

16. SCHEDULE 16:
CONSTRUCTION CONTRACT

Part 1: MBT

Part 2: Alconbury

**CONSTRUCTION CONTRACT, INCORPORATING THE NEC3 ENGINEERING AND CONSTRUCTION
CONTRACT JUNE 2005 (WITH AMENDMENTS JUNE 2006)
(OPTION A: PRICED CONTRACT WITH ACTIVITY SCHEDULE)**

DATED _____ **200**

DONARBON WASTE MANAGEMENT LIMITED

- and -

NORTHSTONE (NI) LIMITED

**CONSTRUCTION CONTRACT
relating to
the design and construction of a Waste
Transfer Station and associated works at
Alconbury Hill, Alconbury, Huntingdon,
Cambridge**

CONTRACT AGREEMENT

THIS CONTRACT is made on

200

BETWEEN:-

- (1) **DONARBON WASTE MANAGEMENT LIMITED** (No 06054499) whose registered office is at Ely Road, Waterbeach Cambridge, CB25 9PG (the "**Employer**"); and
- (2) **NORTHSTONE (NI) LIMITED** (No NI004078) whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU (the "**Contractor**").

IT IS AGREED as follows:-

1. This contract incorporates:-
 - The Contract Data of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006), attached hereto; and
 - The core clauses, and the clauses for Options indicated in the Contract Data, and
 - The other documents defined in the Contract Data (copies of which are annexed and/or have been signed for identification purposes by or on behalf of the *Employer* and the *Contractor*).
2. Any disputes, differences or questions arising out of or relating to this contract are to be resolved in accordance with the adjudication and/or litigation provisions of this contract.
3. The Contract Date (the date when this contract came into existence) is 200 .

EXECUTED AS A DEED by the parties in duplicate on the date which first appears in this contract.

EXECUTED (but not delivered)
until the date hereof))
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof))
AS A DEED by)
NORTHSTONE (NI) LIMITED)
acting by:-)

Director

Director/Secretary

CONTRACT DATA

PART ONE - DATA PROVIDED BY THE EMPLOYER

4. GENERAL

The *conditions of contract* are the core clauses, and the clauses for Option A, dispute resolution Option W2 and secondary options X7, X16 and Z of the NEC3 Engineering and Construction Contract June 2005 (with amendments June 2006)

- The *works* are the design and construction of an industrial waste transfer station as more particularly described in the Works Information
- The *Employer* is
Name: Donarbon Waste Management, Donarbon Ltd
Address: Ely Road, Waterbeach, Cambs, CB25 9PG
together with his successors and assignees
- The *Project Manager* is
Name: Waterman Sustainable Energy Limited (No. 05143979)
Address: Waterman Group PLC, Pickfords Wharf, Clink Street, London, SE1 9DG
- The *Supervisor* is
Name: Waterman Sustainable Energy Limited (No: 05143979)
Address: Waterman Group PLC, Pickfords Wharf, Clink Street, London, SE1 9DG
- The *CDM Coordinator* is
Name: RPS Planning and Development Limited (No: 02947164)
Address: Centurion Court, 85 Milton Park, Abingdon, Oxfordshire, OX14 4RY
- The *Principal Contractor* for the purposes of the CDM Regulations is the *Contractor* or any successor appointed by the *Employer*
- The Works Information is presented in drawing format as listed on the Post Tender drawing list as copied in Appendix 6 and as described as follows:-

The works comprise the design and construction of an industrial waste transfer facility to be constructed on an existing operational site situated off the B1043 (Grid Ref NGR TL185 788). The boundaries of the site are shown on drawing no. 15186/A1/0100 rev D.

In undertaking the design and construction of the facility, the Contractor is to take recognition of all appropriate and current design and construction standards and to obtain all necessary approvals from relevant bodies. The Employer has submitted and obtained conditional Planning Approval for the works (copy of approved document provided in Appendix 7). It is the Contractor's responsibility to ensure that, in his design and construction of the facility, compliance with any/all conditions imposed by the Planning Authority are met or otherwise adhered to. All building structures and drainage works must be fully compliant with Building Regulation requirements and the facility must be designed and constructed to meet Environment Agency approval/licensing criteria.

The works comprise:

New Buildings

New Transfer Building have minimum internal dimensions (measured sheeting rail to sheeting rail) of 36m width by 72m long, providing approximately 2592m² gross internal floor area. The building is to have 8.0m (minimum) clear height to underside of haunch on the west elevation and 8.5m (minimum) clear to underside of haunch on the east elevation. Building to be provided with internal pushwalls, retaining walls and split level flooring to enable the facility to operate as a waste transfer facility.

The external elevation of the building shall be as shown on the post tender drawings. The building is to be provided with an insulated roof covering and uninsulated side cladding. Electrically operated roller shutter doors are to be provided with all doors capable of simultaneous operation from one central panel with individual override switches provided for each door.

Manual opening personnel doors are to be provided in the position shown on the drawings.

Roof water drainage is to be provided by syphonic drainage, connected to a suitable and appropriate surface water drainage network for discharge, off site, into an adjacent watercourse.

Channel drainage is to be provided across all front elevation vehicle access door entrances for connection to an external cesspool.

The building is to be provided with internal lighting suitable and safe for the intended use and be provided with mechanical operated extraction fans. External lighting is to be incorporated into the works.

Weighbridge Office

A new weighbridge office is to be constructed in the location shown on the drawings. The building size layout and form of construction are to be agreed with the Employer prior to construction.

The facility is to be provided with adequate and appropriate windows and doors. A small kitchen and toilet areas are to be provided within its internal layout. A schedule of fixtures and fittings is to be agreed with the Employer and included within the works. Surface water drainage from the weighbridge office is to discharge into a surface water drainage network for discharge into the adjacent watercourse. Foul drainage is to discharge into the existing dedicated foul drainage network by new connection.

The weighbridge office is to be provided with heating, lighting, potable water supply, electrical sockets and computer terminal points to the appropriate standard together with necessary cabling and data links to enable the facility to service both the existing and new weighbridge.

The facility shall be provided with appropriate and safe pedestrian access and have adequate protection from vehicle impact.

All layout and construction details associated with the design and construction of the weighbridge office are to be agreed with the Employer. The Contractor is to note that the Employer will be required to submit Elevation and other building information/details to the Planning Authority prior to its construction and requires the Contractor to include for such work in the programming and pricing for the facility.

The weighbridge office facility must be fully compliant with current Building Regulations.

Other Works

- Earthworks to create the required platforms and formations for the proposed works.
 - Site surface water and foul water drainage infrastructure to service the proposed facility. Noting surface water discharge restrictions from the site of 3 l/sec peak flow, or as otherwise agreed with the Environment Agency.
 - External concrete paving and other hardstanding, kerbs, channels and footways
 - Construction of a new site entrance/egress to a standard and at a location agreed with the Highway Authority
 - Installation testing and commissioning of new weighbridge including all controls, power and data links
 - Installation of ducting, cabling and draw chambers, to provide and controls electrical power and data distribution within the site
 - Provision of ducting, pipework, valves, valve chambers to provide portable water and fire main distribution within the site.
 - Miscellaneous works associated with provision of barriers, signage, white lining and fencing works appropriate and necessary to completing the works.
 - The Contractor is responsible for obtaining Building Control Approval and for arranging all necessary and associated inspections. The Contractor is also responsible, by novation of Civil and Structural Engineering services, for completing necessary design approvals for surface water and foul drainage infrastructure and for highway works associated with the new vehicle entrance. Any subsequent change in design/construction requirements from those shown on the information contained in the Contractors works information, that are required by the Contractor to achieve all final approvals, are to be administered in accordance with the terms of this Contract.
-
- The Site Information is presented in the Site Investigation Report (Ref: DLE 1015 dated May 2007). The Contractor is made aware of the constraints associated with design and construction of the new weighbridge facility which must not affect the operation of the existing weighbridge or the operation of the Employer's site.
 - The *boundaries of the site* are shown on the drawing 15186/A1/0100 Rev D
 - The *language of this contract* is English
 - The *law of the contract* is the law of England and Wales
 - The *period for reply* to a communication is two weeks unless the Contractor specifically provides otherwise
 - The Adjudication nominating body is the President or Vice President of TeCSA
 - The *tribunal* is litigation

5. NOT USED

6. TIME

- The *starting date* is 3 September 2007
- The *completion date* for the whole of the works is 24 March 2008
- The *Contractor* submits revised programmes at intervals no longer than 4 weeks

7. TESTING AND DEFECTS

- The *defects date* is sixty weeks after Completion of the whole of the works.
- The *defect correction period* is three weeks, or such lesser period as may be reasonably demanded by or on behalf of the *Employer* in relation to any Defect

8. PAYMENT

- The *currency of this contract* is the pound sterling
- The *assessment interval* is 4 weeks
- The interest rate is 3% per annum above the Base Rate of the Bank of England for the time being in force

9. NOT USED

10. RISKS AND INSURANCE

- The amount of the minimum limit of indemnity for insurance in respect of loss of or damage to property (except the works, Plant and Materials and Equipment) and liability for bodily injury to or death of a person (not an employee of the *Contractor*) due to activity in connection with this contract for any one event is [REDACTED]
- The amount of the minimum limit of indemnity for insurance in respect of death of or bodily injury to employees of the *Contractor* arising out of and in the course of their employment in connection with this contract is [REDACTED]
- The amount of the minimum limit of professional indemnity insurance for failure of the *Contractor* to comply with its design obligations under or in connection with this contract is [REDACTED]
- Insurers shall be lawfully carrying on such business in the United Kingdom

Optional Statements

- The *Employer* is willing to take over the works before the Completion Date provided Completion has occurred
- The period within which payments are made is twenty-eight days

If Option X7 is used (but not if Option X5 is also used)

- Delay damages for Completion of the whole of the works are [REDACTED] per week or part thereof

If Option X16 is used

- The *retention free* amount is not applicable
- The *retention percentage* [REDACTED]

If Option Z is used

- The *additional conditions of contract* are the Additional Conditions attached to the Contract Data.

PART TWO – DATA PROVIDED BY THE CONTRACTOR

Statements given in all contracts

- The Contractor is
 - Name **NORTHSTONE (NI) LIMITED** (No: N1004078) whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU
- The direct fee percentage is [REDACTED]
- The subcontracted fee percentage is [REDACTED]
- The *working areas* are the areas of the Site indicated on drawings No 15186/A1/0100 Rev D and 0130
- The key people are
 - (1) Name: Keith Dorling
 - Job: Contracts Manager
 - Responsibilities: Contact of all construction resources
 - Qualifications: HNC Construction
 - Experience: 32 years in engineering construction
 - (2) Name: Daniel Moore
 - Job: Site Manager
 - Responsibilities: Day to day site supervision of all trade
 - Qualifications: HNC Building Studies
 - Experience: 7 years in engineering construction

Optional Statements

If the Contractor is to provide Works Information for his design

- The Works Information for the Contractor's design is shown on the drawings as listed in Appendix 6 and in the Specification for Groundworks, Reinforced Concrete Works Drainage and External Works (Document Reference 15186 dated May 2007).

If a programme is to be identified in the Contract Data

- The programme identified in the Contract Data is 11033 Rev C 3 September 2007 Appendix 8.

If the Contractor is to decide the completion date for the whole of the works

- The completion date for the whole of the works is 24 March 2008.
- The activity schedule is the predicted cash flow and associated payment schedule dated 16/10/07 (Appendix 9).
- The tendered total of the Prices is [REDACTED] and is inclusive of [REDACTED] Provisional Sum, [REDACTED] Contingency and [REDACTED] Day Works
- The percentage for people overheads is [REDACTED]
- The published list of Equipment is the last edition of the list published by Civil Engineering Contractor's Association.
- The percentage for adjustment for equipment in the published list is [REDACTED]
- The hourly rates for Defined Cost of design outside the Working Areas are

Category of employee	hourly rate
Principle Engineer	[REDACTED]
Senior Engineer	[REDACTED]
Draughts Person	[REDACTED]
- The percentage for design overheads is [REDACTED]
- The categories of design employees whose travelling expenses to and from the Working Areas are included in Defined Cost are as listed in the "category of employee" above

OPTION Z – ADDITIONAL CONDITIONS ("the Additional Conditions")

AMENDMENTS AND ADDITIONS TO EXISTING CLAUSES

Clause 11	Identified and defined terms
11.2 (10)	In line 2 delete "the <i>Contractor</i> or" and insert: "any Statutory Body, the <i>Contractor</i> or"
11.2 (17)	At the end of the clause insert: "and including for the avoidance of doubt any design consultant appointed by or novated to the <i>Contractor</i> " Insert new clauses:
"11.2 (34)	Mortgagee includes any person that provides finance for any part of the <i>works</i> or the Site or any person having or acquiring a mortgage or charge over the <i>works</i> or the Site or any part thereof.
11.2 (35)	NOT USED.
11.2 (36)	NOT USED.
11.2 (37)	Documents include without limitation all bills of quantities, calculations, designs, details, drawings, plans, reports, specifications, surveys and other documents (including electronically stored information), prepared or to be prepared by or on behalf of the <i>Contractor</i> in connection with the <i>works</i> .
11.2 (38)	Working Day excludes Saturdays, Sundays and any day which is a bank holiday under the Banking and Financial Dealings Act 1971.
11.2 (39)	Statutory Body includes a local highways authority, a statutory undertaker, a public utility and any person, body or organisation formed or exercising powers pursuant to statute.
11.2 (40)	Statutory Agreement is an agreement entered into or to be entered into by the <i>Employer</i> with a Statutory Body where details of the agreement are provided to the <i>Contractor</i> in the Works Information.
11.2 (41)	The CDM Regulations are the Construction (Design and Management) Regulations 2007 and the related Approved Code of Practice issued by the Health & Safety Commission.
11.2(42)	Project Agreement is the agreement to be entered into and made between (1) the Authority and (2) the <i>Employer</i> .
11.2(43)	The Authority is Cambridgeshire County Council.
11.2(44)	The Longstop Date is 9 months after the Completion Date."

Clause 12

Interpretation and the Law

Insert new clauses:

- 12.5 Any reference to people or person includes any firm, company and any entity which has legal capacity and vice versa.
- 12.6 For the purposes of the Contracts (Rights of Third Parties) Act 1999, nothing in this contract confers or purports to confer on a third party any benefit or any right to enforce a term of this contract.
- 12.7 Any references to legislation or code of practice mean such legislation or code of practice as amended or re-enacted from time to time.
- 12.8 In this contract expressions which are defined in the Project Agreement shall have the same meanings where used in this contract, unless differently defined in clause 11 or elsewhere in the Additional Conditions.
- 12.9 The *Contractor* acknowledges that it has received and familiarised itself with a copy of the Project Agreement.
- 12.10 The *Contractor* acknowledges that it is (and the *Contractor* shall be deemed to be) on notice as to the terms of the Project Agreement, including the obligations and potential liabilities of the Employer arising under it. The *Contractor* acknowledges that such liabilities are (and such liabilities shall be deemed to be) within the contemplation of the *Contractor*. The *Contractor* shall not act or omit to act in any manner which would place the Employer in breach of any of the Employer's obligations under the Project Agreement.
- 12.11 The *Contractor* performs and assumes as part of its obligations under this contract the Employer's obligations, risks and liabilities under the Project Agreement insofar as the same relate to the *works* (as if the same were expressly referred to herein as obligations, risks and liabilities of the *Contractor* mutatis mutandis).
- 12.12 The *Contractor* ensures that none of the following occur and indemnifies the Employer against all claims, proceedings, loss, damage, costs and expenses (including legal costs) suffered or incurred in relation to any of the following:-
- any breach, non-observance or non-performance by the *Contractor* of those of its obligations referred to in clause 12.11;
 - any act or omission of the *Contractor*, a Subcontractor, or their respective servants or agents which causes, contributes or otherwise gives rise to any breach by the Employer of any of its obligations pursuant to, or liability under, the Project Agreement or otherwise gives rise to any other liability on the part of the Employer to the Authority or pursuant to any Legislation or Consent;
 - any negligence or breach of statutory duty on the part of the *Contractor*, a Subcontractor, or their respective servants or agents;
 - any act or omission of the *Contractor*, a Subcontractor, or their respective servants or agents which prejudices or leads to the diminution or loss of any rights, entitlements or other benefits of the Employer under the Project Agreement or any Legislation or Consent.
- 12.13 Where pursuant to the Project Agreement, any Legislation or Consent any certificates, drawings, notices, programmes or other documents or data in connection with the design, construction and completion of the *works* or the performance of the *Contractor's* other obligations under this contract are required to

be submitted by the Employer to the Authority or any other person, the *Contractor* shall (unless otherwise provided in this contract or otherwise instructed by the Employer in writing) submit the same on behalf of the Employer if requested to do so (and at the same time provide a copy to the Employer and such other person the Employer may designate) in the manner and within the time (if any) prescribed by the Project Agreement or Legislation or any Consent.

12.14 Where under the Project Agreement the taking of any step is required first to be notified to, or be subject to the prior consent or approval of, the Authority or any other person, then to the extent that such step relates to the design, construction or completion of the *works* or the performance of the *Contractor's* other obligations under this contract, the *Contractor* shall not proceed with such step until the relevant notification has been made or consent or approval given (or has been deemed to be made or given for the purposes of the Project Agreement).

12.15 To the extent that the same relate to the design, construction or completion of the *works* or the performance of the *Contractor's* other obligations under this contract, the Employer shall promptly pass to the *Contractor* and (where applicable) the *Contractor* shall promptly pass to the Employer, all information of whatever nature which either receives at any time from the Authority which either shall be at liberty lawfully to disclose.

12.16 Where, pursuant to the Project Agreement, the Employer is deemed to have inspected, examined, approved or otherwise satisfied itself as to any matter in connection with or affecting the design, construction or completion of the *works* or the performance of the *Contractor's* other obligations under this contract, the *Contractor* shall to the same extent be deemed to have inspected, examined, approved and satisfied itself as to that matter."

Clause 13 Communications

13.4 At the end of clause 13.4, add:

"or that the submission is not in accordance with the Works Information"

Clause 14 The Project Manager and the Supervisor

14.1 Delete clause 14.1, and substitute:-

"No communication (including instructions, the Defects Certificate and other certificates), no acceptance of a communication from the *Contractor*, and no acceptance or approval of the *Contractor's* work, by the *Project Manager* or the *Supervisor* changes the *Contractor's* liability under this contract (including the *Contractor's* responsibility to Provide the Works and his liability for Defects)."

Clause 17 Ambiguities and inconsistencies

17.1 Add the following new sentence to the end of clause 17.1:

"Instructions issued under this clause do not give rise to a compensation event."

Clause 19 Prevention

19.1 Delete.

Clause 20 Providing the Works

20.1 Add the following wording to clause 20.1:

"and without prejudice to the generality of the foregoing the *Contractor* carries out and completes the *works*:-

- in a good and workmanlike manner and with good quality and sound materials of their respective kinds so far as to be free from defects;
- in accordance with the terms and requirements of all Consents;
- in accordance with Good Industry Practice; and
- in accordance with Legislation."

Insert new clauses:

"20.2 The *Contractor* procures the carrying out of the design (including the preparation of Design Data) and the construction, completion, commissioning and testing of the *works* so that:-

- 20.2.1 the *works* fully comply with and meet all the requirements of this contract, the Works Information, Good Industry Practice, Guidance, all Consents and all applicable Legislation;
- 20.2.2 new materials only will be used in carrying out the *works* (unless the Employer agrees otherwise in writing) and all goods used or included in the *works* will be of satisfactory quality, and no products or materials will be used or included in the *works* that are not in conformity with relevant British Standards (or European equivalent) or codes of practice which at the time of use are widely known to construction contractors or members of the relevant design profession within the European Union to be deleterious to health or safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used;
- 20.2.3 all persons employed in connection with the performance of the *works* will be skilled and experienced in their several professions, trades and callings or adequately supervised by a person or persons in accordance with clause 20.2.4;
- 20.2.4 all aspects of the *works* will be supervised by sufficient numbers of persons having adequate knowledge of such matters for the satisfactory and safe performance of the *works* in accordance with this contract and having regard to the activities which are carried on at the Site;
- 20.2.5 the *works* are maintained in good order, kept in a safe condition and protected from damage, and working areas of the Site are secure against trespassers and kept clean and tidy so far as practicable having regard to the nature of the *works*; and
- 20.2.6 adequate retaining and supporting walls or structures are provided to support any adjoining property during the carrying out of the *works*.

20.3 During the carrying out of the *works* the *Contractor* does and procures that the Subcontractors do:-

- 20.3.1 not use or occupy or permit the Site upon which the *works* are being undertaken to be used or occupied for any purpose other than the carrying out of the *works*;
- 20.3.2 not deposit or manufacture or permit to be deposited or manufactured on the Site upon which the *works* are being undertaken any materials which are not required for the carrying out of the *works*;
- 20.3.3 not sell or dispose of any earth, clay, sand, gravel, chalk or other material from the Site upon which the *works* are being undertaken or permit or suffer the same to be removed, except so far as shall be necessary for the proper execution of the *works*, without the consent of the Employer which shall not be unreasonably withheld;
- 20.3.4 at the *Contractor's* sole cost transport all surplus materials arising from the *works* and arrange for the tipping of the same at such places as may lawfully be used for tipping and the *Contractor* shall ensure that such materials will not cause or give rise to pollution of the environment as defined by section 29(3) Environmental Protection Act 1990;
- 20.3.5 not permit or suffer the storage of materials or the parking of vehicles in the immediate external vicinity of the boundaries of the Site by the *Contractor* other than for reasonable periods necessary for carrying out of the *works* or loading and unloading or as set out in the Works Information;
- 20.3.6 ensure that all vehicles leaving the Site are adequately cleaned to prevent the deposit of waste materials and debris or the spread of disease on any Adjoining Property and if such material or debris is so deposited the *Contractor* forthwith employs such measures as shall be necessary to remove the material and debris and to clean and reinstate such Adjoining Property to the reasonable satisfaction of the owners or occupiers of the Adjoining Property;
- 20.3.7 not, in breach of any Legislation, Guidance or Consents permit any Contamination from the Site entering into any rivers or any ditches or services media on the Site and/or any Adjoining Property and shall not in breach of any Legislation, Guidance or Consents, permit or suffer the blockage of any of such rivers, ditches and services media by reason of anything done or omitted on the Site or any land upon which the Works are being undertaken, and complies at the *Contractor's* expense with any requirement of the Environment Agency or any other Relevant Authority so far as such requirements relate to or affect the *works*;
- 20.3.8 not gain access to or egress from the Site except in accordance with lawful rights of access, any Consents or as contemplated by the Works Information;
- 20.3.9 not without the written consent of the Employer erect or permit or suffer to be erected on the Site any temporary structure except site accommodation usual in connection with works of a like nature to the *works* or as contemplated by the Works Information;
- 20.3.10 not erect or exhibit or permit or suffer to be erected or exhibited on any part of the Site any signs or trade boards save those

previously approved in writing by the Employer (such approval not to be unreasonably withheld or delayed);

20.3.11 take all necessary steps in accordance with Legislation with regard to ensuring that the health and safety of all:-

(a) occupants of the Site;

(b) individuals invited or trespassing onto the Site; and

(c) occupants of Adjoining Properties;

are not adversely impacted upon by the undertaking of the *works*;

20.3.12 take responsibility at its own cost for obtaining all road closure and/or orders necessary to ensure the *works* proceed;

20.3.13 at its own cost comply with the terms of such agreements under sections 38 and 278 of the Highways Act 1980 and section 104 of the Water Industry Act 1990 as may be required in respect of the *works*;

20.3.14 notify the Employer and the Authority immediately of any articles of value or of archaeological or geological interest that are discovered in the course of carrying out of the *works* and so that (subject to the rights of the Crown) the Authority shall have the sole property in any such articles and they shall be dealt with as the Employer and the Authority shall reasonably direct; and

20.3.15 ensure that the laying of the Conduits and all service media connections to Conduits required in connection with the *works* are correctly made and rectify at the *Contractor's* own expense any Conduits wrongly laid and any wrong or crossed connection.

