

4 September 2015  
Subject to review and approval by the Council and the Participants

# RIVERS REGIONAL COUNCIL



## Participants Agreement Number 2013/1

### Participants Agreement for the

## Receipt and Processing Waste for Resource Recovery

Prepared by



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**RIVERS REGIONAL COUNCIL**

This Agreement

is made on \_\_\_\_\_2015 between the following Parties:

**1. Rivers Regional Council**

ABN 80 479 097 483

a regional local government under the *Local Government Act 1995* (WA), having its principal office at 13 Third Road, Armadale, Western Australia 6112  
**(Principal)**

**2. City of Armadale**

ABN 79 863 269 538

a local government under the *Local Government Act 1995* (WA), having its principal office at 7 Orchard Avenue, Armadale, Western Australia 6112

**3. City of Gosnells**

ABN 18 374 412 891

a local government under the *Local Government Act 1995* (WA), having its principal office at 2120 Albany Highway, Gosnells, Western Australia 6110

**4. City of Mandurah**

ABN 43 188 356 365

a local government under the *Local Government Act 1995* (WA), having its principal office at 3 Peel Street, Mandurah, Western Australia 6210

**5. City of South Perth**

ABN 65 533 218 403

a local government under the *Local Government Act 1995* (WA), having its principal office at the corner of Sandgate Street and South Terrace, South Perth, Western Australia 6151

**6. Shire of Murray**

ABN 16 036 156 261

a local government under the *Local Government Act 1995* (WA), having its principal office at 1915 Pinjarra Road, Pinjarra, Western Australia 6208

**7. Shire of Serpentine-Jarrahdale**

ABN 98 924 720 841

a local government under the *Local Government Act 1995* (WA), having its principal office at 6 Paterson Street, Mundijong, Western Australia 6123

**8. City of Canning**

ABN 80 227 965 466

a local government under the *Local Government Act 1995* (WA), having its principal office at 1317 Albany Highway, Cannington, Western Australia 6107

under which:

- (a) each of the Participants agree to provide and deliver Wastes to the Contractor on behalf of the Principal and to pay the Fees associated with that Waste in accordance with this Agreement;

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- (b) the Principal and the Participants agree to meet their obligations under and in accordance with the Waste Services Agreement and the Direct Deed; and
- (c) the Participants acknowledge that the Principal is reliant on the Participants to meet their obligations under this Agreement so that the Principal can comply with its obligations under the Waste Services Agreement and the Direct Deed,

in consideration of the mutual promises contained in this Agreement.

The details of the Principal and the Participants are shown in Annexure 1.

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## 1 DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Agreement, the defined terms have the meaning set out below:

**'Administration Fee'** has the meaning given in Clause 4.4(a);

**'Affected Party'** has the meaning set out in the definition of 'Force Majeure Event' in this Clause 1.1;

**'Aggregate Working Capital Fee'** has the meaning given in Clause 4.3(c);

**'Agreement'** means this agreement between the Principal and the Participants and includes all annexures, schedules and attachments;

**'Approvals and Licences'** means any approval, licence, consent, authority or permit;

**'BBSY Rate'** means the rate (which is expressed as a yield per centum per annum to maturity) which is the buying rate for bank accepted Bills quoted at approximately 10.10am (Perth time) on page 'BBSY' of the Reuters Monitor System on that day, having a term of one month;

**'Bill'** has the same meaning as 'bill of exchange' in the *Bills of Exchange Act 1909* (Cth) (but does not include a cheque or payment order);

**'Billing Period'** means a period of one calendar month in a Financial Year;

**'Budget Approval Resolution'** means a resolution by the Principal to adopt a budget (which includes the Forecast Expenses);

**'Business Day'** means a day on which banks are open for business in Perth, other than a Saturday, Sunday or public holiday in Perth or 27, 28, 29, 30 or 31 December;

**'Change of Law'** means a change of:

- (a) statute, regulation or ministerial direction in force in Australia whether made by the Commonwealth of Australia or the State of Western Australia or the introduction or repeal of a statute, regulation or ministerial direction by either the Commonwealth of Australia or the State of Western Australia (but the reference to a ministerial direction does not include a ministerial direction arising out of a failure to comply with existing Laws, Approvals and Licences); or
- (b) any applicable judgment of a relevant court of law having jurisdiction in Western Australia which changes a binding precedent,

which:

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(c) comes into effect after the date of the Waste Services Agreement and had not been tabled as a bill in the parliament in which it was passed, prior to the date of the Waste Services Agreement; and

(d) a Party is required by Law to comply with,

but does not include a change or introduction of:

(e) Laws related to amalgamation, mergers, dissolution or otherwise of the Principal, the Participants or any other local or regional government;

(f) local laws of an Affected Party; or

(g) taxes, levies or other similar imposts;

**'Commissioning LDs'** has the meaning given in Clause 3.1(f);

**'Commissioning Scheduled Waste'** has the meaning given in Clause 3.1(c);

**'Commissioning Shortfall Fee'** has the meaning given by Clause 3.1(d);

**'Commissioning Shortfall Participant'** means a Participant who delivers less than the Wastes scheduled to be delivered by that Participant under the Commissioning Waste Notification;

**'Commissioning Shortfall Waste'** has the meaning given by Clause 3.1(c);

**'Commissioning Waste Notification'** has the meaning given by Clause 3.1(a);

**'Committed Waste'** means the per annum quantities of Wastes of that name, expressed in tonnes and set out in Annexure 2, as amended in the Waste Delivery Plan for the relevant Financial Year;

**'Contractor'** means the party identified as the Contractor in the Waste Services Agreement and its successors and assigns;

**'Date of Practical Completion'** means the date on which Practical Completion (as that term is defined in the Waste Services Agreement) of the RRF is achieved under the Waste Services Agreement;

**'Date of Signing'** means the date on which the last Party signs this Agreement;

**'Default Rate'** means a rate equivalent to 2% per annum above:

(a) the BBSY Rate; or

(b) if the BBSY Rate is no longer available or, if in the reasonable opinion of the Principal, the BBSY Rate becomes an inappropriate rate to benchmark the default rate or becomes incapable of application, the rate reasonably determined by the Principal to be the appropriate equivalent rate having regard to prevailing market conditions, which rate must be the same as the rate used to determine the default rate under the Waste Services Agreement;

**'Delivered Waste'** has the meaning given in Clause 3.1(c);

**'Direct Deed'** means the agreement of that name between the Principal, the Participants, the Contractor and the Security Trustee;

**'Dissolution Date'** has the meaning given in Clause 8.1(c);

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**'Establishment Agreement'** means the agreement between City of Armadale, City of Gosnells and City of South Perth for the establishment of the Rivers Regional Council dated 6 June 2008 as amended from time to time;

**'Expiry Date'** means two months following the expiry or termination (including the final payment of all amounts owing by any party) of the Waste Services Agreement in accordance with its terms;

**'Fees'** means the fees payable under Clauses 3.1, 3.6 and 4;

**'Financial Year'** means any 12 month period commencing on 1 July and ending on 30 June, provided that:

- (a) the first Financial Year will commence on the day following the date that the Services CPs are satisfied under the Waste Services Agreement and end on the next 30 June; and
- (b) the last Financial Year will commence on 1 July immediately preceding the end of the Term and end on the last day of the Term;

**'Financiers'** means the providers of senior secured financing to the Contractor for the construction of the RRF;

**'Force Majeure Event'** means the occurrence after the Date of Signing of:

- (a) fire, explosion, lightning, storm, tempest, flood, ionising radiation, earthquakes, riot and civil commotion, but not including spontaneous combustion in the Wastes;
- (b) any blockade or embargo;
- (c) any:
  - (i) official or unofficial strike;
  - (ii) lockout;
  - (iii) go-slow; or
  - (iv) other dispute,

generally affecting the haulage, construction, or waste management industries in the Perth metropolitan area or a significant sector of them;
- (d) war, civil war, declared national emergency, armed conflict or terrorism;
- (e) nuclear, chemical or biological contamination (other than contamination arising out of the Wastes delivered);
- (f) pressure waves caused by devices travelling at supersonic speeds;
- (g) a Change of Law; or
- (h) for the Principal only, the Contractor is entitled to relief under the Waste Services Agreement for a Force Majeure Event (as that term is defined in the Waste Services Agreement),

which causes a Party (**Affected Party**) to be unable to comply with all or a material part of its obligations under this Agreement including, in the case of the Principal being the Affected Party, that the RRF is unable to receive and process or store Wastes or the Contractor is otherwise unable to perform its obligations under the Waste Services Agreement, but does not include:

- (i) any failure or inability to pay money;

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- (j) an event to the extent that it is caused or contributed to by the Party seeking relief from performance or to the extent that the effect of the event could have been avoided or mitigated by a prudent party acting reasonably; or
- (k) any event to the extent that it is caused or contributed to a breach of contract or Law by the Party seeking relief from performance or to the extent that the effect of the breach of contract or Law could have been avoided or mitigated by a prudent party acting reasonably;

**'Forecast Expenses'** means a forecast of all costs, expenses and other liabilities arising in the relevant Financial Year (and approved under the Budget Approval Resolution for that Financial Year) that the Principal anticipates that it will incur in enforcing its rights and carrying out its functions and obligations under this Agreement and the Waste Services Agreement;

**'FY Committed Waste'** means the quantity of Committed Waste scheduled to be delivered by a Participant under Annexure 2 as amended by the relevant Waste Delivery Plan in respect of a Financial Year;

**'FY Optional Waste'** has the meaning given at Clause 3.2(b);

**'FY Shortfall Waste'** has the meaning given at Clause 3.6(a);

**'Government Agency'** means any organ of government, government entity, government authority, body politic (but excluding any political party) or government department;

**'Initial FY Optional Waste'** has the meaning given at Clause 3.2(a);

**'Insurances'** has the meaning given in Clause 10(a);

**'Invoice'** means a tax invoice for payment in the form agreed between the Parties (each acting reasonably);

**'Law'** means any statute, regulation, by-law, local law, Approvals and Licences or other authorisation, direction, order or ruling of a Minister of the Crown, or other authorised government representative pursuant to statute, any common law in force or applicable from time to time in Australia or any final determination of a court or legal tribunal within Australia;

**'LD Participant'** has the meaning given in Clause 3.1(f);

**'Legal Requirements'** means any requirement of Law and any fees and charges payable in respect of the foregoing;

**'Loss'** means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Approvals and Licences;

**'Non-Member Participant'** means a Participant who is not a party to the Establishment Agreement;

**'Non-Participant Member'** means a party to the Establishment Agreement who is not a Party to this Agreement;

**'Notice'** means any notice given by one Party to any other Party, in accordance with this Agreement;

**'Optional Waste'** means, in respect of a Participant in any Financial Year, the amount of all Wastes required to be delivered under Clause 3.4 in excess of that Participant's Committed Waste in that Financial Year, expressed in tonnes (forecast estimates of which are set out in Annexure 2);



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**'Participant Fee'** means the amount due and payable by a Participant to the Principal calculated in accordance with Clause 3.1(j) (for Wastes delivered for commissioning the RRF) and Clause 4.2 (for all other Wastes);

**'Participants'** means the City of Armadale, the City of Gosnells, the City of Mandurah, the City of South Perth, the Shire of Murray, the Shire of Serpentine-Jarrahdale and the City of Canning and **'Participant'** means one of them;

**'Participant's Personnel'** means any and all personnel engaged by the Participant or a related body corporate (including its directors, officers, employees, agents, representatives, contractors, subcontractors and any director, officer, employee, agent or representatives of any contractor or subcontractor) and any other person engaged or employed by, or on behalf of, the Participant;

