

**Agreement 20 – 07 - 2015**

**SERVICES AGREEMENT  
(2015)**

**For**

**Resource Recovery Options at Seven Mile Waste Facility**

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## This Agreement

is made on 20 JULY 2015 between the following Parties:

**City of Karratha** a local government under the *Local Government Act 1995 (WA)*, having its principal office at Welcome Road, Karratha (Post Office Box 219, Karratha Western Australia, 6714)  
(Principal)

AND

**Waste 2 Gas Pty Ltd** (ACN 600 245 985) Unit 1, 12 Parliament Place West Perth, Western Australia  
(Contractor)

under which

- the Principal agrees to purchase the Services of the Contractor in accordance with this Services Agreement; and
- the Contractor agrees to provide the Services in accordance with this Services Agreement,

in consideration of the mutual promises contained in this Services Agreement.

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

## 1. Definitions and Interpretation

### 1.1. Definitions

In the Agreement:

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

**'Agreement'** means this Services Agreement between the Principal and the Contractor to provide Resource Recovery Services for the Principal's Waste;

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

**'Best Practice'** means a working technique or set of working techniques that are officially accepted as being the best to utilise in a particular business or industry;

**'Billing Period'** means one (1) calendar month;

**'Boodarie RRF'** means the resource recovery facility to be developed at Boodarie and in respect of which environmental approval has been given at this date of the Agreement;

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

**'Change in Law'** means: (a) any amendment to or repeal of an existing Law after the date of the Agreement; (b) the enactment or making of any new Law after the date of execution of the Agreement; or (c) any change in the way a Law is applied or interpreted as a result of a binding decision of a court that overrules, reverses or does not apply an earlier binding decision of a court where that earlier decision existed at the date of execution of the Agreement;

**'Clause'** means any clause of the Services Agreement;

**'Commencement Date'** means the Date of Practical Completion;

**'Conditions Precedent'** means the following conditions precedent:

- a) the RRF has been constructed by the Contractor in accordance with the requirements of the Lease Agreement;
- b) all insurances have been obtained by the Contractor in accordance with the Lease and this Services Agreement and the documents required in clause 15.d) have been provided to the Principal;
- c) the following plans have been prepared by the Contractor and approved by the Principal:
- d) Waste Acceptance Protocol; and
- e) Waste Delivery Plan for the first Financial Year of the Term; and
- f) the Boodarie RRF is able to accept the Principal's Waste (other than Landfill Wastes) and other Wastes.

**'Conditions Subsequent'** means obtaining Approvals and Licences to allow the development of the RRF and achieving financial close of the Boodarie RRF;

**'Consequential Loss'** means:

- a) any breach of any duty of care (including in respect of the duty of care in negligence or bailment) other than a breach that amounts to Gross Negligence;
- b) any financial or economic loss, cost, expenses or damages, including loss of profit, loss of revenue, loss of use, loss of agreement, loss of goodwill or loss of business opportunity;
- c) special damage or loss;
- d) any new or increased costs and expenses, including financing, capital or operating costs;
- e) any failure to achieve any actual or anticipated saving in respect of any cost

or expense;

- f) any incidental, indirect or consequential loss;
- g) any cost, expense, damage or loss resulting from any liability of the other party to any third person howsoever and whensoever arising; or
- h) to the extent permitted by law, any liability arising under or by virtue of statute.

**'Contractor'** means the person or persons, corporation or corporations whose Tender is accepted by the Principal, including the executors or administrators, successors and assignments of such person or persons, corporation or corporations;

**'Contractor Default'** has the meaning set out in **clause 18.1**;

**'Contractor Maximum Liability Amount'** means the maximum liability of the Contractor to the Principal under the Agreement as defined in **clause 15.1(a)**;

**'Contractor's Personnel'** means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor;

**'Date of Practical Completion'** has the same meaning as defined in the Lease;

**'Fee'** means the amount due and payable to the Contractor for providing the Services in the Billing Period calculated in accordance with **clause 11**;

**'Financial Year'** means any 12 month period commencing on 1 July and ending on 30 June, provided that the first Financial Year will commence on the day following the Date of Practical Completion and end on the next 30 June and 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;

**'Force Majeure Event'** means any event or circumstance to the extent that it is beyond the reasonable control of the Principal or the Contractor (**Affected Party**), and that could not have been reasonably foreseen by the Affected Party and prevents, interferes with, impacts, hinders or delays the Affected Party from performing any obligation under the Agreement, but, in the case of any Party seeking relief due to the Force Majeure Event, it is not an event which arises from any of the following:

- a) a breach of a contract, including the Agreement, or Law by that Party;
- b) negligence by that Party relating to the performance of its obligations under the Agreement; or
- c) an occurrence that is a risk assumed by the Party under the Agreement.

**'Law'** means any statute, regulation, by-law, local law, Approvals and Licences or other authorisation, direction or ruling of a Minister of the Crown, or other authorised government representative, 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;

**'Lease Agreement'** means the Agreement between the Principal and the Contractor for the lease of the Site, dated and signed 20 July 2015;

**'Legacy Wastes'** means all tires currently stockpiled in the 7 Mile WF;

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

**'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 government authority;

**'Notice'** means each notice, demand, consent or authority given or made to any person under this Services Agreement;

**'One Month'** means a period comprising 30 consecutive days;

**'Party'** means the Principal or the Contractor and **'Parties'** means all of them;

**'Practical Completion'** means that stage in the execution of the development, design, engineering, manufacture, testing and commissioning of the RRF by the Contractor when:

- a) the RRF has been completed by the Contractor in accordance with the requirements of the Lease Agreement, including the Minimum Technical Requirements and Design Plans, (as defined in the Lease Agreement);
- b) the RRF has passed the commissioning tests and the results of the commissioning tests have been provided to the Principal; and
- c) the RRF is able to receive and process waste in accordance with the Lease Agreement including the Contractor having obtained all necessary licences to do so.

**'Principal'** means the City of Karratha;

**'Principal Maximum Liability Amount'** means the maximum liability of the Principal to the Contractor under the Agreement as defined in **clause 15.1(a)**;

**'Principal's Waste'** means all Wastes arising within the district and municipality of the Principal which the Principal has a duty or obligation to collect and to dispose of, or which the Principal as a matter of fact collects and disposes of and includes waste deposited at the 7 Mile WF by the general public;

**'Product'** means a material or commodity that is produced by the Resource Recovery Facility, which has commercial value or assists the Principal to achieve environmental or social



objectives;

**'Products and Residues Management Plan'** means the plan contained in **Annexure 6**;

**'Rates'** means the amount of dollars per tonne payable to the Contractor for the receipt and processing of Principal's Wastes and Legacy Waste, as shown in **Annexure 2**;

**'Rectification Plan'** means a rectification plan prepared by the Contractor and approved by the Principal in accordance with clause 8.6(b);

**'Representative'** means the representatives of the Principal and the Contractor for the purposes of the Agreement as set out in **Annexure 1** (or as may be replaced from time to time);

**'Residue'** means everything produced or derived as a result of receiving the Wastes at the RRF which is not sold or disposed of by the Contractor as a Product;

**'Residue Waste'** means residual material that is produced from a process of treating or separating waste and that requires disposal;

**'Resource Recovery Facility'** or **'RRF'** means the Resource Recovery Facility to be established by the Contractor, at which the Wastes are to be received and processed by the Contractor in accordance with the Lease;

**'Resource Recovery Services'** or **'Services'** means the waste processing services to be provided by the Contractor to the Principal, as described in this Services Agreement, from the Commencement Date until the end of the Services Term;

**'RRF Weighbridge'** means the weighbridge that is at the entry point for waste entering the 7 Mile WF;

**'Services Fee'** means the fee set out in **clause 11.1**;

**'Site'** refers to the area within the 7 Mile WF leased by the Principal to the Contractor as defined in the Lease Agreement;

**'Subcontractor'** means any person engaged by the Contractor in connection with the Services and includes consultants, subcontractors, suppliers and other contractors;

