



[●] June 2018
Subject to contract

Dear [●]

Memorandum of Understanding dated [●] [] 201* in respect of Lewisham Strategic Heat Network (the “Project”)

1. BACKGROUND

- 1.1 Save in respect of paragraphs 4 to 11 (inclusive) this letter sets out non-exhaustive heads of terms and is not intended to create legal relations nor be legally binding between Veolia and the London Borough of Lewisham (“Lewisham”). Paragraphs 4 to 11 (inclusive) are intended to be legally binding and, in consideration of the payment of one pound (£1.00) from Veolia ES SELCHP Ltd (“**Veolia**”) to the Mayor and Burgesses of the London Borough of Lewisham “**Lewisham**” (together with Veolia, the “**Parties**”; and “**Party**” shall mean each of them) (receipt of which is hereby acknowledged by Lewisham), the Parties each agree to comply with the their obligations set out in paragraphs 4 to 11 (inclusive).
- 1.2 This letter sets out certain key terms and conditions upon which Veolia and Lewisham will work together on the matters set out below under ‘Heads of Terms’. The Parties acknowledge that those matters would be relevant to their consideration in the future of any legally binding agreement between them in relation to the Project (a “**Formal Agreement**”).
- 1.3 The Parties acknowledge that nothing in this Memorandum of Understanding:
 - (a) shall prejudice the Council’s position as local planning authority or local highway authority or under any other statutory jurisdiction; and
 - (b) Shall not fetter Lewisham’s discretion in relation to consideration of any future decision, and no consent or approval by the Council given under the



provisions of this Memorandum of Understanding shall in any way waive diminish or affect any existing or future powers or duties of the Council in the exercise of its statutory functions as a local authority.

2. HEADS OF TERMS

The Parties will work on the matters set out below; and in particular will take into account the following commercial considerations and discussions:

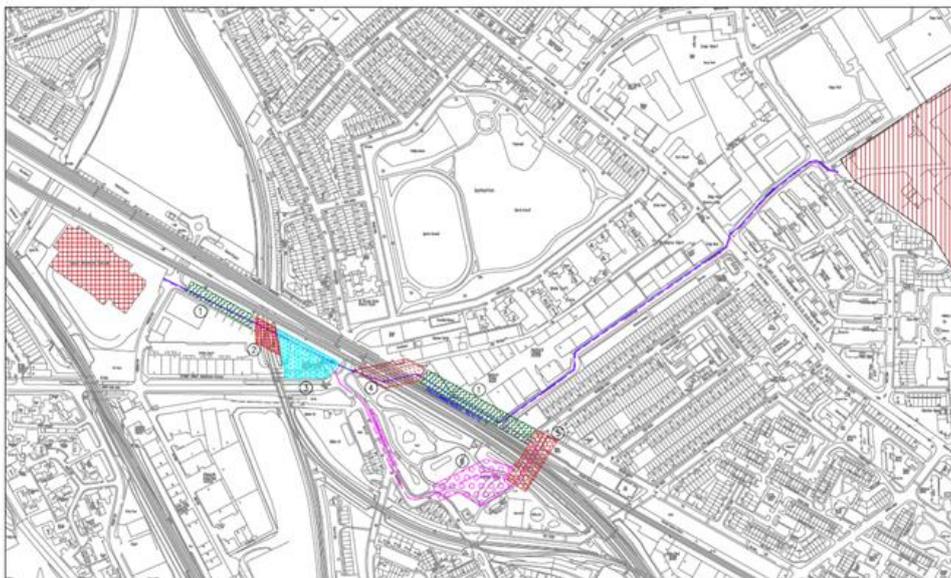
- **Veolia and SELCHP Ltd**

Veolia is the company responsible for the Operation and Maintenance of the South East London Combined Heat and Power Ltd (“SELCHP”) Energy from Waste facility. Veolia’s ultimate parent company is also a majority owner of SELCHP. SELCHP uses the services of Veolia for the management of a number of support activities including commercial development work.

