

**CONFORMED COPY
OF THE PRINCIPAL CONTRACT DATED 31ST MARCH 2003
AND THE AMENDMENTS TO THE PRINCIPAL CONTRACT
PURSUANT TO THE DEED OF AMENDMENT DATED 28TH MAY 2003**

SCHEDULE 23

**OUTLINE CONSTRUCTION CONTRACTOR DIRECT
AGREEMENT**

DATED

(1) [THE CONSTRUCTION CONTRACTOR]

(2) BRIGHTON & HOVE CITY COUNCIL

(3) EAST SUSSEX COUNTY COUNCIL

(4) SOUTH DOWNS WASTE SERVICES LIMITED

AND

(5) [CONSTRUCTION CONTRACTOR'S GUARANTOR]

OUTLINE CONSTRUCTION CONTRACTOR DIRECT AGREEMENT

Herbert Smith
Exchange House
Primrose Street
London EC2A 2HS

Tel: 020-7374-8000
Fax: 020-7374-0888
Ref: 2141/4156/30814609

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SCHEDULE	STEP-IN UNDERTAKING	

THIS AGREEMENT is made on the _____ day of _____ .

BETWEEN:

- (1) _____ a company incorporated under the laws of England and Wales with registered number _____ whose registered office is at _____ (the “**Construction Contractor**”);
- (2) **BRIGHTON & HOVE CITY COUNCIL** whose principal office is at King’s House, Grand Avenue, Hove BN3 2SR (“**B&HCC**”);
- (3) **EAST SUSSEX COUNTY COUNCIL** whose principal office is at County Hall, St Ann’s Crescent, Lewes, East Sussex BN7 1UE (“**ESCC**”); [and]
- (4) **SOUTH DOWNS WASTE SERVICES LIMITED** a company incorporated under the laws of England and Wales with registered number 4362726 whose registered office is at 154a Pentonville Road, London NI 9PE (the “**Contractor**”); and
- [(5) _____ a company incorporated under the laws of England and Wales with registered number _____ whose registered office is at _____ (the “**Guarantor**”).]

WHEREAS:

- (A) Under the Principal Contract made pursuant to the Government’s Private Finance Initiative, B & HCC and ESCC (the “**Councils**”) and the Contractor have agreed the terms on which the Contractor will design, construct, finance and operate a joint integrated waste management service.
- (B) Under the Construction Contract the Contractor and the Construction Contractor have agreed the terms on which the Construction Contractor will, in relation to [Newhaven ERP] therein described design, execute and complete the works described in the Construction Contract including any variation to such works which has been or shall be effected thereunder.
- (C) It is a requirement of the Principal Contract that this Agreement be entered into by each of the Councils, the Contractor and the Construction Contractor.
- [(D) The Guarantor has provided a guarantee to the Contractor in respect of the Construction Contractor’s obligations under the Construction Contract and it is party to this Agreement to give certain undertakings when the Construction Contract is novated under this Agreement.]

[Note: Depending upon identity of the Construction Contractor a parent company guarantee may not be provided and all references throughout to the Construction Contract Parent Company Guarantee and the Guarantor will need to be removed. For example, if the Construction Contractor is the ultimate holding company in its group of companies.]

IT IS AGREED as follows:

1. DEFINITIONS AND CONSTRUCTION

1.1 Definitions

In this Agreement, (including the recitals and Schedules) unless the context otherwise requires:

1.1.1 terms and expressions defined in the Principal Contract shall (unless otherwise defined herein) have the same meaning in this Agreement; and

1.1.2 the following terms shall have the following meanings:

“**Agreement**” means this document including the recitals and the Schedules hereto.

“**Construction Contract**” means the agreement made on or about the date of this Agreement between (1) the Contractor and (2) the Construction Contractor.

[“**Construction Contract Parent Company Guarantee**” means the parent company guarantee provided by the Guarantor pursuant to the Construction Contract.]

