



INDEPENDENT CONTRACTOR AGREEMENT

WASTE MANAGEMENT SERVICES

BETWEEN

SORELL COUNCIL
("the Council")

AND

SUCCESSFUL TENDERER
("the contractor")

THIS AGREEMENT is made on the (print date signed)..... 2024

PARTIES:

SORELL COUNCIL, a body corporate with perpetual succession created pursuant to the *Local Government Act 1993* of 47 Cole Street Sorell in Tasmania

("Council")

AND

SUCCESSFUL TENDERER (ACN)

("Contractor")

BACKGROUND

- a. The Council seeks to engage a suitable entity to provide the Services as an independent contractor.
- b. The Contractor seeks to be engaged by Council to provide the Services.
- c. The Council agrees to engage the Contractor to provide the Services in the capacity of an independent contractor in accordance with the terms and conditions of this Agreement.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

- a. **Agreement** is a reference to this independent contractor agreement and includes any schedules and annexures to this Agreement;
- b. **Alternative disposal facility:** means the Mornington Park Waste transfer station.
- c. **Approved Disposal Facility** means a facility approved by the Waste Management Officer where greenwaste and hard rubbish waste may be taken.

In the case of greenwaste this is the Mornington Park Transfer Station or Copping Landfill. In the case of hard rubbish this is the Copping Landfill.

- d. **Bulk greenwaste** means vegetation including grass, bushes, tree limbs or shrubs that is placed kerbside for collection, other than greenwaste in an MGB with a Council log.
- e. **Business Day** means a day, which is not a Saturday, Sunday or Public Holiday as taken under the *Statutory Holiday Act 2000* limited to the greater Hobart area;
- f. **Collection and Disposal Fee** means the remuneration paid by Council to the Contractor under this Agreement;
- g. **Call back** – means a request from Council to the Contractor to return to a property to collect a green waste or hard rubbish that is not a Missed Collection.

- h. **Collection and Disposal Invoice** means a written invoice supplied by the Contractor to the Council pursuant to clause 8.1 of this Agreement that is GST compliant and calculates the Collection and Disposal Fee in accordance with the formula set out in Schedule 3 of this Agreement;
- i. **Collection Vehicles** means the vehicles to be used by the Contractor to perform the Services under this Agreement;
- j. **Commencement Date** means 1st July 2024;
- k. **Compliant collection** means a greenwaste or hard rubbish collection 'out for collection' by 6am on the designated collection week and was appropriately located, not contaminated, overweight or otherwise not in accordance with requirements specified by the Waste Management Officer.
- l. **Contractor** means the Contractor, and where appropriate its employees, sub-contractors, agents and any other persons or entities under the control or direction of the Contractor;
- m. **Copping Landfill** means the landfill operated by Southern Waste Solutions situated at Arthur Highway Copping described in certificate of title volume 126073 folio 3;
- n. **Council** means Sorell Council;
- o. **CPI Adjustment** means the adjustment of the Collection and Disposal Fee as described in clause 8.4 of this Agreement;
- p. **Current Collection Areas** means the areas indicated on the plan which forms Schedule 1 to this Agreement, as may be varied from time to time;

- q. **Derwent Park Transfer Station** means the waste transfer station situated at Derwent Park Road, Lutana;
- r. **Force Majeure Event** means any event or circumstance or combination of events and circumstances which:
 - i. is unforeseen, unforeseeable and beyond the control of the party affected by that event or circumstance or combination of events and circumstances;
 - ii. causes or results in the prevention of the performance by the affected party of any of its obligations under this Agreement; and
 - iii. is impossible to prevent, overcome or remedy with the exercise of care and diligence consistent with that of a professional contractor experienced in projects or activities of a similar nature to the Services.
- s. **Greenwaste Collection** means the kerbside collection of up to 2m³ of greenwaste for each Tenement and is more particularly described in clause 5.3 of this Agreement;
- t. **GST** means the Goods and Services Tax prescribed by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;
- u. **Hard Rubbish Collection** means the kerbside collection of up to 2m³ hard rubbish for each Tenement and is more particularly described in clause 5.2 of this Agreement;
- v. **Hazardous Waste** includes, but is not limited to asbestos, paint, agricultural or veterinary chemicals, tyres, lead, gas bottles, batteries, flammable liquids, broken glass, motor vehicle engines or any other substance considered hazardous by the waste management officer.

- w. **HVNL Act** means the Heavy Vehicle National Law (Tasmania) Act 2013 including any regulations, amendments or replacement legislation.
- x. **MGB** means a mobile garbage bin;
- y. **Missed Collection** means a missed Compliant Collection that was 'out for collection' when the collection vehicle attended the property but was not collected.
- z. **Mornington Park Transfer Station:** means the transfer station situated in Mornington Road, Mornington;
- aa. **Multiple Tenement** means residential flats, units, apartments or any other form of multiple dwelling;
- bb. **Non-Compliant Collection** means a greenwaste or hard rubbish collection that:
 - i. Is greater than 2m³ in volume;
 - ii. Is too heavy for two people to lift into a compactor truck;
 - iii. Contains hazardous materials;
 - iv. Is longer than 1.5m; or
 - v. Was not located kerbside for collection when the collection vehicle attended the property.
- cc. **Nuisance** means an nuisance as defined in section 199 of the *Local Government Act 1993* (Tas) (as varied or replaced) and as determined by Council's Environmental Health Officer;
- dd. **Performance Benchmarks** means the performance benchmarks set out in Schedule 5 of this Contract

- ee. **Services** is a collective reference to each of the services set out in clause 5.1 of this Agreement;
- ff. **Tenement** means room, set of rooms, flats, units or house forming separate residencies or dwelling used for residential purposes;
- gg. **Term** means the period of time specified in clause 4 of this Agreement as varied or extended;
- hh. **Warranties** means those warranties given by the Contractor as set out in clause 14 of this Agreement; and
- ii. **Waste Management Officer** means the employee of the Council appointed to the position of Waste Management Officer from time to time, and includes any officer acting in a temporary capacity.

