



Deed of Amendment and Restatement

Project Participants' Agreement – Regional Resource
Recovery Centre Project of the Southern Metropolitan
Regional Council

—

Town of East Fremantle

City of Fremantle

City of Melville

Southern Metropolitan Regional Council

—

Deed of Amendment and Restatement

Project Participants' Agreement – Regional Resource Recovery Centre Project of the Southern Metropolitan Regional Council

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Details

Date

14 April 2021

Parties

Name	Town of East Fremantle
ABN	80 052 365 032
Notice details	135 Canning Highway, East Fremantle

Name	City of Fremantle
ABN	74 680 272 485
Notice details	William Street, Fremantle

Name	City of Melville
ABN	81 152 433 900
Notice details	Almondbury Road, Ardross, Perth

Name	Southern Metropolitan Regional Council
ABN	28 965 675 752
Notice details	9 Aldous Place, Booragoon, Perth

Background

- A By this deed the Parties agree to amend and restate the Project Participants' Agreement on the terms and conditions set out below.

Agreed terms

1. Defined terms & interpretation

In this deed:

- (a) **Project Participants' Agreement** means the in agreement titled "Project Participants' Agreement – Regional Resource Recovery Centre Project of the Southern Metropolitan Regional Council" dated 12 April 1999 and originally between the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle and City of Melville; and
- (b) **Parties** means the Town of East Fremantle, City of Fremantle, City of Melville and the Southern Metropolitan Regional Council.

2. Commencement

This deed takes effect from the date it is signed by all of the Parties (**Effective Date**).

3. Amendments to the Contract

- (a) On and from the Effective Date, the Project Participants' Agreement shall be amended and restated in the form set out in Schedule 1 including that the Southern Metropolitan Regional Council becomes a party to the Project Participants' Agreement.
- (b) The Parties each acknowledge and agree that the terms of the Project Participants' Agreement (as amended by this deed) shall otherwise continue in full force and effect.

4. Further Assurance

The Parties agree that they shall execute and deliver all necessary documents and do all necessary acts and things in order to give full effect to this deed.

5. No waiver

This deed shall not have the effect of (nor shall the amendments to the Project Participants' Agreement have the effect of) amending or waiving any provision of the Project Participants' Agreement except as expressly provided in this deed.

6. Variation

This deed cannot be altered or varied by the Parties except by deed.

7. Counterparts

This deed may consist of a number of executed counterparts and, if so, the counterparts taken together constitute one document.

Signing page

EXECUTED as a deed.

THE COMMON SEAL of TOWN OF EAST)
FREMANTLE was hereunto affixed by authority of a)
resolution of the Council in the presence of:)






Mayor




Chief Executive Officer

THE COMMON SEAL of CITY OF FREMANTLE was)
hereunto affixed by authority of a resolution of the Council)
in the presence of:)





DEPUTY Mayor



Chief Executive Officer

THE COMMON SEAL of CITY OF MELVILLE was)
hereunto affixed by authority of a resolution of the Council)
in the presence of:)



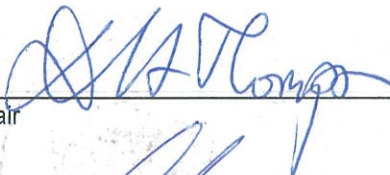
Mayor




Chief Executive Officer



THE COMMON SEAL of SOUTHERN)
METROPOLITAN REGIONAL COUNCIL was hereunto)
affixed by authority of a resolution of the Council in the)
presence of:)



Chair



Chief Executive Officer



Schedule 1 – Amended and Restated Project Participants' Agreement

Dated 14 April 2021

**TOWN OF EAST FREMANTLE
and
CITY OF FREMANTLE
and
CITY OF MELVILLE
and
THE SOUTHERN METROPOLITAN REGIONAL COUNCIL**

AMENDED AND RESTATED PROJECT PARTICIPANTS' AGREEMENT

**REGIONAL RESOURCE RECOVERY CENTRE
PROJECT
OF THE
SOUTHERN METROPOLITAN REGIONAL COUNCIL**

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AGREEMENT

THIS AGREEMENT dated

14 April

2021

BETWEEN **TOWN OF EAST FREMANTLE** of 135 Canning Highway, East Fremantle, Western Australia 6158

