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DIRECT FINANCING AGREEMENT

between

THE GARDEN ROUTE DISTRICT MUNICIPALITY

(as the Municipality)

and

DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED

(as Lender)

and

EDEN WASTE MANAGEMENT (RF) PROPRIETARY LIMITED

(as the Private Party)

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THIS DIRECT FINANCING AGREEMENT (this "Direct Financing Agreement") IS MADE ON [•] AT [•] BETWEEN:

1. **THE GARDEN ROUTE DISTRICT MUNICIPALITY**, duly established in terms of section 12 and section 14 of the Local Government: Municipal Structures Act 117 of 1998, by Establishment Notice No. PN499/2000, dated 22 September 2000 ("**Municipality**");
2. **DEVELOPMENT BANK OF SOUTHERN AFRICA LIMITED**, a development finance institution reconstituted and incorporated in terms of section 2 of the Development Bank of Southern Africa Act, 1997 ("**Lender**"); and
3. **EDEN WASTE MANAGEMENT (RF) PROPRIETARY LIMITED**, registration number 2014/092464/07, a private company, with limited liability, duly registered and incorporated in accordance with the Laws of the Republic of South Africa ("**Private Party**").

IT IS AGREED AS FOLLOWS:

1. **DEFINITIONS AND INTERPRETATION**

1.1. Definitions

In this Direct Financing Agreement:

- 1.1.1. "**Affiliate**" has the meaning given to it in the PPP Agreement;
- 1.1.2. "**Appointed Representative**" has the meaning given to it in clause 5.1;
- 1.1.3. "**Business Day**" has the meaning given to it in the PPP Agreement;
- 1.1.4. "**Debt**" has the meaning given to it in the PPP Agreement;
- 1.1.5. "**Effective Date**" has the meaning given to it in the PPP Agreement;
- 1.1.6. "**Enforcement Event**" means an event of default under the Senior Facility Agreement, as notified by the Lender to the Municipality, which notice shall describe the relevant event of default;
- 1.1.7. "**Financing Agreements**" means the financing agreements listed in schedule [17] (*List of Financing Agreements*) of the PPP Agreement;
- 1.1.8. "**Lender**" means the Party listed in paragraph 2 of the preamble above, or its successors in title in accordance with the Financing Agreements;
- 1.1.9. "**Local Municipalities**" means Bitou Municipality, Knysna Municipality, George Municipality and Mossel Bay Municipality, as envisaged in the PPP Agreement

- 1.1.10. **"Municipality"** means the Party listed in paragraph 1 of the preamble above;
- 1.1.11. **"No Liquid Market"** means that less than 2 (two parties meeting the criteria in clauses 1.1.31.1, 1.1.31.2 and 1.1.31.3 of the definition of "Substitute Private Party" have pre-qualified pursuant to a request in clause 4.1.1;
- 1.1.12. **"Notice of Existing Liabilities"** has the meaning given to it in clause 3.2;
- 1.1.13. **"Parties"** means the parties to this Direct Financing Agreement, being the Municipality, the Lender and the Private Party;
- 1.1.14. **"Penalty Deductions"** has the meaning given to it in the PPP Agreement;
- 1.1.15. **"PPP Agreement"** means the public private partnership agreement, , between the Municipality and the Private Party concluded contemporaneously with this Direct Financing Agreement;
- 1.1.16. **"Pre-termination Notice"** has the meaning given to it in clause 3.1;
- 1.1.17. **"Private Party"** means the Party listed in paragraph 3 of the preamble above;
- 1.1.18. **"Private Party Default"** means any Private Party Default (as defined in the PPP Agreement) that is capable of being remedied, being any Private Party Default referred to in clause [59.2] (*Municipality's Options*) of the PPP Agreement;
- 1.1.19. **"Project"** has the meaning given to it in the PPP Agreement;
- 1.1.20. **"Project Deliverables"** has the meaning given to it in the PPP Agreement;
- 1.1.21. **"Project Term"** has the meaning given to it in the PPP Agreement;
- 1.1.22. **"Required Period"** means the period starting on the date of a Pre-termination Notice and:
 - 1.1.22.1. during the period preceding the Service Period, ending 90 (ninety) days later; and
 - 1.1.22.2. during the Service Period, ending 60 (sixty)] days later;
- 1.1.23. **"Responsible Authority"** means any ministry, any minister, any organ of state, any official in the public administration or any other governmental or regulatory department, commission, municipality, entity, service utility, board, agency, instrumentality or authority (in each case, whether national, provincial or municipal) or any court, each having jurisdiction over the matter in question, but excluding for all purposes the Municipality;