1.2 Interpretation

In this Agreement except to the extent that the context requires otherwise or the contrary intention appears:

- a. references to any legislation or to any provision of any legislation shall include any modification, consolidation or re-enactment of, or any provision substituted for, and all statutory instruments issued under such legislation or provisions;
- b. where in this Agreement a period of time dating from a given day, act or event is specified or allowed for any purpose, the time shall be reckoned exclusive of that day or of the day on which the act or event occurred but inclusive of the day on which that period expires or in the event that any day on which the work or payment is to be done

is not a Business Day such act, matter or thing shall be done on the immediately succeeding Business Day;

- c. words importing the singular or plural shall include the plural and the singular respectively;
- d. words importing any gender shall include every gender;
- e. a reference to a person includes a reference to the corporation, firm, authority, government or governmental agent;
- f. clause headings do not affect the interpretation of this Agreement;
- g. where a word or phrase is given a particular meaning in this Agreement, other cognate parts of speech and grammatical forms of that word or phrase shall have a corresponding meaning;
- h. references to a clause, paragraph, schedule, annexure or part shall be a reference to a clause, paragraph, schedule, annexure or part of this Agreement;
- i. every contract or undertaking expressed or implied by which more than one person is bound shall bind those persons and any two or greater number of them jointly and each of them severally;
- j. references to a party shall include that party's executors, administrators and permitted assigns, or being a Council, its successors and permitted assigns and any other person deriving title under those persons or Councils;
- k. reference to time shall be reference to Tasmanian time;

- I. time shall be of the essence to the performance and observance of the obligations of the Contractor under this Agreement and to periods stipulated in this Agreement within which any act, matter or thing shall or may be done by the Contractor.

2. AGREEMENT TO PROVIDE SERVICES

2.1 The Contractor agrees to provide the Services for the duration of the Term and in accordance with the terms and conditions of this Agreement.

2.2 In consideration for providing the Services, the Council agrees to remunerate the Contractor in accordance with clause 8 of this Agreement.

2.3 The Contractor warrants that it:

- a. is competent and has the skills, qualifications, expertise and experience appropriate to perform the duties and obligations of the Contractor under this Agreement and to provide the Services; and
- b. has an Australian Business Number and is registered for GST.

3. INDEPENDENT CONTRACTOR RELATIONSHIP

3.1 The parties agree that the Contractor is engaged under this Agreement as an independent contractor and that the Contractor in performing its duties and obligations under this Agreement in no way is, or is intended to be, an employee, servant or agent of the Council.

3.2 The parties agree that the engagement of the Contractor is not an exclusive engagement. Whilst the Contractor does not provide the Services exclusively to the Council and is free to enter into other contracts with third parties, those other contracts:

- a. must not place the Contractor in a conflict of interest, or possible conflict of interest, between the Contractor's obligations to the Council under this Agreement and the Contractor's obligations to the third party; and
- b. must not take priority over the obligations of the Contractor under this Agreement.

3.3 When performing the Services the Contractor will adhere to the Council's policies regarding workplace health and safety, alcohol and other drugs, anti-discrimination, sexual harassment, fitness for work, workplace behaviour, and any other matter as advised by the Waste Management Officer.

3.4 The Contractor will not, on behalf of its employees, sub-contractors, agents and any other persons or entities under the control or direction of the Contractor, claim upon the Council in respect of any leave entitlements, including (but not limited to) annual leave, public holidays, sick leave, long service leave, other entitlements or otherwise in respect of any claims under any relevant workers' compensation legislation, superannuation legislation or any other legislation or regulations affecting or relating to the relationship between an employer and employee.

3.5 Use of Sub-contractors

- a. The Contractor may use sub-contractors to perform the Services.
- b. The Contractor must provide prior written notice together with details of sub-contractors it proposes to use to perform any aspect of the Services. The Contractor must also provide such details of sub-contractors as the Council may request from time to time.
- c. The Contractor remains liable for delivery of Services at all times and the Contractor is responsible for the actions of sub-contractors as though they were the actions of the Contractor under this Contract.

4. TERM

4.1 The term of the Agreement is two (2) years from the Commencement Date.

4.2 Upon providing notice to the Contractor not less than four (4) weeks prior to the expiry of the Term, the Council may in its absolute discretion extend the Term for a period of up to twelve (12) months upon the same terms and conditions set out in this Agreement, inclusive of this clause 4.2.

5. THE SERVICES

5.1 The Services to be provided by the Contractor under this Agreement are:

- i. To undertake either 6 monthly or annual kerbside Hard Rubbish Collection as more fully described in clause 5.2; and
- ii. To undertake either 3, 4 or 6 monthly kerbside bulk Greenwaste Collection as more fully described in clause 5.3.

5.2 Hard Rubbish Collection

The Contractor agrees to carry out the Hard Rubbish Collection from Tenements in accordance with the following conditions:

- a. The Hard Rubbish Collection is to occur every 6 months or annually on a date determined in accordance with clause 9.1.
- b. The Hard Rubbish Collection must not occur before 6.00am or after 5.00pm without the Contractor first obtaining the express written permission of the Waste Management Officer to do so.

