

DATED

21 March 2013

**CORNWALL COUNCIL**

- and -

**SITA CORNWALL LIMITED**

**SUPPLEMENTAL AGREEMENT**

- to -

**THE INTEGRATED WASTE MANAGEMENT CONTRACT DATED 16 OCTOBER 2006  
AS AMENDED BY THE LETTERS FROM CORNWALL COUNCIL TO SITA CORNWALL  
LIMITED DATED 13 JANUARY 2011 (COUNTERSIGNED ON 17 JANUARY 2011),  
24 AUGUST 2011 (COUNTERSIGNED ON 31 AUGUST 2011),  
21 DECEMBER 2011 (COUNTERSIGNED ON 29 DECEMBER 2011)  
AND 31 MAY 2012 (COUNTERSIGNED ON 31 MAY 2012)**



Matter ref R3846/00013  
F6/JDWL/2585182

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**BETWEEN:**

- (1) **Cornwall Council of County Hall**, Treyew Road, Truro, Cornwall TR13 3AY (the "**Authority**"); and
- (2) **SITA Cornwall Limited** a company incorporated in England with company number 5696514, whose registered office is at SITA House, Grenfell Road, Maidenhead, Berkshire, SL6 1ES (the "**Contractor**").

**WHEREAS:**

- (A) The Authority and the Contractor entered into the Project Documents, including an Integrated Waste Management PFI Contract dated 16 October 2006 relating to the provision of the Services pursuant to the United Kingdom Government's Private Finance Initiative (the "**Project Agreement**").
- (B) The Contractor's obligations under the Project Agreement include the finance, design, construction, refurbishment and operation of new and existing facilities that are required for the receipt, handling, transportation, storage, recycling, composting and disposal of the municipal waste of the County of Cornwall, including a proposed Residual Waste Treatment Plant.
- (C) The Contractor's obligations in respect of the Residual Waste Treatment Plant are, conditional upon the grant of satisfactory planning permission and a satisfactory environmental permit. However, the grant of satisfactory planning permission and a satisfactory permit has taken longer than the parties had originally envisaged.
- (D) Pursuant to paragraph 3.11(a) of Schedule 6 of the Project Agreement, the parties concluded that it would not be possible to achieve the RWTP Works Start Date by the RWTP Planning and PPC Long Stop Date. The Authority was therefore obliged (under paragraph 3.11 of Schedule 6) to decide whether to request a Revised Project Plan or terminate the Project Agreement. The Authority issued a formal instruction on 17 March 2010 for the Contractor to prepare a Revised Project Plan.
- (E) In consequence of the above matters, the Contractor is arranging a refinancing of the loan facilities relating to the Project put in place at Financial Close (the "**Refinancing**") and will enter into a new Construction Subcontract.
- (F) This Agreement deals with the amendments required to the Project Agreement to implement the Revised Project Plan and other changes consequent thereon.

**IT IS AGREED:**

**1. INTERPRETATION**

- 1.1 Unless stated to the contrary in this Supplemental Agreement, words and phrases used in this Supplemental Agreement with initial capital letters but not defined shall have the meanings given to them in the Project Agreement as amended by this Supplemental Agreement. The provisions of clauses 1.2 to 1.7 of the Project Agreement shall apply to this Supplemental Agreement.
- 1.2 Unless stated to the contrary, references in this Supplemental Agreement to any clause or schedule are references to such clause or schedule of this Supplemental Agreement.

**2. AMENDMENTS TO PROJECT AGREEMENT**

The Project Agreement shall be amended and restated in the form in Schedule 3 (*Amended and Restated Project Agreement*).

**3. CONFIRMATION AND WARRANTIES**

3.1 The Project Agreement, as amended by this Supplemental Agreement, shall continue in full force and effect. The parties acknowledge and agree that pursuant to their respective obligations under the Project Agreement, the parties have previously executed the following documents:

- (a) the CES Asset Sale Agreement;
- (b) the CPC Share Sale Agreement;
- (c) the SKW Share Sale Agreement;
- (d) the Collateral Agreement in respect of the Construction Subcontract for all of the Facilities other than the RWTP;
- (e) the Collateral Agreement in respect of the Operating Subcontract; and
- (f) the Collateral Agreement in respect of the Project Management Agreement.