- 1.1.24. **"Security Documents"** means the documents creating or evidencing the security granted by the Private Party to the Lender (or any security company, trust or other entity appointed by the Lender to hold the security) in respect of the Debt
- 1.1.25. **"Senior Facility Agreement"** means the senior facility agreement between the Lender and the Private Party concluded on or about the date of this this Direct Financing Agreement;
- 1.1.26. **"Service Commencement Date"** has the meaning given to it in the PPP Agreement;
- 1.1.27. **"Service Period"** has the meaning given to it in the PPP Agreement;
- 1.1.28. **"Step-in Date"** has the meaning given to it in clause 5.2;
- 1.1.29. **"Step-in Period"** means the period from the Step-in Date up to and including the earlier of:
 - 1.1.29.1. the Step-Out Date;
 - 1.1.29.2. the date of any assignment under clause 8 (*Assignment of PPP Agreement to the Substitute Private Party*); and
 - 1.1.29.3. the date of any termination for breach under clause 6.2;
- 1.1.30. **"Step-Out Date"** has the meaning given to it in clause 7.1 below;
- 1.1.31. **"Substitute Private Party"** means a person approved by the Municipality as:
 - 1.1.31.1. having the appropriate technical and financial ability to perform the rights and obligations of the Private Party under the PPP Agreement;
 - 1.1.31.2. employing persons having the appropriate qualifications, experience and technical competence; and
 - 1.1.31.3. having sufficient resources available to it (including committed financial resources and subcontracts) to perform the obligations of the Private Party under the PPP Agreement;
- 1.1.32. **"Tender Submission Date"** has the meaning given to it in the PPP Agreement;
- 1.1.33. **"Termination Date"** has the meaning given to it in the PPP Agreement; and

1.1.34. **"Unitary Payment"** has the meaning given to it in the PPP Agreement.

1.2. Interpretation

This Direct Financing Agreement shall be interpreted according to the following provisions, unless the context requires otherwise:

- 1.2.1. References to the provisions of any law shall include such provisions as amended, re-enacted or consolidated from time to time in so far as such amendment, re-enactment or consolidation applies or is capable of applying to any transaction entered into under this Direct Financing Agreement.
- 1.2.2. References to "Parties" shall include the Parties' respective successors-in-title and, if permitted in this Direct Financing Agreement, their respective assignees and assignees.
- 1.2.3. References to a "person" shall include an individual, firm, company, corporation, juristic person, Responsible Authority, and any trust, organisation, association or partnership, whether or not having separate legal personality.
- 1.2.4. References to any "Responsible Authority" or any public or professional organisation shall include a reference to any of its successors or any organisation or entity, which takes over its functions or responsibilities.
- 1.2.5. References to "clauses", and "sub-clauses" are references to the clauses and sub-clauses of this Direct Financing Agreement.
- 1.2.6. The headings of clauses and sub-clauses are included for convenience only and shall not affect the interpretation of this Direct Financing Agreement.
- 1.2.7. The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Direct Financing Agreement, and agree that no provision or word used in this Direct Financing Agreement shall be interpreted to the disadvantage of any Party because that Party was responsible for or participated in the preparation or drafting of this Direct Financing Agreement or any part of it.
- 1.2.8. Words importing the singular shall include the plural and vice versa, and words importing either gender or the neuter shall include both genders and the neuter.
- 1.2.9. References to ~~this~~ Direct Financing Agreement+ shall include this Direct Financing Agreement as amended, varied, novated or substituted in writing from time to time.