20.4 The *Contractor* fits out and equips the *works* with the plant and Equipment and all other plant, services, machinery, goods, fixtures, fittings, materials, consumables and equipment necessary to enable the *Contractor* to carry out and complete the *works* in accordance with this contract.

20.5 Within 21 days of Completion the *Contractor* without other charge to the Employer shall provide the Employer and the Authority with a set of as built drawings of the *works*."

20A Insert a new clause:

"The *Contractor* does not infringe any rights, reservations, covenants, restrictions, stipulations or other encumbrances binding upon or affecting the Site where details are made known to the *Contractor*."

20B Insert new clauses:

20B.1 Where the *Contractor* is the *CDM Co-ordinator*, he observes and performs the duties of the *CDM Co-ordinator* under and in accordance with the CDM Regulations. Where the *Contractor* is not the *CDM Co-ordinator*, he co-operates with and provides all the information and assistance that the *CDM Co-ordinator* reasonably requires.

20B.2 Where the *Contractor* is the *Principal Contractor*, he observes and performs the duties of the *Principal Contractor* under and in accordance with the CDM Regulations. Where the *Contractor* is not the *CDM Co-ordinator*, he co-operates

with and provides all the information and assistance that the *CDM Co-ordinator* reasonably requires.

21.1 Delete clause 21.1 and substitute

"The *Contractor* accepts and adopts all designs contained in and/or referred to in the Works Information as being his own and the *Contractor* is fully responsible for such designs and for the designs which he carries out or has carried out on his behalf in accordance with this contract. The *Contractor* is fully responsible for the design of the whole of the *works* (whether or not such design work has been carried out prior to or after the date of this contract)."

21.4 Insert a new clause:

"The *Contractor* warrants to the *Employer* that there has been exercised and will be exercised in the design of the *works* all the skill, care and diligence reasonably to be expected of a duly qualified and experienced designer undertaking the design of works similar in scope, nature and complexity to the *works*."

21.5 Add the following new clause:-

"21.5 The *Employer* gives no warranty or representation as to the condition of the site or any adjoining property or any services in or under the site or as to the accuracy or sufficiency of any soils or survey data or other data contained in any documents (including without limitation the Site Information) made available to the *Contractor* by the *Employer*, or as to any recommendations or conclusions made or reached in any such document."

Clause 22 Using the *Contractor's* design

Delete and substitute:

"22.1 The *Contractor* to the extent that it is required to do so makes available to the *Employer* free of charge (and hereby irrevocably licenses the *Employer* to use) all Project Data (and for the purposes of this contract 'Project Data' includes without limitation any drawings, details, specifications, designs, plans, reports, surveys, calculations and any other documents (including electronically stored information) and which have been or are prepared by or on behalf of the *Contractor* relating to the *works* and the designs contained in them and/or any other materials whatsoever (including all Design Data)) that shall reasonably be required by the *Employer* and notified to the *Contractor* by the *Employer* and the *Contractor* uses all reasonable endeavours to obtain all necessary licenses, permissions and consents to ensure that the *Employer* can make the Project Data available to the Authority on these terms, for the purposes of the *Employer* performing its obligations under the Project Agreement.

22.2 The *Contractor*:

22.2.1 hereby grants to the *Employer*, free of charge, an irrevocable, non-exclusive and transferable (but only to any assignee or transferee of any rights or benefits under this contract or upon or at any time following termination of this contract) licence (carrying the right to grant sub-licences) to use all the Intellectual Property Rights (as defined in the Project Agreement) which are or become vested in the *Contractor*, and

22.2.2 where any Intellectual Property Rights are or become vested in a third party, uses all reasonable endeavours to procure the grant of a

like licence to that referred to in clause 22.2.1 above to the Employer.

- 22.3 The *Contractor* uses all reasonable endeavours to ensure that any Intellectual Property Rights created, brought into existence or acquired during the term of this contract vest, and remain vested throughout the term of this contract, in the *Contractor* and the *Contractor* uses all reasonable endeavours to enter into appropriate agreements with any third party that may create or bring into existence, or from which it may acquire, any Intellectual Property.
- 22.4 To the extent that any of the data, materials and documents referred to in this clause are generated by or maintained on a computer or similar system, the *Contractor* uses all reasonable endeavours to procure for the benefit of the Employer, at no charge or at the lowest reasonable fee, the grant of a licence or sub-licence for any relevant software to enable the Employer or its nominee to access and otherwise use (subject to the payment by the Employer of the relevant fee, if any) such data for the purpose of the Employer performing its obligations under the Project Agreement. As an alternative, the *Contractor* provides such data, materials or documents in a format which may be read by software generally available in the waste management industry at the relevant time or in hard copy format.
- 22.5 The *Contractor* ensures the back-up and storage in safe custody of the data, materials and documents referred to in clause 22.1 in accordance with Good Industry Practice.
- 22.6 Where a claim or proceeding is made or brought against the Employer which arises out of the infringement of any rights in or to any Intellectual Property or because of the use of any materials, plant, machinery or equipment in connection with the *works* or the Project infringes any rights in or to any Intellectual Property or a third party then, unless such infringement has arisen out of the use of any Intellectual Property by or on behalf of the Employer otherwise than in accordance with the terms of this contract, the *Contractor* indemnifies the Employer at all times from and against all such claims and proceedings."

Clause 25

Working with the *Employer* and Others

25.3

Delete the last sentence of the clause.

Insert new clauses:

- 25.4 The Authority, the Authority's Representative, the Mortgagee and any person authorised by the Employer or the *Project Manager* shall at all reasonable times be entitled to enter the areas on the Site on which *works* are being undertaken in the case of each party (except the Employer and the *Project Manager*) by prior arrangement (except in the case of emergency) with the *Contractor* (whose approval shall not be unreasonably withheld or delayed). Such entitlement shall be for the purpose of inspecting the *works* and ensuring that the *Contractor* is observing and performing the provisions of this contract.
- 25.5 The entitlement set out in clause 25.4 shall include access to the workshops or other places of the *Contractor* where work is being prepared for this contract, and when work is to be so prepared in workshops or other places of a Subcontractor to the *Contractor* shall by a term of the subcontract so far as possible secure a similar right of access to those workshops or places for the Employer and his representatives and shall do all things reasonably necessary to make such right effective.

- 25.6 Access in accordance with clause 25 may be subject to such reasonable restrictions of the *Contractor* or of any Subcontractor as are necessary:
- 25.6.1 to protect any proprietary right of the *Contractor* or of any Subcontractor in the work referred to in clause 25 (but no such restrictions on access shall apply to the *works*); and/or
- 25.6.2 to comply with any health and safety requirements.
- 25.7 The *Contractor* shall supply to any person visiting the Site pursuant to this clause 25 such information in respect of the Works as may reasonably be required.
- 25.8 The Employer shall procure that the parties referred to in clause 25.4 shall not (whether by act or omission) obstruct, hinder or prevent the *Contractor* or any *Contractor* Party from carrying out any of the *Contractor's* obligations under this contract.

Clause 26

Subcontracting

26.3

Delete and substitute:

"The *Contractor* submits the proposed conditions of contract for a subcontract where specifically requested by the *Project Manager*"

26A

Insert a new clause:

"Subcontracts are executed as a deed."

26B

Insert new clauses:

"26B.1 The *Employer* may assign any benefit in whole or in part of this contract.

26B.2 The *Contractor* does not contend that any person to whom this contract is assigned in accordance with clause 26B.1 is precluded from recovering under this contract any loss incurred by such assignee resulting from any breach of this contract (whenever happening), by reason that such person is an assignee and not a named promisee under this contract.

26B.3 The *Contractor* does not assign or charge the benefit of this contract or any right arising under it without the prior written consent of the *Employer*."

Clause 27

Other responsibilities

Insert new clauses:

"27.5 The *Contractor* does not permit or suffer to be done anything which might:-

27.5.1 be or become a danger or unreasonable nuisance (which danger or nuisance could be prevented by a construction contractor using reasonable and practicable measures) or give rise to liability in tort to any Adjoining Owners or to members of the public generally;

27.5.2 cause damage to any Adjoining Property; and/or

27.5.3 (unless permitted by a Third Party Consent and then only in accordance with the terms of the Third Party Consent) interfere with any Adverse Rights;

and the *Contractor* at its own expense in the carrying out of the *works* takes all reasonable measures and precautions to avoid any such danger, unreasonable nuisance, tort, damage or interference and shall make good any damage so caused.

27.6 If the *works* cannot be carried out without interfering with any Adverse Right the *Contractor* promptly and at its own expense obtains all necessary Third Party Consents and pays such sums as may be required for the giving of such Third Party Consent and supplies to the *Contractor* and the Authority a copy of every Third Party Consent obtained.

27.7 The *Contractor* makes good any damage to any roads, footpaths, Conduits, services landscaping and other works on any Adjoining Property which may be caused by the *Contractor*.

- 27.8 In so far as they relate to the *works* the *Contractor* performs and fulfils the obligations of the Employer contained in clauses 63, 121, 122, 125 and 126 of the Project Agreement as if the same were expressly referred to herein as obligations and liabilities of the *Contractor* mutatis mutandis.
- 27.9 The *Contractor* insofar as they relate to the *works* performs and fulfils the obligations of the Employer contained in clause 108 of the Project Agreement as if the same were expressly referred to herein as obligations and liabilities of the *Contractor* mutatis mutandis."

Clause 30 Starting, Completion and Key Dates

30.4 "Any design, design development work or works carried out prior to the first access date will not obviate, diminish or alter the *Contractor's* obligations hereunder and will be deemed to have been carried out pursuant to this contract.

31.3 The Programme

Insert a new bullet point, after the last bullet point:

- "the proposed programme would prevent or is incompatible with compliance by the *Employer* with its obligations under the Project Agreement."

Clause 40 Tests and inspections

40.6 In line 1 after "*Employer*" insert:

"in monitoring work to correct defects and"

Clause 43 Correcting Defects

43.2 In lines 2, 3 and 4 delete "The *defect correction period* begins at Completion for Defects notified before Completion and when the Defect is notified for other Defects" and insert:

"The *defect correction period* begins when the Defect is notified."

Clause 50 Assessing the amount due

50.1 In line 1 at the end of the first sentence and before the full stop insert:

"only on receipt of an application for payment by the *Contractor*"

Clause 51 Payment

51.1 Delete the first sentence of clause 51.1 and insert:

"The *Project Manager* certifies a payment on or before the due date for payment. The due date for payment is 14 days after the assessment date".

At the end of the clause insert a new sentence:

"The *Project Manager's* certificate is the notice of payment from the *Employer* to the *Contractor* specifying the amount (if any) of the payment proposed and how the amount is calculated."

51.2 Delete the first sentence of clause 51.2 and insert:

"Each certified payment is made on or before the final date for payment. The final date for payment is 28 days after the due date for payment."

Clause 54

The Activity Schedule

Insert new clause 54.3A:

"Any errors, inconsistencies, omissions and/or ambiguity in the Activity Schedule are the *Contractor's* risk."

Clause 56

Withholding payment

Insert a new clause:

"56.1

If the *Employer* intends to withhold payment of any amount due under the contract, he notifies the *Contractor* no later than 5 days before the final date for payment of the sum due specifying:

- the amount proposed to be withheld and
- the ground for withholding payment or,
- if there is more than one ground, each ground and the amount attributable to it."

Clause 60

Compensation Events

60.1 (1)

Insert new bullet points before the first bullet point:

"

- a change to the Works Information where the *Contractor* has notified that the *works* are impossible,
- a change in an instruction given to resolve an ambiguity or inconsistency in or between the documents which are part of this contract,
- a change replacing a Subcontractor named or listed within Works Information,
- a change to the Works Information resulting from a *Contractor* risk event."

60.1 (12)

Delete clause 60.1(12)

60.1 (13)

Delete clause 60.1 (13)

60.1 (19)

Delete clause 60.1 (19)

60.2

Delete clause 60.2.

60.3

Delete clause 60.3 and insert:

"If there is an inconsistency within the Site Information (including the information referred to in it), the *Contractor* is assumed to have taken into account the physical conditions actually encountered."

60.4

Insert new clause 60.4 as follows:

"The *Contractor* does not have any right to an increase in the Prices on the occurrence of the compensation events referred to in clauses 60.1(7), 60.1(9) and 60.1(17), but he may be granted an extension of time to the Completion Date and/or any Key Dates on the occurrence of those compensation events subject to the remaining provisions of this contract."

61.3 In line 5 delete "eight" and replace with "seven".

61.4 Delete the first bullet point, and replace with:

"arises by reason of any error, omission, negligence or default of the *Contractor* or of Subcontractors or any of their employees or agents,"

63.3 Add to clause 63.3:

"Concurrent delay (namely, any part or parts or the whole of any delay during which a compensation event causing such delay and some other cause of such delay are both concurrently operative, regardless of which arose first) is not included in the assessment and shall not result in a delay to the Completion Date."

63.8 Delete this clause.

66. Insert new clause:

"Notwithstanding clauses 61 to 65 (inclusive), the *Contractor* provides all the assistance, details and information required by the *Employer* to comply with its obligations under clauses 35, 36, 104 and 105 of the Project Agreement."

Clause 80

Employer's risks

80.1 Delete lines 3 and 4, namely:

"use or occupation of the Site by the *works* or for the purpose of the *works* which is the unavoidable result of the *works*

In line 8 delete:

"or a fault in his design"

Delete lines 15 and 16, namely:

"strikes, riots and civil commotions not confined to the *Contractor's* employees"

Delete line 29 namely:

"Additional *Employer's* risks stated in the Contract Data"

Clause 82

82.2 Add a new clause:

"All insurance proceeds received under any policy referred to in Clause 84.2 shall be applied to replace loss of and repair damage to the *works* Plant and Materials"

Clause 84

Insurance cover

84.2 In line 1 after the word "Parties" insert:

“and such persons as the *Employer* may reasonably require (including any Mortgagee),“

In line 3 insert before the full stop:

“except in the case of professional indemnity insurance which need not be in the joint names of the Parties and where cover runs from the *starting date* to the date twelve years after Completion”

Insert a new section to the INSURANCE TABLE

Liability for loss of or damage to the <i>works</i> and other losses arising out of a breach of the obligations of the <i>Contractor</i> to carry out design in accordance with this contract	The amount stated in the Contract Data for any one occurrence or series of occurrences arising out of one event
---	---

84.3

Add a new clause:

“The *Contractor* complies with the Joint Code of Practice for “Fire Prevention on Construction Sites” published by the Builders Employers Confederation, the Loss Prevention Council and the National *Contractors’* Group. The *Contractor* performs the functions of “Site Fire Safety Co-ordinator” and “Design Phase Co-ordinator” and the Site is regarded as a “large project” under the Joint Fire Code if payments to the *Contractor* are likely to exceed £5m in total.”

Clause 85

Insurance policies

Add a new clause:

85.5

“The *Employer* and the *Contractor* notify the other in writing of any claims which they receive in respect of any injury, loss or damage referred to in clauses 84 and 85. Notification by the *Contractor* is given to the *Project Manager* immediately.”

Clause 91

Reasons for termination

91.2

Delete clause 91.2, and substitute:-

"91.2 The *Employer* may terminate if the *Project Manager* has notified the *Employer* and the *Contractor* that the *Contractor* has.

- Materially failed to comply with his obligations, and has either not corrected that failure within three weeks of being notified of that failure by the *Project Manager*, (or, in circumstances where urgent correction is necessary, within such shorter period as may be notified to the *Contractor* by the *Project Manager*), or, having corrected that failure, has at any subsequent time materially failed to comply with his obligations in the same or a similar manner (R11).
- Not provided a bond or guarantee which this contract requires (R12).
- Appointed a Subcontractor for substantial work before the *Project Manager* has accepted that Subcontractor, or assigned any benefit in a part or the whole of this contract (R13)."

91.3

Delete the first sentence of clause 91.3, and substitute:-

"91.3 The *Employer* may terminate if the *Project Manager* has notified the *Employer* and the *Contractor* that the *Contractor* has defaulted in one of the following ways, and has not stopped defaulting within three weeks of being notified of that default by the *Project Manager*, (or, in circumstances where cessation of the default is necessary as a matter of urgency, within such shorter period as may be notified to the *Contractor* by the *Project Manager*)."

91.6

In clause 91.6, third line, delete "thirteen weeks" and substitute "twenty six weeks".

Add the following new clauses:-

"91.8 The *Employer* may terminate where the Project Agreement is terminated and notwithstanding any other provision of this contract (including without limitation the Termination Table) the provisions of clauses 92 (except P4), 93.1 and 93.2 (except A2 and A4) apply.

91.9 The *Contractor* warrants that in entering into this contract it has not committed any Prohibited Act.

91.10 If the *Contractor* or any of its Subcontractors (or anyone employed by or acting on behalf of any of them) or any of its or their agents or shareholders commits any Prohibited Act then the *Employer* is entitled to act in accordance with clauses 91.11 to 91.15 below.

91.11 If a Prohibited Act is committed by the *Contractor* or by an employee not acting independently of the *Contractor* then the *Employer* may terminate by giving notice to the *Contractor*.

91.12 If the Prohibited Act is committed by an employee of the *Contractor* acting independently of the *Contractor* then the *Employer* may terminate by giving notice to the *Contractor* unless within 20 Days of receipt of such notice the *Contractor* terminates the employee's employment and (if necessary) procures the performance of such part of the *works* by another person.

91.13 If the Prohibited Act is committed by a Subcontractor or by an employee of that Subcontractor not acting independently of that Subcontractor then the *Employer* may terminate by giving notice to the *Contractor* unless within 20 Days of receipt of such notice the *Contractor* terminates the subcontract and procures the performance of such part of the *works* by another person.

91.14 If the Prohibited Act is committed by an employee of a Subcontractor of the *Contractor* acting independently of that Subcontractor then the *Employer* may terminate by giving notice to the *Contractor* unless within 20 Days of receipt of such notice the Subcontractor terminates the employee's employment and (if necessary) procures the performance of such part of the *works* by another person.

91.15 If the Prohibited Act is committed by any other person not specified in clauses 91.11 to 91.14 above then the *Employer* may terminate by giving notice to the *Contractor* unless within 20 Days of receipt of such notice the *Contractor* procures the termination of such person's employment and of the appointment of their employer (where not employed by the *Contractor*) and (if necessary) procures the performance of such part of the *works* by another person.

91.16 Any notice of termination under this clause shall specify:

(a) the nature of the Prohibited Act;

- (b) the identity of the Party whom the Employer believes has committed the Prohibited Act; and
- (c) the date on which this contract will terminate in accordance with the applicable provision of this clause.

91.17 If this contract is terminated pursuant to clauses 91.11 to 91.16 then notwithstanding any other provision of this contract (including without limitation the Termination Table) the provisions of clauses 92 (except P4), 93.1 and 93.2 (except A2 and A4) apply.

91.18 The Employer may terminate where Completion of the whole of the *works* has not occurred on or before the Longstop Date and notwithstanding any other provision of this contract (including without limitation the Termination Table) the provisions of Clauses 92 (except P4), 93.1 and 93.2 (except A2 and A4) apply."

Clause 92

Procedures on termination

92.3

Add the following new clause:-

"92.3 On termination howsoever arising the following also apply:

- such part of the *works* as has been constructed vests in the Employer;
- the *Contractor* delivers to the Employer "as built drawings" showing all work carried out since commencement of the *works*, and copies of all maintenance, operation and training manuals for the Facilities (or drafts of them) which are in existence at the date of termination;
- the *Contractor* where so requested by the Employer assigns or novates to the Employer, or to such other person as the Employer may elect, with effect from the date of termination, any subcontract or appointment of a consultant (and the *Contractor* shall take all necessary steps and execute such documents as are necessary to give effect to such assignment or novation);
- the *Contractor* uses reasonable endeavours to procure that the benefit of manufacturers' warranties in respect of mechanical and electrical plant and equipment which are incorporated in that part of the *works* which has been completed, or are at or near the Site, or which will otherwise vest in the Employer pursuant to this clause 92, is assigned, or otherwise transferred, to the Employer;
- the *Contractor* promptly and in an orderly manner and with all reasonable speed and economy delivers to the Employer all documents relating to the *works* which are for the time being under the control of the *Contractor*; and
- the *Contractor* on being requested to leave the site vacates the site as soon as practicable and leaves the Site in a safe, clean and orderly condition."

Clause 93

Payment on termination

93.1

In clause 93.1, second subparagraph, first line, delete "for", and substitute "of".

In clause 93.1, delete the fourth subparagraph, and substitute:-

"to which the *Employer* has title, and which the *Contractor* delivers to the Working Areas or to another location reasonably instructed by the *Project Manager*."

Add the following new clause:-

"94. Insofar as they relate to the *works* the *Contractor* performs and fulfils the obligations of the *Employer* contained in clauses 84, 85, 86, 87, 88, 89 and 90 of the Project Agreement as if the same was expressly referred to herein as obligations of the *Contractor* mutatis mutandis."

Z CLAUSES

Add the following additional conditions of contract as Z clauses:-

Z1. Contractor's warranty

Z1.1 The *Contractor* promptly executes and delivers a deed or deeds of warranty in favour of any Mortgagee and/or the Authority in the terms of the draft *Contractor's* warranty contained in Appendix 1 when required by the *Employer*.

Z1.2 If the *Contractor* fails to execute and deliver any such deed pursuant to clause Z2.1 above, within seven days of the *Employer's* request, the *Employer* may execute such deed on the *Contractor's* behalf, and the *Contractor* appoints the *Employer* as the *Contractor's* attorney for the purpose of executing any such deed and the *Contractor* ratifies and confirms any act done by the *Employer* pursuant to this power of attorney and agrees that this power is irrevocable pursuant to section 4, Powers of Attorney Act 1971.

Z2. Consultants

Z2.1 The *Contractor* executes a deed of novation in respect of the Novated Consultants in the form set out in Appendix 2, Part 2 or in a similar form reasonably required by the *Employer* and delivers the same to the *Employer*. The "Novated Consultants" are:-

Architects and Civil and Structural Engineers: RPS Planning and Development Limited

Z2.2 The Novated Consultants' appointments are by deed in substantially the terms of the respective draft appointments contained in Appendix 2, Part 1.

Z2.3 In addition to the novation of the consultant(s) identified at clause Z2.1, the *Contractor* may appoint additional consultants for the purposes of the *works* whose appointments are by deed on terms previously approved by the *Employer* (such approval not to be unreasonably withheld).

Z2.4 The *Contractor* ensures that each consultant (including the Novated Consultants) immediately upon his appointment or novation executes and delivers a deed of warranty in favour of the *Employer* in the form of the draft deed contained in Appendix 3, mutatis mutandis, or in such other form as the *Employer* approves. If requisite the *Contractor* shall himself execute and deliver such deed of warranty immediately upon the *Employer's* request.

Z2.5 Whenever the *Employer* from time to time requires, the *Contractor* ensures that each consultant (including the Novated Consultants) executes and delivers a deed or deeds of warranty in favour of any Mortgagee in the form of the draft contained in Appendix 3, mutatis mutandis, or in such other form as the *Employer* shall have approved. If requisite the *Contractor* shall himself execute and deliver such deed of warranty immediately upon the *Employer's* request.