3.2 On execution of this Supplemental Agreement, the parties shall execute the following documents:

- (a) the Funders' Direct Agreement;
- (b) the Collateral Agreement in respect of the Construction Subcontract for the RWTP;
- (c) a supplemental agreement amending and restating the Independent Tester Contract; and
- (d) subject to Clause 3.3 below, Leases in respect of the following sites:
  - (i) Bodmin (Wheal Prosper);
  - (ii) Bodmin MRF;
  - (iii) Bude (Tiscott Wood);
  - (iv) Connon Bridge (Liskeard) HWRC Site;
  - (v) Connon Bridge (Liskeard) RTS Site;
  - (vi) Falmouth (new);
  - (vii) Helston (Gays Hill);
  - (viii) Launceston (new);
  - (ix) Pool (new);
  - (x) Saltash;

- (xi) St Austell (Tregongeeves);
- (xii) St Austell (new);
- (xiii) St Dennis (Parkandillick); and
- (xiv) St Erth (Hayle).

- 3.3 The Lease for the St Dennis (Parkandillick) site shall be signed but remain undated and held in escrow in accordance with Clauses 12.5 and 12.5A (*Lease and Licence for St Dennis (Parkandillick) Site*) of the Project Agreement.
- 3.4 The Contractor warrants to the Authority that entry into this Supplemental Agreement shall not constitute a breach or constitute an event of default under the Financing Agreements.
- 3.5 Each party warrants to the other, that it has the necessary consents and authority to enter into this Supplemental Agreement.
- 3.6 The Authority confirms and agrees that:
- (a) the provisions of clause 68 (*Refinancing*) of the Project Agreement shall not apply as a result of the Contractor entering into the Financing Amendment and Restatement Deed and any other Initial Financing Agreements (including as a result of the refinancing on the Amendment Date of certain Senior Debt and Junior Debt contemplated by Clause 5 (*Refinancing of Existing Indebtedness*) of the Financing Amendment and Restatement Deed)); and
  - (b) with effect from the date of this Agreement, paragraphs (n) and (q) of the definition of Contractor Default shall no longer apply.
- 3.7 The Authority approves the Change of Ownership necessary to implement the shareholdings in Holdco identified in Schedule 2 (Contractor Warranted Information) of the Project Agreement as amended by this Supplemental Agreement.
- 3.8 The Authority consents to the Contractor entering in to the following documents in the agreed form:
- (a) the Financing Amendment and Restatement Deed;
  - (b) the Second Supplemental Debenture (as defined in the Common Terms Agreement);
  - (c) the Construction Subcontract for the RWTP and associated Performance Guarantee;
  - (d) the supplemental agreement amending and restating the Construction Subcontract for the Facilities other than the RWTP and confirming the associated Performance Guarantee;
  - (e) the supplemental agreement amending and restating the Project Management Agreement and confirming the associated parent guarantee;
  - (f) the supplemental agreement amending and restating the Operating Subcontract and the amendment and confirmation agreements relating to the associated Performance Guarantees; and

(g) the Approved PPA.

- 3.9 For the purposes of clause 4.6(a) of the Project Agreement the Authority hereby consents to the increase of the liabilities of the Authority on early termination of the Contract as a consequence of the amendment and restatement of certain Financing Agreements and Ancillary Documents contemplated by those documents (and the refinancing of certain Senior Debt and Junior Debt contemplated by Clause 5 (*Refinancing of Existing Indebtedness*) of the Financing Amendment and Restatement Deed) on the terms of the drafts provided to the Authority for review.

#### 4. EFFECTIVE DATE

This Supplemental Agreement shall take effect on the Amendment Date.

#### 5. NO CLAIMS

- 5.1 The parties acknowledge and agree that, subject to the remaining provisions of this Clause 5, this Supplemental Agreement and the amended and restated Project Agreement referred to in Clause 2 (together with all settlement letters and agreements entered into between the parties prior to the Amendment Date) constitute settlement and/or waiver of all claims of each party arising under or in connection with the Project Agreement as at the date of this Supplemental Agreement and the obligations of each party arising under the Project Agreement to date have either been discharged in full, waived or settled by the other party.

##### *Authority*

- 5.2 The Authority reserves the right to bring claims against the Contractor in relation to:
- (a) any or all of the issues identified in Schedule 2; and
  - (b) any issues which could not reasonably be expected to be identified by the Authority as giving rise to a claim under the Project Agreement either in the form prior to amendment or as amended by this Supplemental Agreement as a result of the Authority having made reasonable enquiries on or before the date of this Supplemental Agreement

For the purpose of clause 5.2, "**reasonable enquiries**" means that reasonable enquiry has been made of the individuals listed in Schedule 1 Part A.