- 1.2.10. References to any other contract or document shall include (subject to all approvals required to be given pursuant to this Direct Financing Agreement for any amendment or variation to or novation or substitution of such contract or document) a reference to that contract or document as amended, varied, novated or substituted from time to time.
- 1.2.11. General words preceded or followed by words such as "other" or "including" or "particularly" shall not be given a restrictive meaning because they are preceded or followed by particular examples intended to fall within the meaning of the general words.
- 1.2.12. When any number of days are prescribed by this Direct Financing Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the immediately following Business Day.
- 1.2.13. Capitalised terms used but not defined under this Direct Financing Agreement shall bear the meanings assigned to such terms in the PPP Agreement.

2. **CONSENT TO SECURITY**

- 2.1. The Municipality acknowledges notice of, and consents to, the security interests granted over the Private Party's rights under the PPP Agreement effected by the Private Party in favour of the Lender under the Security Documents.
- 2.2. The Municipality confirms that it has not received notice of any other security interest granted over the Private Party's rights under the PPP Agreement.

3. **NOTICES OF PRE-TERMINATION AND EXISTING LIABILITIES**

The Municipality shall not terminate the PPP Agreement without giving to the Lender:

- 3.1. at least the Required Period, by providing a prior written notice to the Lender of the proposed termination (the "**Pre-termination Notice**") stating:
 - 3.1.1. the proposed termination date of the PPP Agreement by the Municipality; and
 - 3.1.2. the Private Party Default(s) constituting the grounds for termination of the PPP Agreement by the Municipality in reasonable detail; and
- 3.2. not later than (A) the date falling 14 (fourteen) days after the date of a Pre-termination Notice or, if earlier, (B) the date falling 14 (fourteen) days after the date on which the Lender notifies the Municipality that an Enforcement Event has occurred, a notice (the "**Notice of Existing**")

Liabilities") containing details of any amounts owing by the Private Party to the Municipality under the PPP Agreement:

- 3.2.1. which are overdue at the date of the Pre-termination Notice or the date of the Lender's notice of an Enforcement Event, as the case may be; and
- 3.2.2. which will fall due at any time in the period from that date to the end of the Required Period where the Pre-termination Notice has been provided by the Municipality.

4. **NO LIQUID MARKET**

- 4.1. At any time in the Required Period (and not thereafter) and provided the Lender has stepped-in in terms of clause 5.1, the Lender may issue written notice to the Municipality (the "**No Liquid Market Notice**"):
 - 4.1.1. confirming that the Lender has issued a request for pre-qualification in respect of the appointment of a Substitute Private Party for the provision of the Project Deliverables for the unexpired portion of the Project Term and that there is No Liquid Market; and
 - 4.1.2. describing in detail the pre-qualification process undertaken by the Lender.
- 4.2. On or before the 10th (tenth) Business Day following the Municipality's receipt of the No Liquid Market Notice, the Municipality shall issue written notice to the Lender stating whether or not it agrees with the Lender that No Liquid Market exists, and if it disagrees with the Lender, its reasons for such disagreement.
- 4.3. If the Municipality fails to issue a notice as required in clause 4.2 or the Parties do not agree that No Liquid Market exists, then the Lender must refer the dispute (which shall be deemed to exist if the Municipality fails to issue the required notice), for determination in terms of clause [78] (*Fast-track Dispute Resolution*) of the PPP Agreement which shall apply to such dispute, mutatis mutandis.
- 4.4. If the Parties agree that No Liquid Market exists or it is so determined as aforesaid, then the PPP Agreement shall terminate automatically on the date of such agreement or determination and the provisions of clause [66] (*No Retendering Procedure*) of the PPP Agreement shall apply.
- 4.5. If the No Liquid Market Notice is issued in the Required Period and a dispute is referred for determination as contemplated in clause 4.3, then the Required Period shall be extended by the period over which the dispute is determined.