**'Party'** means the Principal or any one or more Participant and **'Parties'** means all of them;

**'Persistent Breach Notice'** means a "Persistent Breach" notice issued by the Contractor under clause 16(h)(i)(B) of the Waste Services Agreement;

**'Principal's Party'** means any and all personnel engaged by the Principal or a related body corporate, (including its directors, officers, employees, agents, representatives, contractors, subcontractors and any director, officer, employee, agent or representatives of any contractor or subcontractor, and any other person engaged or employed by, or on behalf of, the Principal) but does not include any Participant or any Participant's Personnel or the Contractor;

**'Quarterly Billing Period'** means the following Billing Periods:

- (a) July to September;
- (b) October to December;
- (c) January to March; and
- (d) April to June,

in a Financial Year;

**'Rate'** has the meaning set out in Clause 4.2;

**'Reconciled Commissioning Payment'** has the meaning given in Clause 3.1(g);

**'Representative'** means the representatives of the Principal and one or more Participants (as the case may be) for the purposes of this Agreement as set out in Annexure 1 (as may be replaced from time to time in accordance with Clause 11.1(b));

**'Resource Recovery Facility'** or **'RRF'** means the resource recovery facility to be provided by the Contractor, at which the Wastes are to be received and processed by the Contractor in accordance with the Waste Services Agreement;

**'RRF Capacity'** means the licensed capacity of the RRF, as increased by the Contractor from time to time;

**'Scheduled Date of Practical Completion'** has the meaning given in the Waste Services Agreement;

**'Security Trustee'** means the 'Security Trustee' as defined in the Direct Deed.

**'Services'** means the waste processing services to be provided by the Contractor to the Principal, as described in the Waste Services Agreement;

**'Services CPs'** has the meaning given in the Waste Services Agreement;

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**'Set-Up Fee'** has the meaning given in Clause 4.5;

**'Shortfall Fee'** has the meaning given in Clause 3.6(e);

**'Shortfall Participant'** means a Participant who delivers less than the FY Committed Waste scheduled to be delivered by that Participant under the Waste Delivery Plan for the relevant Financial Year;

**'Term'** means the period beginning on the Date of Signing and ending on the Expiry Date;

**'Unavailable'** and **'Unavailability'** have the meaning given in the Waste Services Agreement;

**'Waste Acceptance Protocol'** means the waste acceptance protocol set out in Annexure 8 of the Waste Services Agreement, as amended by the Contractor and approved by the Principal from time to time;

**'Waste Delivery Plan'** means:

- (a) for the first Financial Year, the plan contained in Annexure 8 of the Waste Services Agreement as updated by the Contractor and approved by the Principal in accordance with clause 9.2(b) of the Waste Services Agreement; and
- (b) following the first Financial Year, the plan prepared by the Contractor and approved by the Principal in accordance with clause 9.2(c) of the Waste Services Agreement,

in each case consistent with Annexure 8 of the Waste Services Agreement or as otherwise agreed by the Principal and the Participants, provided that a Participant's agreement is only required to that part of the Waste Delivery Plan that relates to the Waste to be delivered from its district;

**'Waste Services Agreement'** means the agreement between the Principal, the Participants and the Contractor whereby the Principal agrees to purchase the Services from the Contractor for the receipt and processing of Wastes for resource recovery dated on or about the Date of Signing;

**'Waste Services Commissioning Shortfall Fee'** has the meaning given by Clause 3.1(d);

**'Wastes'** means the wastes to be delivered to the RRF in accordance with the Waste Services Agreement, as described in Annexure 9 of the Waste Services Agreement and as amended in accordance with Annexure 9 of the Waste Services Agreement;

**'Wilful Misconduct'** means any act or failure to act which:

- (a) does not breach the Agreement or the Waste Services Agreement, but:
  - (i) is deliberate and wrongful; or
  - (ii) involves reckless disregard or wanton indifference to the likely consequences; or
- (b) breaches this Agreement or the Waste Services Agreement in circumstances where the person who acted or failed to act knew that their action or failure to act would breach the Agreement or the Waste Services Agreement (as relevant);

**'Withdrawing Participant'** has the meaning given in Clause 8.2(c);

**'Working Capital Fee'** means, in respect of a Participant, an amount equal to the sum of its anticipated Participant Fees based on the Wastes to be delivered as set out in Annexure 2 for two full Billing Periods after the Date of Practical Completion;

**'Working Capital Fee Reimbursement'** is calculated in accordance with Clause 4.3(c); and

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'WSA Shortfall Fee' has the meaning given in Clause 3.6(e).

## 1.2 Interpretation

In this Agreement, heading and bold type are for convenience only and do not affect the interpretation of this Agreement and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa and words importing a gender include every gender;
- (b) monetary references are references to Australian currency;
- (c) reference to an Act by name includes the rules, regulations and local laws for the time being in force thereunder for the period of this Agreement;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (e) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (f) a reference to anything (including any right) includes a part of that thing but nothing in this Clause 1.2(f) implies that performance of part of an obligation constitutes performance of the obligation;
- (g) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a Party includes that Party's successors and permitted assignees;
- (j) a reference to an agreement other than this Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing;
- (k) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (l) no provision of this Agreement will be construed adversely to a Party because that Party was responsible for the preparation of this Agreement or that provision;
- (m) references to time are to Australian Western Standard Time;
- (n) unless otherwise expressly stated, all Waste quantities will be measured in tonnes for the purposes of this Agreement; and
- (o) a reference to a body, other than the Contractor or a Party to this Agreement (including an institute, association or authority), whether statutory or not:
  - (i) which ceases to exist; or
  - (ii) whose powers or functions are transferred to another body,
 is a reference to the body which replaces it or which substantially succeeds to its powers or functions.

### 1.3 Interpretation of inclusive expressions

Specifying anything in this Agreement after the words 'includes' or 'for example' or similar expressions does not limit what else is included unless there is express wording to the contrary.

### 1.4 Business Day

If the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

### 1.5 Agreement components

This Agreement includes any annexures.

### 1.6 Ambiguities and inconsistencies

If there is any inconsistency between the terms and conditions in this Agreement and the Parties are unable to resolve the inconsistency, the matter must be resolved in accordance with Clause 9.

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## 2 TERM

### 2.1 Commencement and expiry of this Agreement

- (a) This Agreement commences on the Date of Signing and continues until the Expiry Date.
- (b) The Participants acknowledge that the Waste Services Agreement may be terminated early in the circumstances set out in clause 20 of the Waste Services Agreement, subject to the Direct Deed.
- (c) This Agreement may not be terminated before the Expiry Date, except as set out in clause 2.2. The mechanism for:
  - (i) resolving disputes is in accordance with Clause 9; and
  - (ii) withdrawing from this Agreement is in accordance with Clause 8.

### 2.2 Failure to achieve Financial Close under Waste Services Agreement

This Agreement will terminate immediately if the Principal terminates the Waste Services Agreement under clause 2.2(g) of the Waste Services Agreement.

### 2.3 Each Participant bears its own loss

Except as set out in Clause 4.3, each Participant will bear its own Loss in respect of a termination of the Waste Services Agreement, including in respect of any alternative arrangements for the disposal of Waste.

## 3 DELIVERY AND RECEIPT OF WASTE

### 3.1 Wastes for commissioning tests

- (a) As soon as practicable following receipt of the Contractor's notice under clause 6.4(b) of the Waste Services Agreement, the Principal will notify the Participants of the quantity and types of Wastes that the relevant Participant must deliver to the RRF and when such Wastes must be delivered for commissioning of the RRF (**Commissioning Waste Notification**).
- (b) Each Participant must deliver the type and quantity of Wastes to the RRF as set out and at the time specified in the Commissioning Waste Notification.
- (c) If the Wastes delivered by a Participant on any day during commissioning (**Delivered Waste**) is less than the Wastes that it is required to deliver on that day in accordance with the Commissioning Waste Notification (**Commissioning Scheduled Waste**), the difference is the Commissioning Shortfall Waste.
- (d) If Clause 3.1(c) applies, and the Principal is liable to pay the Waste Services Commissioning Shortfall Fee, each Commissioning Shortfall Participant must pay to the Principal a Commissioning Shortfall Fee in respect of each day that the Principal is required to pay the Waste Services Commissioning Shortfall Fee due to the Commissioning Shortfall Participant's failure to comply with Clause 3.1(b), calculated as follows:

$$\text{Commissioning Shortfall Fee}_A = \text{WSCSF} \times (\text{QCS}/(\text{ACS}-\text{AQD}))$$

Where:

<b>Commissioning Shortfall Fee<sub>A</sub></b> =	the Commissioning Shortfall Fee payable by the Commissioning Shortfall Participant.
<b>Waste Services Commissioning Shortfall Fee ('WSCSF')</b> =	the Commissioning Shortfall Fee payable by the Principal under the Waste Services Agreement.
<b>Quantity Commissioning Shortfall ('QCS')</b> =	the aggregate quantity of Commissioning Shortfall Waste attributable to a Commissioning Shortfall Participant.
<b>Aggregate Commissioning Shortfall Participants' Commitment ('ACS')</b> =	the sum of Wastes scheduled to be delivered by all of the Commissioning Shortfall Participants under the Commissioning Waste Notification whether delivered or not.
<b>Actual Quantity Delivered By Commissioning Shortfall Participants ('AQD')</b> =	the actual aggregate quantity of Wastes delivered to the RRF by all of the Commissioning Shortfall Participants.

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- (e) If the Principal is liable to pay liquidated damages under clause 6.4(j) of the Waste Services Agreement, the aggregate amount of liquidated damages payable by the Principal will be apportioned pro rata between each of the Commissioning Shortfall Participants that are liable to pay the Commissioning Shortfall Fee under Clause 3.1(d), in accordance with Clauses 3.1(f), 3.1(g), 3.1(h) and 3.1(i).
- (f) If the Principal is liable to pay liquidated damages under clause 6.4(j) of the Waste Services Agreement, each Commissioning Shortfall Participant that delivers less than the Commissioning Scheduled Wastes on the days on which liquidated damages are payable by the Principal under clause 6.4(j) of the Waste Services Agreement (**LD Participants**) will pay to the Principal, as liquidated damages, \$65 per tonne in respect of the Commissioning Shortfall Wastes attributable to that Participant (**Commissioning LDs**) (in addition to any Commissioning Shortfall Fee payable by the Participant).
- (g) As soon as reasonably practicable after the RRF has achieved practical completion under the Waste Services Agreement, the Principal will apportion the Commissioning LDs to each Commissioning Shortfall Participant as follows:

$$\text{Reconciled Commissioning Payment} = \text{ACLD} - ((\text{ACLDP}/\text{QCS}) \times \text{QS})$$

Where:

**Reconciled Commissioning Payment =** the apportioned Commissioning LDs payable by each Commissioning Shortfall Participant.

**Aggregate Commissioning LDs for a LD Participant ('ACLD') =** the aggregate Commissioning LDs payable by a relevant LD Participant under Clause 3.1(f).

**Aggregate Commissioning LDs payable by the Principal ('ACLDP') =** the aggregate liquidated damages payable by the Principal under clause 6.4(j) of the Waste Services Agreement.

**Quantity Commissioning Shortfall ('QCS') =** the aggregate quantity of Commissioning Shortfall Waste calculated in accordance with Clause 3.1(c) for all Participants where the Commissioning Shortfall Fee is payable.

**Quantity Shortfall ('QS') =** the quantity of Commissioning Shortfall Waste calculated in accordance with Clause 3.1(c) attributable to the relevant Commissioning Shortfall Participant.

- (h) If the Reconciled Commissioning Payment is a negative number, the relevant Participant must pay that amount (expressed as a positive number) to the Principal

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and the Principal will issue an Invoice for that amount in accordance with Clause 4.7.