AND **CITY OF FREMANTLE** of William Street, Fremantle, Western Australia 6160

AND **CITY OF MELVILLE** of Almondbury Road, Ardross, Western Australia 6153

(“the Project Participants”)

AND **SOUTHERN METROPOLITAN REGIONAL COUNCIL** of 9 Aldous Place Booragoon WA 6154

RECITALS

- A. The districts of the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle, Town of Kwinana, City of Melville and City of Rockingham (together the Participants), were constituted as a regional district by virtue of an Order of the Governor made under the Former Act and published in the Government Gazette on 13 December 1991.
- B. Pursuant to the Former Act and by virtue of the Order of the Governor, a regional council was then constituted.
- C. Under the Former Constitution Agreement dated 30 October 1991 made between the Participants, the regional council so constituted was named the South West Metropolitan Regional Waste Management Council.
- D. By virtue of transitional provisions of the Act, the regional council continues as a regional local government as if it had been constituted as a regional local government under the Act.
- E. By an Establishment Agreement made between the Participants and approved by the Minister for Local Government on 22 April 1998 (“the Establishment Agreement”), the Participants agreed to amend the Former Constitution Agreement by revoking it and substituting it with the Establishment Agreement.
- F. Under the Establishment Agreement, the Regional Local Government was renamed the Southern Metropolitan Regional Council.
- G. Pursuant to clause 8 of the Establishment Agreement, the Regional Local Government adopted the Project in accordance with the requirements of that clause.

- H. In accordance with clause 8.4 of the Establishment Agreement, in 1999 the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle and City of Melville (the **Original Project Participants**) decided to participate in the Project and gave notice of their decision to the Regional Local Government.
- I. Pursuant to clause 8.6 of the Establishment Agreement, Original Project Participants agreed upon the matters referred to in that clause and agreed to enter into this Agreement to record the terms of their agreement.
- J. By supplementary deed dated 29 August 2000, the Original Project Participants agreed to vary, and to add to, the terms of this Agreement.
- K. In 2010 the City of Canning withdrew from the Regional Local Government and from the Project. In 2017 the City of Cockburn withdrew from the Project.

OPERATIVE PART

1. DEFINITIONS

1.1 In this Agreement, unless the context requires otherwise, words and expressions defined in the Establishment Agreement have the same meaning where appearing in this Agreement.

1.2 In this Agreement, unless the context requires otherwise:

“borrowing” means a borrowing of money, obtaining of credit or arrangement of financial accommodation and includes all principal, interest and fees and charges;

“Project” means the project referred to in the Project Business Plan, being the establishment, operation and management of a regional resource recovery centre for maximising the diversion of waste from landfill;

“Project Budget” means the annual budget for the Project prepared and adopted under clause 2.2;

“Project Participants” means Town of East Fremantle, City of Fremantle and City of Melville.

“Project Business Plan” means the business plan for the Project adopted by the council of the SMRC on 30 July 1998 and as amended or replaced from time to time;

“WtE Contract” means the contract for waste-to-energy services entered into between the Project Participants, the Regional Local Government and the WtE Contractor.

“WtE Contractor” means Kwinana WTE Project Co Pty Ltd.

2. AGREEMENT TO TERMS OF PROJECT

2.1 Terms of Project

In accordance with clause 8.6 of the Establishment Agreement, the Project Participants agree that the provisions of this clause 2 shall apply to the Project.

2.2 Project Budget

- (1) Not later than 30 April in each year, the Project Participants shall cause the Regional Local Government to prepare a budget for the Project for the next financial year and the members of the Council who are appointed by the Project Participants shall adopt the budget.
- (2) The form of the budget shall include, without limitation, the requirements prescribed under the Act for the budget for the municipal fund.
- (3) Nothing in this clause derogates from the Regional Local Government's obligation to prepare and adopt an annual budget for the Regional Local Government under the Act.

2.3 Contributions to Capital Assets

- (1) The Project Participants shall make an annual contribution towards the acquisition of any asset of a capital nature required for the Project.
- (2) The annual contribution shall be an amount which bears the same proportion to the cost of the acquisition disclosed in the Project Budget for that financial year as the Population of that Project Participant bears to the total of the Populations of all Project Participants.