[“**Cut Off Date**” means the date upon which all the conditions in clause [10.7] of the Financier’s Direct Agreement have been satisfied.]

“**Effective Novation Date**” has the meaning given to it in Clause 4.3.

“**Financier’s Direct Agreement**” has the meaning given to it in the Principal Contract.

“**Lead Authority**” means ESCC unless B&HCC is appointed pursuant to the Principal Contract and notified to the other Parties to this Agreement.

“**Novation Agreement**” means an agreement to be entered into in accordance with Clause 4.6.2.

“**Party**” or “**Parties**” means a party or the parties to this Agreement, as applicable.

“**Principal Contract**” means the Principal Contract dated [] between (1) B & HCC, (2) ESCC and (3) the Contractor.

“**Proposed Novation Notice**” has the meaning given to it in Clause 4.1.

“**Proposed Substitute**” has the meaning given to it in Clause 4.1.

[“**Representative**” has the meaning given to it in the Financier’s Direct Agreement.]

[“**Senior Lender/Security Trustee/Agent**” means .]

“**Step-In Confirmation**” has the meaning given to it in Clause 3.3.

“**Step-In Date**” has the meaning given to it in Clause 3.1.

“**Step-In Notice**” has the meaning given to it in Clause 3.1.

“**Step-In Notice Date**” means the date on which a Step-In Notice is given by the Lead Authority to the Construction Contractor.

“**Step-In Period**” means the period commencing on the Step-In Date and ending on the earlier of:

- (A) the date of termination of the Step-In Period pursuant to Clause 3.7 or such longer period as shall arise from the operation of Clause 4.9;
- (B) the Step-Out Date; or
- (C) the Effective Novation Date.

“**Step-In Undertaking**” means an undertaking in the form set out in the Schedule.

“**Step-Out Date**” has the meaning given to it in Clause 3.6.

“**Substitute**” has the meaning given to it in Clause 4.6.1.

1.2 Construction

In this Agreement:

- 1.2.1 headings and sub-headings are for ease of reference only and are not to be taken into consideration in the interpretation or construction of this Agreement;
- 1.2.2 all references to Clauses and Schedules are references to clauses of and schedules to this Agreement;
- 1.2.3 the Schedules to this Agreement are an integral part of this Agreement and reference to this Agreement includes reference thereto;
- 1.2.4 all references to agreements, documents or other instruments include (subject to all relevant approvals) a reference to that agreement, document or instrument as amended, supplemented, substituted, novated or assigned from time to time;
- 1.2.5 all references to any statute or statutory provisions include reference to any statute or statutory provision which amends, extends, consolidates or replaces the same or which has been amended, extended, consolidated or replaced by the same and shall include any orders, regulations, codes of practice, instruments or other subordinate legislation made under the relevant statute or statutory provision;

- 1.2.6 any reference to time of day is a reference to London time;
- 1.2.7 the words “herein”, “hereto”, and “hereunder” refer to this Agreement as a whole and not to the particular Clause or Schedule in which such word may be used;
- 1.2.8 “person” includes any individual, partnership, firm, trust, body corporate, government, governmental body, authority, agency or unincorporated body of persons or association;
- 1.2.9 any reference to a public organisation shall be deemed to include a reference to any successor to such public organisation or any organisation or entity which has taken over the functions or responsibilities of such public organisation;
- 1.2.10 all monetary amounts are expressed in pounds sterling;
- 1.2.11 references to the word “includes” or “including” are to be construed without limitation;
- 1.2.12 words importing the singular include the plural and vice versa;
- 1.2.13 words importing a particular gender include all genders; and
- 1.2.14 the liability of the Councils under this Agreement shall be joint and several.

2. NOTICES OF TERMINATION

2.1 Notice of Event of Default of the Principal Contract

The Lead Authority shall, as soon as possible after it becomes aware of:

- 2.1.1 the occurrence of a Contractor Default; or
- 2.1.2 an event entitling the Lead Authority, the Councils or the [Senior Lender/Security Trustee/Agent] to terminate the Principal Contract pursuant to the Financier’s Direct Agreement;

which, in each instance, has not arisen as a direct result of a default on the part of the Construction Contractor under the Construction Contract, notify the Construction Contractor [and the Guarantor] of such occurrence.