- (i) If the Reconciled Commissioning Payment is a positive number, the Principal must pay that amount to the relevant Participant by deducting the amount from the next Invoice to be issued to the Participant.
- (j) The Participant Fee for processing and disposing of the Delivered Wastes will be calculated at the Rate set out in clause 13.1 of the Waste Services Agreement multiplied by the tonnage delivered to and received at the RRF under Clause 3.1(b), without further cost to the Participants. The Principal may deliver an Invoice to the Participants for the Participant Fee, Commissioning Shortfall Fee (if any) and liquidated damages under Clause 3.1(f) (if any) incurred during commissioning following the Date of Practical Completion, which Invoice must be paid by the relevant Participant in accordance with Clause 4.7.

### 3.2 Optional Waste

- (a) No less than one month prior to the start of commissioning of the RRF, each Participant must notify the Principal in writing of the quantities of Optional Waste which it anticipates it will generate and collect in the remainder of the first Financial Year in its district on a daily and monthly basis (**Initial FY Optional Waste**).
- (b) No less than 30 Business Days prior to the commencement of each further Financial Year, each Participant must notify the Principal in writing of the quantities of Optional Waste which it anticipates it will generate and collect in that Financial Year in its district on a daily and monthly basis (**FY Optional Waste**).
- (c) Subject to Clause 3.4(f), the Principal will ensure that each Waste Delivery Plan approved by it under the Waste Services Agreement in respect of a Financial Year will include the Initial FY Optional Waste or the FY Optional Waste (as applicable) notified by the Participants under Clauses 3.2(a) or 3.2(b) in respect of that Financial Year.
- (d) Notwithstanding that a Participant fails to notify, or incorrectly notifies, an Initial FY Optional Waste or FY Optional Waste in accordance with Clause 3.2(a) or Clause 3.2(b), Clause 3.4(a) continues to apply.

### 3.3 Waste Delivery Plan

- (a) Each Participant acknowledges and agrees that, under the Waste Services Agreement, the Contractor must prepare and submit an annual Waste Delivery Plan to the Principal for approval, detailing the quantities of Committed Waste that must, and Optional Waste that will, if it is generated, be delivered each month by the Principal in respect of each Financial Year (**Proposed WDP**).
- (b) As soon as reasonably practicable after receipt of the Proposed WDP, the Principal must:
  - (i) amend the Proposed WDP to reflect the monthly and annual quantities of Optional Waste nominated by each Participant under Clauses 3.2(a) or 3.2(b) (as applicable) (**Amended WDP**); and
  - (ii) provide each Participant with the Amended WDP for that Participant's written confirmation that the Amended WDP accurately reflects, for the relevant Financial Year and each month in that Financial Year:

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- (A) the FY Committed Waste which the Participant has agreed to deliver, which can be no less than the amount of FY Committed Waste for the Financial Year set out in Annexure 2; and
  - (B) the Initial FY Optional Waste or FY Optional Waste (whichever is applicable) as notified by the Participant under Clauses 3.2(a) or 3.2(b).
- (c) If a Participant disagrees with the amounts in the Amended WDP which are identified as being its FY Committed Waste, Initial FY Optional Waste or FY Optional Waste (whether on a monthly or annual basis):
- (i) within 5 Business Days of receipt of the Amended WDP, it must notify the Principal of the amendment that it requires the Principal to make to the Amended WDP; and
  - (ii) if the instructed amendment is consistent with the FY Committed Waste in Annexure 2 and the nomination under Clauses 3.2(a) or 3.2(b) (as applicable), the Principal must amend the Amended WDP and, if necessary, the Proposed WDP to reflect the Participant's instructions.
- (d) If a Participant fails to:
- (i) notify the Principal of any amendments it requires under Clause 3.3(c); or
  - (ii) provide the Principal with confirmation in writing of the accuracy of the Waste Delivery Plan under Clause 3.3(b)(ii),
- within 10 Business Days of receipt of the Amended WDP (or such longer period agreed to by the Principal), it will be deemed to have confirmed the Amended WDP provided under Clause 3.3(b)(ii).
- (e) The Principal must ensure that the Proposed WDP approved by it under the Waste Services Agreement is consistent with the amendments made in accordance with Clause 3.3(c)(ii) or, if no amendments are made, consistent with the Amended WDP provided to the Participants under Clause 3.3(b)(ii) (unless approved otherwise by the affected Participant) or must not approve the Proposed WDP.
- (f) The Participants acknowledge and agree that, if the Principal and the Contractor are unable to agree on the Waste Delivery Plan for a Financial Year, clauses 9.2(b) and 9.2(c) of the Waste Services Agreement apply to determine the Waste Delivery Plan for the Financial Year.

**3.4 Delivery of Wastes**

- (a) From the day following the date of satisfaction of the Services CPs (as notified by the Principal), each Participant must deliver to the RRF all Wastes collected by or on its behalf and generated within its district. The Wastes must be delivered in accordance with this Agreement and the Waste Services Agreement, including the Waste Acceptance Protocol. For the avoidance of doubt, the Services CPs may be satisfied prior to the Scheduled Date of Practical Completion.
- (b) Without limiting each of the Participant's obligation to either deliver or pay for its FY Committed Waste in accordance with Clause 3.6, the Participants are not required to deliver Optional Waste in excess of the amounts set out in Annexure 2 as at the Date of Signing which would cause the Principal to be in breach of section 3.57 of the *Local Government Act 1995 (WA)* and the associated *Local Government (Functions & General) Regulations 1996 (WA)* (as notified by the Principal to the Participants).



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- (c) The Participants must not deliver Wastes which would cause the amount of Wastes delivered to the RRF by all Participants to exceed the RRF Capacity (as notified by the Principal to the Participants).
- (d) The obligation on each Participant to deliver Wastes in this Agreement applies only to Wastes collected by or on behalf of that Participant and generated within that Participant's respective district.
- (e) Without limiting Clause 3.4(a), each Participant must use reasonable endeavours to deliver Wastes at the times stated in the Waste Delivery Plan for that Financial Year, unless notified otherwise by the Principal. Subject to any Force Majeure Event or Unavailability, the Principal must use its reasonable endeavours to ensure that the Participants are permitted under the Waste Services Agreement and this Agreement to deliver at least their FY Committed Waste to the RRF in accordance with the Waste Delivery Plan.
- (f) If clause 9.1(h) of the Waste Services Agreement applies, the Participant (or Participants) which is affected by the change described in clause 9.1(h)(i) or 9.1(h)(ii) of the Waste Services Agreement, and any Participant which becomes responsible for part of the district of a Participant affected by the change described in clause 9.1(h)(i) of the Waste Services Agreement, must:
  - (i) notify the Contractor and the Principal of the proposed change promptly upon becoming aware of the proposal to effect the change, unless such notification would cause the Participant to breach any confidentiality obligations (in which case, it must provide such notice as soon as it is legally able to do so);
  - (ii) use its best endeavours to maintain the same levels of Wastes being delivered to the RRF by the Participant as existed immediately prior to the change; and
  - (iii) reasonably assist the Principal to comply with its obligations under Clause 9.1(h)(v) of the Waste Services Agreement to assist the Contractor to make submissions to the relevant body responsible for the proposed change.
- (g) If clause 9.1(h) of the Waste Services Agreement applies, the quantity of Committed Waste, and the obligation to pay any Shortfall Fee on that Committed Waste, of a Participant (or Participants) which are affected by the change described in clause 9.1(h)(i) or 9.1(h)(ii) of the Waste Services Agreement are not affected. However, the Principal will use its best endeavours to use Optional Waste delivered by another Participant to offset any FY Shortfall Waste of an affected Participant.

### 3.5 Waste Acceptance Protocol

- (a) Wastes delivered by or on behalf of the Participants must be Acceptable Waste as defined in Annexure 9 of the Waste Services Agreement. Once accepted by the Contractor in accordance with the Waste Acceptance Protocol, the Wastes are deemed to be Acceptable Waste, as defined in Annexure 9 of the Waste Services Agreement.
- (b) The measurements taken by the Contractor at the RRF weighbridge will be conclusive evidence of the amount of Wastes accepted by the Contractor (unless the Contractor and the Principal agree that there has been a demonstrable error) and will be used for the purpose of calculating the Participant Fee to be paid by the Participants.

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- (c) Title and risk in the Wastes delivered by the Participants shall transfer from the relevant Participant to the Contractor in accordance with the Waste Acceptance Protocol.
- (d) The Principal must consult with the Participants, and give genuine consideration to any representations made by a Participant, before amending the Waste Acceptance Protocol under the Waste Services Agreement.
- (e) If, in accordance with the Waste Acceptance Protocol, a Participant requests that the Contractor dispose of the Rejected Load (as that term is defined in the Waste Acceptance Protocol) otherwise than at the RRF and the Contractor agrees to dispose of the Rejected Load (as that term is defined in the Waste Acceptance Protocol), the relevant Participant must reimburse on demand from the Contractor, the Contractor's reasonable additional costs of doing so.

### 3.6 Calculation of the Shortfall Fee

- (a) At the end of a Quarterly Billing Period, if the total aggregate of all Wastes delivered by a Participant to the RRF for the Financial Year to date is less than the total aggregate of the FY Committed Waste to be delivered by that Participant up to the relevant date, as set out in the Waste Delivery Plan for the Financial Year, that difference (expressed in tonnes) shall be the FY Shortfall Waste for that Participant.
- (b) If Clause 3.6(a) applies and the Principal is liable to pay a WSA Shortfall Fee under the Waste Services Agreement, the Shortfall Participant must pay a Shortfall Fee in accordance with the remainder of this Clause 3.6.
- (c) At the end of each Quarterly Billing Period in a Financial Year, the Shortfall Fee payable for the Quarterly Billing Period for a Shortfall Participant (if any) will be calculated in accordance with the formula in Clause 3.6(e) by reference to the aggregate amount of that Participant's FY Shortfall Waste for the Financial Year to date, less the Shortfall Fee paid to date by that Participant in respect of previous Quarterly Billing Periods for the same Financial Year. If the calculation of the Shortfall Fee payable for the Quarterly Billing Period in accordance with this Clause 3.6 results in a negative number, that number will be deducted from the Fee for that Participant in accordance with Clause 3.6(g).
- (d) The calculation of the Shortfall Fee is subject to adjustment in accordance with Clause 5.
- (e) The Shortfall Fee will be calculated as follows:

$$\text{Shortfall Fee}_A = \text{WSASF} \times (\text{QS} / (\text{AC} - \text{AQD}))$$

Where:

**Shortfall Fee<sub>A</sub>** = the Shortfall Fee payable by a Shortfall Participant.

**WSA Shortfall Fee ('WSASF')** = the amount payable by the Principal under the Waste Services Agreement for Shortfall Waste (as defined under the Waste Services Agreement) in respect of the relevant Quarterly Billing Period in a Financial Year.

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**Quantity Shortfall ('QS')** = the quantity of FY Shortfall Waste for the Shortfall Participant calculated in accordance with Clause 3.6(a).

**Aggregate Shortfall Participants' Commitment ('AC')** = the sum of FY Committed Waste scheduled to be delivered by all of the Shortfall Participants for the relevant Financial Year up to the relevant date, as set out in the Waste Delivery Plan (including having regard to Clause 5).

**Actual Quantity Delivered By Shortfall Participants ('AQD')** = the actual quantity of Wastes delivered to the RRF up to the relevant date in the Financial Year by all of the Shortfall Participants for the relevant Financial Year.