Footnote:

1. "Population" is defined in clause 6 of the Establishment Agreement as follows:

'Population' means at any relevant time in relation to a Participant, the estimated resident population of that Participant as set out in Table 1 (Estimated Resident Population In Statistical Local Areas) of the statistics last published by the Australian Bureau of Statistics titled 'Estimated Resident Population by Age and Sex in Statistical Local Areas' or any substitute therefor accepted by the Government of the Commonwealth of Australia from time to time as a measure of resident population provided that if at any time the statistics are discontinued or suspended or if in the opinion of the Regional Local Government the method of computation thereof is substantially altered there shall be substituted therefor such alternative method of establishing resident populations of the Participant as the Regional Local Government may resolve;

- (3) Where the cost of the acquisition is met by a borrowing by the Regional Local Government for the acquisition of the capital asset, then the annual contribution in respect of that cost shall be payable:
 - (a) in the same manner as the borrowing; and
 - (b) not less than 10 days prior to the due date of the relevant loan instalments or repayment of the borrowing.

- (4) Where the annual contribution relates to a cost other than a borrowing, then the contribution shall be payable in such instalments and on such dates as are determined by the Regional Local Government.
- (5) The Project Participants acknowledge that the bank or other financial institution, from which a borrowing is to be made by the Regional Local Government, may require the Project Participants to guarantee or secure the borrowing.
- (6) Where the liability of a Project Participant under any guarantee or security referred to in sub-clause (5) is limited to the proportion which the Population of that Project Participant bears to the total of the Populations of all Project Participants, then the Project Participants agree to vary the proportion, from time to time, when notified by the Regional Local Government of a change to the Populations.

2.4 Contributions to Operating Expenditure

- (1) This clause applies to all operating expenditure, including administrative expenses, relating to the Project other than any WtE Payments and expenditure relating to educating the public with respect to the Project.
- (2) The Project Participants shall make an annual contribution towards the operating expenditure to which this clause 2.4 applies.
- (3) The annual contribution for each financial year shall be paid by 12 monthly instalments in arrears on the later of:
 - (a) the expiry of a period of 14 days after receipt of an invoice from the Regional Local Government; and
 - (b) the last day of the month in which the invoice is received.
- (4) Each monthly instalment payable by a Project Participant shall be calculated in accordance with the formula set out in the Schedule.
- (5) This clause 2.4 shall apply notwithstanding clause 8.8 of the Establishment Agreement.

2.5 Waste-to-Energy Payments

- (1) This clause applies to all payments to be made under the WtE Contract (**WtE Payments**).
- (2) The WtE Payments shall be calculated in accordance with the formula set out in the Schedule.
- (3) The Regional Local Government shall issue each Project Participant with an invoice for their respective WtE Payments.
- (4) All WtE Payments shall be paid within 14 days after receipt of an invoice from the Regional Local Government.

- (5) This clause 2.5 shall apply notwithstanding clause 8.8 of the Establishment Agreement.

2.6 Contributions to Education

- (1) This clause applies to all operating expenditure, including administrative expenses, relating to educating the public with respect to the Project.
- (2) The Project Participants shall make an annual contribution towards the operating expenditure to which this clause 2.6 applies.
- (3) The annual contribution shall be an amount which bears the same proportion to the cost of the operating expenditure to which this clause 2.6 applies as disclosed in the Project Budget for that financial year as the Population of that Project Participant bears to the total of the Populations of all Project Participants.
- (4) The annual contribution shall be payable by 4 quarterly instalments in advance within 30 days after receipt from the Regional Local Government of an invoice.
- (5) This clause 2.6 shall apply notwithstanding clause 8.8 of the Establishment Agreement.

2.7 Proportional Equity or Liability

- (1) The Project Participants shall request the Regional Local Government to prepare, as soon as practicable after the end of each financial year, financial statements for the Project which include each of the Project Participants:
 - (a) proportional equity or liability with respect to the Project; and
 - (b) proportional entitlement to any operating surplus.
- (2) Subject to subclause (3), the proportional entitlement of a Project Participant to any operating surplus for a financial year shall be credited by the Regional Local Government during the next financial year towards the annual contribution payable by the Project Participant under clause 2.3, 2.4 or 2.6 as determined by the Regional Local Government.
- (3) Within 30 days after receipt of the financial statements referred to in subclause (1), a Project Participant may request the Regional Local Government to:
 - (a) credit the Project Participant's proportional entitlement to operating surplus, towards the annual contribution payable by that Project Participant under clause 2.3, 2.4 or 2.6 in respect of the next financial year; or
 - (b) pay that proportional entitlement to the Project Participant as soon as practicable following the acceptance of the financial statements by the Regional Local Government.