- c. The Contractor is only required to collect Hard Rubbish if it is contained within a 2m³ area on the kerbside.
- d. The Contractor is not required to collect:
 - i. Hazardous Waste;
 - ii. any item which the contractor considers is too heavy for two people to safely lift into a garbage compactor truck; or
 - iii. any item that is longer than 1.5m.
- e. The Contractor must perform the Hard Rubbish Collection in such a manner as to not cause a Nuisance to the occupiers of any Tenement.
- f. The contractor is only required to collect Hard Rubbish from properties that have pre-booked the collection with Sorell Council. The Waste Management Officer will supply the contractor with a list of properties to collect Hard Rubbish from on or around noon on the Friday before the collection week.
- g. Disposal of Hard Rubbish is to be undertaken at the Copping Landfill or the Derwent Park Waste Transfer Station. The Council will pay all costs associated with the disposal of Hard Rubbish.

5.3 Greenwaste Collection

- a. The Greenwaste Collection is to occur either four (4) times, three (3) or twice a year on a date determined in accordance with clause 9.1.
- b. The Greenwaste Collection must not occur before 6.00am or after 5.00pm without the Contractor first obtaining the express written permission of the Waste Management Officer to do so.

- c. The Contractor is only required to collect Greenwaste if it is contained within a 2m³ area on the kerbside.
- d. The contractor must **not** empty greenwaste from an MGB with a Council Logo.
- e. The Contractor is not required to collect:
 - i. Hazardous Waste;
 - ii. any item which the contractor considers is too heavy for two people to safely lift into a garbage compactor truck; or
 - iii. any item that is longer than 1.5m.
- f. The Contractor must perform the Greenwaste Collection in such a manner as to not cause a Nuisance to the occupiers of any Tenement.
- g. The contractor is only required to collect Greenwaste from properties that have pre-booked the collection with Sorell Council. The Waste Management Officer will supply the contractor with a list of properties to collect Greenwaste from on or around noon on the Friday before the collection week.
- h. The Disposal of Greenwaste is to be undertaken at the approved facility. The Waste Management Officer may direct the contractor to take some or all greenwaste to a particular Approved Facility. The Council will pay all costs associated with the disposal of Greenwaste.

6. GENERAL REQUIREMENTS FOR PROVISION OF SERVICES

6.1 In addition to and without limiting the obligations of the Contractor under clause 5, the Contractor must at all times comply with the obligations set out in this clause 6.

6.2 When performing the Services the Contractor must at the Contractor's expense:

- a. immediately recover and remove any Green Waste, Hard Rubbish or substances that are spilled during the collection or transit of Green Waste, Hard Rubbish or substances; and
- b. clean any mark or stain caused by any spill.
- c. return to a property within 3 days of being notified by Council or other period agreed by the Waste Management Officer, to collect a Compliant Collection.

6.3 The contractor must within 7 days of the contract commencing provide Council with procedures for:

- a. Missed Hard Rubbish and Greenwaste collection and how that will be investigated and dealt with by the contractor; and
- b. How residents are notified that a collection is non-compliant.

6.4 If the contractor fails to complete the collection of Greenwaste or Hard Rubbish (Missed collection), as required by this Agreement, the Contractor must within 3 working days after the normal collection day collect the Greenwaste or Hard Rubbish.

6.5 The Waste Management Officer may require the contractor to alter or amend the procedures referred to in clause 6.3.

6.6 The Waste Management Officer may require the contractor to return to a property for a Call back collection. The cost of the Call back will be at the rate specified in the Schedule 1 of the tender. The contractor must return to the property with 3 days of notification by Council or other period agreed with the Waste Management Officer.

- 6.7** The Contractor is to retain a copy of 'weighbridge docket' from each delivery of hard rubbish or greenwaste taken to the Approved Facility. The 'weighbridge docket' must be provided to the Waste Management Officer at the end of each collection week.
- 6.8** The Contractor may divert Hard rubbish or Greenwaste to an Alternative Disposal Facility acceptable to the Waste Management Officer when the current Disposal Facility is temporarily closed. The Contractor must as soon-as-is reasonably practical notify the Wastewater Management Officer that waste, recycling or Greenwaste is being diverted.
- 6.9** The contractor is to leave a notice in the letter box of a non-compliant collection explaining why the greenwaste or hard rubbish was not collected. The format of the notice must be approved by the Waste Management Officer.
- 6.10** Council will be responsible for all costs associated with the disposal of greenwaste and hard rubbish at an Approved Facility.

7. LIQUIDATED DAMAGES

- 7.1** The Contractor agrees to pay the Council the amounts set out in Schedule 3 for failure to comply with the provisions of this Agreement, as set out in that Schedule.
- 7.2** At the Council's option, any payment due under clause 7.1 may be deducted from any unpaid Collection Fee.
- 7.3** A claim for liquidated damages pursuant to this clause 7 is without prejudice to any other rights the Council may have pursuant to the terms of this Agreement.

8. REMUNERATION OF CONTRACTOR

8.1 Provision of Collection and Disposal Invoice

- a. At the end of the calendar month following a collection the Contractor will prepare a Collection & Disposal Invoice setting out the Collection and Disposal Fee applicable for that calendar month and provide such invoice to Council.
- b. The Collection & Disposal Fee must be calculated strictly in accordance with the formula set out in Schedule 3 of this Agreement.
- c. The Collection & Disposal Invoice must clearly show the calculation of the Collection & Disposal Fee in relation to each of the Services provided by the Contractor.
- d. Separate invoices must be provided for Greenwaste and Hard Rubbish Collections and Disposal.