**'Tender'** means the offer submitted by the Contractor to provide the Services under the Agreement;

**'Term'** or **'Services Term'** has the meaning given in **clause 2.2**;

**'Unavailability'** means that the Contractor, for whatever reason, is unable, in whole or in part, to receive and process Wastes delivered or to be delivered by the Principal in accordance with the requirements of the Services Agreement and all Laws;

**'Unavailability Trigger'** refers to the definition provided in **clause 8.6(a)**;

**'Variation'** means any change to the Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Services;

**'Waste Delivery Plan'** is the waste delivery plan described in **clause 8.3**;

**'Wastes'** means waste streams including residential green waste, commercial and industrial waste, construction and demolition, municipal solid waste, residual from the Principal's waste transfer station (from residential general waste), contaminated green waste, rejected green waste, miscellaneous waste, tyres, residential general waste, residential green waste, commercial green waste, contaminated wastes, hazardous wastes, clean fill, car bodies, commercial cars, utes and trailers, trailers, boats and caravans, wooden cable drums, mattresses, liquid wastes, pre and post cyclone clean up waste and other special wastes (as characterized in accordance with the DER waste license for the 7 Mile WF;

**'Waste Acceptance Criteria'** means the compositional and other requirements of Wastes that will be accepted by the Contractor at the RRF in accordance with this Services Agreement and as detailed in the Waste Acceptance Protocol;

**'Waste Acceptance Protocol'** means the waste acceptance protocol prepared by the Contractor and approved by the Principal as detailed in **Annexure 3**;

**'Wilful Misconduct'** means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this Services Agreement;

**'7 Mile WF'** means the Seven Mile Waste Facility located on Reserve 32987 comprising Lot 552 on deposited plan 71049, Karratha WA 6714.

## **1.2. Interpretation**

In the Agreement, heading and bold type are for convenience only and do not affect the interpretation of the 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 the Agreement.
- d) where two or more persons or bodies comprise the Contractor they shall be bound hereby jointly and severally.
- e) other parts of speech and grammatical forms of a word or phrase defined in the Agreement have a corresponding meaning.
- f) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government authority as well as an individual.
- g) a reference to any thing (including any right) includes a part of that thing

but nothing in this **clause 1.2(g)** implies that performance of part of an obligation constitutes performance of the obligation.

- h) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
- i) a reference to a document includes all amendments or supplements to, or replacements or novation's of, that document.
- j) a reference to a Party includes that Party's successors and permitted assignees.
- k) a reference to an agreement other than the Services Agreement includes a deed and any legally enforceable undertaking, agreement, arrangement or understanding, whether or not in writing.
- l) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind.
- m) no provision of the Services Agreement will be construed adversely to a Party because that Party was responsible for the preparation of the Agreement or that provision.
- n) references to time are to Australian Western Standard Time.

### **1.3. Interpretation of inclusive expressions**

Specifying anything in the 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**

The Agreement includes any annexures.

### **1.6. Ambiguities and inconsistencies**

If there is any inconsistency between the terms and conditions in the Services Agreement, and the Principal and the Contractor are unable to resolve the inconsistency, the matter must be resolved in accordance with **clause 20**.

## **2. Term**

### **2.1. Commencement of Agreement**

The Agreement commences and becomes effective on the Commencement Date.

### **2.2. Term**

- a) The term of the Agreement commences on the Commencement Date and

expires on the 20 year anniversary of the Commencement Date (**Term**), subject to any other earlier termination permitted under the Agreement.

- b) The Principal may, at its sole discretion, extend the Term by two consecutive periods of five years each on Notice to the Contractor.

## **2.3. Conditional Upon Lease Agreement**

It is a fundamental term of the Agreement that:

- a) the Principal and the Contractor enter into the Lease Agreement; and
- b) the Lease Agreement remains in full force and effect for the duration of the Term.

## **2.4. Lease Ending**

Upon the Lease terminating or expiring for any reason during the Term, this Agreement will terminate immediately and without the requirement for Notice.

## **3. Quality of the Services**

The Contractor must ensure that:

- a) the Resource Recovery Services are provided in accordance with all applicable conditions of the Approvals and Licences;
- b) the Resource Recovery Services are performed with the professional skill, care and diligence expected of a professional contractor; and
- c) any items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality, comply with the standards set out in this Agreement and are fit for their usual purpose and any purpose described in this Agreement.

## **4. Overview of the Services**

- a) The Contractor must:
  - i) provide a Resource Recovery Facility (RRF) suitable for receiving and processing the Principal's Waste in accordance with the terms of this Agreement;
  - ii) receive and process the Principal's Waste delivered by, or on behalf of, the Principal at the RRF, in accordance with the Waste Acceptance Protocol, the Waste Delivery Plan and the Lease Agreement;
- b) This Agreement does not restrict the Contractor from receiving and processing wastes or other material at the RRF which are not the subject of this Agreement.

## **5. Representatives and Key Personnel**

### **5.1. Representatives**

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

### **5.2. Key Personnel**

The Contractor must ensure that the key personnel retain the roles assigned to them in respect of the Services, being those roles outlined in **Annexure 1**, unless otherwise approved by the Principal.

### **5.3. 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.

### **5.4. Power to Act for the Contractor**

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

## **6. Approvals and Licences**

- a) The Contractor must obtain, maintain and renew all required Approvals and Licences necessary to provide the Services.
- b) If any Approvals and Licences are revoked or withdrawn, the Contractor must do everything reasonably necessary to regain the relevant Approval and Licence and immediately inform the Principal in writing.

## **7. Condition Precedent**

The obligation of the Contractor to commence development of the RRF is conditional on the satisfaction or waiver of the Conditions Subsequent on or before 1 October 2016 by the Contractor.

- a) The obligation of the Principal to deliver Wastes and the commencement of the Services is conditional upon the satisfaction or waiver by the Principal of all of the Conditions Precedent.
- b) The Contractor must ensure that the Conditions Precedent are satisfied as expeditiously as possible and in any event on or before the Scheduled Date of Practical Completion.
- c) The Contractor must provide a Notice and satisfactory supporting documented evidence to the Principal to demonstrate that each of the Conditions Precedent has been satisfied.
- d) The Principal shall determine, acting reasonably, if the Conditions

Precedent have been satisfied. If the Principal determines, acting reasonably, that a Condition Precedent has been satisfied the Principal shall issue a Notice to that effect to the Contractor.

- e) A Condition Precedent shall not be satisfied until a Notice to that effect has been issued by the Principal.
- f) The Principal may waive a Condition Precedent by issuing a Notice to that effect to the Contractor.

## 8. Resource Recovery Services

### 8.1. Principal's Waste and Legacy Waste

- a) The Principal:
  - i must deliver to the Contractor at the RRF all of the Principal's Waste; and
  - ii allow the Contractor access to all Legacy Waste.
- b) Subject to clause 8.1(c), if in any month the Principal's Waste delivered varies by:
  - i more than 25% (in respect of kerbside collections) or 30% (in respect of residual residential general waste from the Principal's Waste Transfer Station) of the average of Principal's Waste delivered in the preceding period of 12 months (excluding that month); or
  - ii 10% (in respect of kerbside collections) or 15% (in respect of residual residential general waste from the Principal's Waste Transfer Station) of the average Principal's Waste delivered for the corresponding 3 month period of the prior year or the quantity of Principal's Waste for Financial Year 2014/2015 in respect of the first Financial Year (each an **Applicable Average**) (other than in circumstances in which the Principal is permitted to make its own arrangements under clause 8.6); then  
  
the Principal must pay the Contractor an amount equal to the amount that the Principal would have been obliged to pay to the Contractor had the Principal been in compliance with **clause 8.1(a)**.
- c) Before issuing an invoice in relation to any amount pursuant to clause 8.1(b), the Contractor must notify the Principal by notice, in writing, of the amount that it intends to invoice. If the Principal does not agree with the amount that the Contractor intends to invoice, by notice in writing, the Principal may notify the Contractor asking for a meeting to discuss the circumstances and the amount payable. If within 21 days after the notice from the Contractor pursuant to this **clause 8.1(c)** the parties have not agreed on the amount of the invoice, the Contractor may invoice for an amount equal to the Applicable Average and either party may refer the matter to an Expert in accordance with **Annexure 5**, for a determination of the actual amount that Principal would have been obliged to pay to the Contractor had the Principal been in compliance with **clause 8.1(a)**, and for these purposes the Principal must make available to the Contractor and to the applicable expert all information that it has in its control or possession or in the control or possession of any contractor (other than the Contractor),

with any such expert to be appointed by the Waste Management Association of Australia, whose decision shall be final and binding on all parties.