- (f) The Principal may include a Shortfall Fee payable under this Clause 3.6 in the Invoice delivered to a Participant described in Clause 4.7 at the end of the relevant Quarterly Billing Period or any subsequent Invoice.
- (g) Any deductions from the Fee to be made under Clause 3.6(c) will be deducted from the Fee for that Billing Period and any subsequent Billing Periods until the deduction has been fully accounted for. If there are insufficient Billing Periods remaining in the Financial Year in which to make the deductions, the Principal will reimburse the remainder of the deductions to the relevant Participant at the end of the Billing Periods.
- (h) The Parties acknowledge and agree:
- (i) if the Principal is not liable for a WSA Shortfall Fee under the Waste Services Agreement, then the Participants will not be liable for any Shortfall Fee under this Agreement;
  - (ii) any quantity of Optional Waste delivered by any Participant to the RRF within a Financial Year will be assessed as contributing to the aggregate quantity of Committed Waste for that Financial Year if and to the extent the aggregate quantity of Wastes delivered by all Participants in that Financial Year would otherwise be less than the quantity of Committed Waste that the Principal is obligated to deliver for that Financial Year; and
  - (iii) a Participant will not be entitled to a refund or payment from the Principal or any Participant in respect of any Wastes which it delivers in a Financial Year notwithstanding that the effect of such delivery may be to reduce or avoid any WSA Shortfall Fee that would otherwise be payable by the Principal under the Waste Services Agreement or by another Participant under this Agreement.

### 3.7 Compensable Tonnes

- (a) If a Participant acts in a way which is fraudulent or there is Wilful Misconduct by a Participant, and, as a result, the Principal fails to comply with its obligation to deliver Wastes to the Contractor in accordance with clause 9.1 of the Waste Services Agreement for the Financial Year (the non-delivered Wastes being **Compensable Tonnes**) and is required to pay liquidated damages to the Contractor in accordance with clause 16(g) of the Waste Services Agreement then the Participant is liable to pay liquidated damages to the Principal calculated in accordance with Clause 3.7(b) or Clause 3.7(c), whichever applies. Each Participant acknowledges clause 16(h) of the Waste Services Agreement. If a

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Participant engages in any of the activities set out in clause 16(h) of the Waste Services Agreement, including failing to deliver Wastes that should be delivered to the RRF whether before or after the Principal receives a Persistent Breach Notice under the Waste Services Agreement, it will be a deliberate default and that Participant will be liable for liquidated damages.

- (b) If liquidated damages are owing by the Principal under the Waste Services Agreement because Wastes were not delivered to the RRF after receipt of a Persistent Breach Notice, all Participants who did not deliver Wastes that were required to be delivered to the RRF in the 12 month rolling period referred to in clause 16(h)(i)(B) of the Waste Services Agreement will be responsible for the payment of the liquidated damages owing by the Principal under the Waste Services Agreement. The amount of the liquidated damages that the Participant will be liable to pay will be in proportion to the amount of Waste it failed to deliver in that 12 month rolling period.
- (c) Liquidated damages are calculated as follows in all other circumstances:
  - (i) in addition to any FY Shortfall Fee payable in respect of FY Committed Waste not delivered, the relevant Participant will pay to the Principal \$65 per tonne (indexed in accordance with clause 13.2(c) of the Waste Services Agreement) for each Compensable Tonne shortfall in FY Committed Waste and \$175 per tonne (indexed in accordance with clause 13.2(c) of the Waste Services Agreement) for each Compensable Tonne of Optional Waste which should have been delivered in accordance with Clause 3.4 each of which is not delivered as a result of the behaviour described above in this Clause 3.7, (capped at the amount of liquidated damages payable by the Principal under clause 16(g) of the Waste Services Agreement for the Financial Year); and
  - (ii) for the avoidance of doubt, other than payment of liquidated damages in accordance with this Clause 3.7 and without limiting the indemnities in Clause 7 and liability for any other breaches by the Participant under the Waste Services Agreement, there is no payment consequence for the failure to deliver Optional Waste and the Shortfall Fee is not payable in respect of Optional Waste tonnes which are not delivered to the RRF.

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## 4 PAYMENT

### 4.1 General

Each Participant must pay the Principal in accordance with this Clause 4:

- (a) the Participant Fee for each Billing Period, monthly in arrears calculated in accordance with Clause 4.2;
- (b) the Administration Fee for each Financial Year, monthly in advance calculated in accordance with Clause 4.4;
- (c) the Working Capital Fee calculated in accordance with Clause 4.3; and
- (d) if the Participant is a Non-Member Participant, the Set-Up Fee calculated in accordance with Clause 4.5.

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## 4.2 Participant Fee

- (a) The calculation of the Participant Fee is subject to adjustment in accordance with Clause 5.
- (b) Each Participant must pay the Principal a Participant Fee for each Billing Period calculated monthly in arrears as follows:

$$\text{Participant Fee}_A = (\text{QD} \times \text{R})$$

Where:

**Participant Fee<sub>A</sub>** = the Participant Fee payable by a Participant (**Participant A**).

**Quantity Delivered<sub>A</sub> ('QD')** = the quantity of Wastes delivered to the RRF and accepted by the Contractor in accordance with the Waste Services Agreement and the Waste Acceptance Protocol in the Billing Period (or part thereof) by Participant A.

**Rate ('R')** = the Rate as defined and adjusted in the Waste Services Agreement.

## 4.3 Working Capital Fee

- (a) Each Participant must pay a once-off Working Capital Fee to the Principal. The Principal will issue an Invoice for the Working Capital Fee to the Participant prior to the Date of Practical Completion.
- (b) Subject to Clause 4.3(c), in respect of each Participant:
- (i) as soon as reasonably practicable after the Principal becomes aware of the Expiry Date, the Principal will set off the Working Capital Fee Reimbursement against the Participant Fees that are payable by that Participant in respect of the remainder of the Term (which, for the avoidance of doubt, may be set off against Invoices for more than one Billing Period in the Principal's discretion); and
  - (ii) if the Working Capital Fee Reimbursement is greater than the Participant Fees payable by that Participant in respect of the remainder of the Term, the Principal will pay the difference to the Participant no later than 20 Business Days after the Expiry Date.
- (c) The Working Capital Fee Reimbursement is calculated as follows:

$$\text{Working Capital Fee Reimbursement}_A = (\text{PWCF}_A / \text{AWCF}) \times \text{UAWCF}$$

Where:

**Working Capital Fee Reimbursement<sub>A</sub>** = the Working Capital reimbursement to be made by the Principal to a Participant (**Participant A**).

**Participant Working Capital Fee ('PWCF<sub>A</sub>')** = the Working Capital Fee paid by Participant A under this Clause 4.3.

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**Uncommitted Aggregate Working Capital Fee ('UAWCF') =**

the Aggregate Working Capital Fee which has not been spent or contractually committed by the Principal for costs, expenses and liabilities incurred by it in complying with its obligations under this Agreement or the Waste Services Agreement, but without counting costs, expenses or liabilities that have been or will be recovered under the Administration Fee that has been or will be received by the Principal before the Expiry Date).

**Aggregate Working Capital Fee ('AWCF') =**

the sum of all Working Capital Fees received by the Principal under this Clause 4.3.

- (d) If the Principal does not make a payment when due under Clause 4.3(b)(ii), it will also be liable to pay the relevant Participant interest for late payment calculated at the Default Rate on the amount owing, from the due date of payment until the date that payment is made (inclusive). The amount calculated in accordance with this Clause 4.3(d) will be the Participant's sole entitlement to interest including damages for loss of use of, or the cost of borrowing, money.

#### 4.4 Administration Fee

- (a) Each Participant must pay the Principal an Administration Fee for each Billing Period calculated monthly in advance as follows:

$$\text{Administration Fee}_A = (\text{QC} + \text{QO}) \times \text{AR}$$

Where:

**Administration Fee<sub>A</sub>** = the Administration Fee payable by a Participant (**Participant A**).

**Quantity Committed ('QC')** = the quantity of FY Committed Waste scheduled to be delivered to the RRF in the Billing Period (or part thereof) by Participant A.

**Quantity Optional ('QO')** = the quantity of FY Optional Waste scheduled to be delivered to the RRF in the Billing Period (or part thereof) by Participant A.

**Administration Rate ('AR')** = the rate calculated in accordance with Clause 4.4(b).

- (b) The Administration Rate is calculated as follows:

$$\text{Administration Rate}_A = \text{FE}_{\text{FY}} / \text{FT}_{\text{FY}}$$

Where:

**Forecast Expenses<sub>FY</sub> ('FE<sub>FY</sub>')** = the Forecast Expenses in respect of the relevant Financial Year (or part thereof);

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**Forecast Tonnage<sub>FY</sub> ('FT<sub>FY</sub>') =** forecast FY Committed Waste and FY Optional Waste (expressed in tonnes and as set out in the relevant Waste Delivery Plan) to be delivered to the RRF in the relevant Financial Year under the Waste Services Agreement.

#### 4.5 Set-Up Fee for Non-Member Participants

Each Non-Member Participant must, within 20 Business Days of the Date of Signing, pay a Set-Up Fee which will be calculated by the Principal as follows:

**Set-Up Fee<sub>NMP</sub> = ACS /TFT x Non-Member Forecast Tonnage<sub>NMP</sub>**

Where:

<b>Set-Up Fee<sub>NMP</sub> =</b>	the Set-Up Fee payable by a Non-Member Participant.
<b>Actual Cost of Set-Up ('ACS') =</b>	the actual cost to the Principal of setting up the Waste Services Agreement and this Agreement (including running the tender process).
<b>Total Forecast Tonnage ('TFT') =</b>	the total forecast Committed Waste and Optional Waste (as set out in the Annexure 2) to be delivered to the RRF during the Term by all Participants.
<b>Non-Member Forecast Tonnage<sub>NMP</sub> =</b>	the quantity of forecast Committed Waste and Optional Waste (as set out in Annexure 2) to be delivered to the RRF during the Term by the Non-Member Participant.

#### 4.6 Acknowledgement

The Participants acknowledge that payments made to the Principal by the Participants to satisfy the Principal's obligations under the Waste Services Agreement, being payment of the Participant Fee, the Shortfall Fee, the Commissioning Shortfall Fee and any liquidated damages expressly referred to in this Agreement, are provided on the express basis that they are used solely for the specific purpose of satisfying the payment obligations of the Principal to the Contractor in accordance with the Waste Services Agreement and the Principal agrees to pay the relevant amount to the Contractor under the Waste Services Agreement.

#### 4.7 Manner of Payment of Invoices

- (a) The Principal must issue Invoices to each of the Participants for the Fees, any liquidated damages owing by that Participant under this Agreement and any lump sum capital contribution owing by that Participant under Clause 6.2(d) in accordance with this Clause 4 and this Agreement.
- (b) All payments must be made in Australian Dollars.
- (c) Each Participant must make all payments by the earlier of 20 days of its receipt of the Principal's Invoice and the due date for payment by the Principal of the corresponding invoice issued under the Waste Services Agreement.



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- (d) The amounts described in Clause 4.6, and any interest owing on those amounts calculated in accordance with Clause 4.7(e), must be paid in accordance with the payment direction in clause 13.6 of the Waste Services Agreement and all other amounts must be paid into the dedicated and named bank account set up by the Principal for the purpose of receiving monies under this Agreement. Each Participant must advise the Principal when it has made the required payment in accordance with clause 13.6 of the Waste Services Agreement.
- (e) Each Participant will pay to the Principal interest for late payment of any Fees and liquidated damages calculated at the Default Rate from the due date of payment until the date that payment is made (inclusive).