2.2 Notice of termination of the Principal Contract

The Lead Authority shall, as soon as possible after a notice is issued terminating the Principal Contract as a result of the circumstances referred to in Clause 2.1, notify the Construction Contractor [and the Guarantor] of the issue of such notice. The Construction Contractor shall be entitled to treat and rely upon the notice issued pursuant to this Clause 2.2 as conclusive evidence for the purposes of this Agreement that the Lead Authority has issued a termination notice under the Principal Contract.

2.3 Notice that termination of the Principal Contract becomes effective

The Lead Authority shall, as soon as possible after the termination of the Principal Contract becomes effective as a result of the circumstances referred to in Clause 2.1, notify the Construction Contractor [and the Guarantor] of such occurrence. The Construction Contractor shall be entitled to treat and rely upon such notice as conclusive evidence for the purposes of this Agreement that the Principal Contract has been terminated in such circumstances.

2.4 Financier's Direct Agreement

The Lead Authority acknowledges that the rights under Clauses 3 and 4 shall not be exercised until the Lead Authority is permitted so to do by the terms of the Financier's Direct Agreement (where relevant).

2.5 Information to be provided by the Construction Contractor

Within [20] Working Days of receipt of a notice provided pursuant to Clause 2.1, the Construction Contractor shall promptly provide the Lead Authority with written notice of:

- 2.5.1 any sums which are due and payable by the Contractor to the Construction Contractor as at the date of the notice provided pursuant to Clause 2.1 and any amounts which will become due and payable by the Contractor to the Construction Contractor as at that date;
- 2.5.2 any unperformed obligations and outstanding liabilities of the Contractor as at the date of the notice provided pursuant to Clause 2.1 and any obligations to be performed by the Contractor by that date; and
- 2.5.3 supporting information and materials illustrating in reasonable detail the matters specified in the notice given pursuant to this Clause 2.5.

The Construction Contractor shall inform the Lead Authority in writing as soon as reasonably practicable of any change in such sums, amounts, obligations or liabilities referred to in this clause, including any further sums, amounts or obligations thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or discharged (as the case may be).

3. STEP-IN AND STEP-OUT

3.1 Step-In Notice

If termination of the Principal Contract becomes effective under Clause 2.3, the Lead Authority may give written notice to the Construction Contractor (a "**Step-In Notice**") of its intention to issue a Step-In Undertaking on a date specified in the Step-In Notice (the "**Step-In Date**") which shall be no later than [20] Working Days after the date on which the termination of the Principal Contract becomes effective.

Following receipt of a notice provided pursuant to Clause 2.1, the Construction Contractor shall not be entitled to terminate the Construction Contract (or its employment thereunder) on or before the Step-In Date save that the Construction

Contractor shall be entitled to terminate the Construction Contract (or its employment thereunder) during the period commencing on the date which is [40] Working Days following receipt of the notice given under Clause 2.1 and ending on the day before the date on which the Lead Authority gives a notice under Clause 2.2.

3.2 Notice by the Construction Contractor

Without prejudice to Clauses 2.5, within [10] Working Days of the date on which the Step-In Notice is given to the Construction Contractor shall, if it has not already done so, provide the Lead Authority with the information referred to in Clause 2.5 updated to reflect the same as at the date on which the Step-In Notice is given.

The Construction Contractor shall inform the Lead Authority in writing as soon as reasonably practicable of any change prior to the Step-In Date in such information including any further sums, amounts or obligations thereafter falling due and payable but unpaid or falling due for performance or discharge and unperformed or discharged (as the case may be).