8.2 Payment of Collection and Disposal Invoice

- a. Council will render payment for each undisputed Collection and Disposal Invoice within thirty (30) days from receipt of the Collection and Disposal Invoice.
- b. Payment of the Collection and Disposal Fee will be made by cheque or EFT direct deposit into the bank account nominated by the Contractor.

8.3 Invalid Collection & Disposal Invoice

- a. In the event that, in the opinion of the Waste Management Officer, a Collection and Disposal Invoice is not valid:

- i. the Waste Management Officer will notify the Contractor of the reasons for invalidity; and
- ii. the Contractor is required to amend the invalid Collection and Disposal Invoice to the Waste Management Officer's satisfaction before resubmitting same to Council; and
- iii. upon receiving the amended Collection and Disposal Invoice and provided that the Waste Management Officer is satisfied that the reasons for invalidity have been adequately addressed, Council has a period of thirty (30) days from the date of receipt to render payment for the amended Collection & Disposal Invoice.

8.4 Adjustment of Collection & Disposal Fee in accordance with Consumer Price Index

- a. Upon each anniversary of the Commencement Date, the Collection Fee only for the Services shall be adjusted in accordance with the most recent change to the Consumer Price Index for Hobart (All Groups), published by the Australian Bureau of Statistics ('CPI'). This adjustment will be calculated by multiplying the total Collection Fee for the previous 12 months by the CPI for the 12 months ending at the end of the latest available quarter and dividing it by the CPI for the preceding 12 months.
- b. In the event that the Commonwealth Government ceases to publish the Consumer Price Index or in the event that the basis of calculating that Index is substantially changed there shall be substituted for it an Index Number which reflects the fluctuations in the costs of living in Hobart and which the parties may mutually agree upon and if they are unable to agree then such Index Number shall be determined by the President for the time being of the Tasmanian Chamber of Commerce and Industry or his nominee whose decision shall be binding and conclusive. Due conversion shall be made to preserve the intended continuity of calculation by making the appropriate arithmetical adjustment so that the substituted Index Number corresponds in reference to the Consumer Price Index Number for Hobart (All Groups).

8.5 Upon each anniversary of the Commencement Date, the Disposal Fee only for the Services shall be adjusted, if necessary, in line with any changes during the preceding twelve months in any applicable gate fees charged by Copping Landfill (or other landfill facility, which is used by agreement of the parties) in connection with the disposal of waste pursuant to this Agreement.

9. NOTIFICATION OF INFORMATION TO CONTRACTOR

9.1 Notification of addresses for Hard Rubbish & Greenwaste Collection

- a. The Contractor and the Waste Management Officer will determine a mutually agreeable date or dates for the Hard Rubbish & Greenwaste Collection to occur.
- b. The Council will advertise the availability of the Hard Rubbish & Greenwaste Collection for Tenements within the municipality.
- c. Householders will be required to book Hard Rubbish & Greenwaste Collection with Council.
- d. On or around 12 noon on the Friday prior to the scheduled collection week for Hard Rubbish & Greenwaste Collection during the Term, the Council will notify the Contractor of the number and location of Tenements to be provided with the Hard Rubbish & Greenwaste Collection service and the address of those Tenements.
- e. The Contractor will provide the Services in accordance with clause 5.2 and 5.3 and in such a way as to accommodate the number and location of the Tenements requiring Hard Rubbish & Greenwaste Collection.

10. COMMUNICATION PROTOCOL

- 10.1** The Contractor shall ensure that each Collection Vehicle is equipped with a communications system that enables the Contractor and, if necessary, the Waste Management Officer, to contact each Collection Vehicle at all times during the performance of the Services.
- 10.2** By the close of business on each collection day, a report of any issues arising on that day regarding the Services will be sent to the Contractor's depot by the Waste Management Officer and similarly the Contractor will provide the Waste Management Officer a daily report on any issues arising on that day related to the delivery of the Services.
- 10.3** If the Waste Management Officer sends a report to the Contractor in accordance with clause 10.2 of this Agreement, the Contractor must respond to that report prior to close of business on the following working day and set out the action taken on each of the issues raised in the report.
- 10.4** The Contractor must notify the Waste Management Officer of all complaints received by the Contractor concerning the delivery of the Services.
- 10.5** The Waste Management Officer will notify the Contractor of all complaints received by the Council concerning the delivery of the Services and, if considered necessary by the Waste Management Officer, Council will give notice to the Contractor to remedy any complaint within twenty four (24) hours, or such other time as is specified in the notice. If the Contractor fails to remedy the complaint within the time specified in the notice then the Council may take all reasonable steps to remedy the complaint and deduct the cost of doing so from any unpaid Collection Fee.
- 10.6** The Waste Management Officer may call a meeting with the Contractor for the purpose of discussing any complaints or other issues that may arise regarding the delivery of the Services.

10.7 If a mechanical breakdown, sickness, strike or some other event unforeseen or foreseen by the Contractor occurs which affects the provision of the Services by more than four (4) hours on any given day, the Contractor must notify the Waste Management Officer of the delay as soon as possible.

11. CONDUCT OF THE CONTRACTOR'S EMPLOYEES

11.1 The Contractor, at all times whilst engaged in the provision of Services, must ensure that its employees, sub-contractors, agents and any other persons or entities under its control or direction:

- a. conduct themselves in a sober, civil, obliging, non-threatening and inoffensive manner;
- b. perform the Services with as little noise or disturbance as possible;
- c. perform the Services in as efficient a manner as possible;
- d. do not interfere with or handle anything at any Tenement, save as may be necessary to render the Services at such Tenement and comply with the contractor's procedure referred to in clause 5;
- e. be attired in a neat and tidy manner suitable to the performance of work being undertaken.