- Z2.6 The *Contractor* does not dismiss any of the consultants (including the Novated Consultants) or vary the terms of their appointment without the written approval of the *Employer*.
- Z2.7 If the employment of any consultant (including the Novated Consultants) is terminated before the completion of the services allocated to him, the *Contractor* as soon as is practicable but on seven days' notice to the *Employer* appoints another consultant to complete those services (save any consultant to whom the *Employer* shall make reasonable objection in writing). The foregoing provisions of this clause Z2 shall apply to such replacement consultant, mutatis mutandis.
- Z2.8 If the *Contractor* breaches any provision of this clause Z2, the *Employer* shall be entitled to give the *Contractor* written notice specifying the breach. If such breach is not rectified by the *Contractor* within 14 days after service of such notice, then no further payment shall be due to the *Contractor* hereunder while such breach remains to be rectified.
- Z3. Sub-Contractors**
- Z3.1 In this clause Z3 "Specified Sub-Contractors" means any sub-contractor or supplier of the *Contractor* for the following elements of the *works*:
- Roller Shutters and personnel doors
- Structural steel work and cladding
- Mechanical and Electrical services
- Metal work
- Syphonic Drainage
- Armco Barriers
- Weighbridge
- Bulk excavation and fill
- Z3.2 Each of the Specified Sub-Contractors shall be appointed by contract, and if requested by the *Employer*, the *Contractor* shall supply a complete copy of the sub-contract to the *Employer* within seven days of the request.
- Z3.3 The *Contractor* ensures that each Specified Sub-Contractor forthwith upon his appointment executes and delivers a deed of warranty in favour of the *Employer* in the form of the draft contained in Appendix 4, mutatis mutandis, or such other form as the *Employer* shall have approved.
- Z3.4 Whenever the *Employer* from time to time requires, the *Contractor* ensures that each Specified Sub-Contractor executes and delivers a deed or deeds of warranty in favour of any Mortgagee in the form of the draft contained in Appendix 4, mutatis mutandis, or in such other form as the *Employer* shall have approved.
- Z3.5 If the *Contractor* breaches clause Z3.2 or clause Z3.3 or clause Z3.4 the *Employer* shall be entitled to give the *Contractor* written notice specifying the breach. If such breach is not rectified by the *Contractor* within 14 days after service of such notice then the *Employer* shall not be liable to pay any amount in respect of the elements of the *works* to which the default relates while such breach remains to be rectified.

Z4. Performance bond

Z4.1 Upon the execution of this contract the *Contractor* provides to the *Employer* a performance bond in an amount equal to [REDACTED] of the Prices and in terms of the draft contained in Appendix 5 (or such other terms as the *Employer* shall have approved) executed as a deed and delivered by a bank or insurance company previously approved by the *Employer*.

Z4.2 Unless a performance bond is provided in terms of clause Z4.1 then the *Employer* shall be entitled to retain out of monies becoming due to the *Contractor* a sum equal to 10 per cent of the total of the Prices. Any amount so retained shall become due for release to the *Contractor* only when such performance bond is provided, or, if none is provided, on the date on which a bond in terms of the draft contained in Appendix 5 would have lapsed.

Z5. NOT USED

Z6. Approvals

Z6.1 No inspection, testing, approval or review nor any omission to inspect, test, approve or review on the part of the *Employer* shall diminish any duty or liability hereunder of the *Contractor*.

Z6.2 Whenever in these Additional Conditions there is a reference to any approval by the *Employer*, such approval shall not be withheld or delayed without reasonable cause.

Z7. Set off

Nothing contained in this contract (other than as to giving notices) shall oust or limit any right of the *Employer* under any statute or rule of law or of equity in the nature of set off or abatement of price.

Z8. Priority

Z8.1 In the case of any inconsistency between these Additional Conditions and any other term of this contract the Additional Conditions shall prevail. In the case of any inconsistency between the *conditions of contract* (including the core clauses and the selected Options) and any other term of this contract (except these Additional Conditions) the *conditions of contract* shall prevail.

Z8.2 Any reference in Clauses Z1 to Z20 of these Additional Conditions to a Schedule or Appendix is a reference to a Schedule or Appendix to these Additional Conditions.

Z9. Site Conditions

Z9.1 The *Contractor* accepts the actual Site and physical conditions without adjustment of the Prices.

Z9.2 The *Contractor* inspects and examines the Site and its surroundings before the date of this contract including but not limited to the subsoil, physical conditions, hydrology, adjacent properties, geology, services and pipes below or over the surface and any structures or sub-structures. No misunderstanding or misinterpretation of any such matter entitles the *Contractor* to a compensation event or releases him from any of the risks accepted or obligations undertaken by him under the contract whether or not he foresaw the risk or obligation.

Z9.3 The *Employer* provides Site Information and other documents relating to the condition of the Site by way of information only. The *Employer* does not warrant or represent their accuracy, reliability or completeness.

Z10. Named Subcontractors

- Z10.1 The *Contractor* subcontracts to and obtains design, work, materials or goods from the person named in the Work Information. The *Contractor* uses the subcontract terms and conditions provided by the *Employer* where required and contained within the contract. Where one or more persons are named in a list one from the list is selected.
- Z10.2 If the *Contractor*, for any reason beyond his control, is unable to enter into a subcontract with a named or listed person he proposes details of another person for the *Project Manager's* consent.
- Z10.3 If the employment of a person named or listed or selected by the *Contractor* is determined for any reason, the *Contractor* carries out and completes the work himself or employs another person with the prior consent of the *Project Manager*.
- Z10.4 The naming of a person in the contract or consent by the *Project Manager* to a Subcontractor does not relieve the *Contractor* of his responsibilities to Provide the Works in accordance with the contract. The *Contractor* remains responsible for performing the contract as if he had not subcontracted any part of the *works*.
- Z10.5 The *Contractor* is not relieved from any liability or obligation under this contract if:
- the *Employer* objects to or fails to object to a proposed Subcontractor; or
 - the *Project Manager* issues an instruction to remove a Subcontractor. Reasons for removal of a Subcontractor include:
 - inadequate or poor quality of workmanship;
 - incompetent or negligent performance;
 - uncooperative or disruptive working practices; and
 - failure to operate a quality management system.

The *Contractor* then arranges the removal of the Subcontractor and the appointment of a replacement in accordance with this contract. An instruction to remove a Subcontractor is not a compensation event.

Z11. Trespass, nuisance and pollution

- Z11.1 The *Contractor* identifies and is aware of the rights of adjoining land-owners, occupiers and Statutory Bodies and agrees to prevent trespass and uses all reasonable endeavours to avoid nuisance. The *Contractor* assists the *Employer* in defending any action or proceedings that may be instituted in relation thereto.
- Z11.2 The *Contractor* obtains consent and complies with the condition of any consent to go on or over any adjoining or neighbouring property in the course of or caused by the carrying out of the *works*. The *Contractor* takes all reasonable safety and other measures to avoid damage or injury to any persons and/or property including without limitation the occupiers of adjoining or neighbouring property and members of the public
- Z11.3 The *Contractor* is responsible for Providing the Works so as to ensure that:
- the methods to be used on the Site by the *Contractor* as part of the *works* are safe,

- the *Contractor* does not pollute or contaminate any adjoining land or building, any river, stream, waterway, drain or watercourse whether in, underneath or adjacent to the Site.

Z11.4

The *Contractor* indemnifies the *Employer* for a breach of this clause Z11.

Z12.

Existing public rights of way, footpaths, wayleaves and easements

The *Contractor* within the Prices and without right to a compensation event:

- maintains the routes of all existing public rights of way, roads, footpaths, way leaves and easements within the Site,
- obtains necessary consents and discharges the conditions of such consents to temporarily stop-up, permanently stop-up or divert existing public rights of way, footpaths, roads, way leaves and easements. Diversions require prior consent of the *Project Manager* where they differ from the Works Information.

Z13.

Compliance with Statutory Agreements

The *Contractor* within the Prices and without right to a compensation event:

- complies with the requirements of any Statutory Body under any Statutory Agreement in Providing the Works including but not limited to the standard or quality of any part or parts of the *works* necessary to secure adoption of those works,
- is responsible for obtaining all consents necessary from any relevant Statutory Body and any written consents or certificates to show that the *works* have achieved Completion.

Z14.

Recovery of sums due from the Contractor

Where any sum of money is recoverable from or payable by the *Contractor* under the contract, such sum is assessed by the *Project Manager* and deducted from the Price for Work Done to Date. Where the assessment exceeds any payment due to the *Contractor* under this contract, the sum assessed may be deducted from any sum falling due to the *Contractor* under any other contract with the *Employer* whether before or after the date of this contract. The right to exercise this clause remains at the *Employer's* discretion.

Z15.

Quality statement

Z15.1

The *quality statement* sets out the *Contractor's* proposals for the management and resourcing of the *works*.

Z15.2

The *Contractor* warrants:

- that the representations contained in the *quality statement* are accurate in every respect and may be fully relied upon by the *Employer* where the standards represented exceed the minimum originally specified by the *Employer*, and
- that the *quality statement* does not constitute a qualification to his tender. Should any discrepancy arise between the *quality statement* and other contractual documents, the Works Information takes precedence.

Z16

Quality management system

Z16.1

The *Contractor* operates a quality management system which:

- complies with the relevant parts of BS EN ISO 9001 and 9002;
- incorporates appropriate *sector quality schemes* for highways works; and
- has third party certification from an approved accreditation body or is operating in preparation for accreditation within six months of the date of this contract.

Z16.2

Prior to the *starting date* the *Contractor* prepares a quality plan and submits it to the *Project Manager* for acceptance. The quality plan incorporates:

- the quality statement;
- appropriate sector quality schemes; and
- requirements stated in the Works Information.

A reason for not accepting the quality plan is that:

- it is inadequately prepared or is not practicable;
- it does not incorporate the information which this clause requires; or
- it does not represent a realistic approach for the *works*.

Z16.3

Any Subcontractor appointed by the *Contractor* operates a quality system enabling him to comply with the *Contractor's* quality management system.

Z17.

Named key persons

Acceptance by the *Employer* of key persons stated in the Contract Data does not constitute acceptance that such individuals are suitable for the roles assigned to them or serve to relieve the *Contractor* of his duties or obligations under this contract.

Z18.

Design check certificate

All design prepared by the *Contractor* and submitted to the *Project Manager* is supported by a design check certificate signed by an appropriately qualified and experienced engineer other than the engineer who prepared the design. If the certifying engineer is not an employee of the *Contractor* he is a Subcontractor.

Z19.

Considerate Constructor Scheme

The *Contractor*:

- registers the Site under the Considerate Constructor Scheme; and
- complies with the Considerate Constructor Scheme's Code of Considerate Practice in Providing the Works.

Z20.

Liability Period

The obligations of the *Contractor* under this contract cease 12 years after Completion of the whole of the Works save in respect of any claim under this contract where proceedings have been issued during such 12 year period.

APPENDIX 1
CONTRACTOR'S WARRANTY

DATED 200

(1) NORTHSTONE (NI) LIMITED

(2) []

(3) DONARBON WASTE MANAGEMENT LIMITED

CONTRACTOR'S FUND WARRANTY
relating to
the design and construction of a Waste Transfer Station
and associated works at Alonbury Hill, Alconbury,
Huntingdon, Cambridge



THIS DEED is made on

[]

BETWEEN:-

- (1) **NORTHSTONE (NI) LIMITED** (No 1004078) whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU (the "**Contractor**"); [and]
- (2) [] (No [] of/whose registered office is at [] (the "**Beneficiary**"); and
- (3) **DONARBON WASTE MANAGEMENT LIMITED** (No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge, CB25 9PG (the "**Employer**").

NOW THIS DEED WITNESSES in consideration of the sum of £10.00 paid by the Beneficiary, receipt of which the Contractor acknowledges, as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"Building Contract"	means a contract dated and made between (1) the Employer and (2) the Contractor for the Development
"Development"	means the design and construction of a waste transfer station and associated works at the Property
["Employer"	means]
"Property"	means Alconbury Hill, Alconbury, Huntingdon, Cambridge

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Beneficiary shall be deemed to include their successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

- 2.1 The Employer has by the Building Contract employed the Contractor to design and build the Development.
- 2.2 The Employer has entered into a funding agreement with the Beneficiary relating to the Property.
- 2.3 The Contractor has agreed to enter into this Deed with the Beneficiary.

3. **SKILL AND CARE**

The Contractor undertakes with and warrants to the Beneficiary that:-

3.1 it has and shall continue to:-

- 3.1.1 carry out and complete the Development in conformity with the Building Contract;
- 3.1.2 comply with the obligations on the part of the Contractor contained in the Building Contract;
- 3.1.3 carry out and complete the Development using workmanship and materials of the quality and standard specified in the Building Contract;

3.2 without derogation from Clause 3.1 and to the extent that under the Building Contract the Contractor takes responsibility for the design of the Development and the selection of goods, materials, plant and equipment for incorporation therein the Contractor warrants that the same has been or will be designed or selected with all the reasonable skill and care and diligence to be expected of a duly qualified and experienced designer undertaking the design of works similar in scope and character to the Works;

3.3 it has not specified or used nor will it specify for use or use any products or materials in the Development which at the time of use:-

- 3.3.1 do not conform with British and European Standards or Codes of Practice;
- 3.3.2 are generally known within the Contractor's trade to be deleterious in the particular circumstances in which they are used or specified for use to health and safety and/or the durability of the Development.

4. **[OBLIGATIONS PRIOR TO TERMINATION OF THE BUILDING CONTRACT BY THE CONTRACTOR]**

4.1 The Contractor covenants with the Beneficiary that it will not exercise nor seek to exercise any right of termination of its employment under the Building Contract or to discontinue the construction of the Development for any reason whatsoever (including any breach on the part of the Employer) without giving not less than 21 days written notice of his intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.

4.2 Any period stipulated in the Building Contract for the exercise of a right of termination by the Contractor of its employment under the Building Contract or to discontinue the construction of the Development shall nevertheless be extended as may be necessary to take account of the period of notice required under Clause 4.1.

4.3 The right of the Contractor to terminate its employment under the Building Contract or to discontinue the construction of the Development shall cease within the period of 21 days referred to in Clause 4.1 if the Beneficiary shall give notice to the Contractor:-

- 4.3.1 requiring the Contractor to continue its obligations under the Building Contract with the Beneficiary or its nominee; and
- 4.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Employer under the Building Contract; and
- 4.3.3 undertaking that the Beneficiary or its nominee will discharge all payments which may subsequently become due to the Contractor under the terms of the Building Contract and will pay to the Contractor any sums which have been due and payable to it under the Building Contract but which remain unpaid.

- 4.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of Clause 4.3 the Building Contract will continue in full force and effect as if the same had been entered into between the Contractor and the Beneficiary to the exclusion of the Employer.
- 4.5 Compliance by the Contractor with the provisions of this Clause 4 will not be treated as a waiver of any breach on the part of the Employer giving rise to the right of termination nor otherwise prevent the Contractor from exercising its rights after the expiration of the notice issued pursuant to Clause 4.1 unless the rights of termination have ceased under the provisions of Clause 4.3.
- 4.6 This Clause 4 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Contractor and such person at the request of the Employer.

5. BENEFICIARY'S RIGHTS IN RELATION TO THE BUILDING CONTRACT

- 5.1 Notwithstanding that as between the Employer and the Contractor the Contractor's right of termination of its employment under the Building Contract may not have arisen the provisions of Clause 4.4 shall also apply if the Beneficiary gives notice to the Employer and to the Contractor to the effect that the Beneficiary wishes the provisions of Clause 4.4 to apply and the Beneficiary or its nominee complies with the requirements of Clause 4.3.
- 5.2 The Contractor shall not be concerned, or required to enquire whether, and shall be bound to assume that as between the Employer and the Beneficiary the circumstances have arisen permitting the Beneficiary to give notice under Clause 5.1.
- 5.3 This Clause 5 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Contractor and such person at the request of the Employer.

6. CONTRACTOR'S POSITION

By acting in accordance with Clauses 4 and 5 the Contractor shall not incur any liability to the Employer.]

7. COPYRIGHT

- 7.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Contractor in connection with the Development shall remain vested in the Contractor but the Contractor grants to the Beneficiary and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Development including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Development. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.
- 7.2 The Contractor shall not be liable for any such use by the Beneficiary or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Contractor.
- 7.3 The Beneficiary shall on written request and upon paying a reasonable copying charge therefor, be entitled to be supplied by the Contractor with copies of the drawings and other items referred to in Clause 7.1.

8. INDEMNITY INSURANCE

- 8.1 The Contractor shall maintain professional indemnity insurance covering (inter alia) all its design liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of practical completion of the Development, provided always that

such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof. The Contractor shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Contractor may have against the insurers and which relates to a claim by the Beneficiary against the Contractor or by any act or omission lose or prejudice the Contractor's right to make or proceed with such a claim against the insurers.

- 8.2 Any increased or additional premium required by insurers by reason of the Contractor's own claims record or other acts, omissions, matters or things particular to the Contractor shall be deemed to be within commercially reasonable rates.
- 8.3 The Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates in order that the Contractor and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Contractor in respect of the Development in the absence of such insurance.
- 8.4 The Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Contractor in respect of the net cost of such insurance to the Contractor above commercially reasonable rates, or if the Beneficiary effects such insurance at rates at or above commercially reasonable rates, reimbursing the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates.
- 8.5 As and when reasonably requested to do so by the Beneficiary the Contractor shall produce for inspection documentary evidence (including if required by the Beneficiary, the original of the relevant insurance documents) that his professional indemnity insurance is being maintained.
- 8.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Beneficiary.

9. **LIABILITY PERIOD**

The obligations of the Contractor under this Deed shall cease 12 years after the date of Practical Completion of the Development save in respect of any claim under this Deed where proceedings have been issued during such 12 year period.

10. **ASSIGNMENT**

- 10.1 The Contractor consents to the benefit of this Deed being assigned twice only **PROVIDED ALWAYS** that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.
- 10.2 The Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

11. **NOTICES**

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if given in compliance with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

12. **EXTRANEOUS RIGHTS**

- 12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Contractor to the Beneficiary.
- 12.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Contractor arising under this Deed.
- 12.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

13. **GOVERNING LAW**

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

14. **[EMPLOYER'S CONSENT**

The Employer has executed this Deed to signify consent to its terms.]

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
NORTHSTONE (NI) LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

THIS DEED is made on

200

BETWEEN

- (1) **NORTHSTONE (NI) LIMITED** (No N1004078) a company incorporated in England and Wales and whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU ("the Contractor");
- (2) **CAMBRIDGESHIRE COUNTY COUNCIL** of Cambridgeshire Shire Hall, Cambridge, CB3 0AP ("the Beneficiary", which expression includes its permitted successors in title and assigns); and
- (3) **DONARBON WASTE MANAGEMENT LIMITED** (No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge CB25 9PG ("the Employer").

BACKGROUND

- (A) By a contract dated ("the Project Agreement"), the Beneficiary has appointed the Employer to carry out in relation to the site therein described as "the Sites" the design and construction of the works therein defined as "the Works", which expression has the same meaning in this Deed.
- (B) By a contract dated ("the Contract"), the Employer has appointed the Contractor to carry out in relation to the Sites the design and construction of the Works.
- (C) The Contractor is obliged under the Contract to give a warranty in this form in favour of the Beneficiary.

OPERATIVE PROVISIONS

In consideration of the payment of one pound (£1.00) by the Beneficiary to the Contractor, receipt of which the Contractor acknowledges:

1. CONTRACTOR'S WARRANTY AND LIABILITY

- 1.1 The Contractor warrants to the Beneficiary that it has carried out and will continue to carry out and complete its duties and obligations under the Contract in accordance with the Contract and (without qualification to or derogation from the foregoing) has exercised and will exercise all the reasonable skill care and diligence to be expected of suitably skilled qualified and experienced professional building contractors performing services and works of similar nature to those undertaken by the Contractor under the Contract.
- 1.2 Without derogation from clause 1.1 and to the extent that under the Contract the Contractor takes responsibility for the design of the Works or the selection of goods, materials, plant or equipment for incorporation in the Works the Contractor warrants that the same have been and/or will be designed or selected with reasonable skill and care.

- 1.3 The Contractor has no liability hereunder which is greater or of a longer duration than it would have had if the Beneficiary had been a party to the Contract as joint employer. The Contractor shall not be entitled to set-off against any liability to the Beneficiary under this Deed any sum of money or other entitlement due to it from the Employer howsoever arising under the terms of the Contract or in equity or at common law.
- 1.4 Upon the expiration of 12 years from the date of Practical Completion (or its equivalent) under the Contract the liability of the Contractor under this Deed shall cease and determine, save in relation to any claims made by the Beneficiary against the Contractor and notified by the Beneficiary to the Contractor in writing prior thereto.

2 DOCUMENTS

- 2.1 In relation to all drawings, reports, calculations, details, plans, models, specifications, photographs, schedules, bills of quantities, and other documents and information of any nature whatsoever (including any computer software used to generate them and any designs and inventions contained in them) which have been or are hereafter provided by the Contractor in the course of performing its obligations under the Contract ("Documents") the Contractor hereby grants (or, if such grant cannot legally take place until a later date, agrees to grant) to the Beneficiary with effect from the date of this Deed or in the case of Documents not yet in existence with effect from the creation thereof, an irrevocable royalty-free non-exclusive licence (such licence to remain in full force and effect notwithstanding the termination of the Contract or determination of the employment of the Contractor under the Contract or the abandonment or completion of the Works or of its obligations under the Contract or any dispute thereunder or hereunder) to use and to reproduce all Documents for any purpose whatsoever connected with the Works and such other purposes as are reasonably foreseeable including, but without limitation, the execution, completion, maintenance, letting, advertisement, modification, extension, reinstatement, refurbishment and repair of the Works. Such licence will carry the right to grant sub-licences and will be transferable to third parties.
- 2.2 The Beneficiary will not hold the Contractor liable for any use it may make of the Documents for any purpose other than that for which they were originally provided by it unless the Contractor authorises such use and confirms that the Documents are suitable for it.
- 2.3 The Contractor will not grant to any third party the right to use any of the Documents save under any warranty it is obliged to give under the Contract or hereunder or as otherwise required to enable it to fulfil its obligations under the Contract.
- 2.4 The Contractor agrees on reasonable request at any time and following reasonable written prior notice to give the Beneficiary or those authorised by it access to the Documents and to provide copies (including copy

negatives and CAD disks) thereof at the Beneficiary's expense. The Contractor hereby warrants that it will preserve all such Documents in a safe and accessible place throughout the currency of this Deed.

- 2.5 The Contractor warrants to the Beneficiary that the Documents (save to the extent duly appointed sub-consultants and sub-contractors have been used to prepare the same) are its own original work and that in any event their use in connection with the Works, including use by the Beneficiary in accordance with the licence granted by this clause 2, will not infringe the rights of any third party.