#### 4.8 Goods and Services Tax

- (a) For the purposes of this Clause 4.8:
  - (i) **'GST'** means Goods and Services Tax applicable to any taxable supplies as determined under the GST Act.
  - (ii) **'GST Act'** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
  - (iii) **'Supply', 'taxable supply' and 'tax invoice'** have the same meanings as in the GST Act.
- (b) Where the performance of the Principal's obligations or functions or any part thereof is a taxable supply under the GST Act:
  - (i) the Fees are exclusive of all applicable GST which shall be payable at the rate in force at the time;
  - (ii) the obligation of each Participant to pay the Fees or any instalment thereof, and the right of the Principal to recover the Fees or any instalment thereof, shall be subject to and conditional upon the prior issue by the Principal and the prior receipt by the Participant of an invoice in respect of the Fees, or the relevant instalment thereof, which complies in all respects with the GST Act;
  - (iii) this provision applies notwithstanding any other provision of this Agreement or any Law to the contrary, but does not apply if the Participant is not registered for GST, and is not required to be so registered, under the GST Act; and
  - (iv) the Principal must at all times observe, perform and comply with all applicable provisions of the GST Act relative to the performance of the Principal's obligations or functions under this Agreement.

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## 5 UNAVAILABILITY OF THE RRF

- (a) If the Principal notifies the Participants in writing that the RRF is Unavailable, a Participant must continue to deliver Wastes and pay the Participant Fee for Wastes delivered and any Shortfall Fee calculated in accordance with Clause 3.6, unless (and to the extent) it elects not to deliver the Wastes in accordance with this Clause 5.



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- (b) If the RRF is Unavailable on a given day, a Participant may choose not to deliver some or all of its Wastes that cannot be either processed by or stored at the RRF for the period of (and to the extent the RRF is affected by) the Unavailability. In order to exercise this right, the Participant must first notify the Principal of the amount of Wastes that the Participant intends to deliver elsewhere, such that the Principal can meet its notification obligations under clause 9.5(j) of the Waste Services Agreement. A Participant is deemed not to have exercised a right to deliver Wastes elsewhere until it has given a notice in accordance with this Clause 5(b). The Participant must continue to deliver all Wastes that can be either processed or stored at the RRF in accordance with the Waste Services Agreement and all Laws and will remain liable to pay the Shortfall Fee and, where applicable, liquidated damages in respect of any shortfall in delivery of those Wastes.
- (c) If Clause 5(b) applies then, in respect of the Participant that gave the notice of its intention to deliver Wastes elsewhere:
- (i) the amount of the FY Committed Waste which the Participant is required to deliver to the RRF for the relevant Financial Year under this Agreement will be reduced by the amount of Wastes (as notified by the Participant under Clause 5(b)) that the Participant delivers elsewhere;
  - (ii) the amount of Wastes (as notified by the Participant under Clause 5(b)) that the Participant delivers elsewhere must not be taken into account in calculating any Participant Fee or Shortfall Fee in respect of the relevant Financial Year under Clause 4.2 or Clause 3.6 (respectively);
  - (iii) the amount of Wastes (as notified by the Participant under Clause 5(b)) that the Participant delivers elsewhere is not deducted from the FY Committed Waste scheduled to be delivered for the relevant Billing Period for the purpose of calculating the Administration Fee; and
  - (iv) the Participant must provide to the Principal reasonable supporting evidence of the Wastes delivery elsewhere.
- (d) Without limiting the indemnities in Clause 7, to the extent that a Participant causes or contributes to an Unavailability by breach, negligence or other wrongful act or omission, clause 9.5(l) of the Waste Services Agreement applies so that:
- (i) the remainder of this Clause 5 does not apply in respect of any of the Participants;
  - (ii) the Contractor is not obliged to continue receiving the Wastes to the extent prevented by the Unavailability;
  - (iii) if the Contractor notifies the Principal that it is not receiving Wastes, the Participants may deliver Wastes elsewhere, but are still obliged to pay the Shortfall Fee for Committed Waste and liquidated damages (where applicable) for Wastes that have not been delivered; and
  - (iv) the tonnes of Wastes which are required to be delivered by all Participants, as set out in the Waste Delivery Plan, are not amended.

## 6 FORCE MAJEURE EVENT AND CHANGE OF LAW

### 6.1 Force Majeure Event

- (a) An Affected Party must give a Notice to the other Parties of any Force Majeure Event that precludes the Affected Party (whether partially or wholly) from complying with its obligations under this Agreement (**Affected Obligations**) within 10 Business Days of the Force Majeure Event occurring and must either:
  - (i) to the extent practicable, specify in the Notice the length of delay or disruption that will result from the Force Majeure Event; or
  - (ii) where it is not practicable to specify the length of delay or disruption at the time the Notice is delivered, provide the other Parties with periodic supplemental Notices during the period over which the Force Majeure Event continues to have an effect.
- (b) The Affected Party's obligation to perform the Affected Obligations will be suspended for the duration of the actual delay or disruption arising out of the Force Majeure Event provided that the Principal receives equivalent relief under clause 18.1 of the Waste Services Agreement.
- (c) If a Force Majeure Event prevents Wastes from being delivered to the RRF, to the extent that a Participant has not been able to deliver its total Committed Waste to the RRF for the relevant Financial Year (including having regard to Optional Waste that may be counted as Committed Waste), the total Committed Waste for the relevant Financial Year for that Participant is reduced by the amount of Wastes that the Participant was unable to deliver due to delivery of Wastes being prevented by the Force Majeure Event.
- (d) The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay or disruption caused by any Force Majeure Event, including, in the case of the Affected Party being a Participant, by reasonably rescheduling the delivery of Wastes to the RRF to catch up any Committed Waste prevented from being delivered.
- (e) Except as set out in Clause 6.2, the Parties will be responsible for their own costs incurred during the period of the Force Majeure Event including in respect of any alternative arrangements for the disposal of Wastes.

### 6.2 Change of Law under the Waste Services Agreement

- (a) If there is a "Change of Law" (as defined in the Waste Services Agreement) and clause 18.2(a) of the Waste Services Agreement applies, the Principal must provide the Change of Law Notice (as defined in the Waste Services Agreement) received from the Contractor to each Participant and consult with the Participants on the matters in the Change of Law Notice (as defined in the Waste Services Agreement) and the option to be selected as set out in clause 18.2(e) of the Waste Services Agreement. Notwithstanding any consultation, the Principal may make the election in clause 18.2(e) of the Waste Services Agreement in its discretion.
- (b) If the Principal elects to extend the term of the Waste Services Agreement in accordance with clause 18.2(e)(i) of the Waste Services Agreement, the Term is extended accordingly.
- (c) If the Principal elects to increase the Rate in accordance with clause 18.2(e)(iii) of the Waste Services Agreement, the Rate payable by the Participants is increased accordingly.

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- (d) If the Principal elects to pay the lump sum contribution under clause 18.2(e)(ii) of the Waste Services Agreement, the Principal may include a Participants' pro rata share of the lump sum capital contribution in an Invoice delivered in accordance with Clause 4.7.

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## 7 LIABILITY OF THE PARTICIPANTS

- (a) Each Participant indemnifies the Principal and shall hold the Principal harmless from and against all Loss and other liabilities of any kind suffered or incurred by the Principal due to any breach of the Waste Services Agreement, this Agreement or the Direct Deed, by that Participant or its Participant's Personnel.
- (b) Each Participant indemnifies and holds harmless the Principal, the Principal's Parties, the other Participants and their respective Participant's Personnel, **(Indemnified Persons)** from and against all Loss and other liabilities of any kind suffered or incurred by the Indemnified Persons and arising directly or indirectly from:
- (i) any breach of any warranty or any of the other terms and conditions of this Agreement, the Waste Services Agreement or the Direct Deed by the Participant or its Participant's Personnel;
  - (ii) any fraud, Wilful Misconduct or a negligent act or omission of the Participant or its Participant's Personnel;
  - (iii) any claim made by a third party against the Principal, the Principal's Parties, the other Participants or their respective Participant's Personnel, to the extent that the claim arose out of an act or omission of the Participant or its Participant's Personnel; or
  - (iv) personal injury (including mental illness), death and property damage caused or contributed by the Participant or its Participant's Personnel,
- except to the extent that such Loss or other liabilities are caused by:
- (v) if the Indemnified Person is the Principal or a Principal's Party, the Wilful Misconduct or a negligent act or omission of the Principal or a Principal's Party; or
  - (vi) if the Indemnified Person is another Participant or their Participant's Personnel, the Wilful Misconduct or a negligent act or omission of that Participant or their Participant's Personnel.
- (c) Subject to Clause 7(d), each Participant indemnifies and holds harmless each Non-Participant Member, for as long as that person is a Non-Participant Member, from and against all Loss and other liabilities of any kind suffered or incurred by the Non-Participant Member which accrues to the Non-Participant Member under the Establishment Agreement and arises directly or indirectly from an act or omission under or in connection with the Waste Services Agreement, this Agreement or the Direct Deed, except to the extent that such Loss or other liabilities are caused by the Wilful Misconduct or negligent act or omission of the Non-Participant Member.
- (d) Without limiting a claim between the Participants under Clause 7(b), each Participant is severally liable under Clause 7(c) for that proportion of the Loss or liability suffered or incurred by the Non-Participant Member that is the same proportion that the FY Committed Waste and FY Optional Waste scheduled to be delivered by the Participant for the relevant Financial Year bears to the whole of

**RIVERS REGIONAL COUNCIL**

the FY Committed Waste and FY Optional Waste scheduled to be delivered to the RRF in the Waste Delivery Plan for the relevant Financial Year in which the Loss or liability was suffered or incurred.

- (e) The Principal declares that it holds on trust for each of the Non-Participant Members, the benefit of the indemnity and release given by each Participant under Clause 7(c) in favour of each Non-Participant Member.
- (f) The Principal (in respect of the Principal's Parties) and the Participants (in respect of their own Participant's Personnel) declare that they hold on trust for the relevant Indemnified Persons, the benefit of each indemnity and release given by each Participant under this Agreement in favour of the Indemnified Person.
- (g) Each Participant acknowledges the existence of such trusts and consents to:
  - (i) the Principal exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of the Non-Participant Members or the Indemnified Persons;
  - (ii) the Participants exercising rights in relation to, or otherwise enforcing, such indemnities and releases on behalf of their own Participant's Personnel who are Indemnified Persons; and
  - (iii) the Non-Participant Members or the Indemnified Persons exercising rights in relation to, or otherwise enforcing, the indemnity and release.
- (h) No Party is liable to another Party for (and the indemnities in this Agreement shall not apply to) any claim or Loss suffered or incurred, howsoever arising from, in respect of, in relation to or in connection with any breach of this Agreement, the Direct Deed or the Waste Services Agreement or breach of any duty of care (including in respect of the duty of care in negligence) in respect of:
  - iv loss of profit, loss of revenue (other than the Fees or liquidated damages, or any amount payable in lieu of those amounts), loss of use, loss of agreement, loss of goodwill, loss of reputation or loss of business opportunity;
  - v punitive damages;
  - vi any new or increased costs and expenses, including financing, capital or operating costs; and
  - vii any failure to achieve any actual or anticipated saving in respect of any cost or expense.

other than in respect of a liability that the claiming Party has to the Contractor in relation to the Waste Services Agreement or the Security Trustee and the Financiers in relation to the Direct Deed.
- (i) The liability of the Participants under the Waste Services Agreement, the Direct Deed and this Agreement is several as between each Participant.

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## **8 REPLACEMENT OF PARTIES**

### **8.1 Dissolution of the Principal**

- (a) Subject to the rest of this Clause 8.1, if:

## RIVERS REGIONAL COUNCIL

- (i) the Principal is dissolved by or in accordance with Law; or
- (ii) there is an agreement in writing by all of the Participants to replace the Principal under this Agreement and the Waste Services Agreement,

the Principal will cease to be a Party in accordance with Clause 8.1(c).