11.2 The Council is entitled to require any employee, sub-contractor, agent or any other persons or entity under the Contractor's control or direction to be excluded from any involvement with the provision of the Services if, in the opinion of the Waste Management Officer, the person concerned has persistently failed to comply with clause 11.1 of this Agreement.

12. INSURANCE

12.1 Before commencing the Services, the Contractor is to take out and keep current during the Contract Period with a reputable insurer lawfully carrying on insurance business in Australia the following policies of insurance:

- (i) A contract of public liability insurance in the name of the Contractor which covers the Contractor in relation to the Services including cover for the Contractor's liability to third parties and in the sum of no less than \$20 million for each claim or series of claims arising out of a single incident and which indemnifies the Contractor's liability for personal injury to, or death of a third party or loss of or damage to the property of a third party. The liability to be insured against is that arising from or attributable to the Contractor carrying out the Services to the extent that such injury, death, loss or damage is caused by a wrongful (including negligent) act or omission of the Contractor or any employee or agent. The policy must note the interest of Council as principal in respect of the Services; Workers' compensation insurance as required by law for any of the Contractor's employees engaged in carrying out the Services which, where permitted by law, is to be extended to provide indemnity for Council's statutory liability to the Contractor's employees.
- (ii) Motor vehicle insurance including third party property insurance for all vehicles requiring registration which the Contractor uses in connection with the Services;
- (iii) Workers Compensation Insurance for the Contractor; and
- (iv) Such other applicable insurances as are reasonably required by Council.
 - (a) The Contractor must ensure that any sub-contractor has the same insurances.
 - (b) The Contractor is to provide Council with certificates of currency in respect of such insurance policies at least ten (10) business days before the Commencement of the Services and thereafter is to provide evidence of currency on request by Council.
 - (c) The Contractor must notify Council as soon as possible if:
 - (i) any required insurance policy lapses, is cancelled or materially altered, or;
 - (ii) an incident which may relate to an insurance claim occurs as a result of the Services; or

- (iii) the Contractor claims, or becomes entitled to claim, under any such insurance policy for something related to the carrying out of the Services.

12.2 Failure to Produce Proof of Insurance

If the Contractor, or a subcontractor, fails within ten (10) Business Days of receiving a request from the Council to produce evidence of compliance with insurance obligations required by this Contract or fails to effect or to keep in force any of the insurances required by this Contract to the satisfaction of the Council, the Council may effect and maintain the insurance and pay the premiums or terminate the Contract. The premium paid will be a debt due to the Council from the Contractor and the Council may offset this debt against any monies due and payable to the Contractor or refuse payment of any moneys due to the Contractor under this Contract until evidence of compliance with insurance obligations required by this Contract is produced by the Contractor to the satisfaction and approval of Council. The rights given by this Clause 12 are in addition to any other right.

13. CONTRACTOR'S INDEMNITY

13.1 The Contractor agrees to indemnify and keep indemnified, and to hold harmless the Council, its servants and agents, and each of them from and against all actions, costs, claims, charges, expenses and damages whatsoever which may be brought or made or claimed against them arising out of, or in relation to:

- a. any negligent act or omission of the Contractor in the provision of the Services;
- b. any loss or damage to property of the Council or any other person, or loss or damage to any person including the employees, sub-contractors, agents and any other persons or entities under the control or direction of the Contractor, incurred in the provision of the Services;

- c. any loss, expense or damage incurred by the Council, its employees or agents as a result of the provision of the Services;
- d. any material loss, expense or damage incurred by the Council arising out of or in relation to any breach of this Agreement by the Contractor;

provided that the Contractor's liability to indemnify the Council will be reduced proportionately to the extent that any act or omission of the Council or employees or agents of the Council may have contributed to the loss, death or injury.

13.2 This clause does not merge upon the expiration or completion of this Agreement.

14. CONTRACTOR'S WARRANTIES

14.1 The Contractor acknowledges that it has made and given the Warranties set out in this clause 14 with the intention of inducing the Council to enter into this Agreement and that the Council has entered into this Agreement in full reliance on the Warranties.

14.2 The Contractor hereby expressly warrants to the Council that:

- a. the Contractor will exercise reasonable professional skill and care when carrying out its obligations under this Agreement;
- b. the Contractor, its employees, sub-contractors and agents are possessed of the necessary skills and expertise required to fulfil its obligations under this Agreement;
- c. the Contractor is possessed of, or is readily able to obtain, all plant, equipment and labour required in order to fulfil its obligations under this Agreement;

- d. the Contractor is appraised of all industry standards applicable to the delivery of the Services under this Agreement and will perform its obligations under this Agreement strictly in accordance with those industry standards;
- e. the Contractor will maintain all of the policies of insurance required by clause 12 of this Agreement;
- f. the Contractor will be responsible for the health and safety of the Contractor's employees, sub-contractors, agents and any other persons or entities under its control or direction and will at all times comply with all statutory requirements and industry standards regarding the health and safety of its employees. The contractor is to maintain all records of induction and training of the contractor's staff delivering the Services.

(collectively referred to as the **"Warranties"**).

14.3 The Contractor hereby indemnifies the Council against any claim or loss incurred or suffered by or brought or made or recovered against the Council (directly or indirectly) in connection with any inaccuracy in or any breach of any of the Warranties.