3 INSURANCE

- 3.1 The Contractor hereby covenants with the Beneficiary that it has effected a policy of Professional Indemnity and such other insurance covering the liabilities of the Contractor under the Contract and under this Deed for negligence, with a limit of indemnity of not less than [REDACTED] for any occurrence or series of occurrences arising out of any each and every event and that it will maintain such insurance with reputable insurers carrying on business in the European Union from the date hereof until 12 years after practical completion of the Works provided that such insurance is generally available in the market to design and build Contractors at commercially reasonable rates and (for the avoidance of doubt) provided further that payment of any increased or additional premiums required by insurers by reason of the Contractor's own claims record or other acts omissions matters or things peculiar to the Contractor will be deemed to be within the reasonable rates.
- 3.2 The Contractor shall immediately inform the Beneficiary if for any period such insurance is not or ceases to be available on commercially reasonable terms and shall obtain in respect of such period such reduced level of insurance as is available and would be fair and reasonable in the circumstances for the Contractor to obtain. The Contractor shall co-operate with the Beneficiary to ensure that all reasonable steps are taken to obtain such insurance at reasonable rates.
- 3.3 As and when reasonably required by the Beneficiary the Contractor will produce for inspection documentary evidence that the insurance referred to in clause 3.1 and 3.2 is being properly maintained and that payment has been made in respect of the premiums due thereunder.

4 NOTICES

- 4.1 Any notice to be given by any party hereunder will be sufficiently served if sent by hand, by facsimile transmission or by post to the registered office or if there is none the last known address of the party to be served. Any notice sent by hand will be deemed to be served on the date of delivery and any notice sent by facsimile transmission will be deemed to be served in full at the time recorded on the facsimile report sheet provided that if any notice sent by hand or facsimile is sent after 4.45 pm on any day it will be deemed to be served on the next working day. Any notice sent by post will

be deemed to have been duly served at the expiration of 48 hours after the time of posting if the end of that period falls before 4.45pm on a working day and otherwise on the next working day.

5 ASSIGNMENT

- 5.1 The benefit of and the rights of the Beneficiary under this Deed may be assigned without the consent of the Contractor on two occasions only to any person acquiring the whole or substantial part of the Beneficiary's interest in the Project.
- 5.2 In calculating the number of assignments for the purposes of clause 5.1 no account will be taken of assignments to a successor authority assuming the functions of the Beneficiary or assignments by way of security or by way of re-assignment on redemption.
- 5.3 The Beneficiary will notify the Contractor in writing following any assignment specifying the name and address of the assignee and the date of the assignment.
- 5.4 The Contractor will not contend that any such assignee is precluded from recovering any loss resulting from any breach of this Deed (whatever the date of such breach) by reason only that that person is an assignee and not the original Beneficiary hereunder or by reason that the original Beneficiary or any intermediate Beneficiary escaped any loss resulting from such breach by reason of the disposal of any interest in the Site or that the original Beneficiary or any intermediate Beneficiary has not suffered any or as much loss.

6 BENEFICIARY'S REMEDIES

- 6.1 The rights and benefits conferred upon the Beneficiary by this Deed are in addition to any other rights and remedies it may have against the Contractor including without prejudice to the generality of the foregoing any remedies in negligence.

7 INSPECTION OF DOCUMENTS

- 7.1 The Contractor's liabilities under this Deed will not be in any way reduced or extinguished by reason of any inspection or approval of the Documents, or attendance at site meetings or other enquiry or inspection which the Beneficiary may make or procure be made for its benefit or on its behalf.

8 STANDARDS OF PRODUCTS AND MATERIALS

- 8.1 Without prejudice to the generality of clause 1.1 and 1.2 of this Deed, the Contractor warrants that it has exercised and will exercise reasonable skill, care and diligence in accordance with this Deed to see that it has not specified or used and it will not specify or use, and (as appropriate) it has not authorised or approved and it will not authorise or approve the specification or use by others, of any products or materials not in conformity with relevant British or European Union Standards or Codes of Practice or which at the time of use are widely known to construction contractors or members of the

relevant design profession within the European Union to be deleterious to health and safety or to the durability of buildings and/or other structures and/or finishes and/or plant and machinery in the particular circumstances in which they are used.

- 8.2 If in the performance of its duties under the Contract the Contractor becomes aware that it or any other person has specified or used, or authorised or approved the specification or use by others of any such products or materials the Contractor will notify the Beneficiary in writing forthwith. This clause does not create any additional duty for the Contractor to inspect or check the work of others which is not required by the Contract.

9 STEP-IN RIGHTS

- 9.1 The Contractor warrants to the Beneficiary that it shall not terminate nor treat as terminated its employment under the Contract, nor discontinue the construction of the Works without first giving to the Beneficiary not less than 28 days' prior notice of the Contractor's intention to do so, specifying the grounds for so doing.
- 9.2 If the Beneficiary serves on the Contractor a notice in accordance with clause 9.3, the Contractor shall not terminate nor treat as terminated its employment under the Contract, nor discontinue the construction of the Works but service of such notice shall not prejudice any other right or remedy the Contractor may have under or in connection with the Contract.
- 9.3 Unless the employment of the Contractor under the Contract shall have terminated previously (and whether or not the Contractor shall have served notice on the Beneficiary pursuant to clause 9.1) if the Beneficiary serves upon the Contractor a notice to do so, the Contractor shall thereafter accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer under and in connection with the Contract.
- 9.4 As against the Employer and the Beneficiary the Contractor shall be entitled and obliged to rely upon and to comply with such notice served by the Beneficiary under clause 9.3 and shall not make any enquiry into the entitlement of the Beneficiary as against the Employer to serve such notice.
- 9.5 As from the date of service of notice under clause 9.3, the Beneficiary or its appointee shall assume all the rights and perform all the obligations of the Employer under the Contract, provided that this shall not affect or derogate from any right of action the Employer may have against the Contractor in respect of any breach of duty of the Contractor under or in connection with the Contract happening prior to the date of service of notice by the Beneficiary under clause 9.3.
- 9.6 Within 21 days after serving notice under clause 9.3 or clause 9.9 the Beneficiary shall pay to the Contractor an amount equal to the sum then owing to the Contractor under the Contract for work done and materials delivered.

- 9.7 If the employment of the Contractor under the Contract is terminated before service of any notice under clause 9.3, then if required to do so by notice served by the Beneficiary not later than 12 weeks after the date of such termination, the Contractor shall enter into a new contract with the Beneficiary or its appointee on the same terms as the Contract but with such revisions as the Beneficiary shall reasonably require to reflect the altered circumstances. Forthwith upon the execution of such new contract, the Beneficiary shall pay to the Contractor an amount equal to the sum which, immediately before termination of the Contractor's employment, was owing to the Contractor by the Employer under the Contract for work done and materials delivered and which remains unpaid.
- 9.8 Upon payment by the Beneficiary in accordance with clause 9.6 and 9.7 of an amount equal to the relevant sum owing from the Employer, the Contractor shall assign to the Beneficiary all the Contractor's rights against the Employer in respect of such unpaid sum, and shall pay to the Beneficiary any of the same subsequently received by it from the Employer.
- 9.9 The Contractor further covenants with the Beneficiary that if the Project Agreement is terminated by the Beneficiary, the Contractor, if requested by the Beneficiary by notice in writing and subject to clause 9.6, will accept the instructions of the Beneficiary or its appointee to the exclusion of the Employer in respect of the Works upon the terms and conditions of the Contract and will if so requested enter into a novation agreement whereby the Beneficiary is substituted for the Employer under the Contract.
- 9.10 The Beneficiary guarantees to the Contractor the performance of the obligations of any appointee of the Beneficiary nominated under clause 9.3 or 9.7 or 9.9.
- 9.11 Where the Contractor has given rights in relation to the Contract similar to those contained in this clause 9 to any other person then if both the Beneficiary and any such other person serve notice under clause 9.3 or clause 9.7 or clause 9.9 or its equivalent the notice served by the Beneficiary will not prevail over any notice served by such other person but will prevail over any notice served by any other person.
- 9.12 The Employer agrees to the foregoing provisions of this clause 9 and agrees to be bound by them.

10 OTHER COLLATERAL WARRANTIES

- 10.1 Following a written request from the Beneficiary the Contractor will (unless it has already done so) execute and/or procure that its sub-Contractors and/or professional consultants or any of them each execute a deed of collateral warranty in the relevant form specified in the Contract in favour of any person in whose favour the Contract obliged the Contractor to give or procure the giving of such a warranty.

11. APPLICABLE LAW AND JURISDICTION

11.1 This Deed will be construed in accordance with English law and be in all respects subject to the exclusive jurisdiction of the English courts.

12. THIRD PARTY RIGHTS

12.1 This Deed is enforceable by the original parties to it and by their successors in title and permitted assignees. Any rights of any person to enforce the terms of this Deed pursuant to the Contracts (Rights of Third Parties) Act 1999 are excluded.

IN WITNESS of which this document is executed as a Deed and is delivered on the date first stated above.

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
NORTHSTONE (NI) LIMITED)
acting by:-)

Director

Director/Secretary

THE COMMON SEAL OF)
CAMBRIDGESHIRE COUNTY)
COUNCIL was hereunto affixed by)
order:-)

Authorised Signatory

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
DONARBON WASTE MANAGEMENT)
LIMITED)
acting by:-

Director

Director/Secretary

APPENDIX 2

PART 1

DEEDS OF APPOINTMENT FOR NOVATED CONSULTANTS

DATED 2007

Eng: 13.12.07
SC01/629403.07000/DML

(1) DONARBON WASTE MANAGEMENT LIMITED

(2) RPS PLANNING & DEVELOPMENT LIMITED

**ARCHITECT'S AND CIVIL AND STRUCTURAL
ENGINEER'S DEED OF APPOINTMENT
relating to
the design and construction of a Waste Transfer Station
and associated works at Alconbury Hill, Alconbury,
Huntingdon, Cambridge**

BETWEEN:-

- (1) **DONARBON WASTE MANAGEMENT LIMITED** (Company No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge, CB25 9PG (the "**Employer**"); and
- (2) **RPS PLANNING & DEVELOPMENT LIMITED** (No 02947164) whose registered office is at Centurion Court, 85 Milton Park, Abingdon, Oxfordshire OX14 4RY (the "**Consultant**").

IT IS AGREED as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"Construction Contract"	means a contract to be entered into between (1) the Employer and (2) the Contractor for the design and construction of the Development
"Contractor"	means Northstone (NI) Limited (No N1004078) whose registered office is at 99 Kingsway, Dunmurry, Belfast BT17 9NU
"Deed of Novation"	means a deed of novation in the form of the draft annexed at Appendix 1 hereto with any amendments thereto reasonably required by the Employer and approved by the Consultant (such approval not to be unreasonably withheld or delayed) to give proper effect to the circumstances at the time of entering into such Deed
"Development"	means the design and construction of a Waste Transfer Station and associated works the Property
"Employer"	means Donarbon Waste Management Limited (No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge CB25 9PG
"Employer Warranty"	means a deed of collateral warranty in the form of the draft annexed at Appendix 2 with any amendments thereto required by the Employer and approved by the Consultant (such approval not to be unreasonably withheld or delayed) to give proper effect to the circumstances at the time of entering into such deed
"Fund Warranty"	means a deed of collateral warranty in the form of the draft annexed at Appendix 3 with any amendments thereto required by the Employer and approved by the Consultant (such approval not to be unreasonably withheld or delayed) to give proper effect to the circumstances at the time of entering into such deed
"Instalment Date"	means the instalment date set out in Part 2 of Schedule 2
"Mortgagee"	means a person having or acquiring a mortgage or charge over the Development or Property or part thereof
"Periodic Payment"	means the periodic payment set out in Part 2 of Schedule 2

"Property"	means Alconbury Hill, Alconbury, Huntingdon, Cambridge
"Regulations"	means The Construction (Design and Management) Regulations 2007 and the related Approved Code of Practice issued by the Health and Safety Commission

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Employer shall be deemed to include its successors in title and permitted assigns;
- 1.2.4 any reference to any enactment or code or practice includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

- 2.1 The Employer intends by the Construction Contract to appoint the Contractor for the Development.
- 2.2 This Deed sets out the terms of the Consultant's appointment to provide architectural, civil engineering and structural engineering services required in advance of the award of the Construction Contract.
- 2.3 This Deed also sets out the terms on which the Consultant will act as architect and civil and structural engineer for the Contractor if this Deed is novated to the Contractor in accordance with Clause 8.3.

3. APPOINTMENT

The Employer hereby appoints the Consultant to act as architect on the Development upon the following terms.

4. SERVICES

- 4.1 The Consultant will provide the services set out in Schedule 1 and any other services reasonably required by the Employer.
- 4.2 The parties hereby agree that this Deed governs all services provided by the Consultant in relation to the Development whether before or after the date hereof.

5. SKILL AND CARE

- 5.1 The Consultant undertakes and warrants to the Employer that in the performance of its duties under this Deed, the Consultant has exercised and will continue to exercise all the reasonable skill, care and attention to be expected of a competent and fully qualified member of the Consultant's profession experienced in carrying out services the like of those hereby undertaken by the Consultant for works of a similar nature, value, complexity and timescale to the Development.
- 5.2 In addition (and without limitation to the above) the Consultant undertakes and warrants to the Employer:-

- 5.2.1 to exercise the standard of skill, care and attention referred to in Clause 5.1 above to see that the Development will comply with all planning agreements permissions and conditions and with all deeds and documents relating to the Development which shall have been brought to the attention of the Consultant by the Employer or anyone on behalf of the Employer;
- 5.2.2 that the Consultant has exercised and will continue to exercise the standard of skill, care and attention referred to in Clause 5.1 not to specify any products or materials for use in the Development which at the time of use:-
- (a) do not conform with British and European Standards or Codes of Practice; or
 - (b) are generally known within the Consultant's profession to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structure;
- 5.2.3 to comply with any Act of Parliament, any instrument, rule or order made under any Act of Parliament and any regulation or bye-law of any local authority or of any statutory undertaker or of any public or private utility or undertaking which has any jurisdiction with regard to the Development or with those systems or property the Development is or will be connected with, and without prejudice to the generality of this Clause, undertakes to carry out and fulfil in all respects the duties of a designer under the Regulations;
- 5.2.4 that it will not without the Employer's written consent make or permit any material change in the designs and specifications for the Development after they have been settled or approved.

5.3 The Consultant also agrees:-

- 5.3.1 to prepare drawings, sketches and schedules in relation to those elements of the Development for which the Consultant is responsible in accordance with the design programme agreed between the Employer and the Consultant; and
- 5.3.2 to provide the Contractor or the Employer with as many copies as either may reasonably require of the "as built" drawings of the Development.

5.4 No approval or inspection or review by the Employer or by any person acting on behalf of the Employer nor any omission to inspect or review or to disapprove shall negate or diminish any duty or liability of the Consultant under or in connection with this Deed.

5.5 Notwithstanding any other provision of this Deed and subject to the duty of skill and care set out in Clause 5.1, following the Novation of this Deed in accordance with Clause 8.3 the Consultant shall perform and assume as part of its obligations under this Deed the Contractor's obligations, liabilities and risks contained within the Construction Contract insofar as any relate to the duties and obligations of the Consultant under or in connection with this Deed (as if the same were expressly referred to herein as obligations, liabilities and risks of the Consultant mutatis mutandis). The Consultant shall ensure that no default or omission on its part or the part of any sub-consultant employed directly by it in relation to the performance by the Consultant of its duties and obligations under this Deed shall cause, contribute or otherwise give rise to any breach by the Contractor of any of its obligations pursuant to the Construction Contract.

6. REMUNERATION

- 6.1 The fees payable for the services provided by the Consultant under this Deed are set out in Part 1 of Schedule 2.
- 6.2 The Employer will pay such fees in the manner set out in Part 2 of Schedule 2.
- 6.3 Any fees costs and disbursements expressed to be payable to the Consultant shall be deemed to be exclusive of Value Added Tax but inclusive of all expenses and disbursements.

- 6.4 If for any reason the Employer does not proceed with or curtails the Development, or if the Consultant's employment is terminated or suspended by the Employer other than for the Consultant's breach, the Consultant will be paid any amount which shall have become payable under Clause 6.2.
- 6.5 If at the Employer's request the Consultant undertakes any services additional to those covered by Schedule 1, or by reason of any design changes requested by the Employer or any other circumstances beyond the Consultant's control the Consultant is required to undertake significant extra work, provided the Consultant notifies the Employer before undertaking such work that the Consultant may require an additional fee, a fair and reasonable additional fee will be payable.
- 6.6 Subject to Clause 6.5 the fees payable to the Consultant under Clauses 6.1 to 6.4 (inclusive) shall be the Consultant's entire remuneration under this Deed.
- 6.7 The Consultant shall not be entitled to any compensation for the termination or suspension of the Consultant's employment under this Deed.
- 6.8 The Consultant shall maintain records of all time spent by his professional and technical staff (including partners) in performing each services performed by such staff under this Deed.
- 6.9 The Consultant shall from time to time upon request (and after as well as before the termination or conclusion of the Consultant's employment under this Deed) make the records referred to in Clause 6.8 available to the Employer or his appointee for inspection and provide such copies as the Employer may request.

7. STAFF

- 7.1 The Consultant's employee with responsibility for the Development is Andy Young.
- 7.2 The above will retain their involvement in the Development until completion of the services under this Deed unless otherwise agreed with the Employer.

8. ASSIGNMENT

- 8.1 This Deed is personal to the Consultant and the Consultant may not assign or delegate the obligations under this Deed to any person.
- 8.2 The Employer may assign the benefit of this Deed to any person assuming the whole of the Employer's role in the Development.
- 8.3 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 8.2 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.
- 8.4 This Deed may be novated to the Contractor upon the Contractor's appointment whereupon the Employer may give the Consultant notice of the Contractor's appointment and the Consultant shall enter into the Deed of Novation.

9. DEEDS OF WARRANTY

- 9.1 On the date of this Deed the Consultant will enter into the Employer Warranty.
- 9.2 Within seven days of receiving a written request from the Contractor or the Employer the Consultant will enter into a Fund Warranty in favour of any Mortgagee and/or financier of the Development or the Property or any part thereof.

10. COPYRIGHT

- 10.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Consultant in connection with the Development shall remain

vested in the Consultant but the Consultant grants to the Employer and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Development including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Development. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

- 10.2 The Consultant shall not be liable for any such use by the Employer or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Consultant.
- 10.3 The Employer shall on written request, be entitled to be supplied by the Consultant with copies of the drawings and other items referred to in Clause 10.1.
- 10.4 The Consultant agrees to waive any right to be identified as author of the drawings and other documents referred to in Clause 10.1 in accordance with section 77 of the Copyright Designs and Patents Act 1988 and any right not to have the documents referred to in 10.1 subjected to derogatory treatment in accordance with section 80 of that Act as against the Employer or Contractor or any licensee or assignee of the Employer or Contractor.

11. INDEMNITY INSURANCE

- 11.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of any one event (except in relation to claims arising from pollution, contamination, date recognition or asbestos where the level will be in the annual aggregate) for a period beginning now and ending 12 years after the date of Completion of the Development, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof.
- 11.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 11.3 The Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Consultant and the Employer can discuss means of best protecting the respective positions of the Employer and the Consultant in respect of the Development in the absence of such insurance.
- 11.4 The Consultant shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 11.5 As and when reasonably requested to do so by the Employer the Consultant shall produce for inspection documentary evidence that his professional indemnity insurance is being maintained.
- 11.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Employer.

12. ADJUDICATION

- 12.1 If a dispute or difference arises under this Deed either party may give notice of its intention to refer such dispute or difference to adjudication at any time and shall within 7 days thereafter refer the same to the decision of the Adjudicator. The party referring such dispute shall be called the "**Referrer**" and the party responding shall be called the "**Respondent**".
- 12.2 Where either party has given notice of his intention to refer a dispute to adjudication then:-
- 12.2.1 any agreement by the parties on the appointment of the Adjudicator must be reached and the appointment made in sufficient time so that the dispute or difference can be referred to the Adjudicator within 7 days of the date of the notice of intention to refer; and
- 12.2.2 if the parties are unable to agree on the appointment of the Adjudicator then application to the Chartered Institute of Arbitrators for the appointment of the adjudicator must be made with the object of securing the appointment of and the referral of the dispute or difference to the Adjudicator within 7 days of the date of the intention to refer.
- 12.3 Upon the appointment of the Adjudicator the parties shall comply with all the directions which he may issue for the purposes of fairly and expeditiously considering the facts and issues in the dispute and so that the Adjudicator shall reach a decision within 28 days of the date of referral to him under Clause 12.1 or such longer period as is agreed by the parties after the dispute has been referred and the Adjudicator may extend the period of 28 days by up to 14 days with the Referrer's consent.
- 12.4 The Adjudicator shall act fairly and impartially and shall take the initiative in ascertaining the facts and the law and shall reach his decision in accordance with the applicable law in relation to this Deed and shall publish his decision simultaneously to both parties.
- 12.5 In determining any dispute referred to him for a decision the Adjudicator:-
- 12.5.1 shall consider any written representations, statements and expert's reports submitted to him by the parties (which shall be exchanged between the parties when the same are supplied to the Adjudicator);
- 12.5.2 shall afford the parties the opportunity to address him in a meeting or meetings at which both parties must be present;
- 12.5.3 shall permit the parties to be represented by such legal or other representatives as they shall see fit;
- 12.5.4 shall have the power to require the parties to produce to him and to the other party copies of any documents they are able to produce which may assist in the reference (save any which would be privileged from production in Court proceedings) between the parties relating to the dispute; and
- 12.5.5 shall be entitled to instruct an expert and to take Counsel's opinion as to any matter within their field of expertise raised by the reference, but shall not be entitled to delegate any decision to such expert or Counsel.
- 12.6 The Adjudicator's decision is binding upon the parties until finally determined by legal proceedings or by agreement.
- 12.7 The parties hereby agree that the Adjudicator (including any employee or agent of the Adjudicator) appointed in accordance with this Clause 12 shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as Adjudicator unless the act or omission is in bad faith.
- 12.8 If either party does not comply with the decision of the Adjudicator the other party shall be entitled to take proceedings in the Courts to secure such compliance pending any final determination of the referred dispute or difference pursuant to Clause 12.6.

- 12.9 Subject to the provisions of Clauses 12.3, 12.4, 12.5 and 12.11, in deciding any dispute referred to him, the Adjudicator shall determine and take into account any matter ("**Cross-claim**") raised by the Respondent to the notice to refer by way of defence or set-off or counter claim, provided such Cross-claim arises under this Deed.
- 12.10 Clauses 12.3 to 12.8 (inclusive) shall apply to any Cross-claim as they apply to any dispute referred to the Adjudicator pursuant to Clause 12.1.
- 12.11 Clauses 12.9 and 12.10 shall not apply to any Cross-claim if such Cross-claim is being decided or has been decided by an adjudicator other than the Adjudicator appointed pursuant to Clauses 12.1 to 12.3 inclusive to determine the relevant dispute or difference.

13. TERMINATION AND SUSPENSION

- 13.1 The Employer may terminate the Consultant's employment under this Deed at any time upon seven days notice in writing to the Consultant.
- 13.2 The Consultant may terminate its employment under this Deed if the Employer shall be in material and persistent breach of its obligations (including without limitation the non payment of fees) and shall fail to remedy the same after receiving a 30 day written notice from the Consultant specifying the breach and requiring its remedy in accordance with this.
- 13.3 The termination of the Consultant's employment under this Deed, howsoever arising, shall be without prejudice to the rights and remedies of either party in relation to any omission or default of the other prior to such termination.
- 13.4 The Employer may suspend the Consultant's services by written notice. Upon suspension the Consultant's fee entitlement shall be as provided in Clause 6.4.

14. CONFIDENTIALITY

Save as required by law or as may be necessary for the proper performance of its duties the Consultant shall not during the employment of the Consultant under this Deed or following termination of its employment hereunder disclose to any third party or make use of any information relating to the Development.

15. NOTICES

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if given in compliance with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

16. LIABILITY PERIOD

No action or proceedings for any breach of this Deed shall be commenced against the Consultant after the expiry of 12 years from the date of Completion of the Development.