- (b) If there is an agreement by the parties to the Establishment Agreement to wind up the Principal under clause 10.1 of the Establishment Agreement, the City of Canning must not withhold its consent to the Principal being replaced under this Agreement and the Waste Services Agreement and provide a signed letter to the other Participants stating that it agrees to the winding up.
- (c) The cessation of the Principal as a Party takes effect on the date that a successor Principal has been appointed and has executed all documents and undertakings required under Clause 8.1(d) (**Dissolution Date**)
- (d) Prior to the Dissolution Date:
  - (i) the Participants must appoint:
    - (A) one of the Participants;
    - (B) a body that is subject to the *Local Government Act 1995* (WA) or otherwise created pursuant to statute and is either a statutory authority or local government;
    - (C) an agency or department of the State of Western Australia; or
    - (D) a body that replaces the Principal's functions, (subject to the prior written approval of the Contractor and the Financiers),

as a successor Principal (which appointment must be consistent with any applicable Law) and notify the Contractor of their appointment. Such appointment must occur on or prior to the Dissolution Date so that there is always a "Principal" in situ under this Agreement, the Waste Services Agreement and the Direct Deed; and
  - (ii) the Participants must procure that the successor Principal executes an undertaking to accede to and be bound as successor Principal under this Agreement, the Waste Services Agreement, the Direct Deed and any other agreements or associated documents to which the Contractor and the Principal are a party in respect of the RRF.
- (e) Subject to the transitional provisions of the relevant Law, when a successor Principal executes an undertaking to be bound as successor Principal under this Agreement, the Waste Services Agreement, the Direct Deed and any other agreements or associated documents to which the Contractor and the Principal are a party in respect of the RRF, the successor Principal succeeds to and becomes vested with all the rights and duties (whether past, present and future, actual or contingent) of the retiring Principal, and the retiring Principal is discharged from its duties and obligations under this Agreement and the Waste Services Agreement and the Direct Deed.
- (f) After any retiring Principal's cessation as a Party, this Agreement, the Waste Services Agreement, the Direct Deed and any other agreements or associated documents to which the Contractor and the Principal are a party in respect of the RRF continue in effect in respect of any actions which the retiring Principal took or omitted to take while acting as the Principal.

## RIVERS REGIONAL COUNCIL

**8.2 Withdrawal or assignment by a Participant**

- (a) A Participant may only withdraw from this Agreement:
- (i) by agreement in writing between the Parties; and
  - (ii) with the prior written consent of the Contractor in accordance with clause 22.3 of the Waste Services Agreement and the Financiers in accordance with the Direct Deed.
- (b) If a Participant withdraws from this Agreement, then it must simultaneously withdraw from the Waste Services Agreement and the Direct Deed.
- (c) A Participant wishing to withdraw from this Agreement (**Withdrawing Participant**) must give to each of the other Parties notice in writing of its intention to do so and demonstrating that each of the requirements in clause 22.3(b) or (c) of the Waste Services Agreement can be met.
- (d) The Parties must negotiate in good faith with a view to reaching agreement under Clause 8.2(a)(i) and the Parties must do so:
- (i) as soon as practicable following receipt of a notice under Clause 8.2(c); and
  - (ii) from time to time when reasonably requested to do so by any one of the Parties.
- (e) In addition to the requirements in clause 22.3(b) or (c) of the Waste Services Agreement, the agreement under Clause 8.2(a)(i) must include terms that provide for:
- (i) the agreed date on which the withdrawal from this Agreement, the Waste Services Agreement and the Direct Deed is to take effect;
  - (ii) any agreed amount to be paid to or by the Withdrawing Participant or the agreed methodology for determining the amount to be paid to or by the Withdrawing Participant;
  - (iii) an indemnity from each of the remaining Participants (and any new participant) in favour of the Principal in respect of any Loss arising out of a withdrawal by the Withdrawing Participant from this Agreement; and
  - (iv) amendments to be made to this Agreement and/or the Waste Services Agreement or Direct Deed to reflect the above items and the change in Parties.
- (f) If the agreement required under Clause 8.2(a)(i) satisfies the requirements of Clause 8.2(e), then the Withdrawing Participant must provide such agreement to the Contractor and the Financiers for the purpose of obtaining the Contractor's and the Financier's consent under the Waste Services Agreement and the Direct Deed respectively.
- (g) If the agreement required under Clause 8.2(a)(i) does not satisfy the requirements of Clause 8.2(e), then the Parties will be deemed not to have reached an agreement and the Withdrawing Participant will remain a party to this Agreement and the Direct Deed.

---

## 9 SETTLEMENT OF DISPUTES

### 9.1 Notice

- (a) Any dispute, other than a dispute involving the Contractor or the Financiers arising under the Waste Services Agreement or the Direct Deed, must be resolved in accordance with this Clause 9.
- (b) In the event of a dispute, either a Participant or the Principal (**Notifying Party**) may deliver a written Notice to the other Party or Parties to the dispute (**Receiving Party**) that identifies the dispute (**Notice of Dispute**).
- (c) The Notifying Party must also provide enough information about the dispute in the Notice of Dispute for the Receiving Party to reasonably understand the:
  - (i) alleged facts on which the dispute is based;
  - (ii) legal basis on which any claim arising from the dispute is made; and
  - (iii) relief that is claimed.

### 9.2 Negotiation

- (a) Within 10 days of a Notice of Dispute being delivered, the Receiving Party must deliver a written response to the Notifying Party stating:
  - (i) its position in relation to the dispute; and
  - (ii) the basis for its position.
- (b) Within 10 days of receipt of the response the Notifying Party and the Receiving Party agree to meet and to use their reasonable endeavours to resolve through negotiation any dispute arising under or in relation to this Agreement.
- (c) If the Notifying Party and the Receiving Party do not resolve the dispute within 10 Business Days after meeting pursuant to Clause 9.2(b), either the Notifying Party or the Receiving Party may initiate proceedings in a court of competent jurisdiction.

### 9.3 Continued performance of obligations

If a dispute exists, each Party must continue to comply with its obligations under the Agreement, except with respect to the payment of moneys that are in dispute, unless to do so would put the Principal in breach of the Waste Services Agreement or the Direct Deed.

### 9.4 Summary or urgent relief

Nothing will prejudice the right of a Party to institute proceedings to seek urgent interlocutory injunctive relief.

### 9.5 Principal's obligation to enforce rights against the Contractor

- (a) The Principal and the Participants acknowledge and agree that if a Participant has incurred Loss arising from the Contractor's breach of the Waste Services Agreement or the Direct Deed or the Financiers' breach of the Direct Deed and for which the Principal would be entitled to be compensated for by the Contractor or the Financier, as the case may be, then:

**RIVERS REGIONAL COUNCIL**

- (i) the Participant must notify the Principal of such Loss (if the Principal is not already aware of the Participant's claim);
  - (ii) upon such notification (and subject to the relevant expenditure being approved in accordance with this paragraph below), the Participant may request and, if requested, the Principal must take all steps lawfully available to it to enforce its rights under the Waste Services Agreement and the Direct Deed to recover the relevant compensation from the Contractor or the Financiers or ensure performance of the relevant obligations under the Waste Services Agreement and the Direct Deed by the Contractor and the Financiers (as the case may be), in each case at the Participant's cost (provided that such costs must be reasonably incurred or approved by the Participant before expenditure);
  - (iii) to the extent the Principal recovers any such compensation from the Contractor or the Financiers in respect of the Loss of the Participant following a notice and request under Clause 9.5(a)(ii), it will pay such compensation to the Participant, less any costs owing to the Principal for pursuing the action; and
  - (iv) if there is more than one Participant that has suffered Loss arising out of the subject matter of the action taken by the Principal under Clause 9.5(a)(ii), the distribution of compensation under Clause 9.5(a)(iii) is proportionate on the basis that the Participant's Loss bears to the whole of the Loss suffered by the Participants who gave notice and a request under Clause 9.5(a)(ii).
- (b) Notwithstanding Clause 9.5(a) or any other provision of this Agreement the Waste Services Agreement or the Direct Deed, the Principal's liability to all of the Participants (in aggregate) for an act or omission of the Contractor under the Waste Services Agreement or the Direct Deed or the Financiers under the Direct Deed (including any liability of the Principal to pay compensation to the Participant under Clause 9.5(a)(iii)) is limited to the amount that the Principal recovers from the Contractor in respect of the relevant act or omission. The Principal is not otherwise liable to the Participants for an act or omission of the Contractor under or in connection with the Waste Services Agreement or the Direct Deed or the Financiers under or in connection with the Direct Deed.
- (c) The Participant must cooperate with the Principal and comply with all reasonable requests for assistance in relation to the Principal enforcing its rights under the Waste Services Agreement and the Direct Deed in accordance with Clause 9.5(a)(ii), including the provision of all information and assistance as may be necessary to enable the Principal to enforce its rights.
- (d) This Clause 9.5 does not apply to allow a Participant to direct the Principal as to how or whether to exercise rights or discretions under the Waste Services Agreement or the Direct Deed, including any termination of the Waste Services Agreement.

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## **10 INSURANCES**

- (a) Without limiting the insurances which a Participant would prudently maintain, the Participants and all Participants' Personnel must procure and maintain the appropriate levels of insurances for:
  - (i) public liability;



**RIVERS REGIONAL COUNCIL**

- (ii) vehicle and equipment insurance for the Participant's vehicles and registered plant and equipment used; and
- (iii) liability for death of or injury to persons employed by or deemed by any Law or Legal Requirement to be employed by the Participant including liability by statute and at common law,

in connection with performing their obligations under this Agreement, including, in the case of the Participants and Participants' Personnel, delivery of Wastes (**Insurances**).

- (b) Each Participant must:
  - (i) pay all premiums and all deductibles applicable to the Insurances required to be procured by it under Clause 10(a) when due; and
  - (ii) promptly reinstate any Insurance required to be procured by it under Clause 10(a) if it lapses or if cover is exhausted.
- (c) The Principal is not responsible for obtaining any insurance for or on behalf of the Participants.
- (d) The Insurances are primary, and not secondary, to the indemnities referred to in this Agreement.
- (e) On or before the Date of Practical Completion and whenever reasonably requested by the Principal thereafter, a Participant must produce to the Principal certificates of currency for the Insurances required to be procured by it under Clause 10(a) which demonstrate compliance with this Agreement.

---

## **11 REPRESENTATIVES**

### **11.1 Representatives**

- (a) Each of the Participants and the Principal must appoint in writing a Representative to act on behalf of the Participants or the Principal (as the case may be) for the purpose of this Agreement within delegation limits which must be advised in writing to the Participant and the Principal (as the case may be).
- (b) The identity and contact details of the Participants' and Principal's Representative as at the Date of Signing are set out in Annexure 1. Each of the Participants and the Principal must notify the other in writing of a change to its respective Representative.

### **11.2 Power to Act for the Principal**

Anything to be done or performed by the Principal may be done and performed by the Representative appointed by the Principal.

### **11.3 Power to Act for the Participant**

Anything to be done or performed by a Participant may be done and performed by the Representative appointed by that Participant.