2.8 Late Payment

- (1) If a Project Participant fails to pay to the Regional Local Government any amount due under this Agreement or the Establishment Agreement, with respect to the Project, on or before the due date for payment, then the Project Participant shall pay, in addition to the amount due:
 - (a) interest at an annual rate 2% higher than that charged by the Regional Local Government's bank on an overdraft of the same size as the unpaid amount, calculated from and including the due date of payment to but excluding the actual date of payment; and
 - (b) an administration fee specified in the Project Budget approved under clause 2.2.
- (2) This clause 2.8 shall apply notwithstanding clause 8.9 of the Establishment Agreement.

2.9 Withdrawal from Project

- (1) As soon as practicable after a Project Participant has given notice of its intention to withdraw from the Project under clause 8.10 of the Establishment Agreement, the Project Participants shall request the Regional Local Government to:
 - (a) prepare an amended business plan for the Project having regard to the effect of the withdrawal of the Project Participant giving the notice;
 - (b) provide a copy of the amended business plan to the Project Participants; and
 - (c) include in the amended business plan details of any changes to the annual contributions payable by the Project Participants after the withdrawal takes effect.

Footnote:

1. Clause 8.10 of the Establishment Agreement provides that a Project Participant may, at any time, give notice of its intention to withdraw from the Project.
 2. Clause 8.11 of the Establishment Agreement sets out when the withdrawal takes effect.
 3. Under clause 8.20 of the Establishment Agreement, the members of the Council appointed by the Project Participants of a Project may resolve, by absolute majority to wind up the Project.
 4. Clauses 8.21 and 8.22 of the Establishment Agreement deal with the "Division of Assets" and the "Division of Liabilities" respectively, if a Project is wound up.
- (2) The Project Participant which has given notice of its intention to withdraw under clause 8.10 of the Establishment Agreement shall meet the cost of preparation of the amended business plan.
 - (3) The Project Participants acknowledge the provisions of clause 36.2 of the WtE Contract and the obligation to enter into an agreement prior to the withdrawal from the Project for the supply of waste on the same terms as the WtE Contract.

2.10 Arrangements After Withdrawal

- (1) This clause 2.10 applies in the event of the withdrawal of a Project Participant and, in this clause:

“Former Project Participant” means a Project Participant which has withdrawn.

- (2) Forthwith after the withdrawal of a Project Participant takes effect, the continuing Project Participants shall request the Regional Local Government to determine, and give notice to all Project Participants of, the amount equal to:
 - a) the proportional entitlement of the surplus funds which would be payable to the Former Project Participant; or
 - b) the proportional liability which would be payable by the Former Project Participant,

as the case may be, if the Regional Local Government was wound up, but disregarding any borrowing referred to in subclause (4) and any asset acquired from funds the subject of the borrowing.

- (3) The proportional entitlement of each Project Participant to any surplus funds or the proportional liability of each Project Participant to any deficit shall be in the same proportion as the contributions of a particular Project Participant to the assets of the Project bear to the total of the contributions of all Project Participants to the Project

- (4) Forthwith upon receipt of the notice given by the Regional Local Government under subclause (2) as the case requires:
 - a. the continuing Project Participants shall request the Regional Local Government to distribute to the Former Project Participant its proportional entitlement to the surplus funds referred to in subclause (2)(a); or
 - b. the Former Project Participant shall pay to the Regional Local Government an amount equal to its proportional liability with respect to the Project referred to in subclause (2)(b). (Deed 2000)

- (5) In the case of a borrowing authorised by the Regional Local Government before the withdrawal takes effect, the Former Project Participant shall continue to pay to the Regional Local Government the annual contribution for that borrowing in accordance with clause 2.3 until the borrowing has been repaid or satisfied.

- (6) Subject to sub-clauses (7) and (8), for the purpose of determining the proportional equity or liability of a Former Project Participant, all assets of the Project are to be valued at their respective depreciated values as disclosed in the financial statements of the Regional Local Government.