3.3 Confirmation by the Lead Authority

At least [2] Working Days prior to the Step-In Date, the Lead Authority shall notify the Construction Contractor in writing confirming that it is prepared to issue a Step-In Undertaking (a “**Step-In Confirmation**”) or, subject to Clause 3.4, notify the Construction Contractor of its withdrawal of the Step-In Notice.

3.4 Withdrawal by the Lead Authority

If the Lead Authority notifies the Construction Contractor of its withdrawal of the Step-In Notice pursuant to Clause 3.3 and the Lead Authority has not given a Step-In Undertaking pursuant to Clause 3.5.1 or if the Lead Authority fails to give a Step-In Confirmation under Clause 3.3, the rights and obligations of the Parties shall be construed as if the Step-In Notice had not been given.

3.5 Step-In

3.5.1 If the Lead Authority gives a Step-In Confirmation in accordance with Clause 3.3 then on the Step-In Date the Lead Authority shall give to the Construction Contractor a Step-In Undertaking.

3.5.2 During the Step-In Period, the Construction Contractor confirms to the Lead Authority that, subject to the Construction Contractor’s right to suspend the carrying out of the Works for non-payment pursuant to Section 112 of the Housing Grants, Construction and Regeneration Act 1996, it has observed and performed and shall continue to observe and perform its duties and obligations under the Construction Contract provided however that the Lead Authority shall not assume and/or accede to the rights and/or entitlements of the Contractor under the Construction Contract arising on or prior to the Step-In Date unless and until the exhaustion by the Contractor, the [Senior Lender/Security Trustee/Agent and the Representative] of all of their direct or indirect legal rights and remedies against the Construction Contractor under the Construction Contract or, if earlier, the date on which the [Senior

Lender/Security Trustee/Agent] notifies the Lead Authority of the occurrence of the Cut Off Date pursuant to the Financier's Direct Agreement (if applicable).

3.5.3 During the Step-In Period the Construction Contractor confirms to the Lead Authority that it shall only be entitled to exercise its right of termination under the Construction Contract:-

(A) by reference to an event arising during (rather than before) the Step-In Period (and for the purposes of this Clause, where an act or omission giving rise to the commencement of a remedy period provided for in the Construction Contract occurs prior to, and remains unremedied by, the Step-In-Date, the said act or omission shall be deemed to be an event arising during the Step-In Period but the remedy period in relation thereto shall be deemed to commence on the Step-In-Date), provided that the following events (notwithstanding that they have occurred during the Step-In Period) shall not entitle the Construction Contractor to exercise such rights of termination during the Step-In Period:-

(1) any event of default of the Contractor under the Construction Contract; or

(2) an event which is a breach of the Construction Contract and which is capable of remedy and is remedied within any relevant remedy period set out in the Construction Contract; or

(B) if the Lead Authority fails in a material respect to perform or discharge when falling due for performance or discharge any obligation under the Step-In Undertaking or fails to procure such performance or discharge; or

(C) if such rights of termination arise in circumstances where there is no default under the Step-In Undertaking by the Lead Authority or under the Construction Contract by the Construction Contractor.

3.5.4 The Parties agree that during the Step-In Period the Construction Contractor will accept the instructions of the Lead Authority or its appointee (whose identity shall have previously been notified to the Construction Contractor in writing) to the exclusion of the Contractor (or its appointed contract administrator) for the purposes of the Construction Contract provided that such instructions:

(A) could have been issued by the Lead Authority or its appointee if it had been a party to the Construction Contract in lieu of the Contractor; and

(B) shall not adversely affect the rights and obligations of the Contractor and the Construction Contractor in respect of events arising on or before commencement of the Step-In Period.

3.6 Step-Out

The Lead Authority may, during the Step-In Period, give the Construction Contractor at least [10] Working Days' prior written notice of its intention to terminate the Step-In Period on such date as may be specified in the notice given under this Clause 3.6 (the "**Step-Out Date**") and, to the extent that the Lead Authority shall have complied with all of its obligations under the Step-In Undertaking, the Lead Authority shall be released from the Step-In Undertaking on the Step-Out Date.