## **8.2. Receipt and Processing of Principal's Waste and Legacy Waste**

- a) The Contractor will, during the Term, in accordance with the Waste Acceptance Protocol:
  - i receive and process the Principal's Waste consistent with the Waste Acceptance Criteria; and
  - ii make available to the Principal, all Wastes not consistent with the Waste Acceptance Criteria.
- b) The Principal will, during the Term:
  - i procure the delivery of the Principal's Waste and Legacy Waste in accordance with the Waste Delivery Plan; and
  - ii take delivery of Waste not consistent with the Waste Acceptance Criteria in accordance with the Waste Acceptance Protocol.
- c) The Principal will make available for collection (at the location detailed in the Waste Acceptance Protocol) tyres derived from Legacy Waste on a ratable basis throughout each Financial Year. The Principal must make available, and the Contractor must take and process, 500 tonnes of tyres derived from Legacy Waste in each Financial Year of the Term until the Legacy Waste is exhausted.

## **8.3. Waste Delivery Plan**

- a) The Contractor shall prepare an annual Waste Delivery Plan detailing the quantities of Principal's Waste and Legacy Waste (as contemplated in **clause 8.2(c)** or as otherwise agreed by the parties) that shall be delivered each month by the Principal and a maximum allowable quantity per month. The Waste Delivery Plan is to be proposed by the Contractor for approval by the Principal no less than three (3) months prior to the commencement of each Financial Year during the Services Term (or part year in respect of the first and last years of the Services Term).
- b) The aggregate tonnage in each annual Waste Delivery Plan must not be altered without the Principal's prior consent. The form of the Waste Delivery Plan is shown in **Annexure 4**, and the form (and the substance to be contained in each Waste Delivery Plan) will be the same or substantially the same as the form in **Annexure 4**. If the Parties do not agree the annual Waste Delivery Plan two (2) months before the commencement of the applicable Financial Year, either party may refer the matter to an Expert in accordance with **Annexure 5**.
- c) The Contractor may request, and the Principal may approve (acting reasonably), changes to the Waste Delivery Plan in the event of an Unavailability of the RRF to achieve the annual target of Principal's Waste delivered by the Principal.

## **8.4. Waste Acceptance Protocol**

- a) The Principal's Waste delivered by or on behalf of the Principal and received

by the Contractor shall be in accordance with the Waste Acceptance Protocol.

- b) The Contractor must accept all of the Principal's Waste that complies with the Waste Acceptance Protocol.
- c) The Contractor may at any time, not accept or reject any Principal's Waste that does not comply with the Waste Acceptance Protocol, including after the Principal's Waste has been subject to processing by the RFF.
- d) Ownership of the Wastes delivered by or on behalf of the Principal shall transfer to the Contractor when accepted by the Contractor in accordance with the Waste Acceptance Protocol.

## 8.5. Weighing Waste

- a) The Contractor must:
  - i weigh and record all of the Principal's Waste and Legacy Waste that is delivered to the RRF on the RRF Weighbridge;
  - ii weigh and record all Wastes that are directed to landfill for disposal (including gate fees paid to the Contractor) and such gate fees must be paid to the Principal no later than the defined term from the date of acceptance;
  - iii ensure that the Weighbridge is appropriately calibrated for accuracy in accordance with applicable Laws; and
  - iv keep full and accurate records in hardcopy or electronic format of all Wastes delivered to the Seven Mile WF. The data recorded must be supplied to the Principal at the end of each calendar month.
- b) The measurements taken by the Contractor at the RRF Weighbridge will be conclusive evidence of the amount of Principal's Wastes accepted by the Contractor (unless the Contractor and the Principal agree that there has been a demonstrable error. If agreement cannot be reached, the matter shall be resolved in accordance with clause 20 and will be used for the purpose of calculating the Fee, as described in **Annexure 2**, to be paid by the Principal.
- c) The Contractor, at the request of the Principal, will weigh and record free of charge all vehicles associated with the Principal's activities or services.

## 8.6. Unavailability of the RRF

- a) If the Contractor is unable to receive and process Principal's Wastes from the Principal due to Unavailability of the RRF for either:
  - i a continuous period of up to the defined term; or
  - ii for a total of six (6) weeks in any two (2) month period

**(Unavailability Trigger),**

then the Principal will:



- iii be relieved of its obligation to deliver Wastes to the RRF in accordance with this Services Agreement until the situation giving rise to the Unavailability is overcome and the Contractor can again receive and process Wastes from the Principal;
  - iv make its own arrangement for disposing of the Principal's Waste; and
  - v not be required to pay the Service Fee for waste not delivered during this period.
- b) The Contractor shall submit to the Principal for approval a Rectification Plan within ten (10) Business Days of the Unavailability Trigger detailing how the failure to receive and process Wastes will be resolved, a timetable for resolution, delivery of Wastes during the period of Unavailability (if any) and the Services Fee payable by the Principal during this period, which in relation to the Services Fee, must be consistent with the following principles:
  - i the Services Fee will only apply to the quantities of waste delivered by the Principal;
  - ii the Principal will pay no more than the standard rates payable by the Principal immediately prior to the Unavailability;
  - iii any savings obtained by the Contractor during the Unavailability due to the Contractor's costs being reduced will be passed onto the Principal through a reduction in the Services Fee; and
  - iv the Contractor is solely responsible for, and must not pass on to the Principal, any rectification costs for remedying the Unavailability.
- c) The remedies and the rights of the Principal under this **clause 8.6** are the Principal's exclusive, only and sole rights arising from, in connection with, in relation to and in respect of the RRF being Unavailable, and the consequences of it being Unavailable.

## **8.7. Change in character and extent of Principal's Waste**

- a) For the purposes of this Services Agreement, each of the Principal and the Contractor have assumed that the character and the quantity of the Principal's Waste will change over time, but that:
  - i the character and quantity of Principal's Waste will not change such that the Services Fee received by the Contractor will be less than the Services Fee that would have been payable in that year, had the Services Fee been calculated on the basis of 9,600 tonnes of Principal's Waste having been delivered in that year (**Base Case**); and
  - ii the costs and expenses and imposts payable and liabilities incurred by the Contractor will not increase at a rate that exceeds the rate at which the Rates are escalated in accordance with **clause 11.1 (Base Assumption)**.
- b) If it is apparent at any time and from time to time that the Base Case or the Base Assumption is not continuing or will not continue to be the case, by notice, in writing, either party may request a meeting to discuss how to

ensure that the **Base Case** and the **Base Assumption** continue to be the **case** and if the parties do not agree on how to ensure this, the parties must agree changes to the amount of the **Service Fees** payable or the escalation formula in **clause 11.1(c)**, or both, to ensure that the **Base Case** and the **Base Assumption** each at all times continue to be the case.

- c) If the Parties do not agree pursuant to **clause 8.7 (b)** within (2) months after the date the applicable notice is given, by notice, in writing, either party may refer the matter to an Expert in accordance with **Annexure 5**.

## 9. Service of Notices

- a) Any Notice or other communication under the Services 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 the Services 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 the Agreement,

and is regarded as being given by the sender and received by the addressee:

- iii if by delivery in person, when delivered to the addressee;
- iv if by post, three (3) Business Days from and including the date of postage; or
- v 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),

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.

- b) A Notice must not be given by electronic means of communication (other than e-mail as permitted in clause 9(a)(ii).
- c) A printed or copied signature will be sufficient for the purpose of sending any Notice or other communication.