- (7) Notwithstanding sub-clause (6), if the continuing Project Participants consider that any asset is worth less than its book value then the matter shall be referred for determination by a valuer appointed by the Regional Local Government and the valuer shall act as an expert and not an arbitrator and the valuer’s decision shall be final and binding on the Project Participants.

- (8) In the case of an asset acquired from funds the subject of a borrowing:
- (a) the asset shall be valued:
 - (i) at the date upon which the borrowing is fully repaid or satisfied;
 - and
 - (ii) at its depreciated value as disclosed in the Project Budget, and
 - (b) the Former Project Participant shall only be entitled to be paid for any proportional equity in the asset when the borrowing is fully repaid or satisfied.
- (9) In the case of any asset other than an asset the subject of a borrowing, the continuing Project Participants shall request the Regional Local Government to pay the Former Project Participant, as soon as practicable after the withdrawal takes effect, any proportional equity in the asset.

3. ESTABLISHMENT AGREEMENT

- (1) The Project Participants acknowledge that, except as otherwise varied by this Agreement, the provisions of the Establishment Agreement apply to the Project.
- (2) The Project Participants and the Regional Local Government acknowledge the provisions of clause 36.1 of the WtE Contract and the obligation to enter into an agreement prior to the winding up of the Regional Local Government for the supply of waste on the same terms as the WtE Contract.

Footnote:

1. Where a Participant, which is not a Project Participant under this Agreement, wishes to join the Project, clauses 8.12 to 8.18 of the Establishment Agreement apply. Those clauses provide as follows:

8.12 Participant Wishing to Join Existing Project

A Participant which is not a Project Participant may at any time after a Project is undertaken, give notice of its wish to participate in the Project.

8.13 Preparation of Amended Business Plan

- (1) *As soon as practicable after receipt of a notice under clause 8.12, the Regional Local Government shall:*

- (a) *prepare an amended business plan for the Project in respect of the current financial year having regard to the effect of the participation of the Participant giving the notice; and*
- (b) *provide a copy of the amended business plan to the Participant and the Project Participants.*

- (2) *The amended business plan shall include details of any additional capital expenditure necessitated by the participation of the Participant giving the notice under clause 8.12 and an estimate of that additional capital expenditure.*

- (3) *The Participant giving the notice under clause 8.12 shall meet the cost of preparation of the amended business plan.*

8.14 Determination of Participation Date

- (1) *As soon as practicable after preparation and adoption of the amended business plan under clause 8.13:*
 - (a) *the Participating Local Governments acting reasonably, shall determine the date upon which any decision by the Participant to participate in the Project is to become effective;*
 - (b) *the Regional Local Government shall advise the Participant of that date.*
- (2) *The date determined under sub-clause (1) shall not be earlier than:*
 - (a) *the commencement of the financial year after the financial year in which the notice was given by the Participating Local Government to the Regional Local Government;*
 - (b) *unless otherwise agreed by the Project Participants and the Participant.*

8.15 Participant to Decide

Within 35 days after receipt of the advice referred to in clause 8.14, the Participant may give to the Regional Local Government notice of its decision to participate in the Project.

8.16 When Decision to Take Effect

A Participant which gives notice under clause 8.15 is to become a Project Participant in that Project with effect on the date referred to in clause 8.14.

8.17 Calculation of New Member's Contributions

- (1) *As soon as practicable after a Participant becomes a Project Participant in a Project under clause 8.16 ("the New Member"), the Regional Local Government shall:*
 - (a) *calculate the amount of the contribution of that New Member towards:*
 - (i) *the value of any existing assets of a capital nature acquired for the Project; and*
 - (ii) *the operating expenditure for the current financial year in respect of the Project; and*
 - (b) *ascertain the amount of the additional capital expenditure referred to in the amended business plan prepared under clause 8.13; and*
 - (c) *give notice to the Project Participant and the New Member of the calculation referred to in paragraph (a) and the amount referred to in paragraph (b).*
- (2) *In calculating the amounts of the contributions under clause 8.17(1)(a), the Regional Local Government shall use the proportions referred to in clause 8.6(a) which have been agreed for the Project.*
- (3) *Unless the Project Participants agree upon another method of payment, the New Member shall pay the amounts:*
 - (a) *in the case of the contribution towards capital assets - immediately after receipt of the notice of the calculation referred to in clause 8.17(1)(c);*
 - (b) *in the case of the contribution towards operating expenses - in the same manner as has been agreed in respect of the Project pursuant to clause 8.6(a) or as specified in clause 8.8 (whichever is applicable); and*
 - (c) *in the case of the amount for additional capital expenditure - immediately after receipt of the notice of the amount referred to in clause 8.17(1)(c).*

8.18 Adjustment of Equities

As soon as practicable after payment of the contribution referred to in clause 8.17(1)(a), the Regional Local Government will pay to the Project Participants other than the New Member any

amount due in respect of their equities in the capital assets which results from the participation of the New Member in the Project.”