14.4 For the avoidance of doubt, the Warranties set out in this clause 14 are continuing in nature.

14.5 Limit on Indemnity

- a. Notwithstanding any other clause in this Agreement, and to the full extent permitted by law, the Contractor's total liability for any and all claims under or in connection with this Agreement (including any indemnity), the provision or failure to provide the Services, whether in tort (including negligence), contract (including indemnities), under statute or otherwise, other than claims for personal injury and/or damage to property, is limited to \$20,000,000.00.

- b. The limitation in clause 14.5a does not apply to the extent that the Contractor is able, or should reasonably have been able (for example but for the negligence or wilful misconduct of the Contractor or its agents or employees), to recover under any policy of insurance it is required to hold under this Agreement, in which case the limitation is the sum recovered or which would have been recoverable by the Contractor up to the limit of indemnity specified in this Agreement.

15. WASTE MANAGEMENT OFFICER

- 15.1 The Contractor shall undertake its obligations under this Agreement to the reasonable satisfaction of the Waste Management Officer.
- 15.2 Unless otherwise provided for in this Agreement the Waste Management Officer will give any instructions to the Contractor in writing unless circumstances require a verbal instruction being issued, in which case the Contractor shall observe that instruction as if it had been given in writing.
- 15.3 The Contractor must comply with any reasonable instruction or direction given by the Waste Management Officer, including instructions regarding Hard Rubbish or Greenwaste, within the time specified by the Waste Management Officer for complying with that instruction.
- 15.4 The Council and the Waste Management Officer may at all times when the Contractor's Facilities are available for service under the Contract access and inspect those Facilities and associated Vehicles, Plant and Equipment and records to satisfy themselves that the Contractor is complying with its obligations under this Contract.
- 15.5 The Waste Management Officer may give directions for the better performance of this Contract and the Contractor will give effect to such directions as if they constituted express terms of this Contract, provided however, that any directions giving rise to variations will be subject to the agreement of the Parties as set out in Clause 24.

16. DISRUPTION OF SERVICES

16.1 If for whatever reason:

- a. the Contractor is unable to provide the Services in accordance with this Agreement; and
- b. such inability lasts for a period in excess of twenty four (24) hours,

Council may engage any one or more third parties of its choosing to perform the Services until such time as the Contractor is able to reinstate provision of the Services.

16.2 All costs and expenses of engaging third parties pursuant to clause 16.1 (including legal costs and expenses on a full indemnity basis) ('Costs') will, at the option of the Council, be payable by the Contractor and shall be paid by the Contractor immediately on demand in writing by the Council or alternatively may at the option of Council be deducted from any unpaid Collection Fee.

16.3 In the event that the Contractor is unable to pay the Costs in accordance with clause 16.2 of this Agreement, the Contractor will be liable to pay an amount of interest on the amount of the Costs calculated at the rate of 10.00% per annum compounding annually until such time as the Costs are paid in full.

17. COLLECTION VEHICLES

17.1 The Contractor shall provide sufficient and suitable Collection Vehicles to undertake its obligations under this Agreement and all such vehicles must comply with all relevant legislative requirements.

- 17.2 During the collection process the Collection Vehicles shall have hazard lights and reversing beepers operating and the persons in control of the vehicle shall wear appropriate personal protective equipment.
- 17.3 Collection Vehicles shall be kept clean and in good mechanical condition to the reasonable satisfaction of the Waste Management Officer.
- 17.4 The Contractor will not be entitled to additional remuneration under this Agreement in the event that at any time during the Term it is required to provide additional Collection Vehicles in order to provide the Services.
- 17.5 All Collection Vehicles must:
- a. be no older than fifteen (15) years at any stage throughout the life of this Agreement and be fit for purpose unless otherwise approved by the Waste Management Officer;
 - b. be designed so that at no time during loading or transportation of Hard Rubbish and Greenwaste the contents of any Hard Rubbish, Greenwaste or other matter may freely escape from the Collection Vehicles;
 - c. be clearly marked to indicate that the Collection Vehicles are being utilised for the collection of Waste;
 - d. Have suitable a camera/s installed for taking photographs and video recordings of collections, including the date and time that the collection occurred.
- 17.6 The Contractor shall ensure that one or more Collection Vehicles are maintained on standby for use in the event that any Collection Vehicle suffers mechanical failure undertaking the Services and must be replaced.

17.7 All Collection Vehicles must be thoroughly cleaned and disinfected daily and kept in a state of cleanliness and good mechanical condition to the satisfaction of the Waste Management Officer.

17.8 All Collection Vehicles shall be equipped with:

- a. written operating procedures for the vehicle;
- b. written safety procedures;
- c. written emergency procedures that comply with the applicable industry standard;
- d. a suitable first aid kit;
- e. a shovel, broom and other suitable cleaning equipment of a type satisfactory to the Waste Management Officer to remove spilled Waste, rubbish, substances and liquids and clean areas affected by spills;
- f. all necessary paperwork to record and or document any incidents or occurrences as required by this Agreement; and
- g. an oil spill kit to clean up fuel and oil spills from the vehicle.

17.9 Malfunction of Plant and Equipment

In the event of a malfunction, breakdown or accident that results in an emission from the Contractors plant or equipment, the Contractor shall be responsible for arranging and undertaking all necessary cleaning up, remediation and interim traffic safety arrangement while the clean-up and remediation is occurring.

18. TERMINATION

18.1 The Council may at its option immediately terminate this Agreement by written notice upon the happening of any of the following:

- a. any breach of the Warranties.
- b. any discovery by Council that the Contractor has intentionally failed to accurately keep and maintain the Collection Records or the Returns Records as defined in Clause 25 of this Agreement; or
- c. upon discovering that the Contractor is disposing of greenwaste into landfill without first obtaining the approval of the Waste Management Officer.

