term of this Agreement shall be enforceable solely by virtue of the Contracts (Rights of Third Parties) Act 1999 by a person who is not a party to this Agreement
13. The Developer shall pay the County Council's reasonable legal costs on this Agreement
14. This Agreement shall be registered as a local land charge

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

## **SCHEDULE 1**

### **Traffic Routing**

With effect from the date of the Planning Permission that the Land shall not be used for the purposes authorised by the Planning Permission unless:

- 1.1 All heavy commercial vehicles within the meaning of S138 of the Road Traffic Regulation Act 1984 ("HCV") operated by the Owners or the Developer or their employees or otherwise under the direct control of the Owners or the Developer for the purposes of or in connection with the Development approach and leave the Land via the route shown in green on the Plan (the "Permitted Route")
- 1.2 in relation to HCVs not under the direct control of the Owners or the Developer all reasonable endeavours shall be used to ensure that such HCVs approach and leave the Land via the Permitted Route
- 1.3 there are affixed and displayed and maintained on the Land such signs approved by the County Council in writing as to locations numbers size and legend and as shall be reasonably required from time to time by the County Council (including any modifications, additions or subtractions to those first or subsequently approved by the County Council)
2. It is hereby agreed and declared for the purposes of clause 1.2 that the requirement to use reasonable endeavours:
  - 2.1 requires the Owners and the Developer to incorporate in all contracts with persons likely to visit the Land a term having the same effect as clause 2.1
  - 2.2 requires the Owners and the Developer to communicate in writing with persons whose HCV's from time to time regularly visit the Land informing them of the Permitted Route and requesting that their HCV's follow it at all



times when visiting the Land at a method and frequency as shall be reasonably likely to secure co-operation with the use of the Permitted Route such method and frequency to be determined by the Owners and the Developer and disclosed to the County Council as requested or at the County Councils discretion shall be as reasonably determined by the County Council

- 2.3 requires the Owners and the Developer on receiving information that any driver of a HCV shall have taken any route to or from the Land other than the Permitted Route to take all necessary and lawful action possible against the Driver to ensure future compliance
- 2.4 will be breached if an employee of the Owners or the Developer as driver of an HCV uses a route other than the Permitted Route after at least two warnings, one of which shall be in writing

## **SCHEDULE 2**

### **Surface Water Drainage System**

1. Not to allow commencement of the Development ("Commencement") unless and until a scheme for the management and maintenance of the Drains ("the Drains Management Scheme") has been submitted to and approved by the County Council such scheme to include:
- 1.1 an obligation to convene a meeting with the County Council and/or its authorised representatives to discuss detailed management and maintenance of the Drains within 3 months of the date of the Planning Permission

- 1.2 an obligation to establish within six months of Commencement a monitoring group consisting of representative of the Owners, a representative of the Developer, a representative of the Tenant and a representative of the County Council such group to monitor the management and maintenance of the Drains
2. Following construction of the Drains in accordance with condition 3 of the Planning Permission to thereafter manage and maintain the Drains in accordance with the Drains Management Scheme to the satisfaction of the County Council so as to ensure they operate effectively in perpetuity
3. The period during which maintenance and management is to take place shall be in perpetuity or until the earlier of the following events:
  - 3.1 The development of the Land pursuant to Planning Permission for an alternative use
  - 3.2 The County Council being satisfied on reasonable grounds that the maintenance and management of surface water drainage is no longer required

### **SCHEDULE 3**

#### **Management of Heathland**

1. Within six months of the date of Commencement to submit for approval by the County Council in writing (such approval by the County Council not to be unreasonably withheld or delayed) a detailed scheme for the long term

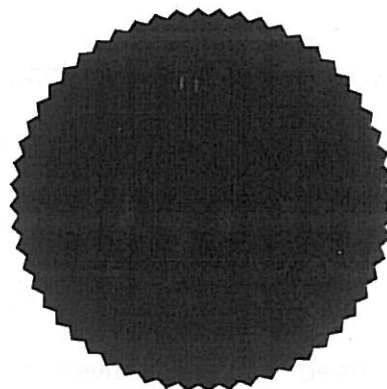
management of the heathland and wildlife habitats ("the Habitats") detailed on the Restoration Master Plan Drawing No. PAS 8 ("the Heathland Management Scheme") such scheme to include:

- 1.1 an obligation to convene a meeting with the County Council and/or its authorised representatives to discuss detailed management of the Heathland including the impact of public access upon the Habitats within 3 months of the date of the Planning Permission
  - 1.2 an obligation to establishment within six months of Commencement a monitoring group consisting of representative of the Owners, a representative of the Developer, a representative of the Tenant and a representative of the County Council such group to monitor the restoration of the Land and its management
- 2 upon restoration of the Land in accordance with conditions 4, 5 and 6 of the Planning Permission to implement and thereafter comply with the Heathland Management Scheme for a period of 25 years from implementation of the Heathland Management Scheme
3. from the date of the Commencement to grant reasonable access to the Habitats to authorised representatives of the County Council for the purpose of examining habitat designed for nature conservation by the Heathland Management Scheme. Access shall be subject to such reasonable requirements of the Developer and the Owners to ensure safety of the visitors and other personnel and security of the Heathland.