17. THIRD PARTY RIGHTS

This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Employer is deemed to be a party to this Deed.

18. ENTIRE AGREEMENT

This Deed shall constitute the entire agreement between the Employer and the Consultant and will replace any previous agreement between the Employer and the Consultant relating to the Development.

19. GOVERNING LAW

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1

SERVICES

The services to be provided are as follows:-

1. PRE CONTRACT

- 1.1 Develop the building layout and site layout including design of site access and drainage;
- 1.2 Preparation of planning drawings;
- 1.3 Carry out site investigations;
- 1.4 Carry out other necessary investigations and enquiries to determine feasibility of development proposals;
- 1.5 Advise on the requirements for Statutory Authority and other approvals and seek to obtain such approvals where these relate to construction of the facility;
- 1.6 Preparation of tender drawings and employer requirement information for a construction contract and preparation and issue of all relevant tender documentation to agreed list of potential contractors; and
- 1.7 Appraisal and reporting tender results.

2. POST CONTRACT

- 2.1 Coordination and review/comment on sub contractors design and drawings for steelwork, cladding pre cast concrete products, mechanical and electrical products and drainage products required to complete the works;
- 2.2 Attendance at design team and site progress meetings;
- 2.3 Preparation of all information for a building regulations application (it is assumed that the application will be submitted by the contractor and therefore excludes fees payable to the local authority or others);
- 2.4 Assistance with discharge of planning conditions;
- 2.5 Advise on requirements for sample taking and carrying out tests of materials and workmanship;
- 2.6 Prepare snagging list of architectural and civil and structural elements of the works;
- 2.7 Prepare and provide as built drawings and specifications for incorporation into the Building Manual;
- 2.8 Provide advice and assistance in connection with making good defects or faults.

3. GENERAL

- 3.1 All drawings to be issued in AutoCAD and pdf format.
- 3.2 Preparation of design, general arrangement and detailed drawings together with specifications, notes and/or documents for:
 - 3.2.1 External foul drainage and surface water drainage including SUDs;
 - 3.2.2 External hard standings including kerbs, bunds and landscape areas;
 - 3.2.3 Service trenches, ducting and chambers;

- 3.2.4 Earthworks plateaus, associate earthwork embankments and land drainage;
- 3.2.5 New vehicle entrance to constructed to Adoptable standard;
- 3.2.6 Ground bearing floor slabs;
- 3.2.7 Foundations and in situ ground beams;
- 3.2.8 Weighbridge foundation, services and drainage;
- 3.2.9 Weighbridge office, services, drainage and foundations;
- 3.2.10 Reinforced concrete structures – including reinforcement detailing and reinforcement schedules;
- 3.2.11 Preparation of drawings and specifications sufficient for design by sub contractors of Structural steelwork framing and associated secondary steelwork elements;
- 3.2.12 Cladding, roof drainage and flashings;
- 3.2.13 Pre cast concrete ground beams;
- 3.2.14 M&E installations;
- 3.2.15 Barriers, posts, doors signage and metalwork sundries.

SCHEDULE 2

PART 1

FEES

The Consultant's fee will be the lump sum of [REDACTED]

PART 2

PAYMENT OF FEES

Instalment Date	Periodic Payment
Amount paid to date	[REDACTED]
30 September 2007	[REDACTED]
31 October 2007	[REDACTED]
30 November 2007	[REDACTED]
31 December 2007	[REDACTED]
31 January 2008	[REDACTED]
29 February 2008	[REDACTED]
31 March 2008	[REDACTED]
30 April 2008	[REDACTED]

Section B

- B.1 The Consultant shall upon or within 3 working days of the Instalment Date submit to the Employer an invoice for the relevant Periodic Payment together with a statement setting out in reasonable detail any additional sums relating to the Instalment Date covered by the Periodic Payment ("additional sums") which the Consultant believes it is entitled to be paid under this Deed together with VAT at the appropriate rate.
- B.2 Payment for invoices issued in accordance with paragraph B.1 shall be due 5 working days after receipt of the invoice by the Employer (the "Due Date for Payment").
- B.3 Subject to paragraphs B.4 and B.5 the Employer shall pay the Periodic Payment and any additional sums due and payable within 30 days of the Due Date for Payment (the "Final Date for Payment").
- B.4 Within 5 days of the Due Date for Payment the Employer shall submit to the Consultant a notice specifying the amount of the Periodic Payment and any additional sums which the Employer has paid or proposes to pay by reference to the Consultant's invoice together with a statement of the basis of the Employer's calculation of the said sums (if different from the sums set out in the Consultant's invoice).
- B.5 If the Employer intends to withhold all or any part of a Periodic Payment from the Consultant the Employer must, not later than 1 day before the Final Date for Payment, give notice to the Consultant to that effect which notice must specify:-
- (a) the amount proposed to be withheld and the ground for withholding payment; and
 - (b) if there is more than one ground, each ground and the amount attributable to it.

B.6 If the Employer fails to pay the amount due to the Consultant by the Final Date for Payment the Employer shall pay to the Consultant in addition to the amount not properly paid simple interest thereon for the period until such payment is made. Payment of such simple interest shall be treated as a debt due to the Consultant by the Employer. The rate of interest payable shall be [REDACTED] over the Base Rate of the Bank of England which is current at the Final Date for Payment.

APPENDIX 1
DEED OF NOVATION

APPENDIX 2
EMPLOYER WARRANTY

APPENDIX 3
FUND WARRANTY

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
RPS PLANNING & DEVELOPMENT LIMITED)
acting by:-)

Director

Director/Secretary

APPENDIX 2

PART 2

CONSULTANT'S DEED OF NOVATION

DATED _____ **2007**

Eng: 14.12.07
SC01/629403.07000/DML

(1) DONARBON WASTE MANAGEMENT LIMITED

(2) NORTHSTONE (NI) LIMITED

(3) RPS PLANNING & DEVELOPMENT LIMITED

NOVATION OF CONSULTANT'S APPOINTMENT
(Employer to Contractor)
relating to
the design and construction of a Waste Transfer Station
and associated works at Alconbury Hill, Alconbury,
Huntingdon, Cambridge

BETWEEN:-

- (1) **DONARBON WASTE MANAGEMENT LIMITED** (No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge, CB25 9PG (the "**Employer**");
- (2) **NORTHSTONE (NI) LIMITED** (No N1004078) whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU (the "**Contractor**"); and
- (3) **RPS PLANNING & DEVELOPMENT LIMITED** (No 02947164) whose registered office is at Centurion Court, 85 Milton Park, Abingdon, Oxfordshire OX14 4RY (the "**Consultant**").

WHEREAS:-

- (A) The Consultant is in practice as consulting architects.
- (B) By an agreement in writing dated (the "**Appointment**") the Employer appointed the Consultant to provide architectural services in connection with the design and construction of a Waste Transfer Station and associated works at Alconbury Hill, Alconbury, Huntingdon, Cambridge (the "**Development**").
- (C) The Employer and the Contractor have entered into a Construction Contract under which the Contractor has been appointed to complete the design of and to construct the Development.
- (D) The parties have agreed to novate the Appointment to the Contractor on the terms set out below.

IT IS AGREED as follows:-

1. NOVATION OF APPOINTMENT

The Appointment is hereby novated from the Employer and the Consultant to the Contractor and the Consultant.

2. RELEASE OF EMPLOYER

The Employer shall no longer owe any duty or obligation to the Consultant under or in respect of the Appointment.

3. RELEASE OF CONSULTANT

The Consultant shall no longer owe any duty or obligation to the Employer under the Appointment whether by virtue of its terms or by virtue of any breach or otherwise.

4. BINDING OF CONSULTANT TO CONTRACTOR

- 4.1 The Consultant binds himself to the Contractor in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Employer.
- 4.2 For the avoidance of doubt the Consultant undertakes with and warrants to the Contractor that it has carried out and will carry out the duties and obligations on its part to be performed under the Appointment, and that in performing the same the Consultant has exercised and will continue to exercise all the reasonable skill, care and attention to be expected of competent and fully qualified member of the Consultant's profession experienced in carrying out services the like of those undertaken by the Consultant under the Appointment for works of a similar nature, value, complexity and timescale to the Development.
- 4.3 The Contractor shall not be precluded from recovering any losses incurred by the Contractor resulting from any breach of this Clause 4 by reason that the acts or omissions causing such breach occurred before this Deed took effect, or that the Employer will not incur or has not or would not have incurred any such losses.

5. **BINDING OF CONTRACTOR TO CONSULTANT**

The Contractor binds itself to the Consultant in the terms of the Appointment as if the Contractor were and always had been named in the Appointment in place of the Employer.

6. **VESTING OF REMEDIES IN CONTRACTOR**

All rights of action and remedies vested in the Employer against the Consultant under the Appointment shall from the date of this Deed vest in the Contractor.

7. **VESTING OF REMEDIES AGAINST CONTRACTOR**

All rights of action and remedies vested in the Consultant against the Employer under and in respect of the Appointment shall from the date of this Deed lie against the Contractor.

8. **FEES AND DISBURSEMENTS**

The Consultant acknowledges that all fees and disbursements earned by the Consultant in respect of services performed to date under the Appointment have been paid in full.

9. **AFFIRMATION OF APPOINTMENT**

Subject to the terms of this Deed the Appointment shall remain in full force and effect.

10. **COLLATERAL WARRANTIES**

Nothing in this Deed shall affect or derogate from any collateral warranty given or to be given by the Consultant to the Employer respecting the Development.

11. **THIRD PARTY RIGHTS**

This Deed does not create any right enforceable by any person not a party to it, (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Employer is deemed to be a party in this Deed.

12. **GOVERNING LAW AND INTERPRETATION**

12.1 The law of this Deed is English law and the English courts shall have jurisdiction with regard to all matters arising from it.

12.2 The definitions given in the recitals to this Deed shall apply to this Deed.

12.3 Clause headings in this Deed shall be of no effect.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
NORTHSTONE (NI) LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
RPS PLANNING & DEVELOPMENT LIMITED)
acting by:-)

Director

Director/Secretary

APPENDIX 3
CONSULTANT EMPLOYER AND FUND WARRANTY

DATED _____ **2007**

Eng: 14.12.2007

(1) RPS PLANNING & DEVELOPMENT LIMITED

(2) DONARBON WASTE MANAGEMENT LIMITED

(3) NORTHSTONE (NI) LIMITED

ARCHITECT'S EMPLOYER WARRANTY
relating to
the design and construction of a Waste Transfer Station
and associated works at Alconbury Hill, Alconbury,
Huntingdon, Cambridge

THIS DEED is made on

2007

BETWEEN:-

- (1) **RPS PLANNING & DEVELOPMENT LIMITED** (No 02947164) whose registered office is at Centurion Court, 85 Milton Park, Abingdon, Oxfordshire OX14 4RY (the "**Consultant**");
- (2) **DONARBON WASTE MANAGEMENT LIMITED** (Company No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge, CB25 9PG (the "**Employer**"); and
- (3) **NORTHSTONE (NI) LIMITED** (No N1004078) whose registered office is at 99 Kingsway, Dunmurry, Belfast, BT17 9NU (the "**Contractor**").

NOW THIS DEED WITNESSES in consideration of the sum of £10.00 paid by the Employer, receipt of which the Consultant acknowledges, as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"Appointment"	means the appointment dated _____ made between (1) the Employer and (2) the Consultant
"Development"	means the design and construction of a Waste Transfer Station and associated works at the Property
"Property"	means Alconbury Hill, Alconbury, Huntingdon, Cambridge

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Employer shall be deemed to include its successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

- 2.1 The Employer has employed the Contractor for the Development.
- 2.2 The Employer has appointed the Consultant to act in the capacity of architect in relation to the Development.
- 2.3 By a Deed of Novation of even date the Appointment has been novated to the Contractor.
- 2.4 The Consultant has agreed to enter into this Deed with the Employer.

3. SKILL AND CARE

The Consultant undertakes with and warrants to the Employer that:-

- 3.1 in carrying out and performing its duties and obligations under or in connection with the Appointment, the Consultant has exercised and will continue to exercise all the reasonable skill, care and attention to be expected of a competent and fully qualified member of the Consultant's profession experienced in carrying out services the like of those undertaken by the Consultant under the Appointment for works of a similar nature, value, complexity and timescale to the Development;
- 3.2 the Consultant has exercised and will continue to exercise the standard of skill, care and attention referred to in Clause 3.1 not to specify any products or materials for use in the Development which at the time of use:-
 - 3.2.1 do not conform with British and European Standards or Codes of Practice; or
 - 3.2.2 are generally known within the Consultant's profession to be deleterious, in the particular circumstances in which they are specified for use, to health and safety and/or the durability of the building or structure;
- 3.3 it has carried out and will carry out the duties and obligations on its part to be performed under the Appointment.

4. OBLIGATIONS PRIOR TO TERMINATION OF THE APPOINTMENT BY THE CONSULTANT

- 4.1 The Consultant covenants with the Employer that it will not exercise nor seek to exercise any right of termination of the Appointment or to discontinue the performance of any of its duties or obligations thereunder for any reason whatsoever (including any breach on the part of the Contractor) without giving not less than 21 days written notice of his intention to do so to the Employer and specifying the grounds for the proposed termination or discontinuance.
- 4.2 Any period stipulated in the Appointment for the exercise by the Consultant of a right of termination or to discontinue the performance of any of its duties or obligations shall, nevertheless be extended as may be necessary, to take account of the period of notice required under Clause 4.1
- 4.3 The right of the Consultant to terminate the Appointment or to discontinue the performance of any of its duties or obligations thereunder shall cease within the period of 21 days referred to in Clause 4.1 if the Employer shall give notice to the Consultant:-
 - 4.3.1 requiring the Consultant to continue its duties and obligations under the Appointment with the Employer or its nominee; and
 - 4.3.2 acknowledging that the Employer or its nominee will assume all the obligations of the Contractor under the Appointment; and
 - 4.3.3 undertaking that the Employer or its nominee will discharge all payments which may subsequently become due to the Consultant under the terms of the Appointment and will pay to the Consultant any sums which have been due and payable to it thereunder but which remain unpaid.
- 4.4 Upon compliance by the Employer or its nominee with the requirements of Clause 4.3 the Appointment will continue in full force and effect as if the Appointment had been entered into between the Consultant and the Employer or its nominee to the exclusion of the Contractor.
- 4.5 Compliance by the Consultant with the provisions of this Clause 4 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Consultant from exercising his rights after the expiration of the notice issued pursuant to Clause 4.1 unless the rights of termination have ceased under the provisions of Clause 4.3.

- 4.6 This Clause 4 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Consultant and such person at the request of the Employer.

5. EMPLOYER'S RIGHTS IN RELATION TO THE APPOINTMENT

- 5.1 Notwithstanding that as between the Contractor and the Consultant the Consultant's right of termination of the Appointment may not have arisen the provisions of Clause 4.4 shall also apply if the Employer gives notice to the Consultant and to the Contractor to the effect that the Employer wishes the provisions of Clause 4.4 to apply and the Employer or its nominee complies with the requirements of Clause 4.3.
- 5.2 The Consultant shall not be concerned, or required to enquire whether, and shall be bound to assume that as between the Contractor and the Employer the circumstances have occurred permitting the Employer to give such notice under Clause 5.1.
- 5.3 This Clause 5 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Consultant and such person at the request of the Employer.

6. CONSULTANT'S POSITION

By acting in accordance with Clauses 4 and 5 the Consultant shall not incur any liability to the Contractor.

7. COPYRIGHT

- 7.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Consultant in connection with the Development shall remain vested in the Consultant but the Consultant grants to the Employer and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Development including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Development. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.
- 7.2 The Consultant shall not be liable for any such use by the Employer or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Consultant.
- 7.3 The Employer shall on written request and upon paying a reasonable copying charge therefor, be entitled to be supplied by the Consultant with copies of the drawings and other items referred to in Clause 7.1.
- 7.4 The Consultant agrees to waive any right to be identified as author of the drawings and other documents referred to in Clause 7.1 in accordance with section 77 of the Copyright Designs and Patents Act 1988 and any right not to have the documents referred to in Clause 7.1 subjected to derogatory treatment in accordance with section 80 of that Act as against the Employer or Contractor or any licensee or assignee of the Employer or Contractor.

8. INDEMNITY INSURANCE

- 8.1 The Consultant shall maintain professional indemnity insurance covering (inter alia) all liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of any one event (except in relation to claims arising from pollution, contamination, date recognition or asbestos where the level will be in the annual aggregate) for a period beginning now and ending 12 years after the date of Completion of the Development, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the

Consultant must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof.

- 8.2 Any increased or additional premium required by insurers by reason of the Consultant's own claims record or other acts, omissions, matters or things particular to the Consultant shall be deemed to be within commercially reasonable rates.
- 8.3 The Consultant shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Consultant and the Employer can discuss means of best protecting the respective positions of the Employer and the Consultant in respect of the Development in the absence of such insurance.
- 8.4 The Consultant shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Consultant in respect of the net cost of such insurance to the Consultant above commercially reasonable rates or, if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 8.5 As and when reasonably requested to do so by the Employer the Consultant shall produce for inspection documentary evidence (including, if required by the Employer, the original of the relevant insurance documents) that his professional indemnity insurance is being maintained.
- 8.6 The above obligations in respect of professional indemnity insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Employer.

9. **LIABILITY**

- 9.1 The obligation of the Consultant under this Deed shall cease 12 years after the date of Completion of the Development save in respect of any cause of action under this Deed where proceedings have been commenced during such 12 year period.
- 9.2 The Consultant shall be entitled in any action or proceedings by the Employer to rely on any limitation in the Appointment and to raise the equivalent rights in defence of liability (excluding set-off and counterclaim) as it would have had against the Employer if the Employer had been named as joint employer under the Appointment.

10. **ASSIGNMENT**

- 10.1 The Consultant consents to the benefit of this Deed being assigned twice only **PROVIDED ALWAYS** that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Employer so long as such assignee company remains within the same group of companies as the Employer.
- 10.2 The Consultant shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

11. **NOTICES**

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if given in compliance with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

12. **EXTRANEOUS RIGHTS**

- 12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Consultant to the Employer.
- 12.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Employer and no omission to inspect or test shall negate or diminish any duty or liability of the Consultant arising under this Deed.
- 12.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.
- 12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Employer is deemed to be a party to this Deed.
- 12.5 The Consultant and the Contractor undertake to the Employer not to vary or depart from the terms and conditions of the Appointment without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed).

13. **GOVERNING LAW**

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

14. **CONTRACTOR'S CONSENT**

The Contractor has executed this Deed to signify its consent to its terms.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED (but not delivered)
until the date hereof))
AS A DEED by)
RPS PLANNING & DEVELOPMENT LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof))
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof))
AS A DEED by)
NORTHSTONE (NI) LIMITED)
acting by:-)

Director

Director/Secretary

APPENDIX 4
SPECIFIED SUB-CONTRACTOR WARRANTY

DATED _____ **2007**

Draft (2): 09.05.07
SCO/629403.07000/DML

(1) [_____]

(2) **DONARBON WASTE MANAGEMENT LIMITED**

(3) [_____]

SUB-CONTRACTOR'S EMPLOYER WARRANTY
relating to
the design and construction of a Waste Transfer Station
and associated works at Alconbury Hill, Alconbury,
Huntingdon, Cambridge

BETWEEN:-

- (1) [] (No []) of/whose registered office is at [] (the "**Sub-Contractor**");
- (2) **DONARBON WASTE MANAGEMENT LIMITED** (No 06054499) whose registered office is at Ely Road, Waterbeach, Cambridge, CB5 9PG (the "**Employer**"); and
- (3) [] (No []) of/whose registered office is at [] (the "**Contractor**").

NOW THIS DEED WITNESSES in consideration of the sum of £10.00 paid by the Employer, receipt of which the Sub-Contractor acknowledges, as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"Construction Contract"	means a contract dated [] and made between (1) the Employer and (2) the Contractor for the design and construction of the Development
"Development"	means the design and construction of a Waste Transfer Station and associated works at the Property
"Property"	means Alconbury Hill, Alconbury, Huntingdon, Cambridge
"Sub-Contract"	means a Sub-Contract dated [] made between (1) the Contractor (2) the Sub-Contractor for the carrying out of the Sub-Contract Works
"Sub-Contract Works"	means the works comprising [] more particularly described in the Sub-Contract

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Employer shall be deemed to include their successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

- 2.1 The Employer has by the Construction Contract employed the Contractor to design and build the Development.
- 2.2 By the Sub-Contract the Contractor has appointed the Sub-Contractor to carry out and complete the Sub-Contract Works at the Development on the terms set out therein.

2.3 The Sub-Contractor has agreed to enter into this Deed with the Employer.

3. **SKILL AND CARE**

3.1 The Sub-Contractor undertakes with and warrants to the Employer that:-

3.1.1 it has observed and performed and will observe and perform its obligations under the Sub-Contract and without prejudice to the generality of the foregoing insofar as the Sub-Contractor is required by the Sub-Contract to:-

- (a) design any part of the Development;
- (b) select materials for incorporation into the Development; or
- (c) ensure compliance of any part of the Development with a performance specification;

in so doing the Sub-Contractor has used and will continue to use all reasonable skill, care and diligence in conformity with the normal standards of the Sub-Contractor's specialist trade;

3.1.2 it has not specified or used nor will it specify for use or use any products or materials in the Development which at the time of use:-

- (a) do not conform with British and European Standards or Codes of Practice;
- (b) are generally known within the Sub-Contractor's trade to be deleterious in the particular circumstances in which they are used or specified for use to health and safety and/or the durability of the Development.

3.2 Notwithstanding any other provision of this Deed and subject to the duty of skill and care set out in Clause 3.1.1, the Sub-Contractor shall perform and assume as part of its obligations under this Deed the Contractor's obligations, liabilities and risks contained within the Construction Contract insofar as any relate to the duties and obligations of the Sub-Contractor under or in connection with this Deed (as if the same were expressly referred to herein as obligations, liabilities and risks of the Sub-Contractor mutatis mutandis). The Sub-Contractor shall ensure that no act or default or omission on its part or the part of any sub-contractor employed directly by it in relation to the performance by the Sub-Contractor of its duties and obligations under this Deed shall cause, contribute or otherwise give rise to any breach by the Contractor of any of its obligations pursuant to the Construction Contract.

4. **OBLIGATIONS PRIOR TO TERMINATION OF THE SUB-CONTRACT BY THE SUB-CONTRACTOR**

4.1 The Sub-Contractor covenants with the Employer that it will not exercise nor seek to exercise any right of termination of its employment under the Sub-Contract or to discontinue the performance of any of its obligations thereunder for any reason whatsoever (including any breach on the part of the Contractor) without giving not less than 21 days written notice of his intention to do so to the Employer and specifying the grounds for the proposed termination or discontinuance.

4.2 Any period stipulated in the Sub-Contract for the exercise of a right of termination by the Sub-Contractor of its employment under the Sub-Contract or to discontinue the performance of any of its obligations thereunder shall nevertheless be extended as may be necessary to take account of the period of notice required under Clause 4.1.

4.3 The right of the Sub-Contractor to terminate its employment under the Sub-Contract or to discontinue to discharge its obligations thereunder shall cease within the period of 21 days referred to in Clause 4.1 if the Employer shall give notice to the Sub-Contractor:-

4.3.1 requiring the Sub-Contractor to continue its obligations under the Sub-Contract with the Employer or its nominee; and

- 4.3.2 acknowledging that the Employer or its nominee will assume all the obligations of the Contractor under the Sub-Contract; and
- 4.3.3 undertaking that the Employer or its nominee will, within 30 days of service of the Employer's notice discharge all payments which may subsequently become due to the Sub-Contractor under the terms of the Sub-Contract and will pay to the Sub-Contractor any sums which have been due and payable to it under the Sub-Contract but which remain unpaid.