5. APPOINTED REPRESENTATIVE

- 5.1. Without prejudice to the Lender's rights under the Security Documents, at any time:
- 5.1.1. during which an Enforcement Event is subsisting (whether or not a Pre-termination Notice has been served); or
 - 5.1.2. during the Required Period,
- the Lender may, on written notice to the Municipality of no less than 5 (five) Business Days, appoint a representative (the "**Appointed Representative**") who shall:
- 5.1.3. step-in to assist the Private Party in remedying:
 - 5.1.3.1. the Enforcement Event which is subsisting; or
 - 5.1.3.2. the Private Party Default(s) stated in the Pre-termination Notice provided by the Municipality to the Lender in terms of clause 3.1; and
 - 5.1.4. jointly and severally assume all the Private Party's rights to perform all of the Project Deliverables.
- 5.2. Such appointment shall take effect on the date set out in the written notice referred to in clause 5.1 above ("**Step-in Date**").
- 5.3. Within 10 (ten) Business Days after the appointment becomes effective, the Lender shall provide the Municipality with full details of the remedial programme to be implemented by the Appointed Representative in respect of the Private Party Default(s) mentioned in the Pre-termination Notice provided by the Municipality to the Lender in terms of clause 3.1 (if any).

6. STEP-IN PERIOD

- 6.1. Without limiting clause 3 (*Notices of Pre-termination and Existing Liabilities*), but subject to clause 6.2, the Municipality shall not terminate the PPP Agreement during the Step-in Period on grounds:
- 6.1.1. that the Lender has taken any action referred to in clause 5 (*Appointed Representative*) or enforced any Security Document(s); or
 - 6.1.2. arising prior to the Step-in Date of which the Municipality is aware as at the Step-in Date; or
 - 6.1.3. arising solely in relation to the Private Party,

unless, in the case of clause 6.1.2 above:

- 6.1.4. the grounds arose during the period preceding the Service Period, and Service Commencement does not begin on or before the date falling 2 (two) months after the Long Stop Date (as defined in the PPP Agreement); or
 - 6.1.5. the grounds arose during the Service Period, and neither the Appointed Representative nor the Private Party is using all reasonable endeavours (including implementation of the remedial programme) to remedy the Private Party Default and that Private Party Default is continuing.
- 6.2. The Municipality shall be entitled to terminate the PPP Agreement by written notice to the Private Party (copied to the Lender and the Appointed Representative):
- 6.2.1. if any amount which is overdue at the date of the Pre-termination Notice or the date of the Lender's notice of an Enforcement Event and which the Municipality has referred to in the Notice of Existing Liabilities provided in accordance with clause 3.2.1 has not been paid to the Municipality on or before the Step-in Date;
 - 6.2.2. if any amount which falls due at any time during the period referred to in clause 3.2.2 has not been paid within 10 (ten) Business Days of the due date under the PPP Agreement for that amount;
 - 6.2.3. if any amount incurred prior to the date of the Pre-termination Notice (of which the Municipality was not aware (having made reasonable enquiry) at the time), and that is subsequently notified by the Municipality to the Lender is not discharged on or before the date falling [30 (thirty)] days after the date of such notice;
 - 6.2.4. if any of the provisions of clause 6.1.4 or 6.1.5 apply; or
 - 6.2.5. for any Private Party Default arising after the Step-in Date; provided that any Penalty Deductions that accrued prior to the Step-in Date shall not be taken into account for the purposes of termination, but shall be taken into account for such purposes after the Step-out Date,
- in accordance with the terms of the PPP Agreement.
- 6.3. Save as provided in clause 6.2, the Municipality shall deal with the Appointed Representative and not the Private Party during the Step-in Period. The Private Party shall be jointly and severally liable for all actions or omissions of the Appointed Representative which are reasonable and necessary for the Appointed Representative to undertake for the purpose of clause 5.1.3, as if these actions and omissions are those of the Private Party.