18.2 The Council may at its option terminate this Agreement by providing thirty (30) days written notice to the Contractor upon the occurrence of any one of the following:

- a. the Contractor is in breach of any term of this Agreement and fails to remedy such breach within a period of fourteen (14) days of receipt of a notice from the Waste Management Officer to do so; or
- b. if an application for the winding up or bankruptcy of the Contractor is presented and the Contractor cannot within ten (10) Business Days reasonably satisfy Council that the application is frivolous or vexatious or an order is made, or any resolution is passed, for the winding up of the Contractor provided always that it will not be an event of default where the winding up of the Contractor is for the purpose of reconstruction or amalgamation and Council has given its prior written consent, which will not be unreasonably withheld if a receiver or receiver and manager or provisional liquidator of the Contractor is appointed; or

- c. if due to the actions, omissions, negligence or otherwise of the Contractor, its employees, servants or agents any execution or other process of any Court or authority is issued against or levied upon the Contractor and is not discharged or a stay of execution is not obtained within thirty days or, a stay of execution having been so obtained, the execution or process is not discharged within ten (10) weeks after the issue or levy of the execution or process, as the case may be; or
- d. if without Council's prior written consent the Contractor suspends payment generally or ceases to carry on its business or is unable to pay its debts as that term is applied under the *Corporations Act 2001*; or
- e. if without Council's prior written consent the Contractor enters into any arrangement, reconstruction or composition with its creditors or any of them; or
- f. if without Council's prior written consent (which consent will not be unreasonably withheld) the Contractor reduces its share capital or attempts to do so; or
- g. if without Council's prior written consent, effective control of the Contractor is altered to any material extent from that subsisting at the Commencement Date; or
- h. if, in the opinion of Council, there is a material adverse change in the financial condition of the Contractor then, without prejudice to any other rights which the Council may have.

18.3 The Contractor may at its option terminate this Agreement by providing thirty (30) days written notice to the Council if the Council fails to render payment of any amount due and owing to the Contractor pursuant to this Agreement and such failure is not rectified within a period of thirty (30) days from receipt of notice from the Contractor detailing the alleged failure.

19. TO COMPLY WITH LAWS

19.1 Generally

- a. The Contractor must comply with all laws and regulations and statutory notices and demands issued and requirements pursuant to the same which have application in any way to the Services and the way in which they are carried out. This includes but is not limited to all laws relating to work health and safety and environmental pollution.
- b. Subject to Council's consent (which Council shall not unreasonably withhold) the Fee for the Services may be adjusted from time to time in the event that a Change in Law occurs which has the effect of increasing or decreasing the Contractor's costs. The Contractor shall provide documentary evidence to the Council of the effect of the increase, and its quantum prior to the adjustment of the Fee.

19.1.2 Work Health and Safety Law

Without limiting the operation of the above Clause 19.1:

- a. the Contractor must comply with all requirements of the *Work Health and Safety Act 2012* (Tas) and the *Work Health and Safety Regulations 2022* (Tas);
- b. at least seven (7) days before the Commencement Date the Contractor must submit to the Waste Management Officer for consideration a safe system of work document ("Hazard Report") detailing all Tasks and potential Hazards at each step of each Task which the Contractor regards as arising out of the carrying out of the Services. The Hazard Report must include, by not be limited to a Job Safety Analysis, Job Safety Environmental Analysis, Safe Work Method Statement for high risk activities. In respect of each hazard identified in the Hazard Report the Contractor must identify control measures aimed at eliminating the hazard or, if the hazard cannot reasonably be eliminated, minimizing the hazard through the application of an appropriate control measure chosen from the Hierarchy of Controls;

- c. Council, acting reasonably, may, in consultation with the Contractor, require changes to be made to the Hazard Report submitted pursuant to the above sub-clause 19.1.2(b); and
- d. the Contractor must, before performing the Services, obtain Council's written confirmation that the Hazard Report has been considered and the Contractor must ensure that the safe system of work and measures outlined in the Hazard Report are complied with during the Collection Period by all workers under the Contractor's control.

19.1.2 Health, Safety and Environment

Prior to the commencement of the Services the Contractor must provide to Council a copy of the following documentation:

- a. The Contractor's WHS Management Plan, with supporting documentation.
- b. The Contractor's JSA / JSEA / SWMS – i.e., Safe System of Work documentation, illustrating how the Contractor will manage health, safety and environment-related matters.
- c. JSA / JSEA / SWMS – Safe System of Work documentation for bulk greenwaste and hard rubbish collection.
- d. The Contractor must:
 - i. provide the Waste Management Officer with regular reports on WHS performance relating to the Contract works or services; and
 - ii. Promptly notify the Waste Management Officer if there is:
 - a. An accident, injury, property or environmental damage associated with the provision of Contract works or services; or
 - b. Any breach of WHS requirements.

20. FORCE MAJEURE

20.1 If a Force Majeure Event occurs the obligations of the party affected by the Force Majeure Event (**'Affected Party'**) are suspended, to the extent that they are affected by the Force majeure Event, until cessation of the Force Majeure Event.

20.2 The Affected Party which is prevented or delayed in the performance of any of its obligations under this Agreement shall give notice to the other party of a Force Majeure Event upon it being foreseen by, or becoming known to, the Affected Party.

21. ASSIGNMENT

21.1 The Contractor must not assign its obligations under this Agreement without first obtaining the prior written approval of the Council to do so.