4.4 Upon service by the Employer or its nominee of a notice complying with the requirements of Clause 4.3 the Sub-Contract will continue in full force and effect as if the same had been entered into between the Sub-Contractor and the Employer to the exclusion of the Contractor.

4.5 Compliance by the Sub-Contractor with the provisions of this Clause 4 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice issued pursuant to Clause 4.1 unless the rights of termination have ceased under the provisions of Clause 4.3.

4.6 This Clause 4 shall cease to have effect upon the prior exercise by any person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Sub-Contractor and such person at the request of the Employer.

5. EMPLOYER'S RIGHTS IN RELATION TO THE SUB-CONTRACT

5.1 Notwithstanding that as between the Contractor and the Sub-Contractor the Sub-Contractor's right of termination of its employment under the Sub-Contract may not have arisen the provisions of Clause 4.4 shall also apply if the Employer gives notice to the Sub-Contractor and to the Contractor to the effect that the Employer wishes the provisions of Clause 4.4 to apply and the Employer or its nominee complies with the requirements of Clause 4.3.

5.2 The Sub-Contractor shall not be concerned, or required to enquire whether, and shall be bound to assume that as between the Contractor and the Employer the circumstances have arisen permitting the Employer to give notice under Clause 5.1.

5.3 This Clause 5 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Sub-Contractor and such person at the request of the Employer.

6. SUB-CONTRACTOR'S POSITION

By acting in accordance with Clauses 4 and 5 the Sub-Contractor shall not incur any liability to the Contractor.

7. COPYRIGHT

7.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Sub-Contractor in connection with the Development shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Employer and its nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Development including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Development provided that the licence to use the drawings and documents for an extension of the Development shall not include the right to reproduce the designs contained in such documents and drawings for any extension of the Development. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

7.2 The Sub-Contractor shall not be liable for any such use by the Employer or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Sub-Contractor.

- 7.3 The Employer shall on written request and upon paying a reasonable copying charge therefor, be entitled to be supplied by the Sub-Contractor with copies of the drawings and other items referred to in Clause 7.1.

8. INDEMNITY INSURANCE

- 8.1 The Sub-Contractor shall maintain professional indemnity/product liability insurance covering (inter alia) all its design liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of practical completion of the Development, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof. The Sub-Contractor shall not, without the prior approval in writing of the Employer, settle or compromise with the insurers any claim which the Sub-Contractor may have against the insurers and which relates to a claim by the Employer against the Sub-Contractor or by any act or omission lose or prejudice the Sub-Contractor's right to make or proceed with such a claim against the insurers.
- 8.2 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.
- 8.3 The Sub-Contractor shall immediately inform the Employer if such insurance ceases to be available at commercially reasonable rates in order that the Sub-Contractor and the Employer can discuss means of best protecting the respective positions of the Employer and the Sub-Contractor in respect of the Development in the absence of such insurance.
- 8.4 The Sub-Contractor shall fully co-operate with any measures reasonably required by the Employer, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Employer undertakes in writing to reimburse the Sub-Contractor in respect of the net cost of such insurance to the Sub-Contractor above commercially reasonable rates, or if the Employer effects such insurance at rates at or above commercially reasonable rates, reimbursing the Employer in respect of what the net cost of such insurance to the Employer would have been at commercially reasonable rates.
- 8.5 As and when reasonably requested to do so by the Employer the Sub-Contractor shall produce for inspection documentary evidence that his professional indemnity/product liability insurance is being maintained.
- 8.6 The above obligations in respect of professional indemnity/product liability insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Employer.

9. LIABILITY PERIOD

No action or proceedings for any breach of this Deed shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of practical completion of the Development.

10. ASSIGNMENT

- 10.1 The Sub-Contractor consents to the benefit of this Deed being assigned twice only **PROVIDED ALWAYS** that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated

companies within the same group of companies as the Employer so long as such assignee company remains within the same group of companies as the Employer.

- 10.2 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

11. **NOTICES**

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if given in compliance with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

12. **EXTRANEOUS RIGHTS**

- 12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Employer.

- 12.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Employer and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.

- 12.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

- 12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Employer is deemed to be a party to this Deed.

- 12.5 The Contractor and the Sub-Contractor undertake to the Employer not to vary or depart from the terms and conditions of the Sub-Contract without the prior written consent of the Employer (such consent not to be unreasonably withheld or delayed).

13. **GOVERNING LAW**

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

14. **CONTRACTOR'S CONSENT**

The Contractor has executed this Deed to signify consent to its terms.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
[])
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
[])
acting by:-)

Director

Director/Secretary

SIGNED (but not delivered)
until the date hereof)
AS A DEED by)
[])
in the presence of:-)

Signature of Witness:

Name of Witness:

Address:

SIGNED (but not delivered)
until the date hereof)
AS A DEED by)
[])
in the presence of:-)

Signature of Witness:

Name of Witness:

Address:

DATED _____ **2007**

Draft (3): 19.11.07
SCO/629403.07000/DML

(1) []

(2) []

(3) []

SUB-CONTRACTOR'S FUND WARRANTY
relating to
the design and construction of a Waste Transfer Station
and associated works at Alconbury Hill, Alconbury,
Huntingdon, Cambridge

BETWEEN:-

- (1) [] (No []) of/whose registered office is at [] (the "**Sub-Contractor**");
- (2) [] (No []) of/whose registered office is at [] (the "**Beneficiary**"); and
- (3) [] (No []) of/whose registered office is at [] (the "**Contractor**").

NOW THIS DEED WITNESSES in consideration of the sum of £10.00 paid by the Beneficiary, receipt of which the Sub-Contractor acknowledges, as follows:-

1. INTERPRETATION

1.1 In this Deed:-

"Construction Contract"	means a contract dated [] and made between (1) the Employer and (2) the Contractor for the design and construction of the Development
["Contractor"	means [] (No []) whose registered office is at []
"Development"	means the design and construction of a Waste Transfer Station and associated works at the Property
"Employer"	means Donarbon Waste Management Limited (No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge CB5 9PG
"Property"	means Alconbury Hill, Alconbury, Huntingdon, Cambridge
"Sub-Contract"	means a Sub-Contract dated [] made between (1) the Contractor (2) the Sub-Contractor for the carrying out of the Sub-Contract Works
"Sub-Contract Works"	means the works comprising [] more particularly described in the Sub-Contract

1.2 In interpreting this Deed:-

- 1.2.1 if any party to this Deed is a partnership then the provisions of this Deed will bind each and every such partner jointly and severally;
- 1.2.2 references to the singular shall be deemed to include the plural (and vice versa) and reference to a "**person**" shall be deemed to include any individual firm unincorporated association or body corporate;
- 1.2.3 references to the Beneficiary shall be deemed to include their successors in title and assigns;
- 1.2.4 any reference to any enactment includes any consolidation, re-enactment, amendment or replacement of it and any subordinate legislation under it;
- 1.2.5 headings to Clauses shall be disregarded.

2. GENERAL

- 2.1 The Employer has by the Construction Contract employed the Contractor to design and build the Development.
- 2.2 By the Sub-Contract the Contractor has appointed the Sub-Contractor to carry out and complete the Sub-Contract Works at the Development on the terms set out therein.
- 2.3 The Employer has entered into [a private finance initiative agreement] [an agreement for lease] [a funding agreement] with the Beneficiary relating to the Property.
- 2.4 The Sub-Contractor has agreed to enter into this Deed with the Beneficiary.

3. SKILL AND CARE

- 3.1 The Sub-Contractor undertakes with and warrants to the Beneficiary that:-

- 3.1.1 it has observed and performed and will observe and perform its obligations under the Sub-Contract and without prejudice to the generality of the foregoing insofar as the Sub-Contractor is required by the Sub-Contract to:-

- (a) design any part of the Development;
 - (b) select materials for incorporation into the Development; or
 - (c) ensure compliance of any part of the Development with a performance specification;

- in so doing the Sub-Contractor has used and will continue to use all reasonable skill, care and diligence in conformity with the normal standards of the Sub-Contractor's specialist trade;

- 3.1.2 it has not specified or used nor will it specify for use or use any products or materials in the Development which at the time of use:-

- (a) do not conform with British and European Standards or Codes of Practice;
 - (b) are generally known within the Sub-Contractor's trade to be deleterious in the particular circumstances in which they are used or specified for use to health and safety and/or the durability of the Development.

- 3.2 Notwithstanding any other provision of this Deed and subject to the duty of skill and care set out in Clause 3.1.1, the Sub-Contractor shall perform and assume as part of its obligations under this Deed the Contractor's obligations, liabilities and risks contained within the Construction Contract insofar as any relate to the duties and obligations of the Sub-Contractor under or in connection with this Deed (as if the same were expressly referred to herein as obligations, liabilities and risks of the Sub-Contractor mutatis mutandis). The Sub-Contractor shall ensure that no act or default or omission on its part or the part of any sub-contractor employed directly by it in relation to the performance by the Sub-Contractor of its duties and obligations under this Deed shall cause, contribute or otherwise give rise to any breach by the Contractor of any of its obligations pursuant to the Construction Contract.

4. [OBLIGATIONS PRIOR TO TERMINATION OF THE SUB-CONTRACT BY THE SUB-CONTRACTOR]

- 4.1 The Sub-Contractor covenants with the Beneficiary that it will not exercise nor seek to exercise any right of termination of its employment under the Sub-Contract or to discontinue the performance of any of its obligations thereunder for any reason whatsoever (including any breach on the part of the Contractor) without giving not less than 21 days written notice of his intention to do so to the Beneficiary and specifying the grounds for the proposed termination or discontinuance.

- 4.2 Any period stipulated in the Sub-Contract for the exercise of a right of termination by the Sub-Contractor of its employment under the Sub-Contract or to discontinue the performance of any of its obligations thereunder shall nevertheless be extended as may be necessary to take account of the period of notice required under Clause 4.1.
- 4.3 The right of the Sub-Contractor to terminate its employment under the Sub-Contract or to discontinue to discharge its obligations thereunder shall cease within the period of 21 days referred to in Clause 4.1 if the Beneficiary shall give notice to the Contractor:-
- 4.3.1 requiring the Sub-Contractor to continue its obligations under the Sub-Contract with the Beneficiary or its nominee; and
 - 4.3.2 acknowledging that the Beneficiary or its nominee will assume all the obligations of the Contractor under the Sub-Contract; and
 - 4.3.3 undertaking that the Beneficiary or its nominee will, within 30 days of service of the Beneficiary's notice discharge all payments which may subsequently become due to the Sub-Contractor under the terms of the Sub-Contract and will pay to the Sub-Contractor any sums which have been due and payable to it under the Sub-Contract but which remain unpaid.
- 4.4 Upon service by the Beneficiary or its nominee of a notice complying with the requirements of Clause 4.3 the Sub-Contract will continue in full force and effect as if the same had been entered into between the Sub-Contractor and the Beneficiary to the exclusion of the Contractor.
- 4.5 Compliance by the Sub-Contractor with the provisions of this Clause 4 will not be treated as a waiver of any breach on the part of the Contractor giving rise to the right of termination nor otherwise prevent the Sub-Contractor from exercising its rights after the expiration of the notice issued pursuant to Clause 4.1 unless the rights of termination have ceased under the provisions of Clause 4.3.
- 4.6 This Clause 4 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Sub-Contractor and such person at the request of the Employer.

5. BENEFICIARY'S RIGHTS IN RELATION TO THE SUB-CONTRACT

- 5.1 Notwithstanding that as between the Contractor and the Sub-Contractor the Sub-Contractor's right of termination of its employment under the Sub-Contract may not have arisen the provisions of Clause 4.4 shall also apply if the Beneficiary gives notice to the Sub-Contractor and to the Contractor to the effect that the Beneficiary wishes the provisions of Clause 4.4 to apply and the Beneficiary or its nominee complies with the requirements of Clause 4.3.
- 5.2 The Sub-Contractor shall not be concerned, or required to enquire whether, and shall be bound to assume that as between the Contractor and the Beneficiary the circumstances have arisen permitting the Beneficiary to give notice under Clause 5.1.
- 5.3 This Clause 5 shall cease to have effect upon the prior exercise by any third person of any similar rights of substitution contained in any other agreement concerning the Development and entered into between the Sub-Contractor and such person at the request of the Employer.

6. SUB-CONTRACTOR'S POSITION

By acting in accordance with Clauses 4 and 5 the Sub-Contractor shall not incur any liability to the Contractor.]

7. COPYRIGHT

- 7.1 The copyright in all drawings, reports, specifications, bills of quantities, calculations and other similar documents provided by the Sub-Contractor in connection with the Development shall remain vested in the Sub-Contractor but the Sub-Contractor grants to the Beneficiary and its

nominees with full title guarantee a non-exclusive irrevocable royalty free licence to copy and use such drawings and other documents and to reproduce the designs contained in them for any purpose related to the Development including (but without limitation) the construction, completion, maintenance, letting, promotion, advertisement, reinstatement, extension and repair of the Development provided that the licence to use the drawings and documents for an extension of the Development shall not include the right to reproduce the designs contained in such documents and drawings for any extension of the Development. Such licence shall include a licence to grant sub-licences and to transfer the same to third parties.

7.2 The Sub-Contractor shall not be liable for any such use by the Beneficiary or its nominees of any drawings and other documents for any purposes other than those for which they were originally prepared by the Sub-Contractor.

7.3 The Beneficiary shall on written request and upon paying a reasonable copying charge therefor, be entitled to be supplied by the Sub-Contractor with copies of the drawings and other items referred to in Clause 7.1.

8. INDEMNITY INSURANCE

8.1 The Sub-Contractor shall maintain professional indemnity/product liability insurance covering (inter alia) all its design liability hereunder upon customary and usual terms and conditions prevailing for the time being in the insurance market, and with reputable insurers lawfully carrying on such insurance business in the United Kingdom, in an amount of not less than [REDACTED] for any one occurrence or series of occurrences arising out of any one event for a period beginning now and ending 12 years after the date of practical completion of the Development, provided always that such insurance is available at commercially reasonable rates. The said terms and conditions shall not include any term or condition to the effect that the Sub-Contractor must discharge any liability before being entitled to recover from the insurers, or any other term or condition which might adversely affect the rights of any person to recover from the insurers pursuant to the Third Parties (Rights Against Insurers) Act 1930, or any amendment or re-enactment thereof. The Sub-Contractor shall not, without the prior approval in writing of the Beneficiary, settle or compromise with the insurers any claim which the Sub-Contractor may have against the insurers and which relates to a claim by the Beneficiary against the Sub-Contractor or by any act or omission lose or prejudice the Sub-Contractor's right to make or proceed with such a claim against the insurers.

8.2 Any increased or additional premium required by insurers by reason of the Sub-Contractor's own claims record or other acts, omissions, matters or things particular to the Sub-Contractor shall be deemed to be within commercially reasonable rates.

8.3 The Sub-Contractor shall immediately inform the Beneficiary if such insurance ceases to be available at commercially reasonable rates in order that the Sub-Contractor and the Beneficiary can discuss means of best protecting the respective positions of the Beneficiary and the Sub-Contractor in respect of the Development in the absence of such insurance.

8.4 The Sub-Contractor shall fully co-operate with any measures reasonably required by the Beneficiary, including (without limitation) completing any proposals for insurance and associated documents, maintaining such insurance at rates above commercially reasonable rates if the Beneficiary undertakes in writing to reimburse the Sub-Contractor in respect of the net cost of such insurance to the Sub-Contractor above commercially reasonable rates, or if the Beneficiary effects such insurance at rates at or above commercially reasonable rates, reimbursing the Beneficiary in respect of what the net cost of such insurance to the Beneficiary would have been at commercially reasonable rates.

8.5 As and when reasonably requested to do so by the Beneficiary the Sub-Contractor shall produce for inspection documentary evidence that his professional indemnity/product liability insurance is being maintained.

8.6 The above obligations in respect of professional indemnity/product liability insurance shall continue notwithstanding termination of this Deed for any reason whatsoever, including (without limitation) breach by the Beneficiary.

9. **LIABILITY PERIOD**

No action or proceedings for any breach of this Deed shall be commenced against the Sub-Contractor after the expiry of 12 years from the date of practical completion of the Development.

10. **ASSIGNMENT**

10.1 The Sub-Contractor consents to the benefit of this Deed being assigned twice only **PROVIDED ALWAYS** that the maximum number of two assignments referred to above shall not be affected by assignments by way of security and assignments to and from subsidiary or other associated companies within the same group of companies as the Beneficiary so long as such assignee company remains within the same group of companies as the Beneficiary.

10.2 The Sub-Contractor shall not be entitled to contend that any person to whom this Deed is assigned in accordance with Clause 10.1 is precluded from recovering under this Deed any loss incurred by such assignee resulting from any breach of this Deed (whenever happening), by reason that such person is an assignee and not a named promisee under this Deed.

11. **NOTICES**

Any notice required to be given under this Deed shall be in writing and shall be deemed to be properly given if given in compliance with section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962).

12. **EXTRANEOUS RIGHTS**

12.1 This Deed shall not negate or diminish any duty or liability otherwise owed by the Sub-Contractor to the Beneficiary.

12.2 No approval or inspection of the Development or of any designs or specifications and no testing of any work or materials by or on behalf of the Beneficiary and no omission to inspect or test shall negate or diminish any duty or liability of the Sub-Contractor arising under this Deed.

12.3 This Deed may be executed in any number of counterparts all of which when taken together shall constitute one and the same instrument.

12.4 This Deed does not create any right enforceable by any person not a party to it (whether pursuant to the Contracts (Rights of Third Parties) Act 1999 or otherwise) except that a person who is the successor to or the permitted assignee of the rights of the Beneficiary is deemed to be a party to this Deed.

13. **GOVERNING LAW**

This Deed is subject in all respects to English law and the English Courts shall have jurisdiction with regard to all matters arising under or in connection with it.

14. **[CONTRACTOR'S CONSENT**

The Contractor has executed this Deed to signify consent to its terms.]

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

)
)
)
)
)

Director/Secretary

)
)
)
)
)

Director/Secretary

$$\left. \begin{array}{l}) \\) \\) \\) \\) \end{array} \right\}$$

Address:

SIGNED (but not delivered)
until the date hereof)
AS A DEED by)
[])
in the presence of:-)

Signature of Witness:

Name of Witness:

Address:

APPENDIX 5
PERFORMANCE BOND

DATED _____ **2007**

Eng: 21.11.2007

(1) LIBERTY MUTUAL INSURANCE EUROPE LIMITED

(2) NORTHSTONE (NI) LIMITED trading as FARRANS (CONSTRUCTION) LIMITED

(3) DONARBON WASTE MANAGEMENT LIMITED

PERFORMANCE BOND
relating to
the design and construction of a Waste Transfer Station
and associated works at Alconbury Hill, Alconbury,
Huntingdon, Cambridge

THIS DEED is made on

2007

BETWEEN:-

- (1) **LIBERTY MUTUAL INSURANCE EUROPE LIMITED** (No 01088268) whose registered office is at 3rd Floor, 2 Minster Court, Mincing Lane, London EC3R 7YE (the "**Surety**");
- (2) **NORTHSTONE (NI) LIMITED** (Number NI004078) trading as **FARRANS (CONSTRUCTION) LIMITED** whose registered office is at 99 Kingsway, Dunmurry, Belfast BT17 9NU (the "**Contractor**"); and
- (3) **DONARBON WASTE MANAGEMENT LIMITED** (No No 6054499) whose registered office is at Ely Road, Waterbeach, Cambridge CB25 9PG (the "**Employer**").

WHEREAS:-

- (A) By an agreement in writing (the "**Building Contract**") dated _____ between (1) the Employer and (2) the Contractor, the Contractor has undertaken the design, construction and completion of the building works therein mentioned (the "**Works**") at Alconbury Hill, Alconbury, Huntingdon, Cambridge in conformity with the provisions of the Building Contract.
- (B) The Surety and the Contractor have agreed to bind themselves jointly and severally to the Employer in the sum of _____ (the "**Maximum Amount**") on the terms of this Deed.

IT IS AGREED as follows:-

1. **INTERPRETATION**

- 1.1 In this Deed (a) "**person**" includes any firm and any entity having legal capacity and (b) the "**Required Evidence**" means in the case of an Award or Decision pursuant to clause 3, a copy of such Award or Decision certified by a solicitor of the Supreme Court of England and Wales as being a true copy of the original.
- 1.2 The definitions given in the recitals to this Deed apply to this Deed.
- 1.3 Clause headings do not form part of this Deed.

2. **PROMISE TO PAY**

- 2.1 In consideration of the Employer accepting the Surety's obligations herein contained in discharge of the Contractor's obligation to procure a performance bond, the Surety hereby unconditionally and irrevocably guarantees to the Employer, subject to the provisions of this Deed, as a continuing guarantee, the due, proper and punctual performance by the Contractor of the obligations on its part contained in the Building Contract (the "**Guaranteed Obligations**") and hereby undertakes that, in the event of breach by the Contractor of any of the Guaranteed Obligations ("**Contractor Default**"), which shall, for the purposes of this Deed, include insolvency of the Contractor in the terms of any one or more of the insolvency events specified in clause 91.1 of the Building Contract ("**Contractor Insolvency**"), the Surety will where such Contractor Default relates to a failure on the part of the Contractor to pay any amount, due and payable from the Contractor to the Employer in accordance with the terms of the Building Contract, pay such amount, up to the Maximum Amount, to the Employer or its assigns, and/or, where such Contractor Default relates to a breach by the Contractor of any other of the Guaranteed Obligations, pay any sum or sums payable as a consequence thereof by the Contractor to the Employer or its assigns as established and ascertained pursuant to and in accordance with or by reference to the provisions of the Building Contract:
 - 2.1.1 without the Surety being entitled or obliged to make any enquiry of the Employer (save for the Required Evidence or in the circumstances set out in Clause (4) below, where appropriate);

- 2.1.2 without the need for the Employer to take any legal action or obtain the consent of the Contractor (other than that required to be evidenced under Clause (3) or Clause (4) below, as appropriate) or obtain the consent of the Contractor;
- 2.1.3 notwithstanding any objection by the Contractor, Surety or any other third party;
- 2.1.4 without proof or conditions (other than those required to be evidenced under Clause (3), the Required Evidence, or Clause (4) below, as appropriate);
- 2.1.5 without any right of set-off, deduction or counterclaim; and
- 2.1.6 within the timescales set out in Clauses (3) and (4) below.

3. **NON-INSOLVENCY CLAIMS**

Save in the event of Contractor Insolvency, the Employer's written demand shall contain a statement that Contractor Default has occurred and that:

- (a) an adjudicator's decision ("Decision") or arbitrator's award ("Award") has been made in respect of the Contractor Default, in favour of the Employer under the adjudication or arbitration procedure specified in the Building Contract; or
- (b) a court order or judgment ("Judgment") has been made in respect of the Contractor Default, in favour of the Employer,

and shall have appended to it a copy of the corresponding Decision, Award or Judgment; following which, subject to Clause (7) and Clause (10) below, the Bondsman shall pay, within five business days, the sum specified in such demand.

4. **INSOLVENCY CLAIMS**

Save where there is an existing Decision, Award or Judgment (in which case, the provisions of Clause (3) above shall apply in respect of any demand made under this Bond in connection with any such Decision, Award or Judgment), in the event of Contractor Insolvency, the provisions of Clause (3) of this Bond shall not apply and the Employer shall make demand under this Bond under the terms of this Clause (4).