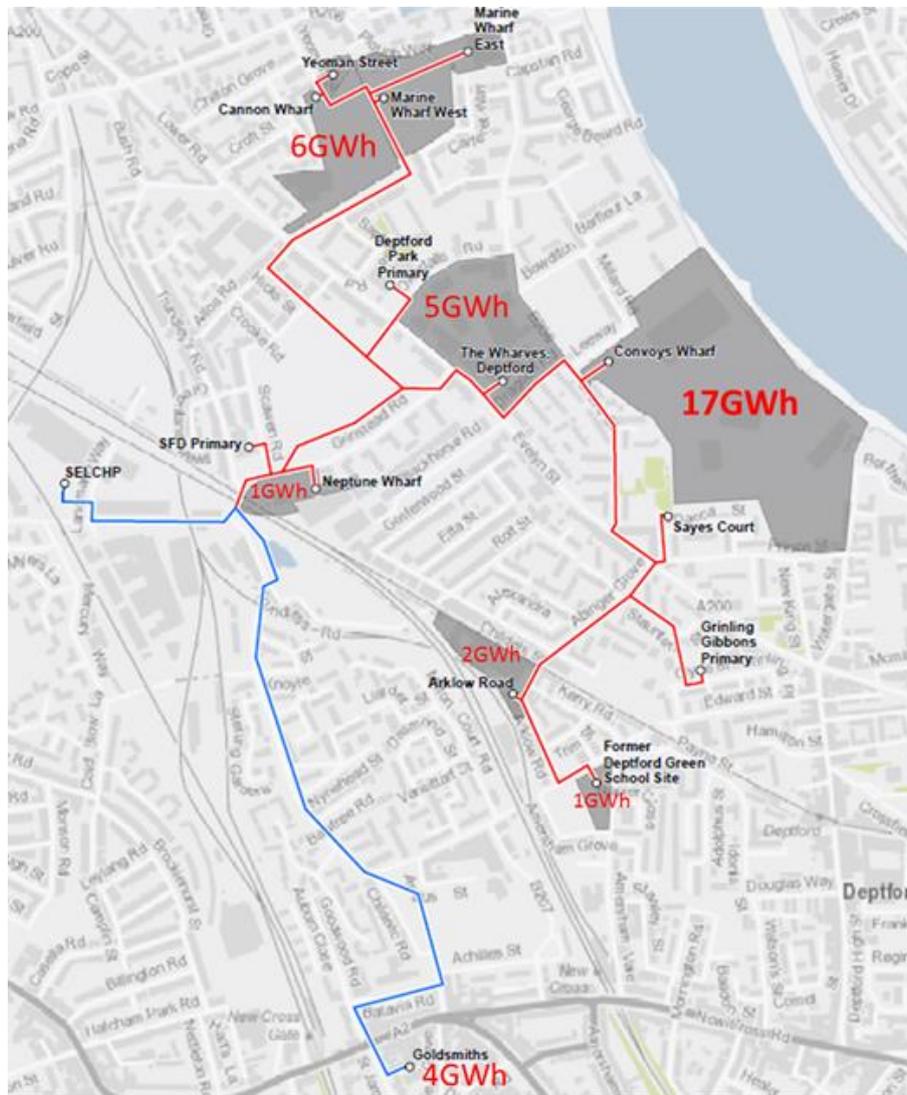
- **General context**

- The Government’s Clean Growth Strategy identifies building and extending heat networks as having a significant contribution to make in achieving low carbon heating.
- The Draft London Environment Strategy states that *“Energy efficient buildings and local energy generation will reduce carbon dioxide emissions and improve air quality; recycling and generating energy from waste will help reduce pressure on resources and landfill.”*
- The Draft London Plan states that development proposals should set out how they intend to *“reduce carbon dioxide emissions through the use of zero or low-emission decentralised energy where feasible, prioritising connection to district heating and cooling networks and utilising local secondary heat sources”*.
- Lewisham’s Sustainable Community Strategy 2008-2020 states that it aims to *“Work alongside the South East London Combined Heat and Power plant to progress sustainable measures for heating and powering local developments”*
- Veolia and SELCHP aim to support growth of its District Heating Network and supply new developments and customers with more heat, under viable commercial conditions.

- Another round of the Government's Heat Network Investment Programme funding is expected to open for applications in 2018 and Veolia and Lewisham are interested in securing funding to support a common development project.
- Veolia and Lewisham wish to work together to develop:
 - A first short-term scope ("phase 1"), whose aim would be to achieve the installation of a primary network route in the ground to connect to the Convoys Wharf development, and also the nearby Timber Yard development if this is commercially and technically feasible.
 - The following chart shows Veolia's current (technically underpinned) view of the best and most feasible route to Convoys' Wharf delivery point:



- Long term plan ("phase 2") covers Lewisham goals of a much more extensive network with connections to smaller loads, but with recognition of the requirement that this will necessarily have to be economically beneficial to Veolia as the heat supplier and network owner and operator, so will require funding or a means of lowering costs should the numbers be incompatible with reasonable commercial parameters.
- The following chart shows Lewisham's current (technically underpinned) view of the desired network scope and potential pipe routes:



To support phase 2, the parties agree in principle that the phase 1 pipes in the ground will be oversized, this will be scoped in the financial modelling and financed with HNIP money (or any other public fund to be determined), not the CW or Timber Yard customers.

- Veolia and Lewisham will work together to give the greatest chances of success of the Project (including both phase 1 and phase 2). This will involve in particular in the development part of phase 1 to determine the best pipe route, as initially the Veolia & Lewisham feasibility studies have suggested different routes.



Both parties agree to consider options for different models of working together in relation to investment in, and the design, delivery and operation of any heat network from SELCHP to sites in Lewisham.