---

## 12 COMPLIANCE

### 12.1 Laws, Approvals and Licences

- (a) Each Party must (at their own cost) comply with all Legal Requirements in any way affecting or applicable to the performance of their obligations under this Agreement including, in the case of the Participants, delivery of Wastes for or on its behalf.
- (b) Each Participant must obtain and maintain (at its cost) all Approvals and Licences necessary for meeting its obligations under this Agreement including delivery of Wastes for or on its behalf.
- (c) The Principal must obtain and maintain (at its cost) all Approvals and Licences necessary for meeting its obligations under this Agreement except for an Approval or Licence that must be obtained and maintained by a Participant under Clause 12.1(b) or the Contractor under the Waste Services Agreement (and there is otherwise no Legal Requirement on the Principal to obtain or maintain such Approval or Licence).
- (d) If a Legal Requirement applying to a Participant is at variance with a term of this Agreement, the Participant must notify the Principal in writing. If such Legal Requirement necessitates a change to the Participants' obligations under this Agreement, the Principal may direct the Participant as to how the inconsistency must be addressed. Such inconsistency shall be at the Participant's risk.
- (e) This Agreement, and any dispute arising out of it, is governed by, construed and take effect in accordance with the Laws of the State of Western Australia and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Agreement or its subject matter or formation.

### 12.2 Safety Obligations

The Participants must:

- (a) perform all relevant functions and fulfil all relevant duties of an employer comply with all Laws and other obligations applicable to workplace health and safety; and
- (b) take measures necessary to protect people and property, avoid unnecessary interference with the passage of persons and vehicles and prevent nuisance and unreasonable noise and disturbance when performing its obligations.

---

## 13 WASTE SERVICES AGREEMENT AND DIRECT DEED

- (a) Each Participant must execute the Direct Deed at the time required in clause 23 of the Waste Services Agreement.
- (b) Each Participant agrees to comply with their respective obligations under the Waste Services Agreement and, once it comes into effect, the Direct Deed and will not indirectly or directly cause the Principal to breach the Waste Services Agreement or, once it comes into effect, the Direct Deed (including by omission).
- (c) Each Participant acknowledges that a failure to make the payments due by it under this Agreement will cause the Principal to breach the Waste Services Agreement, which may lead to a default by the Principal and termination of the Waste Services Agreement.

**RIVERS REGIONAL COUNCIL**

- (d) A Participant must not deliver notices to the Contractor other than in accordance with clause 22.1 of the Waste Services Agreement.
- (e) As soon as reasonably practicable after receipt from the Contractor, the Principal must provide each Participant a copy of each notice that it receives under the Waste Services Agreement that may be, in the opinion of the Principal acting reasonably, relevant to the performance of that Participant's obligations or exercise of that Participant's rights under this Agreement.
- (f) Each Participant acknowledges and agrees that the Principal does not provide any undertaking or assurance that the RRF will be able to accept Wastes from the Scheduled Date of Practical Completion or at all.

---

## **14 VARIATIONS OF AGREEMENT TERMS**

- (a) None of the terms of this Agreement shall be amended, varied, replaced, supplemented, waived, discharged or released either at law or in equity, unless by the express agreement of the Parties in writing. The Parties acknowledge that the consent of the Contractor and the Financiers will also be required.
- (b) An amendment, variation, replacement, supplementing, waiver, discharge or release under this Agreement must not have the effect of reducing the aggregate Committed Waste to be delivered by the Participants otherwise than in accordance with the Waste Services Agreement.

---

## **15 SERVICE OF NOTICES**

- (a) Any Notice or other communication under this Agreement shall be in legible writing, in English, and signed by the issuing Representative (if any) and shall be given or served by:
  - (i) hand delivery or prepaid post to the address of the recipient specified in this Agreement or at such other address as may from time to time be notified in writing to the Party giving the Notice by the intended recipient but in any event to the last notified address; or
  - (ii) e-mail transmission to the Representative (if any) specified in this Agreement.
- (b) Any Notice or other communication under this Agreement shall be deemed to have been given or served in accordance with this Agreement:
  - (i) if by delivery in person, when delivered to the addressee;
  - (ii) if by post, three Business Days from and including the date of postage; or
  - (iii) if by e-mail transmission, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the addressee's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the addressee or an out of office notification),

but if the delivery or receipt is on a day which is not a Business Day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following Business Day.

## RIVERS REGIONAL COUNCIL

- (c) A Notice must not be given by electronic means of communication (other than e-mail as permitted in Clause 15(a)(ii)).
- (d) A printed or copied signature will be sufficient for the purpose of sending any Notice or other communication.

---

## 16 ENTIRE AGREEMENT

- (a) Subject to Clause 16(b) this Agreement supersedes all prior agreements, arrangements and undertakings between all of the Parties and constitutes the entire Agreement between each of the Principal and the Participants in relation to its subject matter.
- (b) The Parties acknowledge that they are also parties to the Waste Services Agreement and the Direct Deed and that all of this Agreement, the Waste Services Agreement and, once its comes into effect, the Direct Deed are to be read in conjunction with each other.

---

## 17 CONFIDENTIALITY

- (a) Each Party acknowledges and agrees that the details of this Agreement, the Waste Services Agreement, the Direct Deed and any arrangement contemplated by them (**Confidential Information**) are to be held as confidential by them, unless:
  - (i) the Confidential Information is necessarily made to a court, or to an arbitrator or administrative tribunal or to legal counsel in the course of proceedings;
  - (ii) the Confidential Information is required to be disclosed to a Government Agency;
  - (iii) the Confidential Information is required to be disclosed to any stock exchange;
  - (iv) the Confidential Information is disclosed to an employee, agent, advisor, subcontractor or contractor of the Party, where that disclosure is reasonably necessary for the conduct of this Agreement, the Waste Services Agreement or the Direct Deed and provided that the person to whom the information is disclosed is bound by the same confidentiality obligations; or
  - (v) the disclosure was consented to in writing by the Party to whom the Confidential Information relates.
- (b) A Party may disclose Confidential Information when required by Law under the *Freedom of Information Act 1992 (WA)* or under a Court order or as otherwise required by Law.

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## 18 SET-OFF

- (a) Without otherwise limiting or affecting the Principal's rights in accordance with any other provision of this Agreement or at Law, the Principal may deduct from any

**RIVERS REGIONAL COUNCIL**

monies due and payable to a Participant under this Agreement any amount due and payable by it to the Principal under this Agreement.

- (b) The Participants must not deduct any amounts owing or claimed to be owed to them from the Fees, any liquidated damages owing under this Agreement or any lump sum capital contribution owing under Clause 6.2(d).

---

**19 PUBLICITY**

Without prior written approval of the Principal, a Participant must not issue any press release or make any other public announcement relating to this Agreement, other than:

- (a) as ordered or required by Law;
- (b) in the course of administrative or judicial proceedings; or
- (c) for the purposes of performing its functions at a Council or committee meeting.

---

**20 ENFORCEABILITY**

- (a) Each of the Participants warrants to the Principal that it has obtained the necessary consents and authorisations to enter into this Agreement, the Waste Services Agreement and the Direct Deed.
- (b) If any part of this Agreement is or becomes for any reason invalid or unenforceable at Law, that part of this Agreement is deemed to be severed from this Agreement without affecting the remainder of this Agreement and the remainder of this Agreement continues to be valid and enforceable.
- (c) The Principal and the Participants agree to use their reasonable endeavours to agree on an equitable adjustment to any provisions of this Agreement determined to be invalid, illegal or unenforceable with a view towards giving effect to the purposes of this Agreement, the Waste Services Agreement and the Direct Deed.

---

**21 LEGAL COSTS**

- (a) Each Party will bear its own legal and other costs and expenses relating directly or indirectly to this Agreement.
- (b) The Participants must pay any stamp duty assessed in respect of this Agreement.

---

**22 CUMULATIVE RIGHTS**

Subject to any express provision in this Agreement to the contrary, the rights of a Party under this Agreement are cumulative, and are in addition to any other rights of that Party.

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## 23 WAIVER

No forbearance, delay or indulgence by the Principal or a Participant in enforcing the provisions of this Agreement shall prejudice, restrict or limit the rights of the Principal or the Participants, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

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## 24 RELATIONSHIP OF THE PARTIES

Nothing in this Agreement constitutes or is intended to constitute a relationship of employer and employee, joint venture, principal and agent, or partnership between the Principal or the Participants.

---

## 25 Shire of Murray

- (a) The obligation to deliver Wastes in this Agreement and the Waste Services Agreement and any undertakings given by the Shire of Murray in the Direct Deed in this regard, do not apply to the Shire of Murray until the commencement of the fifth Financial Year.
- (b) The Shire of Murray may, in its discretion, elect to start delivering Wastes in accordance with this Agreement and the Waste Services Agreement before the commencement of the fifth Financial Year by Notice to the other Parties, in which case:
  - (i) the Principal and the Participants may amend the Committed Waste and Optional Waste tonnages set out in Annexure 2 and in the Waste Services Agreement for one or more of the Participants for that Financial Year and subsequent Financial Years until the end of the fourth Financial Year to take account of the tonnes to be delivered by the Shire of Murray, provided that the aggregate Committed Waste to be delivered in each of those Financial Years is no less than the aggregate Committed Waste to be delivered in those Financial Years as set out in Annexure 2; and
  - (ii) the amended Annexure 2 and annexure 10 to the Participants Agreement replace Annexure 2 and annexure 10 to the Participants Agreement respectively.

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## 26 SURVIVAL

Clauses 1 (Definitions and interpretation), 2.3 (Each Participant bears its own loss), 3.6(g) (Calculation of the Shortfall Fee), 4.7(d) (Manner of Payment of Invoices) (to the extent it applies to payment obligations which arose prior to the termination of this Agreement), 4.8 (Goods and Services Tax), 7 (Liability of the Participants), 9.5 (Principal's obligation to enforce rights against the Contractor), 10 (Insurances), 15 (Service of Notices), 16 (Entire Agreement), 17 (Confidentiality), 18 (Set-off), 19 (Publicity), **Error! Reference source not found.** (Enforceability), 21 (Legal costs), (Cumulative rights), 23 (Waiver), 24 (Relationship of the Parties) and 26 (Survival) survive the termination of this Agreement or expiry of the Term.

# SIGNING PAGE

Executed as an agreement

**PRINCIPAL**

**The common seal of  
Rivers Regional Council**

was hereunto affixed in the presence of:

*sign  
here*



\_\_\_\_\_  
**Chairperson**

*print  
name*

\_\_\_\_\_

*sign  
here*



\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

**CITY OF ARMADALE**

**The common seal of  
City of Armadale**

was hereunto affixed in the presence of:

*sign  
here* ▶

\_\_\_\_\_  
**Mayor**

*print  
name*

\_\_\_\_\_

*sign  
here* ▶

\_\_\_\_\_  
**Chief Executive Officer**

*print  
name*

\_\_\_\_\_

RIVERS REGIONAL COUNCIL

**CITY OF GOSNELLS**

The common seal of

**City of Gosnells**

was hereunto affixed in the presence of:

*sign here ▶*

\_\_\_\_\_  
**Mayor**

*print name*

\_\_\_\_\_

*sign here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_

**CITY OF MANDURAH**

The common seal of

**City of Mandurah**

was hereunto affixed in the presence of:

*sign here ▶*

\_\_\_\_\_  
**Mayor**

*print name*

\_\_\_\_\_

*sign here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_



RIVERS REGIONAL COUNCIL

**CITY OF SOUTH PERTH**

The common seal of

**City of South Perth**

was hereunto affixed in the presence of:

*sign here ▶*

\_\_\_\_\_  
**Mayor**

*print name*

\_\_\_\_\_

*sign here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_

**SHIRE OF MURRAY**

The common seal of

**Shire of Murray**

was hereunto affixed in the presence of:

*sign here ▶*

\_\_\_\_\_  
**Shire President**

*print name*

\_\_\_\_\_

*sign here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_

RIVERS REGIONAL COUNCIL

**SHIRE OF SERPENTINE JARRAHDALE**

The common seal of

**Shire of Serpentine Jarrahdale**

was hereunto affixed in the presence of:

*sign here ▶*

\_\_\_\_\_  
**Shire President**

*print name*

\_\_\_\_\_

*sign here ▶*

\_\_\_\_\_  
**Chief Executive Officer**

*print name*

\_\_\_\_\_

**CITY OF CANNING**

The common seal of

**City of Canning**

was hereunto affixed in the presence of:

*sign here ▶*

\_\_\_\_\_  
**City of Canning  
Commissioner for the City of Canning**

*print name*

\_\_\_\_\_

*sign here ▶*

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**Chief Executive Officer**

*print name*

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## RIVERS REGIONAL COUNCIL

## Annexure 1 – Participants and Principal Details

Principal's Name and ABN**Name:** Rivers Regional Council**ABN:** 80 479 097 483Principal's Contact DetailsPrincipal's Address**Street Address:** 13 Third Road**Suburb:** ARMADALE**State:** Western Australia **Postcode:** 6112**Postal Address:** PO Box 459**Suburb:** ARMADALE**State:** Western Australian **Postcode:** 6992Principal's Representative**Name:** Mr Alex SheridanPrincipal's Phone, Fax and Email Addresses**Phone (Business Hours):** (08) 9497 5699**Phone (Emergency):** 0439 915 766**Facsimile:** (08) 9497 5922**Email:** [admin@rrc.wa.gov.au](mailto:admin@rrc.wa.gov.au)City of Armadale

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**ame:** City of Armadale**ABN:** 79 863 269 538City of Armadale's Contact DetailsCity of Armadale's Address**Street Address:** 7 Orchard Avenue**Suburb:** ARMADALE**State:** Western Australia **Postcode:** 6112**Postal Address:** Locked Bag No. 2**Suburb:** ARMADALE**State:** Western Australia **Postcode:** 6992

## RIVERS REGIONAL COUNCIL

### City of Armadale's Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9394 5000

**Phone (Emergency):**

**Facsimile:** (08) 9394 5814

**Email:** [info@armadale.wa.gov.au](mailto:info@armadale.wa.gov.au)

### City of Gosnells

**Name:** City of Gosnells

**ABN:** 18 374 412 891

### City of Gosnells' Contact Details

#### City of Gosnells' Address

**Street Address:** 2120 Albany Highway

**Suburb:** GOSNELLS

**State:** Western Australia **Postcode:** 6210

**Postal Address:** PO Box 662

**Suburb:** GOSNELLS

**State:** Western Australia **Postcode:** 6990

#### City of Gosnells' Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9397 3000

**Phone (Emergency):**

**Facsimile:** (08) 9397 3333

**Email:** [council@gosnells.wa.gov.au](mailto:council@gosnells.wa.gov.au)

### City of Mandurah

**Name:** City of Mandurah

**ABN:** 43 188 356 365

### City of Mandurah's Contact Details

#### City of Mandurah's Address

**Street Address:** 3 Peel Street

**Suburb:** MANDURAH

**State:** Western Australia **Postcode:** 6210

**Postal Address:** PO Box 210

**Suburb:** MANDURAH

**State:** Western Australia **Postcode:** 6210

## RIVERS REGIONAL COUNCIL

### City of Mandurah's Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9550 3777

**Phone (Emergency):**

**Facsimile:** (08) 9550 3888

**Email:** [council@mandurah.wa.gov.au](mailto:council@mandurah.wa.gov.au)

### City of South Perth

**Name:** City of South Perth

**ABN:** 65 533 218 403

### City of South Perth's Contact Details

#### City of South Perth's Address

**Street Address:** Cnr Sandgate Street and South Terrace

**Suburb:** SOUTH PERTH

**State:** Western Australia   **Postcode:** 6151

**Postal Address:** Cnr Sandgate Street and South Terrace

**Suburb:** SOUTH PERTH

**State:** Western Australia   **Postcode:** 6151

#### City of South Perth's Phone, Fax and Email Addresses

**Phone (Business Hours):** (08) 9474 0777

**Phone (Emergency):**

**Facsimile:** (08) 9474 2425

**Email:** [enquiries@southperth.wa.gov.au](mailto:enquiries@southperth.wa.gov.au)

### Shire of Murray

**Name:** Shire of Murray

**ABN:** 16 036 156 261

### Shire of Murray's Contact Details

#### Shire of Murray's Address

**Street Address:** 1915 Pinjarra Road

**Suburb:** PINJARRA

**State:** Western Australia   **Postcode:** 6208

**Postal Address:** PO Box 21

**Suburb:** PINJARRA

**State:** Western Australia   **Postcode:** 6208

**RIVERS REGIONAL COUNCIL****Shire of Murray's Phone, Fax and Email Addresses****Phone (Business Hours):** (08) 9531 7777**Phone (Emergency):****Facsimile:** (08) 9531 1981**Email:** [mailbag@murray.wa.gov.au](mailto:mailbag@murray.wa.gov.au)**Shire of Serpentine Jarrahdale****Name:** Shire of Serpentine Jarrahdale**ABN:** 98 924 720 841**Shire of Serpentine-Jarrahdale's Contact Details****Shire of Serpentine-Jarrahdale's Address****Street Address:** 6 Paterson Street**Suburb:** MUNDIJONG**State:** Western Australia **Postcode:** 6123**Postal Address:** 6 Paterson Street**Suburb:** MUNDIJONG**State:** Western Australian **Postcode:** 6123**Shire of Serpentine-Jarrahdale's Phone, Fax and Email Addresses****Phone (Business Hours):** (08) 9526 1111**Phone (Emergency):****Facsimile:** (08) 9525 5441**Email:** [info@sjshire.wa.gov.au](mailto:info@sjshire.wa.gov.au)**City of Canning****Name:** City of Canning**ABN:** 80 227 965 466**City of Canning's Contact Details****City of Canning's Address****Street Address:** 1317 Albany Highway**Suburb:** CANNINGTON**State:** Western Australia **Postcode:** 6107**Postal Address:** Locked Bag 80**Suburb:** WELSHPOOL**State:** Western Australia **Postcode:** 6986

**RIVERS REGIONAL COUNCIL**

**City of Canning's Phone, Fax and Email Addresses**

**Phone (Business Hours):** (08) 9231 0606

**Phone (Emergency):**

**Facsimile:** (08) 9458 2353

**Email:** [customer@canning.wa.gov.au](mailto:customer@canning.wa.gov.au)

## RIVERS REGIONAL COUNCIL

## Annexure 2 – Committed and Optional Waste Quantities

Table 1: Committed and Optional Waste Quantities 2016-2030

LGA		Proposed Waste Quantities 2016–2030 (Tonnes per Annum) – FY Commencing 1 July														
		Year-1	Year-2	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030
Armadale	Committed			31,624	32,773	33,963	35,197	36,478	32,266	32,591	32,929	33,279	33,642	34,019	34,409	34,815
	Optional			2,636	2,772	2,915	3,063	3,217	8,942	10,137	11,401	12,717	14,076	15,489	17,254	18,475
Gosnells	Committed			44,655	45,205	45,760	46,321	46,889	46,894	47,467	48,046	48,632	49,225	49,824	50,429	51,040
	Optional			22,897	23,358	23,831	24,311	24,802	25,872	26,390	26,917	27,455	28,005	28,565	29,136	29,720
Mandurah	Committed			44,052	45,213	46,405	47,629	48,885	46,452	47,678	48,937	50,229	51,555	52,917	54,314	55,749
	Optional			6,055	6,216	6,382	6,552	6,728	10,632	10,917	11,210	11,511	11,821	12,140	12,468	12,805
Murray	Committed			0	0	0	0	5,888	6,079	6,278	6,488	6,707	6,935	7,174	7,422	7,684
	Optional			0	0	0	0	3,587	3,822	4,067	4,324	4,590	4,872	5,164	5,471	5,791
Serp-Jarra	Committed			7,449	7,853	8,254	8,658	8,468	7,620	7,357	7,051	6,702	6,991	7,280	7,570	7,859
	Optional			2,678	2,780	2,884	2,989	3,654	4,978	5,718	6,502	7,331	7,608	7,902	8,188	8,476
South Perth	Committed			12,962	12,962	12,962	12,962	12,962	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
	Optional			7,038	7,038	7,038	7,038	7,038	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Canning	Committed			39,259	40,033	40,822	41,626	42,447	38,596	39,368	40,155	40,958	41,777	42,613	43,465	44,334
	Optional			7,767	7,934	8,104	8,278	8,456	13,325	13,591	13,863	14,140	14,423	14,712	15,006	15,306
Totals	Committed			180,000	184,037	188,167	192,394	202,017	189,907	192,739	195,606	198,507	202,125	205,827	209,609	213,481
	Optional			49,072	50,099	51,153	52,231	57,482	75,571	78,820	82,217	85,744	88,805	91,972	95,523	98,573
	All			229,072	234,137	239,320	244,624	259,499	265,478	271,559	277,823	284,252	290,931	297,799	305,132	312,054



RIVERS REGIONAL COUNCIL

Table 2: Committed and Optional Waste Quantities 2031-2045

LGA		Proposed Waste Quantities 2031-2045 (Tonnes per Annum) - FY Commencing 1 July														
LGA		2031	2032	2033	2034	2035	2036	2037	2038	2039	2040	2041	2042	2043	2044	2045
Armadale	Committed	36,120	37,475	38,880	40,338	41,851	43,420	45,049	46,738	48,491	50,309	52,196	54,153	56,184	58,291	60,476
	Optional	19,168	19,886	20,632	21,406	22,209	23,041	23,905	24,802	25,732	26,697	27,698	28,737	29,814	30,932	32,092
Gosnells	Committed	51,658	52,281	52,912	53,551	54,197	54,851	55,513	56,183	56,862	57,548	58,243	58,946	59,657	60,377	61,106
	Optional	30,314	30,921	31,539	32,170	32,813	33,470	34,139	34,822	35,518	36,229	36,953	37,692	38,446	39,215	39,999
Mandurah	Committed	57,222	58,735	60,287	61,881	63,518	65,198	66,922	68,693	70,511	72,378	74,294	76,261	78,281	80,354	82,483
	Optional	13,153	13,510	13,878	14,256	14,646	15,047	15,459	15,883	16,320	16,769	17,232	17,708	18,197	18,702	19,220
Murray	Committed	7,865	8,052	8,245	8,443	8,647	8,857	9,075	9,297	9,528	9,764	10,008	10,259	10,519	10,785	11,059
	Optional	6,013	6,242	6,478	6,721	6,973	7,231	7,498	7,771	8,053	8,343	8,642	8,951	9,268	9,595	9,932
Serp-Jarra	Committed	8,148	8,500	8,852	9,204	9,556	9,908	10,336	10,764	11,192	11,620	12,048	12,568	13,088	13,609	14,129
	Optional	8,765	9,108	9,452	9,797	10,144	10,493	10,905	11,320	11,736	12,153	12,572	13,069	13,567	14,067	14,570
South Perth	Committed	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000	12,000
	Optional	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000	8,000
Canning	Committed	45,221	46,126	47,048	47,989	48,949	49,928	50,926	51,945	52,984	54,043	55,124	56,227	57,351	58,498	59,668
	Optional	15,612	15,924	16,243	16,568	16,899	17,237	17,582	17,933	18,292	18,658	19,031	19,412	19,800	20,196	20,600
Totals	Committed	218,234	223,169	228,224	233,406	238,718	244,162	249,821	255,620	261,568	267,662	273,913	280,414	287,080	293,914	300,921
	Optional	101,025	103,591	106,222	108,918	111,684	114,519	117,488	120,531	123,651	126,849	130,128	133,569	137,092	140,707	144,413
	All	319,259	326,760	334,446	342,324	350,402	358,681	367,309	376,151	385,219	394,511	404,041	413,982	424,172	434,621	445,334