3.7 End of Step-In Period

If:

3.7.1 no notice is given by the Lead Authority under Clause 3.6; or

3.7.2 the provisions of Clause 4.9 do not apply; or

3.7.3 an Effective Novation Date has not occurred;

then, the Step-In Period shall end on the Completion Date and, to the extent that the Lead Authority shall have complied with all of its obligations under the Step-In Undertaking, the Lead Authority shall be released from the Step-In Undertaking.

4. NOVATION

4.1 Proposed Substitute

Subject to Clause 4.2, at any time during which the Lead Authority is entitled to serve a Step-In Notice or at any time during the Step-In Period the Lead Authority may give notice (a "**Proposed Novation Notice**") to the Construction Contractor that it wishes itself or another person (a "**Proposed Substitute**") to assume by way of novation the rights and obligations of the Contractor under the Construction Contract.

4.2 Arrangements Affecting Novation

The following shall apply:-

4.2.1 where the Step-In Period has commenced, the Lead Authority shall not be entitled to serve a Proposed Novation Notice (whether under Clause 4.1 or 4.5) after the expiry of the Step-In Period;

4.2.2 where the Lead Authority has served a Proposed Novation Notice but not a Step-In Notice, the Lead Authority shall be entitled to serve a Step-In Confirmation and a Step-In Undertaking in accordance with Clauses 3.3 and 3.5 respectively as if the Proposed Novation Notice had been served on the Construction Contractor as a Step-In Notice (and for this purpose the Step-In Date shall be deemed to be the date which is [20] Working Days after termination of the Principal Contract becomes effective).

4.3 Information for consent to Novation

A novation in accordance with a Proposed Novation Notice shall be effective on the date falling [5] Working Days after the Construction Contractor consents to that novation in accordance with Clause 4.4 (the “**Effective Novation Date**”). The Lead Authority shall promptly supply the Construction Contractor with such information as the Construction Contractor reasonably requires to enable it to decide whether to grant such consent, including (without limitation) the following information in relation to the Proposed Substitute:

- 4.3.1 its name and registered address;
- 4.3.2 the names of its shareholders and the share capital held by each of them;
- 4.3.3 the names of its directors and secretary;
- 4.3.4 the manner in which it is proposed to finance the Proposed Substitute; and
- 4.3.5 such other information as may reasonably be required to satisfy the Construction Contractor as to the matters listed in Clause 4.4.

4.4 Grant of Consent

- 4.4.1 The Construction Contractor may withhold or delay consent to a novation only if:
 - (A) the Lead Authority fails to demonstrate to the Construction Contractor’s reasonable satisfaction the legal capacity, power and authority of the Proposed Substitute to become a party to and perform the obligations of the Contractor under the Construction Contract; or
 - (B) the Lead Authority fails to demonstrate to the Construction Contractor’s reasonable satisfaction that the financial resources and technical competence available to the Proposed Substitute are sufficient to perform the obligations under the Construction Contract; or
 - (C) the Proposed Substitute or any of the shareholders or financial backers of the Proposed Substitute are persons with whom the Construction Contractor is in dispute with where such dispute would be material in the context of the taking over of such Construction Contract.

The Construction Contractor’s consent shall be deemed to have been given if the Proposed Substitute is the Lead Authority, B&HCC or ESCC.

- 4.4.2 The Construction Contractor shall notify the Lead Authority in writing within [10] Working Days of receipt of a Proposed Novation Notice or receipt of all information required under Clause 4.3 (whichever is the later) whether it has decided to grant such consent to the Proposed Substitute. If the Construction Contractor does not consent in accordance with Clause 4.4.1, the Proposed Novation Notice shall be deemed withdrawn. If the Construction Contractor fails to respond to the Proposed Novation Notice within the period specified

above or is not entitled to withhold its consent under Clause 4.4.1, the Proposed Substitute shall be deemed to be accepted.