4. DISPUTE RESOLUTION

4.1 No proceedings

A party must not start arbitration proceedings in respect of a dispute arising out of this Agreement (“Dispute”) unless it has complied with this clause.

4.2 Notification of dispute

A party claiming that a Dispute has arisen must notify the other parties to the Dispute giving details of the Dispute.

4.3 Reasonable efforts to resolve Dispute

- 1) During the 14 day period after a notice is given under clause 4.2 (or longer period agreed in writing by the parties) (“Negotiation Period”), the parties must use their reasonable efforts to resolve the Dispute.
- 2) Within the first 7 days of the Negotiation Period, a senior employee from each party and a senior employee of the Regional Local Government and use their reasonable endeavours to resolve the Dispute.
- 3) Within the second 7 days of the Negotiation Period, if the Dispute continues, the chief executive officers of the parties and the chief executive officer of the Regional Local Government, must meet, and use their reasonable endeavours to resolve the Dispute.

4.4 Arbitration

If the Dispute is not resolved within the Negotiation Period then any party may notify the others in writing (“arbitration notice”) that it requires the dispute to be referred to arbitration and the dispute (unless meanwhile settled) shall upon receipt of the arbitration notice by the recipients then be and is hereby referred to arbitration under and in accordance with the provisions of the Commercial Arbitration Act 2012.

4.5 Legal Representation

For the purposes of the Commercial Arbitration Act 1985, the Project Participants consent to each other and to the Regional Local Government being legally represented at any such arbitration.

5. ADDITIONAL AGREEMENTS

5.1 Effective Date

The obligations of the Project Participants under this clause 5 take effect on:

- a. 1 March 2001; or
- b. any later date notified in writing to the Project Participants by the Regional Local Government,

and continue until the Project is wound up.

5.2 Implementation of “Regional Waste Collection System”

Each Project Participant shall take all necessary steps to implement the “Regional Waste Collection System” described in the Project Business Plan in the Project Participant’s district by:

- (a) providing to all residential premises within the district of the Project Participant:
 - (i) one 140 litre mobile garbage bin for the disposal of Residual Waste (“**Red Top Bins**”);
 - (ii) one 240 litre mobile garbage bin for the disposal of Recyclables (“**Yellow Top Bins**”); and
 - (ii) one 240 litre mobile garbage bin for the disposal of FOGO Waste (“**Lime Top Bins**”).
- (b) collect the mobile garbage bins referred to in clause (a)(i) each fortnight;
- (c) collect the mobile garbage bins referred to in clause (a)(ii) each fortnight;
- (d) collect the mobile garbage bins referred to in clause (a)(iii) each week;
- (e) collect Green Waste from the verge of all residential premises on at least 1 occasion each year.

The provisions of this clause 5.2 and clauses 5.3-5.7 apply unless otherwise permitted or provided for under the Project Business Plan.

5.3 Recyclable material

Each Project Participant shall deliver to the RRRC:

- (a) all Recyclables produced by the Project Participant; and
- (b) all Recyclables collected by, for or on behalf of, the Project Participant, from residential premises within the Project Participant’s district.

5.4 Residual Waste

Each Project Participant shall deliver to the RRRC or an alternative facility nominated by the Regional Local Government (including to the WtE Contractor once the services under

the WtE Contract commence) all Residual Waste collected by, for or on behalf of, the Project Participant, from residential premises within the Project Participant's district.

5.5 FOGO Waste

Each Project Participant shall deliver to the RRRC or an alternative facility nominated by the Regional Local Government all FOGO Waste collected by, for or on behalf of, the Project Participant, from residential premises within the Project Participant's district.

5.6 Use of Green Waste facility by residents

Each Project Participant shall take all reasonable steps to encourage its residents to use the Green Waste facility established at the RRRC.