7. STEP-OUT

- 7.1. The appointment of the Appointed Representative shall cease on the earlier of:
- 7.1.1. the expiry of a period of 30 (thirty) days following the issue by the Lender of a written notice to the Municipality to this effect; and
 - 7.1.2. the date that falls 60 (sixty) days after the Step-In Date,
- and any rights and obligations of the Appointed Representative against the Municipality under the PPP Agreement will be cancelled (the "**Step-Out Date**").
- 7.2. The Private Party shall continue to be bound by the terms of the PPP Agreement, notwithstanding the occurrence of the Step-out Date. The Municipality shall be entitled to terminate the PPP Agreement after the Step-out Date in accordance with the PPP Agreement.

8. ASSIGNMENT OF PPP AGREEMENT TO SUBSTITUTE PRIVATE PARTY

- 8.1. Subject to clause 8.2, at any time:
- 8.1.1. during which an Enforcement Event is subsisting; or
 - 8.1.2. during the Step-in Period,
- the Lender may notify the Municipality and the Appointed Representative (if any) of its desire to assign the PPP Agreement to any person and, if so, shall provide the Municipality with all information regarding that person that the Municipality may reasonably require to determine whether that person meets the criteria described in the definition of "Substitute Private Party".
- 8.2. The Municipality shall notify the Lender as to whether such person is approved by the Municipality as a Substitute Private Party by no later than 30 (thirty) days after the Municipality has received all the information in clause 8.1. The Municipality shall be entitled to withhold its approval if there is any continuing Private Party Default and the Municipality has not received a remedial programme as contemplated in clause 5.3.
- 8.3. The Lender shall be entitled to assign the PPP Agreement to any such Substitute Private Party provided that:
- 8.3.1. such Substitute Private Party is legally and validly constituted with the legal power and authority to become a party to, and perform the Private Party's rights and obligations under, the PPP Agreement, (bb) the percentage of beneficial shareholding in such Substitute Private Party by Black People and/or Black

Enterprises is no less than the Minimum Black Equity then required to be held by Black People and/or Black Enterprises pursuant to the PPP Agreement, (cc) the directors of the Substitute Private Party have no criminal convictions, and (dd) the Substitute Private Party has no outstanding tax liabilities (save for any such liability which is the subject of a bona fide dispute);

- 8.3.2. if the PPP Agreement is to be assigned prior to the Service Commencement Date, the Service Commencement Date is extended by a period to allow the Substitute Private Party to achieve Service Commencement and to entitle the Substitute Private Party to a Service Period that is equivalent to the original Service Period;
- 8.3.3. any accrued Penalty Deductions shall not apply as against such Substitute Private Party; and
- 8.3.4. any approvals (if any) that may be required from any Responsible Authority (other than the Municipality) under applicable Law for the selection and appointment of such Substitute Private Party shall have been obtained.

8.4. On any assignment to any Substitute Private Party becoming effective:

- 8.4.1. the Private Party shall be released from any obligations arising under or in connection with the PPP Agreement from that assignment date and the Substitute Private Party shall become liable for obligations arising on or after that date;
- 8.4.2. any accrued Penalty Deductions shall not apply as against the Substitute Private Party;
- 8.4.3. any then subsisting ground for termination of the PPP Agreement by the Municipality shall be deemed to have no effect and any subsisting Termination Notice shall be automatically revoked; and
- 8.4.4. the Municipality shall at the request of the Lender enter into a direct agreement with the Lender and the Substitute Private Party on substantially the same terms as this Direct Financing Agreement.

9. **MANNER OF PAYMENT**

- 9.1. The Municipality acknowledges that, in terms of clause [35] of the PPP Agreement, the Municipality shall make all payments into the bank account designated in writing for this purpose by the Private Party.

- 9.2. The Private Party shall designate such bank account/s in writing on as soon as possible after the signature date of this Direct Financing Agreement (the "**Designated Bank Accounts**"), and provide a copy of such designation to the Lender.
- 9.3. Each of the Municipality and the Private Party agree that the Private Party shall not change the Designated Bank Accounts in terms of clause 35 of the PPP Agreement, and the Municipality agrees that it will not make any payments into accounts other than the Designated Bank Accounts, without the prior written consent of the Lender.