4.5 Subsequent proposed Novations

If the Construction Contractor exercises its right under Clause 4.4 to withhold its consent to a Proposed Substitute this shall not prejudice the ability of the Lead Authority to give one or more subsequent Proposed Novation Notices pursuant to the provisions of Clause 4.1 containing changed particulars relating to the same Proposed Substitute or particulars relating to another Proposed Substitute which the Lead Authority has good cause to believe would fulfil the requirements of Clause 4.4.1 provided that only one Proposed Novation Notice may be outstanding at any one time.

4.6 Implementation of Novation

If the Construction Contractor consents to a novation pursuant to a Proposed Novation Notice (or is deemed to have given such consent pursuant to Clause 4.4.2) then on the Effective Novation Date:

- 4.6.1 the Proposed Substitute shall become a party to the Construction Contract (in such capacity, the “**Substitute**”) in place of the Contractor and thereafter shall be treated as if it were named as a party to the Construction Contract in place of the Contractor;
- 4.6.2 the Contractor and the Substitute shall enter into a novation agreement and any other requisite agreements pursuant to which the Substitute shall be granted all of the rights and assume all of the obligations and liabilities of the Contractor under the Construction Contract (whether actual, accrued, contingent or otherwise and whether arising on, before or after the Effective Novation Date); [and]
- 4.6.3 the Construction Contractor shall release the Lead Authority from any Step-In Undertaking given by it to the extent that the obligations of the Lead Authority under the Step-In Undertaking which have accrued up to the Effective Novation Date shall have been discharged; [and]
- 4.6.4 [the Contractor shall assign, novate or otherwise transfer to the Substitute, on terms reasonably requested by the Substitute, the Construction Contract Parent Company Guarantee and the Contractor and the Guarantor irrevocably confirm their consent to any such assignment, novation or other transfer and their agreement to the provisions of such guarantee applying mutatis mutandis to the Construction Contract as assigned, novated or otherwise transferred under this Agreement.]

4.7 Rights of Termination of Construction Contract

4.7.1 Where a Proposed Novation Notice is issued:

- (A) pursuant to Clause 4.2.1, the Construction Contractor shall not be entitled to terminate the Construction Contract (or its employment

thereunder) during the period expiring [20] Working Days after the issue of the Proposed Novation Notice; and

- (B) pursuant to Clause 4.2.2, the Construction Contractor shall not be entitled to terminate the Construction Contract (or its employment thereunder) on or before the Step-In-Date as provided for in Clause 4.2.2.

4.7.2 After the Effective Novation Date the Construction Contractor shall only be entitled to exercise its rights of termination under the Construction Contract in respect of any event arising after that date (and for the purposes of this Clause, where an act or omission giving rise to the commencement of such remedy period occurs prior to the Effective Novation Date and remains unremedied by the Effective Novation Date, the said act or omission shall be deemed to be an event arising after the Effective Novation Date but the remedy period in relation thereto shall be deemed to commence on the Effective Novation Date).

4.7.3 After the Effective Novation Date the Substitute shall only be entitled to exercise its rights of termination under the Construction Contract in respect of any event arising after that date (and for the purposes of this Clause, where an act or omission giving rise to the commencement of such remedy period occurs prior to the Effective Novation Date and remains unremedied by the Effective Novation Date, the said act or omission shall be deemed to be an event arising after the Effective Novation Date and the remedy period in relation thereto shall be deemed to commence on the Effective Novation Date and shall be extended by a further period of [60] days).

4.8 Continuation of Step-In Period

Service of a Proposed Novation Notice during the Step-In Period and the Construction Contractor's refusal to consent to that Proposed Novation Notice shall not affect the duration of the Step-In Period.