5.7 Green Waste

Each Project Participant shall deliver to the RRRC:

- (a) all Green Waste collected by, for or on behalf of the Project Participant from residents in the district; and
- (b) all Green Waste which is produced at all land owned and occupied by, or under the care, control and management of, the Project Participant, and which is collected by, for or on behalf of the Project Participant.

5.8 Definitions

In this clause 5, the expressions "Green Waste", "Residual Waste", "Recyclables", "FOGO Waste" and "RRRC" have the same meaning as given to them in the Schedule.

SCHEDULE

Item No.

1. Purpose of this Schedule

The purpose of this Schedule is to set out the formula for the calculation of the contribution payable by each Project Participant in respect of the Operating Expenditure and the WtE Payments.

Explanatory Note:

Payment of the Gate Fees is intended to recover all operational costs associated with the processing and disposal of Residual Waste, Recyclables FOGO Waste and Green Waste including administrative costs. The fee charged per tonne of material received shall be adjusted to ensure that the cost per household for material transported, processed and disposed of at the RRRC is the same.

2. Definitions

In this Schedule:

“**FOGO Waste**” means food and garden organic waste collected from the Lime Top Bins;

“**Gate Fee**” means the Gate Fee determined in accordance with Item 3, which to avoid doubt excludes the gate fee payable under the WtE Contract;

“**Green Waste**” means vegetative waste collected separately from other forms of waste;

“**Residual Waste**” means residual waste collected from Red Top Bins;

“**Operating Expenditure**” means the operating expenditure to which clause 2.4 applies;

Note:

Clause 2.4 applies to all operating expenditure, including administrative expenses, relating to the Project other than expenditure relating to educating the public with respect to the Project.

“**Recyclables**” means recyclable waste collected separately from other forms of waste;

“**RRRC**” means the regional resource recovery centre the subject of the Project.

3. Gate Fee formula

- (1) The calculation of the Gate Fee shall be determined by the Regional Local Government, prior to the commencement of each quarter of a financial year, in accordance with the following formula for each of the Project Participants following three waste streams - Residual Waste, FOGO Waste, Recyclables and Green Waste.

$$\text{Gate Fee} = A + (B - C \text{ pp})$$

(expressed as \$/tonne for each Project Participant)

Where:

$$A = \frac{D - E}{F} + \frac{G - H}{I}$$

Where:

D = All costs of operation of the RRRC, other than the cost of processing the waste streams.

E = The revenue derived from the operation of the RRRC but does not include:

- (a) the contributions from the Project Participants; or
- (b) the revenue referred to in H.

F = The estimated tonnage of Residual Waste, FOGO Waste Recyclables and Green Waste to be sent to the RRRC or other nominated site by all Project Participants and other sources.

G = The cost of processing each waste stream (expressed as \$/tonne).

H = The revenue derived from the receipt, processing and sale of each waste stream but does not include the contributions from the Project Participants.

I = The estimated tonnage of the particular waste stream to be sent to the RRRC or other nominated site by all Project Participants.

B = The average transportation cost per tonne, weighted for annual tonnage received from each Project Participant, calculated as follows:

$$\mathbf{B} = \frac{(\mathbf{Cpp1} \times \mathbf{Jpp1}) + (\mathbf{Cpp2} \times \mathbf{Jpp2}) + (\mathbf{Cpp3} \times \mathbf{Jpp3}) + (\mathbf{Cpp4} \times \mathbf{Jpp4}) + (\mathbf{Cpp5} \times \mathbf{Jpp5})}{\mathbf{K}}$$

Where:

Jpp = The estimated tonnage of the particular waste stream to be sent to the RRRC or other nominated site by each Project Participant.

K = The total estimate of each waste stream sent to the RRRC or other nominated site by all Project Participants.

Cpp = The cost to transport each waste stream (expressed as \$/tonne) from the population centroid for each Project Participant to the RRRC.

$$= \frac{\mathbf{L} \times \mathbf{M}}{\mathbf{N}}$$

Where:

L = The cost per hour to own, operate and maintain a standard waste collection vehicle appropriate to the type of waste transported to the RRRC or other nominated site. The standard vehicle selected shall represent the most efficient type currently in the service within the region by the Project Participants.