- (a) In the event of Contractor Insolvency, the Employer shall notify the Surety of the amount of costs, losses, expenses, liabilities and/or damages it has suffered or incurred as a consequence of Contractor Default, payable by the Contractor to the Employer under the terms of the Contract and payment of which it is seeking under this Bond and, on or after making any demand for payment under this Clause (4), provide to the Surety such information and copies of such documentation as might be reasonably required in order to properly assess that demand and the amount payable under this Bond in respect thereof.
- (b) Within twenty business days of receipt of a demand for payment under this Clause (4) and such information and copy documentation as the Employer is willing to provide in support thereof, the Surety and the Employer shall meet to agree the amount payable by the Surety to the Employer under this Bond in respect thereof, and, in the event that the Employer and the Surety reach such agreement, the Surety shall pay to the Employer, within ten Business Days of such agreement, the sum so agreed. If the Employer and the Surety cannot agree the amount payable by the Surety to the Employer under this Bond in respect of such demand, either the Employer or the Surety may refer the matter for adjudication in accordance with Clause (4)(c) below.
- (c) In the event of Contractor Insolvency, either the Employer or the Surety shall be entitled to refer any dispute regarding a claim made by the Employer pursuant to this Clause (4) to adjudication in accordance with the adjudication procedure set out in Schedule 1 to this Bond (the "Adjudication Procedure").

- (d) In respect to any demand made by the Employer under this Clause (4) and any dispute referred to adjudication under this Bond, the Surety may raise any matter by way of defence, abatement, deduction or counterclaim which the Contractor would be entitled to raise under the Building Contract in respect of the Employer's claim under this Bond.
- (e) Without prejudice to the right of either party to refer such decision for final determination by the courts, the decision of an Adjudicator under the Adjudication Procedure shall constitute conclusive proof (and shall be admissible as such) of the Surety's obligation to pay the amount or amounts set out in that decision and, subject to Clause (7) and Clause (10) below, the Surety shall pay such amount or amounts within five Business Days of that decision or at such other time as the Adjudicator may determine (whichever shall be the later).

5. AMENDMENTS TO BUILDING CONTRACT

The Building Contract may be modified, amended or supplemented in any manner whatsoever without the consent of the Surety, and no such modification, amendment or supplement shall release or impair the liability of the Surety under this Deed, which shall extend to the liabilities of the Contractor under the Building Contract as so modified, amended or supplemented. No invalidity in the Building Contract or its avoidance or termination shall affect or impair the liability of the Surety under this Deed. No waiver or concession or allowance of time or compromise or forbearance given to or made with the Contractor shall release or affect or impair the liability of the Surety under this Deed and the terms of this Deed shall apply to the terms of such compromise as they apply to the Building Contract.

6. PRIORITY OF CLAIMS AGAINST THE CONTRACTOR

- 6.1 Until such time as the Employer has recovered all amounts due to it under or in connection with the Building Contract, the Surety shall not without the prior written consent of the Employer, in respect of any payment made or liability under this Deed, claim, rank or vote as a creditor in the liquidation of the Contractor in competition with the Employer, or enforce any security over the assets of the Contractor in respect of any such payment or liability in competition with the Employer, but this Clause 6 shall not limit or restrict the exercise or enforcement by the Surety of its rights against any other persons or against the Contractor in respect of any payment made or liability under any other bond or guarantee issued by the Surety not connected with the Building Contract.
 - 6.2 The Surety shall hold in trust any sums recovered by it from the Contractor contrary to the provisions of Clause 6.1:-
 - 6.2.1 to pay to the Employer in full the unrecovered balance of any damages or other sums due from the Contractor to the Employer under or in connection with the Building Contract, to the extent set out in Clause 6.3; and
 - 6.2.2 subject thereto, for the benefit of the Surety.
 - 6.3 The Employer shall be entitled to enforce the foregoing provisions of this Clause 6 only so far as required to keep itself or to put itself in the position it would occupy (so far as concerns the benefit of this Deed) if the Surety had no rights of recourse against the Contractor or its assets in respect of any payment made or liability arising under this Deed, but no further; and any consent required of the Employer under Clause 6.1 above shall not be refused or delayed unreasonably.
- ## **7. EXTENT OF LIABILITY**
- 7.1 The Employer shall be entitled to recover no more under this Deed in respect of any matter than the Employer would be entitled to recover from the Contractor in respect of that matter, net of any set-off, but in any event the Employer shall not be entitled to recover under this Deed any more than the Maximum Amount.
 - 7.2 The Surety's obligations and liability under this Deed will remain in full force and effect and are not to be discharged, released, reduced or affected in any way by reason of any of the following:

- 7.2.1 any provision of the Building Contract being or becoming illegal, invalid, void, voidable or unenforceable for any reason whatsoever, save where the Employer has sought to impose obligations on the Building Contractor, the enforcement of performance of which would be unlawful (in relation to which the Surety shall have no liability under this Deed);
- 7.2.2 any indulgence, forbearance or waiver of any right of action or remedy of the Employer against the Contractor or negligence by the Employer in enforcing any such right of action or remedy;
- 7.2.3 any failure of supervision or detection or prevention of any default of the Contractor under or in connection with the Building Contract;
- 7.2.4 any additional or advance payment to the Contractor under or in connection with the Building Contract;
- 7.2.5 the suspension or termination of the Building Contract or of the employment of the Contractor under the Building Contract for any reason whatsoever;
- 7.2.6 any compromise of any dispute with the Contractor arising out of or in connection with the Contract;
- 7.2.7 the insolvency, bankruptcy, winding up, dissolution, administration, incapacity, amalgamation, reconstruction, re-organisation or any analogous proceeding relating to the Contractor or any change in the status, function, control or ownership of the Contractor; and
- 7.2.8 any other fact, circumstance, act, event, omission or provision of statute or law or otherwise which but for this clause might operate to discharge, impair or otherwise affect any of the obligations of the Surety under this Deed or any of the rights, powers or remedies conferred on the Employer by this Deed or by law.

7.3 The Employer shall not be obliged to pursue any means of recourse against the Contractor before being entitled to enforce this Deed against the Surety and the Employer shall be at liberty to compromise, release, waive or neglect any security as it sees fit, without impairment of its rights under this Deed.

7.4 Any money judgment or award or adjudicators decision against the Contractor in favour of the Employer under the Building Contract shall be conclusive evidence for the purposes of this Deed as to any liability of the Contractor to which such judgment or award relates, but on condition that if the Employer commences any adjudication or legal proceedings or arbitration proceedings against the Contractor in connection with the Building Contract, it shall so notify the Surety within 28 days after their commencement.

8. EXPIRY

This Deed shall cease to have effect, and the Surety will be released and discharged absolutely from its obligations under this Deed, 90 days after the date of Completion (as defined in the Building Contract) save in connection with any demand notified to the Surety in writing prior to the expiry of the said period of 90 days.

9. ASSIGNMENT

9.1 The Employer may without the consent of the Surety assign the benefit of this Deed to any person to whom the Employer lawfully assigns the whole of the benefit of the Building Contract. No other assignment by the Employer of any of its rights or obligations under this Deed shall be permitted without the Surety's prior written consent (such consent not to be unreasonably withheld or delayed).

9.2 Neither the Contractor nor the Surety shall be entitled to contend that any person to whom this Deed is assigned is precluded from recovering under this Deed any loss incurred by such assignee

resulting from any breach of this Deed by reason that such person is an assignee and not a named promisee hereunder.

10. **SERVICE OF NOTICES**

Any notice to be served under this Deed must be in writing and must be served by hand or by registered post or recorded delivery, and in the case of a corporation must be served at its registered office for the time being. In any other case notice may be served at any address for the time being of the person to be served. Service shall take effect, if given by hand, on the date of delivery. If given by post, it shall take effect two days after posting, excluding Saturdays, Sundays and statutory holidays.

11. **THIRD PARTY RIGHTS**

Without prejudice to the rights of an assignee of the benefit of this Deed in accordance with the provisions of clause 9, a person who is not a party to this Deed shall not have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Deed. This clause does not affect any right or remedy of any person which exists or is avoidable otherwise than pursuant to that Act.

12. **GOVERNING LAW**

The law of this Deed is English law and the English Courts shall have jurisdiction with regard to all matters arising from it.

EXECUTED AS A DEED by the parties on the date which first appears in this Deed.

SCHEDULE 1

The Adjudication Procedure ("These Rules")

COMMENCEMENT

- 1.1 These Rules shall apply to the exclusion of any other procedure upon either the Employer or the Surety (each a "Party" and together the "Parties") serving upon the other written notice of its intention to refer any inability to agree the amount payable in respect of a demand submitted under Clause (4) of this Bond to this adjudication procedure (a "Notice of Adjudication"); any such Notice of Adjudication to be served in accordance with the provisions of Clause (4) and to identify in sufficiently full terms the inability to agree or objection ("Dispute") which is to be referred to adjudication under These Rules ("Adjudication").
- 1.2 Within seven days from the date of referral to him of a Notice of Adjudication, and provided that he is willing and able to act, the adjudicator identified and agreed upon under Rule 2, or the adjudicator nominated under Rule 3, or the replacement adjudicator nominated under Rule 4 ("Adjudicator") shall give written notice of his acceptance of appointment to each of the Parties.
- 1.3 The date of the referral of the Dispute shall be the date that the Adjudicator so confirms his acceptance.

Either Party may serve a Notice of Adjudication at any time and either Party may serve more than one Notice of Adjudication but no Notice of Adjudication shall refer more than one Dispute to Adjudication although the same Adjudicator may act as the Adjudicator of more than one Dispute if so identified and agreed, or nominated, and willing to act.

APPOINTMENT

2. Subject to the following provisions of this Rule 2, where the Parties agree within three days of service of the Notice of Adjudication (or have agreed in advance) upon the identity of the Adjudicator then, subject to Rule 1.2, above, that person shall be the Adjudicator.
3. Where the Parties have not so agreed upon the identity of the Adjudicator, or where such person has not so confirmed his willingness to act, then the Party who is seeking the referral of the Dispute to Adjudication may apply to the Chairman, Vice-Chairman, President or Vice-President (as appropriate or available) of the Royal Institute of Chartered Surveyors (the "Nominator") to nominate the Adjudicator; application to the Nominator will be made in writing and accompanied by a copy of this Bond, or other evidence of the agreement of the Parties that These Rules should apply, and a copy of the Notice of Adjudication, and requiring the Nominator to secure the appointment of the Adjudicator and the referral of the Dispute to the Adjudicator within seven days from the date of application being made upon him.
4. The Nominator may replace the Adjudicator with another nominated person as Adjudicator if and when it appears to him necessary to do so but only after giving written notice to the Parties of his intention to make such replacement. The Nominator may only exercise such power if and when either Party shall satisfy him that the Adjudicator (whether agreed or nominated) is not acting impartially, or that the Adjudicator is physically or mentally incapable of conducting the Adjudication, or that the Adjudicator is failing to proceed with the Adjudication or make his decision with necessary despatch. In the event that the Adjudicator is replaced by a Nominator in accordance with this Rule 4, the Parties agree that all timescales shall be re-calculated from the date that his replacement confirms acceptance of his appointment to each of the Parties.

SCOPE OF THE ADJUDICATION

5. The scope of an Adjudication shall be the matters identified in the relevant Notice of Adjudication, together with any further matters that both Parties agree in writing should be within the scope of the Adjudication.
6. The Adjudicator may rule upon his own substantive jurisdiction and as to the scope of the Adjudication but should the Adjudicator at any time decide that the Dispute upon which he has

been asked to adjudicate is, in fact, the same or substantially the same (in all material respects) as a Dispute which has already been decided upon by way of referral to Adjudication under this Bond and in accordance with These Rules, then he shall immediately bring the Adjudication in which he is acting to an end and that earlier decision shall stand.

THE PURPOSE OF THE ADJUDICATION AND THE ROLE OF THE ADJUDICATOR

7. The underlying purpose of an Adjudication shall be to resolve the relevant Dispute, or such elements of it that the Adjudicator rules are within the scope of the Adjudication, as rapidly and economically as is reasonably possible.
8. Subject to the other terms of this Bond, a decision of the Adjudicator shall be binding as to the amount of any sum payable under this Bond until the relevant Dispute is finally determined by legal proceedings, by arbitration (where the Parties so elect) or by arrangement between the Parties.
9. The Adjudicator shall have the like power to open up and review any certificates, or other decisions, relevant to the Dispute, that have been or are to be issued or made pursuant to the Building Contract or this Bond as would a court or arbiter given such powers and the power to award sums equivalent to damages payable under the Building Contract.
10. The Adjudicator shall act fairly and impartially, but shall not be obliged to act as though he were an arbiter.

CONDUCT OF THE ADJUDICATION

11. The Adjudicator shall establish the procedure and timetable for the Adjudication.
12. Without prejudice to the generality of Rule 11, the Adjudicator may if he thinks fit:
 - 12.1 require the delivery of written statements relating to matters in issue in the Dispute;
 - 12.2 require either Party to produce a bundle of key documents, whether helpful or otherwise to that Party's ease, and to draw such inference as may seem proper from such bundle that may become apparent;
 - 12.3 require either Party to deliver to him and/or the other Party copies of any documents other than documents that would be privileged from production to a court;
 - 12.4 limit the length of any written or oral submission;
 - 12.5 require the attendance before him for questioning of either Party or employee or agent of either Party;
 - 12.6 make site visits;
 - 12.7 make use of his own specialist knowledge;
 - 12.8 obtain advice from specialist consultants, provided that at least one of the Parties so requests or consents;
 - 12.9 review and revise any of his own previous directions; and
 - 12.10 conduct the Adjudication in an inquisitorial manner and take the initiative in ascertaining the facts and the law;
 - 12.11 require any Party to pay or make contribution to the legal and other costs of the other Party arising in the Adjudication.
13. The Adjudicator may reach his decision with or without the holding of an oral hearing.

14. The Adjudicator shall exercise his powers in accordance with These Rules, shall act fairly and impartially and shall give each Party a reasonable opportunity to put its case and to deal with that of the other Party.
15. In reaching any decision as to the amount of any sum payable under this Bond and the liability of the Surety to pay it the Adjudicator shall have regard to the documentation required by the Surety and the documentation provided by the Employer pursuant to Clause (4) of this Bond (or lack of it).
16. The Adjudicator may not:
 - 16.1 require any advance payment of or security for his fees;
 - 16.2 receive any written submissions from one Party that are not also made available to the other
 - 16.3 refuse any Party the right at any hearing or meeting to be represented by a representative of that Party's choosing who is present;
 - 16.4 act or continue to act in the face of a conflict of interest.

THE ADJUDICATOR'S DECISION, FEES AND EXPENSES

17. The Adjudicator shall reach a decision within 28 days of the date of the referral of the Dispute (as defined in Rule 1.3, above) or such longer period as is agreed by the Parties after the Dispute has been referred to him. The Adjudicator shall be entitled to extend the said period of 28 days by up to 14 days with the consent of the Party by whom the Dispute was referred. As soon as possible after he has reached a decision, the Adjudicator shall deliver a copy of the decision to each of the Parties.
18. The Parties shall be jointly and severally liable for the Adjudicator's reasonable fees and expenses including those reasonable fees and expenses of any specialist consultant appointed by the Adjudicator under These Rules ("Costs of Adjudication"), and the Adjudicator shall have the discretion to make directions regarding the apportionment of the Costs of Adjudication. If no such directions are made, the Parties shall bear the Costs of Adjudication in equal shares.
19. The Adjudicator may in any decision direct the payment of such compound or simple interest as may be permitted by this Bond.
20. All decisions shall be in writing and, within seven days of the request of either Party, such request to be made not later than seven days from the date of delivery of his decision to both Parties, the Adjudicator shall provide detail of his reasons for that decision.

IMMUNITY, CONFIDENTIALITY AND NON-COMPELLABILITY

21. Neither the Nominator, nor the Adjudicator nor any employee or agent of any of them shall be liable for anything done or not done in the discharge or purported discharge of their functions, whether in negligence or otherwise, unless the act or omission is in bad faith.
22. The Adjudication and all matters arising in the course thereof are and will be kept confidential by the Parties except insofar as necessary to implement or enforce any decision of the Adjudicator or as may be required for the purpose of any subsequent proceedings under this Bond and save insofar as may be required by law.
23. In the event that either Party seeks to challenge or review any decision of the Adjudicator in any subsequent legal proceedings, the Adjudicator shall not be joined as a party to, nor shall be cited or otherwise required to give evidence or provide his notes in, such legal proceedings except where required by law.
24. All information, data or documentation disclosed or delivered by a Party to the Adjudicator in consequence of or in connection with his appointment hereunder shall be treated as confidential by the Adjudicator and each party to the Adjudication (save as otherwise agreed between the Parties).

SIGNED (but not delivered)
until the date hereof)
AS A DEED by)
)
acting as an attorney for and on behalf of)
LIBERTY MUTUAL INSURANCE EUROPE)
LIMITED)
in the presence of:-)

Signature of Witness:

Name of Witness:

Address of Witness:

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
NORTHSTONE (NI) LIMITED trading as)
FARRANS (CONSTRUCTION) LIMITED)
acting by:-)

Director

Director/Secretary

EXECUTED (but not delivered)
until the date hereof)
AS A DEED by)
DONARBON WASTE MANAGEMENT LIMITED)
acting by:-)

Director

Director/Secretary

APPENDIX 6
POST TENDER DRAWING LIST

9

15186 - Donarbon Alconbury, Cambridge

Post Tender Drawing package

Documents...

Ref	Title	Rev
0100	Proposed Site Plan	B
0110	Proposed Modified Highway Entrance	-
0120	Site Entrance Track Analysis	A
0130	Contractors Suggested Working Arrangements	-
0200	Site Survey	A
0205	Site Investigation Trial Hole Locations and Detail	-
0206	Site Investigation Trial Hole Details	-
0210	Site Levels	C
0215	Simplified Site Sections	B
0220	Site Setting Out Details	B
0300	Surface Water Drainage	C
0305	Foul Water Drainage Layout & Details	B
0306	Cesspit Details	A
0310	SUDS Drainage Details	A
0320	Manhole and Drainage Details	A
0321	Bypass Interceptor Details	A
0400	Foundation Layout	D
0410	Ground Beam and Column Casing Layout	C
0430	Floorslab Joint Layout and Details	B
0440	Internal RC wall GA	B
0450	Substructure Sections	B
0500	Steel Column Layout	D
0505	Steelwork Elevations	C
0510	Roof Steelwork Layout	A
0600	Construction Thicknesses	C
0620	Hardstanding Joint Layout	C
0630	Kerb Layout Details	B
0640	Bollard and Barrier Details	A
0641	External Wheel Guide Details	A
0642	Kerbing Details	A
0650	Weighbridge Foundation Details	-
0655	Weighbridge Control Office Foundation Details	-
0660	Site and Operational Signage and Markings	-
5000	Proposed Building Layout	D
5005	Simplified Section Through Building	A
5302	Proposed Elevations	B
5305	Cladding details	-
15186_A1_E 2000	Proposed External Lighting	-
15186_A1_ME 2000	Mechanical and Electrical Services Layout	-
15186_A1_ME 2001	New/Modified Utility Services	-

15186_A1_ME 2002	Lighting Layout	-
15186_A1_ME 2003 RPS-	Lighting positions on Concept Section	-
15186_A1_ME 2110	Mechanical Services Schematic	
	Site Investigation report	

APPENDIX 7
CONDITIONAL PLANNING APPROVAL

Town and Country Planning Act 1990
Notification of the Grant of Planning Permission

To:- Donarbon Ltd.
Ely Road,
Waterbeach
Cambridge
CB25 9PG

FAO:- Ms Sarah Clover

Cambridgeshire County Council, in pursuance of powers under the above Act hereby **GRANT** planning permission subject to the conditions set out below:

For Variation to Building and Layout of Waste Recycling & Transfer Station

**At Alconbury Recycling & Transfer Facility, Stangate Business Park,
Alconbury Hill**

In accordance with your application dated 09th May 2007 and the plans, drawings and documents, which form part of the application.

SCHEDULE OF CONDITIONS

1. The development hereby approved shall be implemented within three years of the date of this permission.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990

2. This planning permission shall only be implemented in accordance with the following approved plans & details unless otherwise agreed in writing by the Waste Planning Authority:-

- 15186/ SK005 rev C
- 15186/ A1 / 001 ref F
- 15186/ A1/ SK5302 rev D (except planting shown on that plan)
- 15186/ A1 / 300

Page 1 of 12

Dated: **12 SEP 2007**

Signed: 
Head of Strategic Planning
Environment and Community Services

Note: This planning permission does not constitute approval under Building Regulations and is not a Listed Building Consent or Conservation Area Consent.

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

- 15186/ A1/ 0685
- 15186/ A1/ 0686
- 15186/ A1/ 0687
- 5/1
- A1/001 rev A
- Supporting Statement dated May 2007
- Application form dated 9th May 2007

3. Archaeology:- Development shall not take place within the area marked hatched on the attached plan CCC1 until the applicant has secured the implementation of a programme of archaeological investigation and recording in accordance with a scheme of investigation which has been submitted by the applicant and approved in writing by the Waste Planning Authority.

Reason: To enable a site of archaeological interest to be adequately investigated and recorded in accordance with Policy WLP12 of the Cambridgeshire and Peterborough Waste Local Plan (2003).

4. Landscaping and Biodiversity:- Notwithstanding the details submitted, prior to the implementation of the development, details of the following shall be submitted to and approved in writing by the Waste Planning Authority:-

- Planting plans, including schedule of size, species, positions, density, numbers and times of planting
- Details of existing trees and hedgerows on the site, indicating those that are protected by Tree Preservation Orders, those which are to be retained, and the method of tree protection during development works.
- Details of the height of bunds proposed, & how these would be planted
- The planting and habitat provision on the swales
- Artificial biodiversity measures and their location
- Cultivation details including operations required to establish new planting and a 10-year management plan for the maintenance of landscaped areas and biodiversity measures implemented at the site & how it will be implemented. Any trees or shrubs which are removed, die, become diseased or are harmed in any way within five years of the initial planting shall be replaced during the next planting season with the same species and size as that originally planted, unless the Waste Planning Authority gives its written consent to any variation.

The landscaping works shall be undertaken in accordance with the approved plans and details no later than the end of the full planting season following the

Page 2 of 12

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

commencement of the implementation of this planning permission. Consequently notification must be given in writing to the Waste Planning Authority within 1 week of the first implementation of this planning permission. The landscape maintenance plan shall be carried out as approved.

Reason: To ensure that landscaping is carried out within a reasonable period in the interests of improving biodiversity and upholding the visual amenities of the area in accordance with Policies P7/2 and P7/4 of the Cambridgeshire and Peterborough Structure Plan (2003) and Policies En20 and En25 of the Huntingdonshire Local Plan (1995)

5. Tree Protection:- No development or other operations shall commence on site until the existing trees and/ or hedgerows to be retained have been protected in accordance with the details submitted to, and approved in writing by, the Waste Planning Authority. The erection of fencing for the protection of any retained tree or hedge shall be carried out before any equipment, machinery or materials are brought on to the site for the purposes of development or other operations. The fencing shall be retained intact for the full duration of the development until all equipment, materials and surplus materials have been removed from the site. If the fencing is damaged all operations shall cease until it is repaired in accordance with the approved details. Nothing shall be stored or placed in any fenced area in accordance with this condition and the ground levels within those areas shall not be altered, nor shall any excavations be made without the written approval of the Waste Planning Authority.