## 10. Recovery and Sale of Products

- a) The recovery and sale of Products must be undertaken in accordance with the terms and conditions of this Agreement and the Products and Residue Management Plan.

- b) The Contractor has all title and risk in the Products. All revenue produced by the sale of Products by the Contractor will be retained entirely by the Contractor.
- c) All Residue produced by the RRF must be disposed of by the Contractor in accordance with the Products and Residue Management Plan and all Laws. The Residue must be disposed at the 7 Mile WF landfill if it is to be disposed to landfill and if it meets the waste acceptance criteria applicable to that 7 Mile WMF landfill.
- d) The Contractor shall bear all costs associated with the disposal of all Residue Waste produced by the RRF.

## 11. Invoicing and payment

### 11.1. Service Fee

- a) The Principal will pay the Contractor the Service Fee for the performance of the Services in a Billing Period, calculated as follows:

$$\text{Service Fee} = (\text{Quantity Principal's Waste} \times \text{Principal's Waste Rate}) + (\text{Quantity Legacy Waste} \times \text{Legacy Waste Rate})$$

Where,

Quantity Principal's Waste = the quantity of Principal's Waste (in tonnes) delivered to and accepted at the RRF in the Billing Period.

Principal's Waste Rate = the Principal's Waste Rate as defined in **Annexure 2** as adjusted in accordance with the Services Agreement.

Quantity Legacy Waste = the quantity of Legacy Waste (in tonnes) delivered to and accepted at the RRF in the Billing Period.

Legacy Waste Rate = the Legacy Waste Rate as defined in **Annexure 2** as adjusted in accordance with the Services Agreement.

- b) Escalation of the Rates shall commence on the Commencement Date and be applied annually on 1 July.
- c) Each Rate is detailed in Annexure 2 and shall be escalated annually for each Contract Year in accordance with the following formula:

$$CR_{\text{year } y} = CR_{\text{year } B} \times [(50\% \times PPI_A / PPI_B) + (50\% \times CPI_A / CPI_B)] \text{ where,}$$

A = previous year;

B = year of the Commencement Date;

Y = current year;

PPI = Producer Price Index (PPI) published by the Australian Bureau of Statistics (Labour Price Index, Australia, Catalogue no. 6427.0); and

CPI = Consumer Price Index (CPI) published by the Australian Bureau of Statistics (Labour Price Index, Australia, Catalogue no. 6401.0).

## 11.2. Manner of Payment of Invoices

- a) The Contractor must issue an invoice to the Principal for the Service Fees calculated for the relevant Billing Period.
- b) All payments shall be made in Australian Dollars.
- c) Unless otherwise provided in the Services Agreement, all payments shall be made within thirty (30) days of the Contractor's invoice. Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate, void or suspend the Agreement.
- d) The Contractor shall not be entitled to any interest, credit charge, service fee or any other fee or charge for extending credit or allowing time for the payment of money becoming due for the provision of Services unless expressly provided for in the Services Agreement.
- e) All periods for payment of invoices shall be calculated from the date of the invoice.
- f) The Service Fee is the Contractor's sole entitlement to payment for the performance of its obligations under the Services Agreement.

## 11.3. Unavailability of the RFF

Payment of the Service Fee is subject to **clause 8.6**.

## 11.4. Goods and Services Tax

- a) For the purposes of this **clause 11.4**:
  - 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 supply of the Services or any part thereof is a taxable supply under the GST Act:
  - i the Fee shall be inclusive of all applicable GST at the rate in force at the time;
  - ii the obligation of the Principal to pay the Fee or any instalment thereof, and the right of the Contractor to recover the Fee or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Fee, or the relevant instalment thereof, which complies in all respects with the GST Act;
  - iii this provision applies notwithstanding any other provision of the Agreement or any legislation or rule of Law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act; and
  - iv the Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Services under this Services Agreement.

#### **11.5. Deductions of Charges or Debt**

- a) Without limiting the Principal's rights under any of the Clauses of the Services Agreement any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal. Nothing in **clause 11.4** shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- b) The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Services Agreement and all costs, expenses, losses, and damages for which the Contractor shall become liable at any time under the Agreement, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other agreement or agreements which may be subsisting between the Contractor and the Principal for the time being.

#### **11.6. Interest**

- a) Each party must pay to the other party interest at the Default Rate on any moneys which that party has not paid within 20 Business Days of the due date for payment.
- b) Interest is to be calculated daily from the due date and is to be continued until the overdue money is paid.

### **12. Variations to the Agreement**

None of the terms of the Services Agreement shall be varied, waived, discharged or released either at law or in equity, unless by the express agreement of the Parties in

writing.

## **13. Compliance**

### **13.1. Laws, Approvals and Licences**

- a) The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Resource Recovery Services and/or the performance of the Services Agreement.
- b) The Contractor is responsible for obtaining and maintaining (at its cost) all Approvals and Licences necessary to provide and operate the Resource Recovery Facility.
- c) If a Legal Requirement is at variance with a term of the Services Agreement the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Resource Recovery Services or the way in which they must be provided (or both), the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk.

### **13.2. Safety Obligations**

The Contractor must:

- a) perform all relevant functions and fulfill all relevant duties of an employer and occupier and 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.

### **13.3. Industrial Awards**

With respect to all work done in Western Australia under the Services Agreement, the Contractor shall observe, perform and comply with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Services and the Services Agreement.

### **13.4. Governing Law**

The Services Agreement, and any dispute arising out of it, shall be 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 the Services Agreement or its subject matter or formation.

### **13.5. Change in Law**

- a) If a Change in Law has occurred or is to occur, either Party may notify the other of the effects or likely effects of the Change in Law (Notice of Proposed Change), such notice to detail:
  - i any necessary change in the design or construction of the RRF or any change to the Services, or both;

- ii indicate, in particular, whether a variation to the Fee is proposed (and, if so, give a detailed cost estimate of the proposed change) to address the effect of the Change in Law and whether any changes are required to the terms of this agreement to address the effect of the Change in Law, and, if so, the notice must be accompanied by a mark-up of this agreement to indicate each variation required;
  - iii whether relief from compliance with any obligation is required;
  - iv any net loss of revenue that will or might result from the Change in Law;
  - v any increased or new costs or expenditure that will or might result from the Change in Law.
- b) As soon as possible after the date of the applicable Notice of Change, and in any event within 10 Business Days, the Principal and the Contractor must meet to discuss the Change in Law and its effects. For the purposes of these discussions, the Contractor must seek to determine how to minimise the effect of the Change in Law and the amount of any increased or new cost or expenditure without affecting the provision of Services.
- c) If requested by the Principal, the Contractor must demonstrate the ways in which it has sought to minimise the effect of the Change in Law and the amount of any increased or new cost or expenditure, including:
  - i providing evidence that the Contractor has used reasonable endeavours (including, where practicable, the use of competitive quotes) to minimise the amount of any increased or new costs and to maximise the amount of any reduction in the amount of any increased or new costs; and
  - ii demonstrating how any expenditure to be incurred or avoided is being quantified in a cost effective manner.
- d) If the conclusion of the meeting (or those meetings) is that the Principal and the Contractor do not agree on the effect of the Change in Law or the manner to address the Change in Law either party may refer the matter for Expert determination under **Annexure 5** to determine the direct and reasonable increased and new costs incurred or to be incurred by the Contractor to enable it lawfully to provide the Services in accordance with the Agreement.

## **14. Indemnity and Liability**

### **14.1. Indemnity and Liability**

- a) The Contractor shall indemnify and keep indemnified the Principal from and against all Loss and other liabilities of any kind arising directly or indirectly from:
  - i any breach of any warranty or any of the other terms and conditions of this Services Agreement;
  - ii any Wilful Misconduct or a negligent act or omission; and
  - iii any claim made by a third Party against the Principal in respect of property damage, death or personal injury, including mental illness, to the extent that the claim arose out of an act or omission of the Contractor or the Contractor's Personnel,

- b) except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal.