##### *Contractor*

- 5.3 The Contractor reserves the right to bring claims against the Authority in relation to:
- (a) any or all of the issues identified in Schedule 2; and
  - (b) any issues which could not reasonably be expected to be identified by the Contractor as giving rise to a claim under the Project Agreement either in the form prior to amendment or as amended by this Supplemental Agreement as a result of the Contractor having made reasonable enquiries on or before the date of this Supplemental Agreement.

For the purpose of this clause 5.3, "**reasonable enquiries**" means that reasonable enquiry has been made of the individuals listed in Schedule 1 Part B.

- 5.4 In this clause 5, "**claims**" does not include any deductions, adjustments or notices under the performance or availability measurement and payment systems provided for in the Project Agreement, but only in respect of the period commencing on 1 April 2012.
- 5.5 The Authority accepts no liability to the Contractor and the Contractor accepts no liability to the Authority, in each case whether in contract, tort or otherwise, howsoever arising and whether or not arising from any negligence on the part of the Authority or the Contractor (as the case may be) in respect of any inaccuracy, error, omission or defect of any kind whatsoever in the list of issues identified in Schedule 2, provided that the Authority and the Contractor shall not be entitled to bring a claim in respect of any issue which is:
- (a) in the case of the Authority:
    - (i) not identified in Schedule 2;
    - (ii) an issue which could reasonably be expected to be identified by the Authority as a result of the reasonable enquiries made pursuant to clause 5.2(b) and which is not identified in Schedule 2; and
  - (b) in the case of the Contractor:
    - (i) is not identified in Schedule 2; and
    - (ii) an issue which could reasonably be expected to be identified by the Contractor as a result of the reasonable enquiries made pursuant to clause 5.3(b) and which is not identified in Schedule 2.
- 5.6 Any claims relating to matters which arose prior to the date of this Agreement shall be governed by and determined in accordance with the terms of the Project Agreement as at the date prior to the date of this Agreement, disregarding for those purposes any changes effected to the Project Agreement by this Agreement.
- 5.7 Any claims relating to matters which arise on or after the date of this Agreement shall be governed by and determined in accordance with the terms of the Project Agreement as amended by this Agreement.
6. **GENERAL**
- 6.1 This Supplemental Agreement is governed by and shall be construed in accordance with English law.
- 6.2 Any dispute arising out of or in connection with this Supplemental Agreement shall be resolved in accordance with the procedure set out in clause 102 (*Dispute Resolution*) of the Project Agreement.
- 6.3 This Supplemental Agreement may be executed in any number of counterparts, all of which, taken together, shall constitute one and the same Supplemental Agreement and either party may enter into this Supplemental Agreement by executing a counterpart.
- 6.4 Each party shall, at its own expense, at all times do all things as may be required to give full effect to this Supplemental Agreement including the execution of deeds and documents.

6.5 A person who is not a party to this Supplemental Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any provision of this Supplemental Agreement.

7. LOCAL GOVERNMENT (CONTRACTS) ACT 1997

7.1 The Certification Requirements are intended to be satisfied by the Authority with respect to this Supplemental Agreement and the Project Agreement before the end of the Certification Period relating to each agreement.

7.2 The Authority undertakes that it shall use its best endeavours to satisfy the Certification Requirements as envisaged by clause 7.1.

7.3 The Contractor hereby consents to the issue by the Authority of certificates under section 3 of the Local Government (Contracts) Act 1997 in respect of this Supplemental Agreement.

7.4 If a certificate is not issued by the Authority pursuant to clause 7.3 within six weeks of the date of this Supplemental Agreement then the Contractor shall be entitled by giving notice in writing to the Authority within seven days of the Authority failing to issue such a certificate to terminate this Supplemental Agreement, whereupon the Authority shall pay to the Contractor the aggregate costs incurred by the Contractor (including all sums owing to the Senior Lender under the Senior Financing Agreements) in entering into and terminating this Supplemental Agreement.

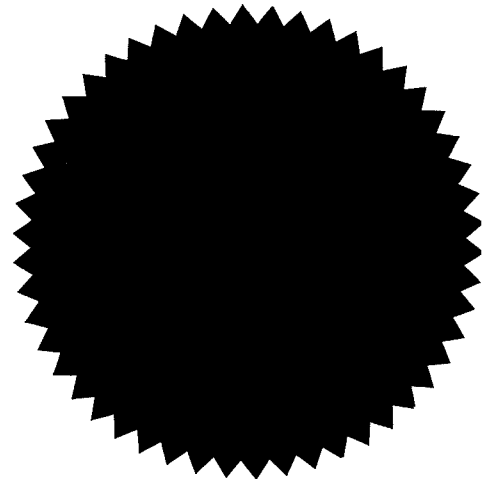
7.5 The relevant discharge terms within the meaning of Section 6 of the Local Government (Contracts) Act 1977 are set out in Schedule 31 (*Relevant Discharge Terms*) of the Project Agreement.