THE COMMON SEAL of THE NORFOLK  
COUNTY COUNCIL was hereunto  
affixed in the presence of:-

*Vick N*

HEAD OF LAW



30500

EXECUTED AS A DEED by the said  
BIFFA WASTE SERVICES LIMITED  
by a Director in the presence of:-

K.W.M

Witness' signature:

*D. Flyck*

Witness' name:

D. FLYCK

Address:

CORONATION ROAD

HIGH WILLOW H/12 72

Occupation:

SOLICITOR

SIGNED as a DEED by the said  
OLIVER WILLIAM ARNOLD in the  
presence of:-

*Oliver William Arnold*

Witness' signature:

*Kevin Wynd*

Witness' name:

KEVIN WYND

Address:

THE WAITING ROOMS, STATION HOUSE

POULSTHAM, DORSET NR20 5RD

Occupation:

FORMAN

SIGNED as a DEED by the said  
HANNAH RACHEL IRENE ARNOLD  
In the presence of:-

*Hannah*

Witness' signature: *[Signature]*

Witness' name: *KEVIN LYAND*

Address: *THE WAITING ROOMS, STATION HOUSE  
FALSTHAM, PERCETAM, NR20 5RD*

Occupation: *FOREMAN*

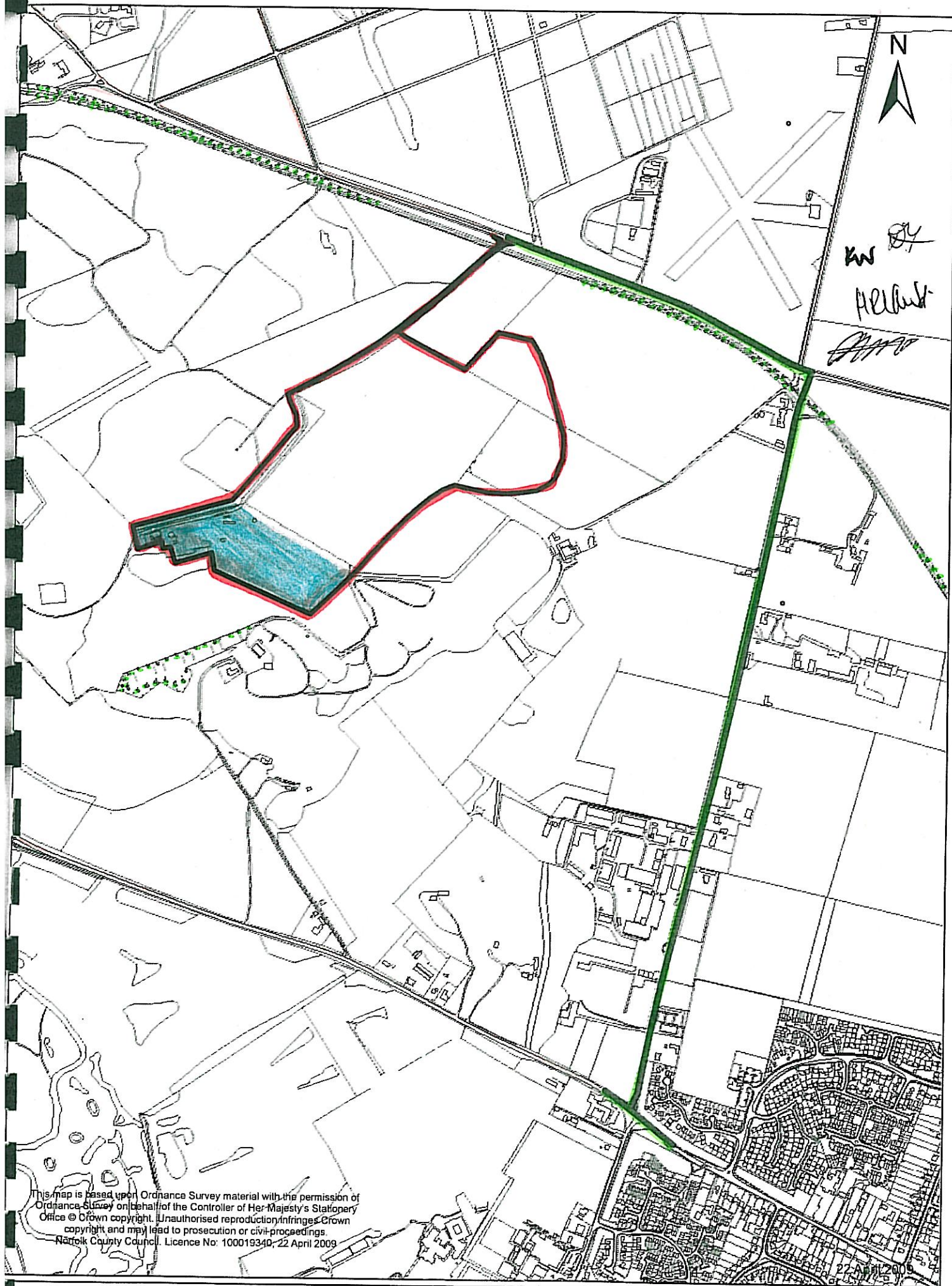
Executed as a deed by affixing  
THE COMMON SEAL of  
CEMEX UK OPERATIONS LIMITED  
In the presence of:-

Authorised signatory *[Signature]*

Assistant Company Secretary *[Signature]*







Attlebridge

*Handwritten signature*

**Norfolk County Council**

Planning & Transportation GIS

Scale 1: 10000

Centred on 615372 315903