#### **14.2. Proportionate Liability**

Each Party agrees that Part 1F of the *Civil Liability Act 2002* (WA) is excluded from operation with respect to any dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- a) the Services Agreement; and
- b) any of the Contractor's Subcontractors or the Subcontractor's personnel.

### **15. Limits on Liability**

#### **15.1. Maximum Liability**

- a) Subject to this clause 15, the aggregate maximum liability of each party to the other party is an amount equal to \$20,000,000 (Maximum Liability).
- b) The Maximum Liability does not apply in respect of:
  - i any fraudulent, malicious or criminal conduct;
  - ii any deliberate default, Gross Negligence or Wilful Misconduct; or
  - iii any act or omission done or not done with a reckless disregard for the consequences by the applicable party or its Personnel; or
  - iv for any Loss arising from any claim by a third Party against the other party for damage or destruction or property or for death or personal injury arising out of any act or omission of the applicable party or its Personnel.

#### **15.2. Liability for Consequential Loss**

- a) Subject to clauses 15.2(b) no Party shall in any event be liable to any other Party for any Consequential Loss.
- b) Clause 15.2(a) does not exclude liability of a Party for Consequential Loss:
  - i if, but for clause 15.2(a), that Party would have insurance cover for that Consequential Loss under a policy of insurance that the Party is required to procure and maintain pursuant to this Contract; or
  - ii to the extent that any liquidated damages payable under this Contract include are classified as Consequential Loss.

### **16. Insurances**

- a) The Contractor must procure and maintain the appropriate levels of insurances for:
  - i public and product liability;



- ii vehicle and equipment insurance for the Contractor's vehicles, registered plant and equipment used in connection with the Services Agreement;
  - iii liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability by statute and at common law; and
  - iv professional indemnity.
- b) The Contractor must:
  - i pay all premiums and all deductibles applicable to the insurance when due; and
  - ii promptly reinstate any insurance required under this clause if it lapses or if cover is exhausted.
- c) The insurances are primary, and not secondary, to the indemnities referred to in the Services Agreement.
- d) On or before the Date of Practical Completion and whenever reasonably requested by the Principal thereafter, the Contractor must produce to the Principal certificates of currency for the Insurances.

## 17. Force Majeure

- a) A Party must give a timely notice to the other Party of any Force Majeure Event that prevents, interferes with, impacts, hinders or delays other otherwise affects the ability of the Party (whether partially or wholly) from complying with its obligations under the Services Agreement (**Affected Obligations**) and must either:
  - i to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
  - ii where it is not practicable to specify the length of delay at the time the Notice is delivered, provide the other Party with periodic supplemental Notices during the period over which the Force Majeure Event continues.
- b) The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- c) If the Contractor is the Party with Affected Obligations, the Principal is relieved, to the extent the Contractor is precluded from providing the Services, from any payment to the Contractor for the duration of the delay resulting from 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 caused by any Force Majeure Event.
- e) If a Force Majeure Event continues to affect the supply of the Services for a continuous period of 180 days, the Principal may terminate the Services Agreement by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date

of the Services Agreement being terminated.

- f) The parties will be responsible for their own costs incurred during the period of the Force Majeure Event.
- g) If the RRF (in part or in whole) is damaged or destroyed due to a Force Majeure Event :
  - i) the Contractor will not be in breach of this Agreement (and not be in Contractor Default);
  - ii) to the extent that the Contractor is able to provide the Services it will do so; and
  - iii) the Contractor may elect to repair or to reconstruct the RRF, and the Term will be extended by a period of time equal to the time taken to repair or to reconstruct the RRF or such longer period as the parties may agree.
- h) If the RRF (in part or in whole) is damaged or destroyed and the Contractor does not elect to repair or to reconstruct the RRF the Contractor must give notice to the Principal. The Contractor must give notice to the Principal within 180 days after the occurrence of the damage or destruction.

## **18. Default**

### **18.1. Default by the Contractor**

A Contractor Default occurs when:

- a) a period of Unavailability extends for a continuous period of 180 days or more;
- b) a period of Unavailability comprises a period greater than 180 days in any 365 day period;
- c) the Contractor fails to prepare or comply with the Rectification Plan in accordance with clause 8.6;
- d) the Contractor fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in the Agreement and such failure continues for a period of twenty eight (28) days after service on the Contractor of a Notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
- e) the Contractor defaults under the terms of the Lease Agreement; or
- f) the Contractor fails to satisfy any Condition Precedent by the Scheduled Date of Practical Completion and the unsatisfied Condition Precedent has not been waived by the Principal.

### **18.2. Default by the Principal**

Default by the Principal occurs only if the Principal does not pay a due and payable invoice in accordance with the timeframes specified in this Services Agreement, provided that the Contractor has first given the Principal a Notice (in addition to the

invoice) requesting payment within a minimum period of thirty (30) days. The Notice shall be issued no earlier than the date when the invoice becomes due and payable.

### **18.3. Procedure upon Default**

- a) Either the Principal or the Contractor (as the case may be) may give the other Party a Notice specifying the default and requiring that Party to remedy the same at that Party's expense within a period agreed between the Parties or, in the absence of an agreement, within twenty eight (28) days.
- b) If a Contractor default remains unrectified after the expiry of the abovementioned period or the default is incapable of rectification then the Principal (without prejudice to any other rights that it may have under the Services Agreement or otherwise) may exercise all or any of the following rights:
  - i suspend payment under the Services Agreement until the default has been remedied; or
  - ii terminate the Services Agreement in accordance with clause 19.
- c) If a Principal default remains unrectified after the expiry of the abovementioned period the Contractor (without prejudice to any other rights that it may have under the Services Agreement or otherwise) may terminate this Services Agreement in accordance with clause 19.

## **19. Termination of Agreement**

### **19.1. Termination for Default**

- a) If the Services Agreement is terminated pursuant to the below paragraph, the Parties' remedies, rights and liabilities shall be the same as they would have been had the Contractor repudiated the Services Agreement and the Principal elected to treat the Services Agreement at an end and recover damages.
- b) The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Services Agreement if the Contractor:
  - i a Contractor Default has not been remedied in accordance with clause 17.3;
  - ii (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver is appointed or enters into any composition or scheme of arrangement with its creditors or if an inspector is appointed to examine the affairs of the Contractor, or if the Contractor enters into voluntary or other external administration;
  - iii (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
  - iv assigns or subcontracts this Services Agreement or any part

thereof without the prior written consent of the Principal;

- v the Contractor, or any Contractor's Personnel, are found guilty of any criminal act related to the Services that may bring the Principal into disrepute; and
- c) The Contractor may only terminate this Services Agreement in the event of a Principal Default.
- d) Without limiting any other rights of the Parties under this Services Agreement, if this Services Agreement terminates for any reason whatsoever the Contractor agrees that the Principal is free to utilise alternative Resource Recovery Services or any other services to process or dispose of the Principal's Waste.

## **19.2. Termination upon Prolonged Force Majeure**

The Agreement may be terminated in accordance with **clause 17**.

## **19.3. Termination upon Expiration of the Term**

The Agreement will otherwise terminate at the expiration of the Term.

## **19.4. No other termination**

Notwithstanding any other rule of law or equity to the contrary, neither party may terminate, rescind or treat as repudiated this Services Agreement or any rights under this Services Agreement other than as expressly provided for in this clause 19.

## **20. Settlement of Disputes**

- a) In the event of a dispute, other than in relation to any provision providing for referral to an expert under **Annexure 5**, either Party may deliver a written Notice to the other Party that identifies the dispute ('Notice of dispute').
- b) The Party that delivers the Notice of dispute should also provide enough information about the dispute for the other Party to reasonably understand the:
  - i alleged facts on which the claim is based;
  - ii legal basis on which the claim is made; and
  - iii relief that is claimed.
- c) Within ten (10) Business Days of a Notice of dispute being delivered, the receiving Party must deliver a written response to the other Party stating:
  - i its position in relation to the dispute; and
  - ii the basis for its position.
- d) Within ten (10) Business Days of receipt of the response the parties agree to use their reasonable endeavors to resolve through negotiation any dispute arising under or in relation to the Services Agreement.