IN WITNESS of which the parties or their duly authorised representatives have executed this Supplemental Agreement as a deed the day and year first before written.

Executed as a deed by **The Cornwall Council** whose Common Seal was hereunto affixed in the presence of:

*Michael A. Crich*  
.....  
Authorised Signatory

**MICHAEL A. CRICH**  
.....  
Signatory Full Name



Executed as a deed by **SITA Cornwall Limited** acting by:

Director *[Signature]*  
Director *[Signature]*



**SCHEDULE 1**

**Enquiries**

Part A - Authority

<b>Name</b>	<b>Position</b>
Miranda Kennaway	PFI Solicitor
Debbie Spires	PFI Project Manager (legal, contract management and procurement)
Des Teal	IWMC Team Manager
Nigel Blackler	Head of Transportation, Waste and Environment (and Authority Representative)
Kevin Bryant	Assistant Head of Service- Service Commissioning and Assets
Michael Crich	Corporate Director Resources (and Authority Representative)

Part B – Contractor

<b>Name</b>	<b>Position</b>
Ian Sexton	Chairman – SITA Cornwall Limited
Phil Rudin	Regional Manager – Cornwall and Devon – SITA UK Limited
Charlotte Padmore	Senior Financial Analyst – SITA UK Limited
David Buckle	Head of Construction – SITA UK Limited
Paul Gavin	Director – SITA Cornwall Limited
Alan Fieldsend	Legal Services Manager – SITA UK Limited
James Pike	General Manager (Processing ) South West – SITA UK Limited
Stuart Higgins	Operations Manager
Gareth Phillips	Planning Manager – SITA UK Limited
Graham McKenna-Mayes	Chief Operating Officer – Material Sourcing – SITA UK Limited

**SCHEDULE 2**

**Known Issues**

The appearance of an issue in this Schedule 2 is for the purposes of identification only and shall in no way constitute an acceptance of the merits or validity of, or liability in respect of, the issue.

	<b>Type of claim</b>	<b>Further details</b>
1.	There are outstanding construction cost claims due from the Authority	<p>These costs relate to New Authority Site Assumptions at Falmouth and Launceston</p> <p><u>Falmouth HWRC</u></p> <p>Claims relating to the New Authority Site not satisfying the Assumptions included in Appendix 1 of Schedule 7 of the CM Contract. Value: £52,701.67.</p> <p><u>Launceston HWRC &amp; RTS</u></p> <p>Claims relating to the New Authority Site not satisfying the Assumptions included in Appendix 1 of Schedule 7 of the CM Contract. Value: £150,020.38.</p> <p><u>Pool RTS</u></p> <p>A claim relating to reimbursement of works costs following Authority to agreement to pay for the facility provision on a cost plus basis. Value: £775,432 (based on final advised outturn costs of £2,617,835 less £1,842,403 paid to date).</p>
2.	Loss of Non PFI HWRC' recycling revenue	<p>SITA operates the Newquay site. This was due to become a New Authority Site whereupon SCL would get benefit of recycling revenue but due to delay benefit going to CC instead.</p>

3.	Use of different vehicle types (by WCA contractor) at nominated delivery points	Since Cory won the collection contract they have been using different vehicles on site which take longer to unload. SITA has requested relief from obligations relating to the performance deduction for turnaround times and that this is treated as a WCA Service Change (resulting in a Qualifying Change in Law).
4.	Latent defect claim at Connon Bridge Landfill resulting in a claim against the Authority (refer to most recent letter of Authority to SITA).	This issue has been on the Project Liaison Group Issues List since 2008, as a Latent Defect claim. The claim includes SITA's costs for tankering leachate arising in the landfill as a result of the Latent Defect.
5.	Market Testing	The following Services have either not been Market Tested on the required dates or, to the extent they have been Market Tested, the Annual Unitary Charge has not been adjusted following such Market Testing in each case in accordance with section 51 of the Project Agreement (including in relation to Carrick recylates): (i) Utility Contracts; (ii) Haulage Services; (iii) Paper Recycling Service (excluding newspapers and pamphlets); and (iv) Paper Recycling Service (newspapers and pamphlets).