10. **BUDGET ALLOCATION OF LOCAL MUNICIPALITIES¹**

- 10.1. The Municipality acknowledges that:
- 10.1.1. the Project will initially provide alternative waste treatment services or the benefit of the Local Municipalities within the Garden Route District Municipality, and subject to any variations of the PPP Agreement in accordance with the PPP Agreement, other local municipalities within the Garden Route District Municipalities;
- 10.1.2. the Local Municipalities are required to make payments to the Municipality (the "**Local Municipality Payments**"), and the Municipality will make payment of the Unitary Payment to the Private Party in accordance with the terms of the PPP Agreement.
- 10.2. Without derogating from the Municipality's obligation to budget for and make payment of the entire Unitary Payment set out in the PPP Agreement, the Municipality hereby acknowledges and agrees to provide the Lender, on a regular basis or upon the written request of the Lender and to the extent that the Municipality is able to obtain such proof from the Local Municipalities, with proof that each Local Municipality has budgeted for its obligations in making the Local Municipality Payments in accordance with applicable law.

11. **ASSIGNMENT OF THE DIRECT FINANCING AGREEMENT**

No party to this Direct Financing Agreement may assign any part of its rights or obligations under this Direct Financing Agreement, save that:

- 11.1. any Lender may assign its rights and obligations under this Direct Financing Agreement to any Qualifying Financial Institution (as defined in the PPP Agreement) to whom it assigns its rights as Lender under and in accordance with the terms of the Financing Agreements without the consent of the Municipality; and

¹

- 11.2. the Municipality may assign its rights and obligations under this Direct Financing Agreement to any person to whom it assigns its rights and obligations under and in accordance with the terms of the PPP Agreement.

12. **MISCELLANEOUS**

- 12.1. The Municipality shall, at the Private Party's expense, take whatever action the Lender may require to give effect to any assignment in clause 8 (*Assignment of PPP Agreement to a Substitute Private Party*).
- 12.2. The Municipality shall not take any action to wind-up or liquidate, appoint a liquidator or business rescue practitioner or administrator, or sanction a compromise arrangement (or similar) in relation to the Private Party.
- 12.3. This Direct Financing Agreement shall remain in effect until the earlier of: (i) the date on which all amounts which may be or become owing by the Municipality to the Private Party under clauses [63, 64, 67 and 68] of the PPP Agreement have irrevocably been paid in full; and (ii) the date on which the Private Party provides the Municipality with written confirmation obtained from the Lender that the final discharge date has occurred under the Financing Agreements, whereupon the Lender shall procure the release of any and all security granted in favour of the Lenders (or any security company, trust or other entity established to hold such security). The Private Party agrees that the Municipality may pay any amounts that may be due under clauses [63, 64, 67 and 68] of the PPP Agreement to the Lender and such payment shall constitute a discharge of the Municipality's liability to the Private Party in respect of such amounts. If the amounts so paid to the Lenders exceed the Debt, the Lender shall procure that any such excess is paid to the Private Party.
- 12.4. The Lender shall notify the Municipality of:
- 12.4.1. any decisions to accelerate the maturity or demand repayment of any Debt; and
- 12.4.2. the date referred to in clause 12.3 on or before the date falling 14 (fourteen) days after its occurrence.
- 12.5. The Private Party joins in this Direct Financing Agreement to acknowledge and consent to the arrangements in this Direct Financing Agreement and agrees not knowingly to do or omit to do anything that may prevent any party from enforcing its rights under this Direct Financing Agreement.
- 12.6. For the avoidance of doubt, if there is any conflict or inconsistency between the provisions of this Direct Financing Agreement and the PPP Agreement, the provisions of the PPP Agreement prevail.

13. MUNICIPALITY WARRANTIES

- 13.1. The Municipality warrants that it has taken all necessary actions through its council to authorise the execution of this Direct Financing Agreement.
- 13.2. The Municipality warrants that it shall rehabilitate the Project Site in the manner required by the norms and standards, the license conditions and the applicable law.