- e) If the parties are unable to resolve the dispute within the ten (10) Business Days of attempting to use their reasonable endeavors to resolve the dispute, either Party may initiate proceedings in a court of competent jurisdiction.

## **21. Miscellaneous Provisions**

### **21.1. Entire Agreement**

The Services Agreement supersedes all prior agreements, arrangements and undertakings between the Parties and constitutes the entire Agreement between the Principal and the Contractor relating to the Services provided.

### **21.2. Assignment and Subcontracting**

- a) The Contractor shall not:
  - i subject to **clause 21.2(b)**, assign the Services Agreement, or any part thereof or any payment thereunder; or
  - ii subcontract the whole or any part of the Services Agreement, without the Principal's prior written approval. The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under the Services Agreement.
- b) If the Contractor wishes to assign the benefit of all rights, title and interest in this Agreement, the Principal will be treated as having given approval under clause 21.2(a) if the Lessor has given or must not withhold its approval under the Lease.

### **21.3. Confidentiality**

The details of the Services Agreement and any arrangement contemplated by the Agreement (**Confidential Information**) are to be held as confidential by the Contractor, unless:

- a) 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;
- b) the Confidential Information is required to be disclosed to a government agency;
- c) the Confidential Information is required to be disclosed to any stock exchange;
- d) the Confidential Information is disclosed to an employee, agent, advisor, subcontractor or contractor of the Contractor, where that disclosure is reasonably necessary for the conduct of the Services Agreement and provided that the person to whom the information is disclosed is bound by the same confidentiality obligations;
- e) the Confidential Information is disclosed to a financing Party or prospective

financing Party or to an agent, employee or advisor, subcontractor or contractor of a financing Party or prospective financing Party for the purpose relating to a financing document or the financing of any project funding and provided that the person to whom the information is disclosed is bound by the same confidentiality obligations; or

- f) the disclosure was consented to in writing by the Principal.

The Principal may disclose Confidential Information when required by law under the *Freedom of Information Act (WA)* 1992 or under a Court order or as otherwise required by Law.

#### **21.4. Publicity**

The Contractor must not issue any press release or make any other public announcement relating to the Services Agreement other than as ordered or required by Law or in the course of administrative or judicial proceedings, or in accordance with the requirements of any applicable stock exchange, without prior written approval of the Principal.

#### **21.5. Severability**

- a) If any part of the Services Agreement is or becomes for any reason invalid or unenforceable at Law, that part of the Agreement is deemed to be severed from the Agreement without affecting the remainder of the Agreement and the remainder of the Agreement continues to be valid and enforceable.
- b) The Principal and the Contractor agree to use their reasonable endeavours to agree on an equitable adjustment to any provisions of the Agreement determined to be invalid, illegal or unenforceable with a view towards giving effect to the purposes of the Services Agreement.

#### **21.6. Legal Costs**

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

#### **21.7. Price Basis**

Unless otherwise indicated, prices shall be in Australian Dollars and include all duties, levies, taxes and charges applicable at the time. Any charge not stated as being additional will not be allowed as a charge against any transaction under the Services Agreement.

#### **21.8. Cumulative Rights**

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

#### **21.9. Waiver**

No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Services Agreement shall prejudice, restrict or limit the rights of the Principal, nor shall

any waiver of those rights operate as a waiver of any subsequent breach.

#### **21.10. Relationship of the Parties**

Nothing in the Services Agreement constitutes or is intended to constitute a relationship of employer and employee, joint venture, principal and agent, or partnership between the Principal and the Contractor (including its employees or any related bodies corporate).

#### **21.11. Rights and Remedies**

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether at Law or under the Services Agreement.

#### **21.12. Patent Rights / Copyright and Other Intellectual Property Rights**

The Contractor warrants that neither the Services nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trade mark or name, copyright or other protected right and shall indemnify the Principal against any action, suit, claim, demand, loss, proceeding, liability, cost or expense resulting from any alleged infringement.

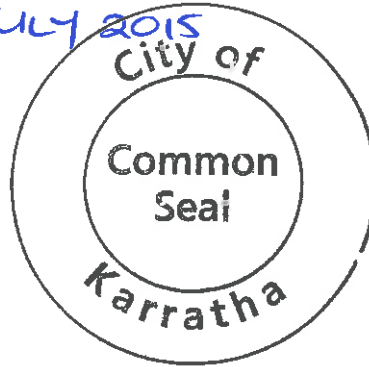
#### **21.13. Survival**

**Clauses 1, 9, 11, 14, 15, 16, 20 and 21** survive the termination of the Services Agreement or expiry of the Term.

## Signing page

Executed as an agreement ON 20 JULY 2015

Principal  
The common seal of  
City of Karratha  
was hereunto affixed in the presence of:



sign  
here ►

  
Chairperson

print  
name

PETER J LONG

sign  
here ►

  
Chief Executive Officer

print  
name

CHRIS ADAMS

### Contractor

Signed by Waste 2 Gas Pty Ltd] in accordance with section 127 of the  
Corporations Act 2001 (Cth):

sign  
here ►

  
Director

Print  
name

Enzo Gullotti

sign  
here ►

  
Director/Company Secretary

Print  
name

SAM MANCIONE



## ANNEXURE 1 – CONTRACTOR AND PRINCIPAL DETAILS

### **Contractor's Name and ABN**

Name: Waste 2 Gas Pty Ltd

ABN: \_\_\_\_\_

### **Contractor's Contact Details**

#### **Contractor's Address**

Street Address: 1/ 12 Parliament Place

Suburb: West Perth

State: WA Postcode: 6005

Postal Address: PO Box 1036

Suburb: West Perth

State: WA Postcode: 6872

#### **Contractor's Representative**

Name: Jason Pugh

#### **Contractor's Phone, Fax and Email Addresses**

Phone (Business Hours): 08 9226 0722

Phone (Emergency): 0448 777 733

Facsimile: 08 94818023

Email: Jason.pugh@newenergycorp.com.au

### **Contractor's Key Personnel**

Name: Miles Mason Position: Business Development Manager

Name: Dylan Keenan Position: Project Engineer

Name: \_\_\_\_\_ Position: \_\_\_\_\_

## **Principal's Name and ABN**

Name: City of Karratha

ABN: 83 812 049 708

## **Principal's Contact Details**

### **Principal's Address**

Street Address: Welcome Road

Suburb: Karratha

State: Western Australia Postcode: 6714

Postal Address: Post Office Box 219

Suburb: Karratha

State: Western Australia Postcode: 6714

### **Principal's Representative**

Name: Steve Wachter

### **Principal's Phone, Fax and Email Addresses**

Phone (Business Hours): (08) 9186 8555

Phone (Emergency): 0408915419

Facsimile: (08) 9185 1626

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**ANNEXURE 2 – RATES****Table 1 – Principal's Waste Rates**

<b>Description</b>	<b>Unit</b>	<b>Price (2015) ex GST</b>
Principal's waste delivered to the RRF	\$/tonne	\$101.66
Legacy waste tyres delivered to the RRF	\$/tonne	\$253.50

**Notes for 2015 calculation:**

- Escalation in accordance with Clause 11.1(c).
- CPI = 1.7%
- PPI = 1.1%
- Adjusted rise = 1.4%

**Table 2 – Commercial Waste Rates (post Boodarie RRF opening)**

<b>Description</b>	<b>Unit</b>	<b>Price (2017) ex GST</b>	<b>Price (2018) ex GST</b>	<b>Price (2019) ex GST</b>
Commercial & Industrial waste delivered to RRF	\$/tonne	\$130.00	\$140.00	\$150.00

**Notes:**

1. The Commercial & Industrial rate applies to commercial and industrial waste, contaminated green waste, and miscellaneous waste
2. The Clause 11.1(c) Escalation formula applies post 2019 with maximum increase of 5%, with proposed increases above 5% to be discussed and agreed with the City. If the parties cannot come to an agreement then the matter will be resolved by Expert Determination in accordance to Annexure 5.
3. The Tyre rate to be determined based on the prior year's disposal rate and quantities received.
4. The gate fee for other commercial waste streams will be set by the City with NE margin in accordance to Table 3.