4.9 Continuing discussions

If there shall have been no Step-Out Date or Effective Novation Date and the Step-In Period shall not have been terminated under Clause 3.7 and as at the date for expiry of the Step-In Period:

4.9.1 the Lead Authority shall be in the course of conducting active discussions in good faith with a Proposed Substitute, then the Step-In Period shall not expire but shall continue until a date agreed by the Construction Contractor, provided that the Effective Novation Date shall not be later than [35] Working Days after the date on which the Step-In Period would otherwise expire; or

4.9.2 contracts have been exchanged with a Proposed Substitute to act as a replacement project company then the Step-In Period shall not expire but shall continue until the date such contracts are completed, provided that such date shall not be later than [35] Working Days after the date on which the Step-In Period would otherwise expire.

5. RIGHTS AND OBLIGATIONS UNDER THE CONSTRUCTION CONTRACT

5.1 Rights of termination

Subject to the provisions of this Agreement (including without limitation Clause 4.9) if:

5.1.1 no Step-In Undertaking has been given by the Lead Authority by or on the Step-In Date in the case where a Step-In Notice has been given by the Lead Authority; or

5.1.2 the Step-In Period ends and no Effective Novation Date has occurred;

the Construction Contractor shall be entitled, pursuant to the terms of the Construction Contract to terminate the Construction Contract in its entirety by notice to the Contractor and the Lead Authority having immediate effect.

5.2 Contractor's obligations to continue

Subject to the terms of the Novation Agreement, the other agreements referred to in Clause 4.6.2 and the Financier's Direct Agreement, the Contractor shall continue to be liable to the Construction Contractor for all of its obligations and liabilities, whenever occurring under or arising from the Construction Contract which shall not have been performed notwithstanding:

5.2.1 the giving of a Step-In Notice or Step-In Undertaking or the expiry of the Step-In Period or release of a Step-In Undertaking; or

5.2.2 the giving of a Proposed Novation Notice; or

5.2.3 any other provision of this Agreement.

5.3 Subsequent novation or assignment

In the event of a novation of the Construction Contract [and Construction Contract Parent Company Guarantee] coming into effect pursuant to Clause 4.6, the Lead Authority shall, notwithstanding any other provisions of this Agreement, be entitled to require that the Construction Contractor [and the Guarantor] to consent to a subsequent novation or assignment (as the case may be) of such documents to an alternative Proposed Substitute which is acceptable to the Construction Contractor in accordance with Clause 4.4 in which event the provisions of Clause 4 shall apply to such novation or assignment mutatis mutandis, provided that the Lead Authority shall not be entitled to require any such subsequent novation or assignment after the date on which the Step-In-Period would have expired if an Effective Novation Date or a Step-Out-Date had not occurred.

6 NOTICES

6.1 Address

Except as otherwise stated, all notices or other communications required in connection with this Agreement shall be in writing and sent by hand, by first class

prepaid post or by facsimile transmission to the relevant address or facsimile number set out below or to such other address or facsimile number as any Party may notify to the others in writing by not less than [5] Working Days' prior notice.

The Construction Contractor

Address:

Fax :

Attention :

The Contractor

Address:

Fax :

Attention :

ESCC

Address:

Fax :

Attention :

B & HCC

Address:

Fax :

Attention :

[The Guarantor

Address:

Fax :

Attention :]

6.2 Effective receipt

- 6.2.1 Subject to Clause 6.3 a letter delivered by hand shall be effective when it is delivered to the addressee.
- 6.2.2 A letter sent by first class prepaid post shall be deemed received on the second Working Day after it is put in the post.
- 6.2.3 Subject to Clause 6.3, a facsimile transmission shall be effective upon completion of the transmission.

6.3 Timing

A notice or other communication received on a day which is not a Working Day or after 5 p.m. on any Working Day shall be deemed to be received on the next Working Day.

7 STATUTORY RESPONSIBILITIES

- 7.1 In carrying out their statutory duties the powers, duties, rights and obligations of the Councils shall not be fettered or otherwise affected save as provided by the terms of the Construction Contract.
- 7.2 Save to the extent that the Construction Contract sets out a procedure for the application for or obtaining of any Necessary Consent, approval or consent, the Construction Contractor will apply for any Necessary Consent, approval or consent in the normal way.