14. ENTIRE PPP DIRECT FINANCING AGREEMENT

- 14.1. Except where expressly provided otherwise in this Direct Financing Agreement, this Direct Financing Agreement constitutes the entire agreement between the Parties in connection with its subject matter and supersedes all prior representations, communications, negotiations and understandings concerning the subject matter of this Direct Financing Agreement.
- 14.2. Each of the Parties acknowledges that:
- 14.2.1. it does not enter into this Direct Financing Agreement on the basis of and does not rely, and has not relied, upon any statement or representation (whether negligent or innocent) or warranty or other provision (in any case whether oral, written, express or implied) made or agreed to by any person (whether a Party to this Direct Financing Agreement or not) except those expressly contained in or referred to in this Direct Financing Agreement, and the only remedy available in respect of any misrepresentation or untrue statement made to it shall be a remedy available under this Direct Financing Agreement; and
 - 14.2.2. this clause shall not apply to any statement, representation or warranty made fraudulently, or to any provision of this Direct Financing Agreement which was induced by fraud, for which the remedies available shall be all those available under the law governing this Direct Financing Agreement.

15. COUNTERPARTS

This Direct Financing Agreement may be executed in any number of identical counterparts, all of which when taken together shall constitute one agreement. Any single counterpart or a set of counterparts taken together which, in either case, are executed by the Parties shall constitute a full original of this Direct Financing Agreement for all purposes.

16. SEVERABILITY

Whenever possible, each provision of this Direct Financing Agreement shall be interpreted in a manner which makes it effective and valid under applicable law, but if any provision of this Direct Financing Agreement is held to be illegal, invalid or unenforceable under applicable law, the

illegality, invalidity or unenforceability shall not affect the other provisions of this Direct Financing Agreement, all of which shall remain in full force.

17. NOTICES AND LEGAL SERVICE

17.1. All notices and any other communications whatsoever (including, without limitation, any approval, consent, demand, query or request) by either Party in terms of this Direct Financing Agreement or relating to it shall be given in writing and sent by registered post, or delivered by hand, or transmitted by facsimile or electronic mail to the recipient Party at its relevant address set out below:

17.1.1. if to the Municipality, at:

17.1.1.1. Address: 54 York Street, George

17.1.1.2. Postal address: PO Box 12, George, 6530

17.1.1.3. Facsimile number: 044 693 3159

17.1.1.4. Electronic mail address: morton@gardenroute.gov.za

17.1.1.5. marked for the attention of Manager: District Waste Management

17.1.2. if to the Private Party, at:

17.1.2.1. Address: 2 Brammer Road, Germiston South, Gauteng

17.1.2.2. Postal address: PO Box 382, Germiston, 1400

17.1.2.3. Facsimile number: N/A

17.1.2.4. Electronic mail address: leong@interwaste.co.za

17.1.2.5. marked for the attention the Landfills Director

17.1.3. if to the Lender, at:

17.1.3.1. Address: 1258 Lever Road, Headway Hill, Midrand, Gauteng

17.1.3.2. Postal address: [•]

17.1.3.3. Facsimile number: +27 11 313 3086

17.1.3.4. Electronic mail address: [•]

17.1.3.5. Marked for the attention: [Group Executive: SA Financing and General Counsel: Legal]

- 17.2. Either Party may, by written notice to the other Party, change any of the addresses at which or the designated person for whose attention those notices or other communications are to be given.
- 17.3. Any notice or other communication given by any Party to the other Party which:
 - 17.3.1. is sent by registered post to the addressee at its specified address shall be rebuttably presumed to have been received by the addressee on the seventh (7th) day after the date of posting; or
 - 17.3.2. is delivered by hand to the addressee during the normal business hours of the addressee at its specified address shall be rebuttably presumed to have been received by the addressee at the time of delivery; or
 - 17.3.3. is transmitted by facsimile to the addressee during the normal business hours of the addressee at its specified facsimile number shall be rebuttably presumed to have been received by the addressee on the date of transmission as indicated on the sender's facsimile transmission report; or
 - 17.3.4. is transmitted by electronic mail to the addressee during the normal business hours of the addressee at its specified electronic mail address shall be rebuttably presumed to have been received by the addressee on the date of transmission as reflected on the sender's electronic mail records.
- 17.4. The previous provisions of this clause shall not invalidate any notice or other communication actually given and received otherwise than as described in those provisions.
- 17.5. The Parties choose their respective physical addresses in clause 17.1 as their respective *domicilia citandi et executandi* at which all documents relating to any legal proceedings to which they are a party may be served. If that address is changed to another address which is not a physical address in the Republic of South Africa, then the original address shall remain the *domicilium citandi et executandi* of the relevant Party until it nominates a new physical address within the Republic of South Africa in writing to be its new *domicilium citandi et executandi*.
- 17.6. Where any request for consent or approval by the Lender or the Private Party is given to the Municipality in terms of this clause 17 (*Notices and Legal Service*), the Municipality shall not unreasonably withhold or delay such consent or approval and shall be deemed to have consented to any requested action or condition unless the Municipality shall have responded within the period specified in the relevant clause in this Direct Financing Agreement or, if such period is not provided, within seven (7) days (prior to the Service Commencement Date) or twenty one (21) days (following the Service Commencement Date) of the date on which the Municipality received such request.

18. CONFIDENTIALITY

- 18.1. For purposes of this clause, **Confidential Information** means any information exchanged between the Parties with effect from the Tender Submission Date.
- 18.2. Each Party shall keep all Confidential Information of the other Party confidential while this Direct Financing Agreement remains in force and for a period of 7 (seven) years after it terminates for any reason. Each Party shall also use reasonable endeavours to prevent its employees, agents and subcontractors from making any disclosure to any person of any Confidential Information of the other Party while this Direct Financing Agreement remains in force and for a period of 7 (seven) years after it terminates for any reason.
- 18.3. Clause 18.2 shall not apply to:
- 18.3.1. any disclosure of information that is reasonably required by shareholders, officers, directors, employees, consultants and professional advisers who have a need to know (and then only to the extent that each such person has a need to know);
 - 18.3.2. any matter which a Party can reasonably demonstrate is already generally available and in the public domain otherwise than as a result of a breach of this clause;
 - 18.3.3. any disclosure which is required by any applicable law (including any order of a Court of competent jurisdiction), or the rules of any stock exchange or governmental or regulatory authority having the force of law, in arbitration and the Party required to make the disclosure has taken all reasonable steps to oppose or prevent the disclosure and has consulted with the other Party prior to making such disclosure;
 - 18.3.4. any disclosure of information that is already lawfully in the possession of the receiving Party prior its disclosure by the disclosing Party;
 - 18.3.5. any provision of information to the advisors of the receiving Party, or to any funders or potential funders, but in the latter case, only to the extent reasonably necessary to enable a decision to be taken on whether that potential funder will become a funder; or
 - 18.3.6. any disclosure by the Municipality of information relating to the design, construction, operation and maintenance of the Project and any other information that may be reasonably required for the purpose of retendering of the PPP Agreement in accordance with clause [65] (*Retendering Procedure*).

18.4. The disclosures permitted under clauses 18.3.5 or 18.3.6 may only be made subject to obtaining appropriate confidentiality restrictions consistent with the provisions of this clause from the intended recipients.

19. **COST AND EXPENSES**

Each Party shall be responsible for paying its own costs and expenses incurred in connection with the negotiation, preparation and execution of this Direct Financing Agreement.

20. **GOVERNING LAW AND JURISDICTION**

This Direct Financing Agreement is governed by the laws, and subject to the exclusive jurisdiction of the High Court, of the Republic of South Africa.

SIGNED by the Parties and witnessed on the following dates and at the following places respectively:

FOR: **THE GARDEN ROUTE DISTRICT MUNICIPALITY**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

FOR: **DEVELOPMENT BANK OF SOUTHERN AFRICA**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____

FOR: **EDEN WASTE MANAGEMENT (RF) PROPRIETARY LIMITED**

Signature: _____
who warrants that he / she is duly authorised thereto

Name: _____

Date: _____

Place: _____

Witness: _____

Witness: _____