**Table 3 – New Energy Margin applied to Commercial Waste Rates not delivered to the RRF post Boodarie RRF opening (ex-GST)**

<b>Gate Fee Breakdown</b>	<b>New Energy margin (%)</b>	<b>Note</b>	<b>Waste Location</b>
<b>Other Wastes</b>			
Hazardous	5		Direct to LF
C&I	n/a	C&I rate	RRF
Clean concrete	10		KTS/ landfill
Green waste – Commercial	10		KTS
Green waste - Residential	n/a	No margin	KTS
Green waste – KTS rejects	n/a	MSW rate	RRF
Green waste – Contaminated	n/a	C&I rate	RRF
Truck C&D	n/a	C&I rate	RRF
Contaminated Soil	5		Direct to LF
General C&D	10		KTS/ landfill
Tyres	n/a	Tyre rate	RRF
Misc	n/a	C&I rate	RRF

**Notes:**

1. City to set the rates for all wastes not delivered directly to the 7 Mile RRF.
2. No New Energy margin applies to the Principles' waste, including but not limited to MSW, Residential waste or household green waste.
3. The New Energy margin on commercial waste rates not specified in Table 3 above to be 10%.
4. C&I rate as per Table 2 above.
5. Tyre rate to be determined based on the prior year's disposal rate and quantities received.
6. For clarity, the New Energy margin will be included in any publically published gate fees schedule and New Energy will pay to the City the published gate fee minus the New Energy margin.

**Table 4 – New Energy Residual Waste Rates**

<b>Description</b>	<b>Unit</b>	<b>Price (2015) ex GST</b>
Residuals from 7 Mile RRF and Boodarie RRF delivered to landfill	\$/tonne	\$70.98

**Notes for 2015 calculation:**

- Escalation in accordance with Clause 11
- CPI = 1.7%
- PPI = 1.1%
- Adjusted rise = 1.4%

**Table 5 – New Energy Contaminated Waste Rates**

<b>Description</b>	<b>Unit</b>	<b>Price (2015) ex GST</b>
Class 3 waste (AQCS residual) from the Boodarie RRF delivered to landfill	\$/tonne	\$228.18

**Notes for 2015 calculation:**

- Escalation in accordance with Clause 11
- CPI = 1.7%
- PPI = 1.1%
- Adjusted rise = 1.4%

### **ANNEXURE 3 – WASTE ACCEPTANCE PROTOCOL**



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# New Energy Corporation Pty Ltd

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## 7 Mile Resource Recovery Facility

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### Waste Acceptance Plan

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NEC Doc: KAR\_000\_PLN\_013

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#### Revision Status

Rev	Date	By	Chck'd	Appr'd	Comments
A	07/02/15				Draft for Roebourne Tender

**Revision History Tracking Record**

Rev.	Date	NEC Approval	RRC Approval	Description/Comments
A	07/04/2014			Draft for Roebourne Tender
B	07/02/2015			Draft for Service Agreement



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Appendix D – Site Truck Movement Plans .....4

Appendix E – Weighbridge Documentation Examples.....5

# 1 Introduction

## 1.1 Overview

This plan documents the key areas relating to Waste Acceptance at the 7 Mile Waste Facility.

This document should be read in conjunction with the Annexure 3 - "Waste Acceptance Protocol" and "Service Agreement Number xxx" and will be reviewed and updated in accordance with that Agreement as well as required by changing site operational conditions.

## 1.2 Purpose and Scope

The purpose of this Waste Acceptance Plan is to provide a coordinated plan for the acceptance and delivery of waste to the 7 Mile RRF. Further detail is provided on the types of wastes accepted at the 7 Mile RRF, the City's Transfer station, the landfill and the lagoons.

The scope of the Plan covers all waste streams that are identified in Appendix A. The key objectives of the Plan are:

- To operate a safe site and maintain a zero harm environment.
- To maximise resource recovery of waste delivered to the RRF and minimise the environmental impact of waste management in the region.
- To coordinate the roles and responsibilities of the contractor and the Shire.
- To provide a seamless waste management service to the users of the RRF

## 2 Abbreviations and Definitions

### 2.1 Abbreviations

AQCS	– Air Quality Control System
C&D	– Construction and Demolition Waste
C&I	– Commercial and Industrial Waste
EPA	– Environmental Protection Agency
ROE	– Roebourne
GW	– Green Waste
MRF	– Materials Recycling Facility
MSW	- Municipal Solid Waste
MWe	– Mega Watts (electrical)
MWt	– Mega Watts (thermal)
NEC	– New Energy Corporation
RRF	- Resource Recovery Facility
SOS	– Scope of Services
SOW	– Scope of Work
SPV	– Special Purpose Vehicle
tpa	– tonnes per annum
WA	– Western Australia
WDF	– Waste Derived Fuel
WEEE	– Waste Electrical and Electronic Equipment
WtE	– Waste to Energy
WTF	– Waste Treatment Facility
WTS	– Waste Transfer Station

### 2.2 Definitions

<b>Contractor</b>	New Energy Corporation
<b>Market</b>	Any location where commercial transactions take place
<b>Principal</b>	Shire of Roebourne
<b>Product</b>	Any material removed from the facility that has a market value
<b>Project</b>	The 7 Mile Resource Recovery Facility
<b>Quarantined Waste</b>	Waste that is either hazardous or outside of the licence conditions
<b>Residue</b>	Any material removed from the facility that has no market value.
<b>Scope of Work</b>	Physical facilities and systems to be designed, supplied, constructed, demolished and modified as part of the Project
<b>Suppliers</b>	Any company, body or person who is supplying goods or services in relation to the Project

## 7 MILE RRF Waste Acceptance Plan

### 3 Waste Overview

The following outlines the sources of the waste and the means and timing of getting it to the facility

#### 3.1 Waste Sources

Outline the sources of expected waste and .....

#### 3.2 Waste Types

#### 3.3 Waste Composition Criteria

##### 3.3.1 Municipal Solid Waste

##### 3.3.2 Residential General (Bulky) Waste

##### 3.3.3 Separated Green Waste

##### 3.3.4 C&D

##### 3.3.5 C&I

##### 3.3.6 Hazardous Waste

##### 3.3.7 Contaminated Soil

##### 3.3.8 Tyres

##### 3.3.9 Hazardous Waste

##### 3.3.10 Clean Concrete

#### 3.4 Waste Ownership Transfer

## 7 MILE RRF Waste Acceptance Plan

### **4 Waste Arrival**

#### **4.1 Arrival Overview**

The following provides an overview of the process in a truck arriving at the gate and .....

#### **4.2 Weighbridge Queuing and Entry**

#### **4.3 Identification**

##### **4.3.1 Truck**

##### **4.3.2 Driver**

##### **4.3.3 Waste Type Confirmation**

#### **4.4 Weighbridge Ticket**

#### **4.5 Weighbridge Exit**

## 7 MILE RRF Waste Acceptance Plan

### 5 Site Movements

Outline conditions of truck movements around site and the go and no go areas

#### 5.1 Destinations

#### 5.2 Routes

##### 5.2.1 MRF Unloading

##### 5.2.2 Transfer Station Unloading

##### 5.2.3 Landfill Unloading



## **6 Waste Receipts**

### **6.1 Receipts Overview**

The following provides an overview of the process in a truck unloading in a receipts area.....

### **6.2 MRF Unloading**

### **6.3 Transfer Station Unloading**

### **6.4 Landfill Unloading**

## 7 MILE RRF Waste Acceptance Plan

### **7 Waste Acceptance**

#### **7.1 Rejected Load**

#### **7.2 Hazardous Load**

#### **7.3 RRF Non-Availability**

## **8 Invoicing and payments**

### **8.1 New Energy Customers**

### **8.2 Karratha Customers**

### **8.3 Invoicing**

### **8.4 Payment**

## 7 MILE RRF Waste Acceptance Plan

### 9 Vehicle Departure

#### 9.1 Departure Overview

The following provides an overview of the process in a truck departing the gate and .....