The parties respective contributions (without being in any way exhaustive) will include

- **Lewisham:**
 - To determine whether any assistance can be provided to the project (e.g. advice on the correct processes to follow, assistance with communication between parties) if and when any easements need to be obtained from Lewisham or from property developments within Lewisham's boundary.
 - To determine whether any assistance can be provided to the project (e.g. advice on the correct processes to follow, assistance with communication between parties) if and when underground pipes and network features need to be installed, to help de-risk the project's endeavours.
 - facilitation (e.g. through improvement of internal communications) for parking suspensions / highways aspects
 - support and leadership with HNIP funding application
 - Assistance where applicable in dialogue with Network Rail related entities
 - Support and encourage developers to connect to the scheme
- **Veolia:**
 - financial modelling that will be shared with Lewisham and that in particular will reflect the actual cost of enabling phase 2 to happen within the phase 1 construction works
 - technical engineering leadership to ensure the system that will be delivered will be fit for purpose
 - project management leadership
 - commercial interaction to ensure Convoys Wharf & Timber Yard have financial incentives to connect to the system

3. INTERNAL APPROVALS

As soon as reasonably practicable after the date of this letter, Veolia shall commence all necessary internal procedures to obtain main board approval for these commercial terms to be included in any Formal Agreement (as set out in this Memorandum of Understanding). It is intended that this process will mirror Lewisham's discussions to



ensure all necessary approvals and guarantees are in place prior to entering into the Formal Agreement.

4. TIME LIMITS

4.1 The Parties shall work together in the spirit of mutual trust and co-operation with a view to entering into a Formal Agreement on or before one year from the signing of this agreement.

4.2 Subject to paragraph 4.1 and unless the Parties otherwise agree, if the Parties have not entered into a Formal Agreement by the date set out in paragraph 4.1 then this letter and all obligations in it shall automatically terminate.

4.3 This letter shall automatically terminate upon the Parties entering into a Formal Agreement.

4.4 Each Party shall be entitled to serve notice on the other Party (at its registered office) terminating this letter with immediate effect if such other Party is in breach of its obligations under this letter.

5. CONFIDENTIALITY

5.1 Save as permitted by paragraph 5.2, each of the Parties undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of any other Party or of any member of the group of companies to which any other Party belongs.

5.2 Each Party may disclose the other Party's confidential information:

- (a) to its employees, officers, representatives, partners or advisers who need to know such information for the purposes of the evaluation of the Proposal and/or the negotiation of the Formal Agreement. Each Party shall ensure that its employees, officers, representatives, partners or advisers to whom it discloses the other Party's confidential information comply with this paragraph 5; and
- (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.



5.3 No Party shall use the other Party's confidential information for any purpose other than the evaluation of the Proposal and/or the negotiation of the Formal Agreement.

5.4 Upon any termination of this letter in accordance with paragraph 4.3, each Party shall at the other Party's request, return to such other Party all confidential information in respect of such Party then within its possession or control, or destroy such confidential information using a secure and confidential method of destruction and provide to such other Party with such reasonable evidence as such other Party requires of such destruction as soon as reasonably practicable thereafter.

6. NO EXCLUSIVITY

6.1 For the purposes of this paragraph 6, “**Third Party Negotiations**” means, in relation to either Party, any negotiations between that Party (or any of their respective agents or employees) and any third party for the entry into a commercial arrangement in respect of the provision of Heat supply services at the Site which is similar to, or could reasonably be expected to, conflict with the Proposal and/or the Formal Agreement.

6.2 On signing this letter neither party shall be obliged to terminate, or procure the termination of, any Third Party Negotiations currently taking place.

7. COSTS AND LIABILITY

7.1 Each Party shall pay its own costs and expenses incurred in connection with the drafting and negotiation of the Project, this letter, a Formal Agreement (if any) and any documents contemplated by each of the same.

7.2 Save in respect of any matter for which it would be illegal to exclude or attempt to exclude liability, Lewisham's aggregate liability to Veolia arising under, out of or in connection with this letter (whether for breach of contract, tort, negligence and/or breach of statutory duty) shall be limited to £500,000 (five hundred thousand pounds).

7.3 Save in respect of any matter for which it would be illegal to exclude or attempt to exclude liability, Veolia's aggregate liability to Lewisham arising under, out of or in connection with this letter (whether for breach of contract, tort, negligence and/or



breach of statutory duty) shall be limited to £500,000 (five hundred thousand pounds).

8. INADEQUACY OF DAMAGES

Without prejudice to any other rights or remedies that either Party may have, each Party acknowledges and agrees that damages alone may not be an adequate remedy for any breach of paragraph 5 by the other Party. Accordingly, the non-defaulting Party shall be entitled to the remedies of injunction, specific performance or other equitable relief for any threatened or actual breach of paragraph 5.

9. THIRD PARTY RIGHTS

- 9.1 Nothing in this letter confers or is intended to confer on any third party any benefit or right to enforce any term of this letter pursuant to the Contracts (Rights of Third Parties) Act 1999.
- 9.2 Notwithstanding any term of this letter, the authorisation of any person who is not a Party is not required to rescind, vary or terminate this letter.

10. GOVERNING LAW

This letter and all disputes or claims (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with English law.

11. JURISDICTION

The Parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this letter or its subject matter or formation.



Yours faithfully

.....

For and on behalf of **VEOLIA**

We confirm our agreement to the above.

.....

.....

For and on behalf of **LEWISHAM**