Reason: To safeguard the existing trees in accordance with Policies P7/2 and P7/4 of the Cambridgeshire and Peterborough Structure Plan (2003) and Policy En18 of the Huntingdonshire Local Plan (1995)

6. Detailed design:- Details of the second weighbridge and relocated office building shall be submitted to and approved in writing by the Waste Planning Authority prior to the commencement of development if they are to differ in size or appearance from the existing weighbridge or office at the site. Any approved plans shall be implemented as set out.

Reason: To ensure that the development is not out of character with the existing site in accordance with Policies P1/3 and P7/4 of the Cambridgeshire and Peterborough Structure Plan (2003) and Policy P8 of the Huntingdonshire Interim Planning Policy Statement 2007.

Page 3 of 12

12 SEP 2007

Dated:

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

7. Vehicle Movements:- Unless otherwise agreed in writing by the Waste Planning Authority, use of the site on a Saturday, Sunday or Bank Holiday shall be limited to the import of materials from HWRCs. No more than 15 deliveries per Saturday, Sunday or Bank Holiday shall occur. Weighbridge tickets shall be made available to the Waste Planning Authority upon request to demonstrate the vehicle movements which have taken place and the origin of the waste delivered during these times.

Reason: To ensure that the residential amenity of neighbouring properties is upheld in accordance with Policy WLP9 of the Waste Local Plan (2003)

8. Reversing Alarms:- All plant at the site shall be fitted with smart or broadband reversing alarms to the satisfaction of the Waste Planning Authority.

Reason: To ensure that the residential amenity of neighbouring properties is upheld in accordance with Policy WLP9 of the Waste Local Plan (2003).

9. Hours of Operation:- Unless otherwise agreed in writing by the Waste Planning Authority, the hours of operation of the site are permitted between:

0700 and 1800 Monday to Friday
0700 and 1300 on Saturdays

However the site may be used for the deposit of waste from Household Waste Recycling Centres only during the following times:

Between 0700 and 1600 on Saturdays
Between 0700 and 1600 on Sundays and Bank Holidays

This shall be undertaken in accordance with Condition 7 (above) and no processing shall occur on a Saturday or Sunday or Bank Holiday.

Reason: To ensure that the residential amenity of neighbouring properties is upheld in accordance with Policy WLP9 of the Waste Local Plan (2003)

10. Dust:- Dust suppression at the site shall be implemented in accordance with paragraph 6.8 of the Supporting Statement dated May 2007 unless otherwise agreed in writing by the Waste Planning Authority.

Reason: To ensure that the residential amenity of neighbouring properties is upheld in accordance with Policy WLP9 of the Waste Local Plan (2003)

Page 4 of 12

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

11. Drainage & Pollution Prevention:- the development hereby permitted shall not commence until a scheme for the provision and implementation of surface water drainage and pollution control has been submitted to and approved in writing by the Waste Planning Authority. The scheme shall include measures to ensure that contaminated matter, debris or other material is prevented from entering any watercourse. Prior to being discharged into any watercourse, surface water, sewer or soakaway system, all surface water drainage from impermeable parking areas and hard standings shall be passed through trapped gullies with an overall capacity compatible with the site being drained. The approved scheme shall be completed prior to the commencement of use of the building hereby approved and shall be constructed, completed & maintained in accordance with the approved details.

Reason: To ensure satisfactory drainage of the site in accordance with Policy P6/4 of the Cambridgeshire and Peterborough Structure Plan (2003) & Policy WLP16 of the Waste Local Plan (2003).

12. Environmental Protection:- No processing or storage of waste whether in a raw or processed form shall be permitted at the site unless within the confines of the buildings or designated storage bays shown on the approved drawings, or unless otherwise approved in writing by the Waste Planning Authority.

Reason: To ensure that noisy activities are confined to the building, to avoid problems of wind blown litter, and to protect the character and appearance of the locality in accordance with Policies WLP7 and WLP9 of the Cambridgeshire and Peterborough Waste Local Plan (2003).

13. External Lighting:- No external floodlighting shall be erected at the site unless details are submitted to and approved in writing by the Waste Planning Authority prior to the erection of such lighting. These details shall include the height of the floodlighting posts, intensity of the lights (specified in LUX levels), spread of light including approximate light spillage to the rear of the floodlighting posts, any measures proposed to minimise the impact of the floodlighting or disturbance through glare (such as shrouding), and the times when such lights will be illuminated. Any such scheme must be implemented in accordance with the approved details.

Reason: In the interests of visual amenity and the amenity of nearby residents in accordance with Cambridgeshire and Peterborough Structure Plan Policy P1/3 and Cambridgeshire and Peterborough Waste Local Plan Policies WLP7 and WLP9.

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

14. Stockpiles: Unless otherwise agreed in writing by the Waste Planning Authority the height of the stockpiles and processed waste material on-site shall not exceed a height of 5 metres as measured from the base of the pile.

Reason: In the interests of visual amenity in accordance with Cambridgeshire and Peterborough Structure Plan Policy P1/2 and Cambridgeshire and Peterborough Waste Local Plan Policy WLP7

15. Highways: Unless otherwise agreed in writing by the Waste Planning Authority, the gradient of the access shall not exceed 1 in 10 for a distance of 17m from the edge of the existing carriageway.

Reason: To ensure highway safety in accordance with Policy P8/1 of the Cambridgeshire and Peterborough Structure Plan (2003)

16. Development shall not commence until details of the junction between the proposed site access road and the highway have been approved in writing by the LPA and the new building hereby approved shall not be occupied until that junction has been constructed in accordance with the approved details

Reason: To ensure highway safety in accordance with Policy P8/1 of the Cambridgeshire and Peterborough Structure Plan (2003)

17. Unless otherwise agreed in writing by the Waste Planning Authority, the existing access to the site shall be permanently and effectively closed within 28 days of the bringing into use of the new access in accordance with a detailed scheme to be submitted to and approved in writing by the Waste Planning Authority (and such a scheme shall include the removal of the existing crossover and the re-instatement of the highway verge).

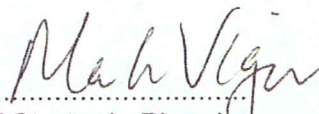
Reason: To ensure highway safety in accordance with Policy P8/1 of the Cambridgeshire and Peterborough Structure Plan (2003)

18. The permanent space to be reserved on the site for turning/ parking/ loading and unloading shall be surfaced and marked out in accordance with a detailed scheme to be submitted to and approved in writing by the Waste Planning Authority and provided before the development comes into operation and thereafter used for no other purpose unless agreed otherwise by the Waste Planning Authority

Reason: To ensure highway safety in accordance with Policy P8/1 of the Cambridgeshire and Peterborough Structure Plan (2003)

Page 6 of 12

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

Reasons for Approval:

- A) The proposal accords with the Development Plan Documents
- B) There are benefits in terms of sustainability and the recycling of waste derived from this proposal
- C) The proposal will not have an adverse impact upon the character and appearance of the area or the residential amenity of adjacent properties

All material land-use planning considerations raised have been taken into consideration. None is individually or cumulatively of such significance as to outweigh the reasons for the decision to approve the application.

The following policy documents were relevant to the determination of this application:

Relevant policies are set out in the Huntingdonshire District Council Local Plan (1995) including:

T18 The District Council will require new development to be accessed by new highways of acceptable design and appropriate construction.

E11 The District Council will normally allow the expansion of existing firms providing the scale and location of development does not conflict with other local plan policies.

E15 Special and heavy industrial uses will only be allowed in locations where traffic and environmental conditions permit and where residential amenities will not be detrimentally affected.

En17 Restricts development in the countryside to that in connection with an identified land use need

En20 States where appropriate development will be subject to landscaping conditions

En25 Expects all new development to relate sensitively to its surroundings

Huntingdonshire Interim Planning Policy Statement 2007:

P1 States proposals should contribute to the pursuit of sustainable development

P2 states development should encourage waste reduction and recycling

Page 7 of 12

Dated: 12 SEP 2007

Signed: Mark Vignar
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

P3 states development should contribute to the social and economic well-being of the district

P8 Lists the limitations which apply to development in the Countryside

G2 States development proposals should respect and respond appropriately to the distinctive qualities of the surrounding landscape

B1 state proposals should demonstrate high quality design and contribute to the character of the area

B2 states development proposals should make a positive contribution to the character and appearance of streets and public spaces

B3 states that new development should be accessible, adaptable and secure

B4 states proposals should not have an unacceptable impact upon amenity

E2 Lists the limitations relating to the location of new industrial and warehouse developments

T1 States a development proposal should be capable of being served by safe convenient access to the transport network and should not give rise to traffic volumes that exceed the capacity of the local transport network

T2 States development proposals should limit car parking and provide cycle parking facilities

Two Supplementary Planning Documents (SPDs): Huntingdonshire Design Guide and Huntingdonshire Landscape & Townscape Assessment were adopted by Huntingdonshire District Council on the 7th June 2007 & these are also considered to be material to this proposal.

Relevant policies are set out in the Cambridgeshire and Peterborough Waste Local Plan 2003:

Policy WLP1 – Sustainable Waste Management

To achieve sustainable waste management all proposals for waste development will be considered in the context of achieving the best practicable environmental option taking into account regional self-sufficiency, the proximity principle and the waste hierarchy.

Page 8 of 12

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

Policy WLP2 – Resource Recovery

All waste development proposals will need to demonstrate that, wherever practicable, they contain integrated proposals to recover resources from waste

Policy WLP3 - The need for Waste Development and the Movement of Waste

Proposals for major new waste development will only be permitted where there is a demonstrated need within Cambridgeshire and Peterborough. To ensure that excessive provision is not made within the Plan area, which could result in unacceptable importation of waste, planning permission will be dependent upon applicants entering into binding restrictions on catchment area, tonnages and/ or types of waste

Policy WLP 4 – Traffic/ Highway Matters

Waste development will only be permitted if there is suitable access and highways network to accommodate any associated increase in traffic, and any associated increase in traffic or highway improvements would not cause unacceptable harm to the environment, road safety or residential amenity.

Policy WLP 5 - Transport of Waste – Proximity Principle

The WPA will consider favourably proposals that entail disposal or management of waste as near as possible to the point at which it is generated (subject to other policies in the plan)

Policy WLP 7 – Protection of Landscape Character

Waste development will not be permitted in the countryside unless it can be demonstrated that its impact on the landscape can be assimilated without significantly adversely changing the landscape character

Policy WLP 9 – Protecting Surrounding Uses:

Waste development will only be permitted where it can be demonstrated that it is compatible with existing or proposed neighbouring land uses and there would be no unacceptable harm to the environment or to human health or safety, visual intrusion or loss to residential or other amenities.

Policy WLP 12 – Archaeology and the Historic Environment

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

Waste development will not be permitted where there would be an adverse affect on sites of historical or architectural importance without satisfactory mitigation measures

Policy WLP 16 -- Land Drainage and Floodplain Protection

Waste development will only be permitted where it is demonstrated that there would be no unacceptable risk of flooding to others, and surface run-off from the development would not adversely affect land drainage in the locality

Policy WLP22 -- Waste Transfer Stations

Subject to policies and criteria contained elsewhere in the development plan, waste transfer stations will be considered favourably where this would help achieve a network of such facilities. They will be permitted where they form part of a major waste management facility other than landfill

Policy WLP 37 -- Planning Conditions

The WPA will grant planning permission for waste development only where it is satisfied that operations can be carried out in such a manner so as to minimise disturbance, mitigate any adverse impact of the development, and where appropriate achieve satisfactory restoration and aftercare to a beneficial afteruse.

Emerging Minerals and Waste Plan for Cambridgeshire and Peterborough

Policies SSP10 and SSP14 in the Emerging Preferred Options Plan are relevant to this site, and these state that the site is suitable for waste recycling and recovery and is a safeguarded waste management area.

Cambridgeshire and Peterborough Structure Plan 2003:

Policy P1/2 sets out environmental restrictions on development

Policy P1/3 requires a high standard of design and sustainability for all new development

Policy P7/4 requires development to relate sensitively to the local environment

Policy P7/8 Safe and Healthy Air, Land and Water

Page 10 of 12

Dated:

12 SEP 2007

Signed:

Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

New development will be located and designed to minimise and where possible avoid air, land and water pollution.

Policy P7/11 states new proposals for waste management will be positively encouraged where they achieve the best practicable environmental option

Policy P7/12 lists the criteria which should be considered in relation to major waste management facilities

Policy P8/1 states the need to encourage sustainable forms of development by providing links between land use and transport

Policy P8/2 states that development will be required to make provision for integrated and improved transport infrastructure to increase sustainable transport opportunities

Policy P8/5 sets out the policy approach for the provision of car parking in all new developments

National Planning Guidance:

PPS1 Delivering Sustainable Development (2005) contains advice on the operation of the plan-led system.

PPS 7 Sustainable Development in Rural Areas (2004) concerns development proposals in the countryside with development to be strictly controlled and requiring good quality design, which respects the character of the countryside and safeguards the distinctiveness of its landscape

PPS 10 Planning for Sustainable Waste Management (2005) states that the planning system should enable adequate provision to be made for waste management facilities in appropriate locations, without undue adverse environmental effects or nuisance.

PPG 13 Transport (2001) Contains advice on the integration of planning and transport

PPG 24 Planning and Noise (1994) states that noise generated by new development is a materials consideration and its affects upon adjacent land users must be taken into account.

The National Waste Strategy (DEFRA 2007) is also relevant; this sets out the waste hierarchy, landfill diversion targets, aims to increase resource recovery and the greater segregation and sorting of waste.

Page 11 of 12

Dated: 12 SEP 2007

Signed: 
Head of Strategic Planning
Environment and Community Services

**Variation to Building and Layout of Waste Recycling & Transfer Station
Alconbury Recycling & Transfer Facility, Stangate Business Park, Alconbury Hill**

NOTES TO APPLICANT

1. The Environment Agency states:

Vehicle loading or unloading bays and storage areas involving chemicals, refuse or other polluting matter shall not be connected to the surface water drainage system. All surface water from roofs shall be piped direct to an approved surface water system using sealed downpipes. Open gullies should not be used. Foul and surface water manhole covers should be marked to enable easy recognition; convention is red for foul and blue for surface water. This is to enable water pollution incidents to be more readily traced. A closure valve should be installed in the surface water drainage system to contain any polluting material in the event of an emergency.

Your attention is drawn to the enclosed letter from the Environment Agency.

2. Notwithstanding any consent granted under the relevant planning acts the applicant is advised that before any works are carried out on any footway, carriageway, verge or other land forming part of the public highway the expressed consent of Cambridgeshire County Council as local highway authority will be required under. The applicant is advised to contact the Divisional Maintenance Engineer, Mr R Kingston, at Stanton House, Stukeley Road, Huntingdon, PE29 6XL, for further information.

Page 12 of 12

Dated: 12 SEP 2007

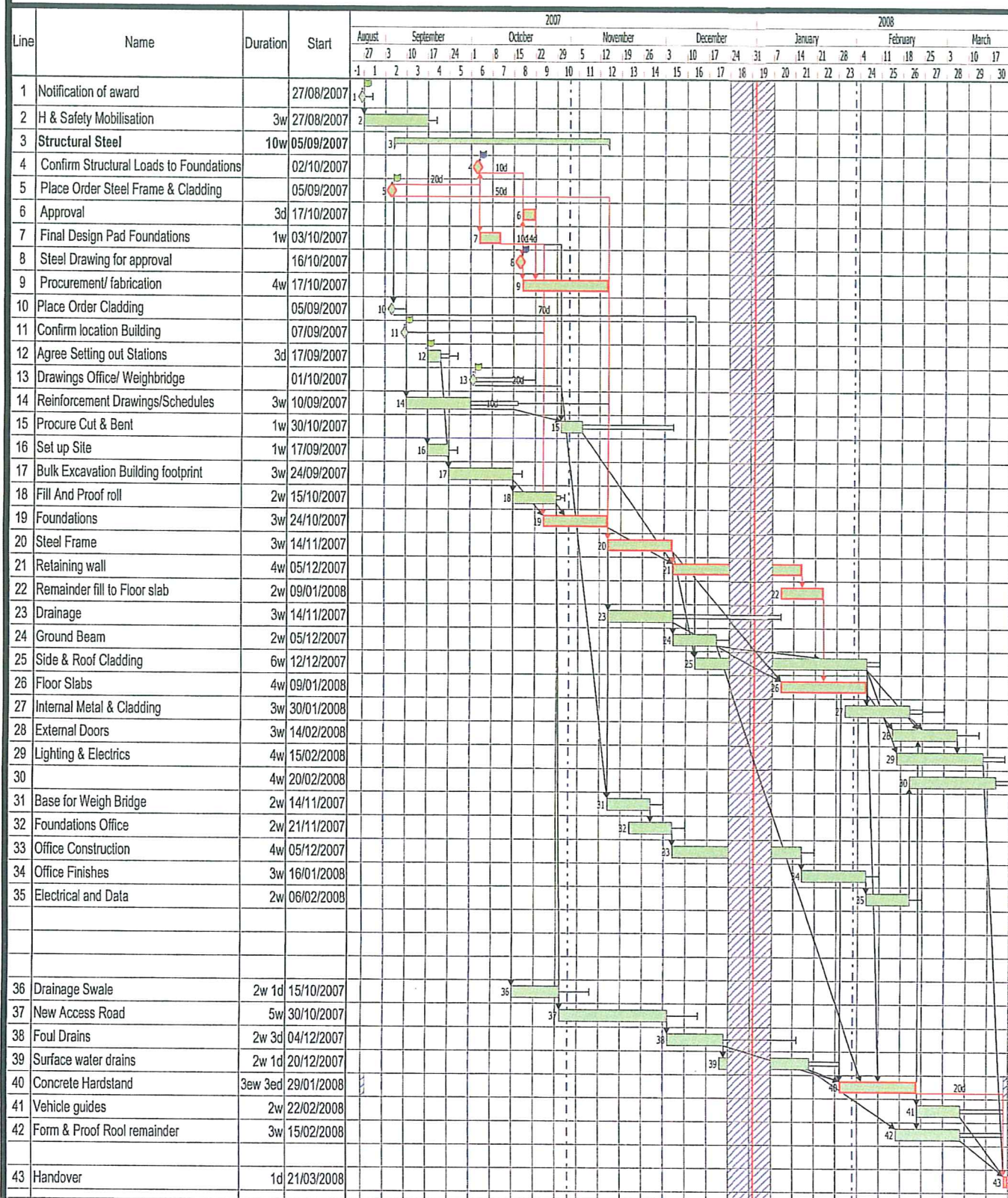
Signed: 
Head of Strategic Planning

Environment and Community Services

APPENDIX 8
PROGRAMME

ORIGINAL ISSUE DATE:13/08/2007
REVISION Nr.C DATE:03/09/2007

Waste Transfer Building D & P added

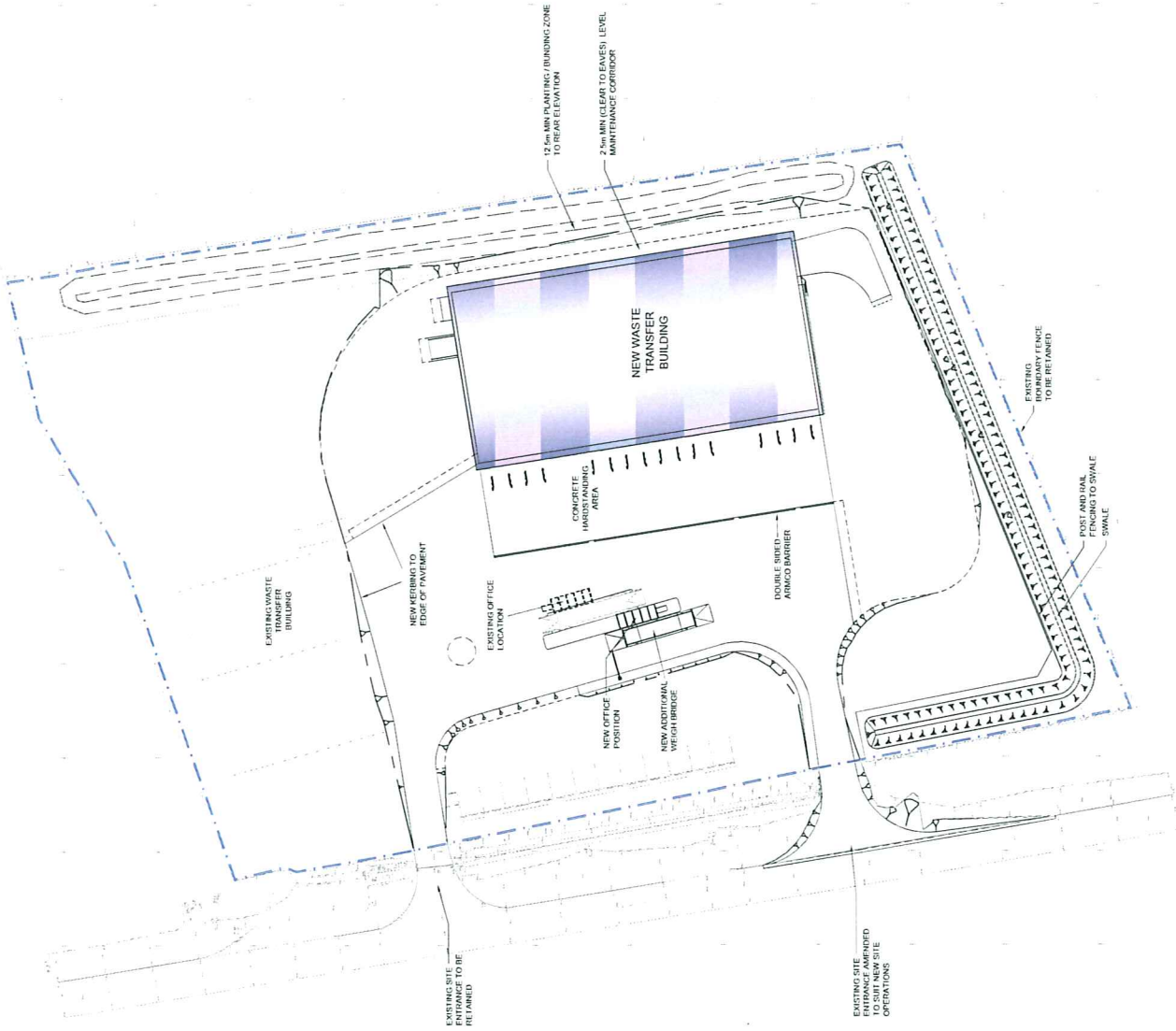


APPENDIX 9
ACTIVITY SCHEDULE

APPENDIX 10
LAYOUT/SITE BOUNDARY DRAWING

NOTES :

1. All drawings are the property of RPS Burke Green and shall not be reproduced or used in any manner without the written consent of RPS Burke Green.
2. All dimensions are in millimeters unless otherwise specified. The recommended unit conversion is listed in the notes to this drawing.
3. This drawing should be used in conjunction with all other related drawings and specifications.



10m SCALE 1:500

RPS Burke Green		Client	
RPS Burke Green 144-151 14th Ave S Edmonton, Alberta T6C 1G5 Canada Tel: 780-443-1111 Fax: 780-443-1112 Email: info@rpsbkgreen.com		Donarborn Waste Management 15186 / A1 / 0100 D	
Project Donarborn Altonbury Waste Transfer Site		Drawing Status Construction	
Title Proposed Site Plan		Drawing Scale 1:500	
Drawing Number 15186 / A1 / 0100		Date Created May 2007	
Project Leader ANV		Drawn By JUN	
Checked By RS		Issued By RS	