#### 9.2 Weighbridge Queuing and Entry

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##### 9.3.1 Truck

##### 9.3.2 Driver

#### 9.4 Weighbridge Ticket

#### 9.5 Weighbridge and Site Exit

## 7 MILE RRF Waste Acceptance Plan

# 10 Emergency Crisis Response

## 10.1 Overview

The following provides an overview of the process in a truck arriving at the gate and .....

## 10.2 Out of Hours Contacts

## 10.3 Serious Injury

## 10.4 Fire

## 10.5 Hazardous Material

## 10.6 Environmental

## 10.7 Off Site Events

## **Appendix A – Waste Streams Accepted**

## **Appendix B – Emergency Crisis Contacts List**

## **Appendix C – Crisis Management Booklet**



## **Appendix D – Site Truck Movement Plans**

## **Appendix E – Weighbridge Documentation Examples**



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# New Energy Corporation Pty Ltd

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## 7 Mile Resource Recovery Facility

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### Waste Acceptance Plan

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NEC Doc: KAR\_000\_PLN\_013

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#### Revision Status

Rev	Date	By	Chck'd	Appr'd	Comments
A	07/02/15				Draft for Roebourne Tender

[illegible]

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## 7 MILE RRF Waste Acceptance Plan

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Outline conditions of truck movements around site and the go and no go areas

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### **6.3 Transfer Station Unloading**

### **6.4 Landfill Unloading**

## 7 MILE RRF Waste Acceptance Plan

### **7 Waste Acceptance**

#### **7.1 Rejected Load**

#### **7.2 Hazardous Load**

#### **7.3 RRF Non-Availability**

## 7 MILE RRF Waste Acceptance Plan

### **8 Invoicing and payments**

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#### **8.2 Karratha Customers**

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#### **8.4 Payment**

## 7 MILE RRF Waste Acceptance Plan

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## 7 MILE RRF Waste Acceptance Plan

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## 10.4 Fire

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## 10.6 Environmental

## 10.7 Off Site Events

## **Appendix A – Waste Streams Accepted**



## **Appendix B – Emergency Crisis Contacts List**

## 7 MILE RRF Waste Acceptance Plan

### **Appendix C – Crisis Management Booklet**

## **Appendix D – Site Truck Movement Plans**

## **Appendix E – Weighbridge Documentation Examples**

**ANNEXURE 4 – SAMPLE WASTE DELIVERY PLAN**

**Note:** We anticipate that the Waste Delivery Plan will be based on the prior year] Annual Waste Delivery Plan to be in the same format as the Sample contained here.

Month	Principal's Waste (Tonnes)	Legacy Waste Tyres (Tonnes)
July	500 – 2000	30 - 60
August	500 – 2000	30 - 60
September	500 – 2000	30 - 60
October	500 – 2000	30 - 60
November	500 – 2000	30 - 60
December	500 – 2000	30 - 60
January	500 – 2000	30 - 60
February	500 – 2000	30 - 60
March	500 – 2000	30 - 60
April	500 – 2000	30 - 60
May	500 – 2000	30 - 60
June	500 – 2000	30 - 60
<b>Annual Total</b>	<b>Arising</b>	<b>500</b>

## ANNEXURE 5 – EXPERT DETERMINATION

- (a) The parties:
- (i) may agree, in writing, that any dispute be referred; and
  - (ii) have agreed to refer any non-agreement arising under **clauses 8.1(c), 8.3(b), 8.7 (c) and 13.5 (d)**,  
  
to an individual for expert determination in accordance with this **Annexure 5**.
- (b) Within ten (10) days after:
- (i) the parties agree (in accordance with **paragraph (a)(i)** of this **Annexure 5**) to refer any dispute for expert determination in accordance with this **Annexure 5**; or
  - (ii) the date of the applicable notice given pursuant to **clauses 8.1(c), 8.3(b), 8.7(c) and 13.5 (d)** ,  
  
each party must propose to the other the name of an individual to be appointed as an Expert to determine the dispute or matter in relation to which the parties have not reached agreement, and seek to agree on the identity of the individual to determine the dispute or matter (**Expert Nomination Period**).
- (c) Each party acknowledges that any individual that is to act as an expert appointed must have the following attributes:
- (i) experience in acting as an expert on like disputes or matters;
  - (ii) a reputation for excellence in acting as an expert on like disputes or matters;
  - (iii) a reputation fairness and transparency in acting as an expert on like disputes or matters; and
  - (iv) no connection with and no interest in (in each case direct or indirect) either party, including through any family or friend.
- (d) If the parties do not agree on the identity of the individual to be appointed as an Expert within ten (10) after the expiry of the Expert Nomination Period, the parties jointly must request [the President, for the time being, of the Law Society of Western Australia] to appoint an individual to act as the Expert, and if either party does not with the other party jointly request [the President, for the time being, of the Law Society of Western Australia] to appoint an individual to act as the Expert, if one of the parties so requests, both will be treated as having so requested.
- (e) The individual appointed by agreement or in accordance with paragraph (d) of this Annexure 5 is the Expert.
- (f) The seat of the determination by the Expert must be Perth, Western Australia, and the location of all meetings for the administration of the determination by the Expert must be Perth, Western Australia.
- (g) Each party jointly with the other party must require the Expert to determine the dispute or matter within thirty (30) days (after the appointment of the Expert) or such other



- period as the parties may agree, in writing, and if either party does not with the other party jointly so require the Expert, if one of the parties so requires, both will be treated as having so required. If the Expert considers that the determination of the dispute or matter will take longer than thirty (30) days, each party must consult with the other party to the dispute or matter so as to endeavour to agree on that longer period. If the parties do not agree on that longer period, that longer period will be determined by the Expert. In any event, the dispute must be determined with sixty (60) days after the date of the appointment of the Expert.
- (h) Each party to the dispute or matter will have the right to make representations and submissions, in writing, to the Expert in the manner that the Expert determines. There will be no formal hearing or verbal representations or submissions, unless the Expert determines that this is necessary. The language of representations and submissions, in writing, or verbal representations, in English.
  - (i) Each party must provide to the Expert any documents or information that the Expert may request.
  - (j) In making any determination in relation to clause 2.3(b) the Expert must have regard to all the circumstances, including the preservation at all times of an appropriate contingency in the program of the Contractor, clause 8.3(b) the Expert must have regard to all the circumstances, but primarily the efficient and lawful and safe operation of the RRF and the costs and expenses of the Contractor, clause 8.7 (b) the Expert must have regard to all the circumstances, but primarily ensuring that the Contractor is not exposed to demand risk for the provision of Services and clause 12.5 (b) the Expert must have regard to all the circumstances, but primarily the efficient and lawful and safe operation of the RRF and the costs and expenses of the Contractor.
  - (k) The Expert must act as an expert and not as an arbitrator.
  - (l) The determination of the Expert:
    - (i) must be in writing, must give reasons and must be provided to each party at the same time; and
    - (ii) is final and binding on the parties, other than in the case of manifest error or fraud, in which case this **Annexure 5** must be applied again with the dispute or matter to be determined by another Expert.
  - (m) If the determination of the Expert contains a clerical error or mistake, the Expert may correct that error or mistake in the determination, and any such correction must be in the form of a mark-up of the determination of the Expert provided to each Party under paragraph (l) of this Annexure 5, and must be provided by the Expert to each party at the same time, and is final and binding on the parties.
  - (n) Each Party must comply with the terms of the determination of the Expert, and in doing so must do so without delay, and non-compliance will be treated as a breach of this Services Agreement.
  - (o) The costs and expenses of the Expert (including the costs and fees of any advisers appointed by the Expert) must be borne equally by each party and each party must be borne by that party.

## ANNEXURE 6 – PRODUCT AND RESIDUES MANAGEMENT PLAN

Flow Chart - 7 Mile Management Principles