8 ASSIGNMENT

Any Party shall not, without the prior written consent of the other Parties (such consent not to be unreasonably withheld or delayed), assign or otherwise dispose of this Agreement or any part thereof or any benefit or interest therein or thereunder.

9 COUNTERPARTS

This Agreement may be executed in one or more counterparts. Any single counterpart or a set of counterparts executed, in either case, by all the Parties hereto shall constitute a full and original instrument for all purposes.

10 WAIVER

Failure by any Party at any time to enforce any provision of this Agreement or to require performance by the other Parties (or either of them) of any provision of this Agreement shall not be construed as a waiver of such provision and shall not affect the validity of this Agreement or any part hereof or the right of the relevant Party to enforce any provision in accordance with its terms. The rights or remedies of any of the Parties may be waived only if such waiver is recorded in writing, signed by a duly authorised representative of the Party and refers to this Clause.

11 SEVERABILITY

If any condition, Clause or provision of this Agreement not being of a fundamental nature, is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected thereby.

12 WHOLE AGREEMENT

This Agreement (including the Schedules) constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the Parties with respect thereto.

13 EXPIRY

Without prejudice to any antecedent breaches, if the Construction Contract (or the Construction Contractor's employment thereunder) is terminated for whatever reason in accordance with its terms and the terms of this Agreement then the rights of the Parties under this Agreement shall be extinguished.

14 AMENDMENTS

No amendment to this Agreement shall be binding unless it is in writing and signed by the duly authorised representatives of the Parties.

15 THE CONTRACTOR'S ACKNOWLEDGEMENT

The Contractor joins in this Agreement to acknowledge and agree the arrangements effected hereby and agrees with each of the Lead Authority, the Construction Contractor [and the Guarantor] to observe the provisions of this Agreement at all times and, subject to the Financier's Direct Agreement, shall not in any way prejudice or affect the due enforcement hereof or to do or permit to be done anything which would be a breach hereof.

16 COSTS AND EXPENSES

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Agreement. The obligations of any Party under this Agreement are to be performed at that Party's own cost and expense.

17 LAW AND JURISDICTION

17.1 Law

This Agreement shall be governed by and construed in all respects in accordance with English Law.

17.2 Dispute Resolution Procedure

The Dispute Resolution Procedure contained in the Principal Contract shall apply mutatis mutandis to any claim or matter arising in relation to this Agreement.

18 CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement which that third party would not have had but for the Contracts (Rights of Third Parties) Act 1999.

IN WITNESS WHEREOF the Parties have executed and delivered this Agreement as a deed after the Schedules on the date first written.

SCHEDULE

Step-In Undertaking

[To be typed onto the notepaper of the Lead Authority]

[Date]

To: [The Construction Contractor]

Dear Sir,

We refer to the direct agreement (the “**Direct Agreement**”) dated [] made between [] (the “**Construction Contractor**”), **BRIGHTON & HOVE CITY COUNCIL (“B&HCC”), EAST SUSSEX COUNTY COUNCIL (“ESCC”),** [and] **SOUTH DOWNS WASTE SERVICES LIMITED** (the “**Contractor**”) [and [] (the “**Guarantor**”). Terms defined in the Direct Agreement shall have the same meaning when used herein.

We hereby undertake for the duration of the Step-In Period and subject to the terms of the Direct Agreement to:-

- (a) pay or procure the payment to the Construction Contractor, within [15] days of demand by the Construction Contractor of any sum properly due and payable that was unpaid by the Contractor under the Construction Contract before the Step-In Date;
- (b) perform or discharge or procure the performance or discharge of any unperformed or undischarged obligations of the Contractor under the Construction Contract which shall have fallen due for performance or discharge before the Step-In Date;
- (c) perform or discharge or procure the performance or discharge of any obligations of the Contractor under the Construction Contract which shall arise on or after the Step-In Date.

Signed by

for and on behalf of the Lead Authority