M = The time for a standard vehicle to travel from the population centroid to the RRRC or other nominated site (loaded) and return to the centroid

(empty) expressed in hours plus discharge time at the facility. The route chosen shall be the most time efficient route. The travel time shall be measured using a standard vehicle driven over the route.

N = The manufacturer's specified net payload of the standard vehicle, subject to density requirements of the waste payload received at the RRRC or other nominated site. Net payload is to be expressed in tonnes.

- (2) For the purpose of this Item
 - (a) **Jpp** and **K** shall be determined by the Chief Executive Officer of the Regional Local Government ("CEO");
 - (b) **L, M and N** shall be as agreed by the Project Participants within 14 days of receipt of a recommendation with respect to the matter by the CEO and, failing agreement, as determined by a consulting engineer chosen by the CEO. The consulting engineer shall act as an expert and not an arbitrator and the engineer's decision shall be final and binding on the Project Participants.
 - (c) The "**population centroid**" for each Project Participant is as determined by the Ministry of Planning or such other government body or other expert determined by the council of the Regional Local Government.

Note:

Examples of the calculation of the Gate Fee are set out in Appendix 1.

4. Calculation of each Project Participants' contribution to Operating Expenditure

- (1) The contribution payable by each Project Participant to the Operating Expenditure shall be calculated by the Regional Local Government monthly in accordance with the following formula:

Contribution of a Project Participant = $P \times \text{Gate Fee}$

Where:

P is the number of tonnes of the particular waste stream delivered to the RRRC or other nominated site by or on behalf of the Project Participant as determined by the Regional Local Government.

- (2) If a Project Participant is in breach of any of its obligations under clause 5 then, for the purpose of subitem (2):

P is the number of tonnes of the particular waste stream which were available for delivery to the RRRC or other nominated site by or on behalf of the Project Participant were it not for the breach, as determined by an independent engineer nominated by the Regional Local Government.

5. Calculation of each Project Participants' WtE Payments

- (1) Each Project Participant's monthly payment for services provided under the WtE Contract will be calculated in accordance with the following formula:

$$\text{WtE Gate Fee Payment} = P \times \text{WtE Gate Fee}$$

Where:

P is the number of tonnes of Residual Waste delivered to the WtE Contractor by or on behalf of the Project Participant as determined by the Regional Local Government.

WtE Gate Fee is the gate fee payable under the WtE Contract, as adjusted from time to time.

- (2) The contribution payable by each Project Participant for other amounts that become due and payable in accordance with the WtE Contract shall be calculated by the Regional Local Government in accordance with the following formula:

$$\text{Contribution of a Project Participant} = A \times \frac{P}{T}$$

Where:

A is the amount payable under the WtE Contract.

P is the total number of tonnes of Residual Waste delivered by the Relevant Project Participant over the previous 12 months of the WtE Contract term.

T is the total number of tonnes of Residual Waste delivered by all of the Relevant Project Participants in the aggregate over the previous 12 months of the WtE Contract term.

Relevant Project Participant means a Project Participant that is liable to contribute to the payment.

EXECUTED by the Parties

THE COMMON SEAL of TOWN OF EAST)
FREMANTLE was hereunto affixed by authority of a)
resolution of the Council in the presence of:)

Mayor

Chief Executive Officer



THE COMMON SEAL of CITY OF FREMANTLE was)
hereunto affixed by authority of a resolution of the Council in)
the presence of:)

DEPUTY

Mayor

Chief Executive Officer



THE COMMON SEAL of CITY OF MELVILLE was)
hereunto affixed by authority of a resolution of the Council in)
the presence of:)



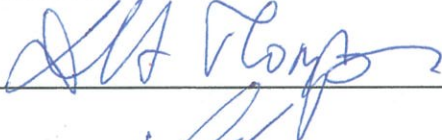
Mayor



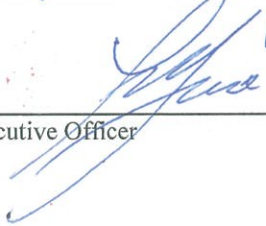
Chief Executive Officer



THE COMMON SEAL of THE COMMON SEAL of)
SOUTHERN METROPOLITAN REGIONAL COUNCIL)
was hereunto affixed by authority of a resolution of the Council)
in the presence of:



Chair



Chief Executive Officer