21.2 Prior to performing any assignment of its obligations under this Agreement, the Contractor must satisfy the following conditions:

- a. any monies payable by the Contractor to the Council under this Agreement must have been paid in full;
- b. the Contractor must not be in breach of this Agreement;
- c. the Contractor must obtain the execution by the assignee of an appropriate assignment or document in a form approved by the Council;
- d. the Contractor must pay all costs incurred in the preparation of the assignment; and

- e. where the proposed assignee is a company then the Council may require the directors and/or controlling shareholders of the company to enter into a deed guaranteeing the performance by that company of the terms of the assignment. Such guarantee must be in a form acceptable to the Council and the costs incurred by the Council in the preparation and execution of the guarantee shall be paid by the Contractor.

22. DISPUTE RESOLUTION

22.1 Any difference or dispute arising out of, or in relation to any matter referred to in this Agreement must be referred to dispute resolution in accordance with this clause 22.

22.2 The parties are where possible to attempt to settle any differences or disputes by conciliation and prior to giving the other party a Dispute Notice in accordance with clause 22.3. The parties must take all reasonable steps to attempt to resolve any difference or dispute within a reasonable time, and attempt to agree upon a process for resolving the dispute or difference.

22.3 If the parties are not able to resolve the matter in dispute then either party may issue a Dispute Notice. A Dispute Notice must set out:

- a. the cause and nature of the dispute;
- b. the clause of the Agreement that the dispute relates to (if applicable);
- c. the manner proposed to settle the dispute; and
- d. any other information relevant to the dispute.

22.4 Despite the service of a Dispute Notice, all parties must to the fullest extent possible continue to fulfil their obligations under this Agreement pending resolution of the dispute.

- 22.5 As soon as practicable following the giving of a Dispute Notice to the other party, the Council and the Contractor must meet and make genuine attempts to resolve the dispute or difference, or if the dispute or difference cannot be resolved, attempt to agree upon a process for resolving the dispute or difference.
- 22.6 Unless otherwise agreed in writing by the parties, if there is any dispute or difference at any time in connection with any matter arising out of, or in relation to, any matter referred to in this Agreement between the Council and the Contractor that is not resolved to the satisfaction of both parties within twenty one (21) Business Days of the service of the Dispute Notice (or such other time that is agreed by the parties), it must be determined by a person appointed by agreement between the parties. If the parties cannot agree on a suitable person to be appointed to determine the dispute then the person is to be appointed by the President for the time being of the Law Society of Tasmania and acting as an arbitrator pursuant to the *Commercial Arbitration Act 1986*.
- 22.7 Both parties agree that the decision made by the independent person appointed in accordance with clause 22.6 of this Agreement is final and binding on the parties.
- 22.8 For the avoidance of doubt, nothing in this clause **Error! Reference source not found.** prevents either party from exercising its rights under clause 18.

23. NOTICES

- 23.1 Any notice or other document required to be given or served under this Agreement:
- a. shall be signed by the party giving the notice or by that party's solicitor;
 - b. shall be in writing addressed to the address of the recipient shown in this Agreement or to such other address as it may have notified the sender; and
 - c. will be deemed to be duly given or made:

- i. in the case of personal delivery, when delivered to the recipient;
- ii. in the case of a letter which is posted, three (3) Business Days after posting to the last known place of business or abode of the recipient or the recipient's registered office if the recipient is a Council; or
- iii. in the case of a facsimile or email, when dispatched, but if such delivery or receipt is later than 4.00 p.m. (local time) on a day on which business is generally carried on in the place to which such communication is sent, it shall be deemed to have been duly given or made at the commencement of business on the next Business Day in that place.

24. VARIATION TO SERVICES

- a. Where in the opinion of the Waste Management Officer an emergency exists which poses a risk to public health, public safety or the environment the Council may direct the Contractor to provide additional or varied Services.
- b. Where the Contractor is directed to provide additional or varied Services under this Clause it shall be paid at rates determined under the Contract or, if no such rates are available at a reasonable rate for the Services provided. Any dispute concerning such payments shall be determined pursuant to Clause 22 of this Contract.
- c. Either Party may at any time request a variation to Services provided under this Contract.
- d. Any request to vary the Services must be made as soon as reasonably practicable before a proposed variation is intended to take effect. Such information as is reasonably required for any other Party to assess the request must be provided, including with respect to the Remuneration and the timing and delivery of Services.

- e. Variations to the Services may only occur with the written agreement of both Parties. Agreement shall not unreasonably be withheld and any dispute shall be resolved pursuant to Clause 22 of this Contract.

25. REPORTING

The Contractor must provide the Council with Reports, with the content, and at the frequency, set out in Schedule 4

26. GENERAL PROVISIONS

26.1 Governing Law

This Agreement shall be governed by the laws of Tasmania and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Tasmania.

26.2 Remedies cumulative

The remedies provided in this Agreement in favour of Council or the Contractor arising because of an event of default by the Contractor or the Council or after a repudiation of this Agreement by the Contractor or the Council will not be deemed to be exclusive but will be cumulative and will be in addition to all other remedies existing at law, in equity or in bankruptcy. The election at any time to enforce any such remedies will in no way bar the later enforcement from time to time of any other such remedies.

26.3 No merger

None of the terms or conditions of this Agreement, nor any act, matter or thing done under or by virtue of, or in connection with this Agreement will operate as a merger of any of the rights and remedies of Council in or under this Agreement or otherwise. All such rights and remedies of Council will continue in full force and effect.

26.4 Delay

No failure or delay on the part of a party to exercise any power or right under this Agreement will operate as a waiver of that power or right. Nor will any single or partial exercise of any power or right under this Agreement preclude any other or further exercise of that power or right. A party will only be taken to have waived any power or right under this Agreement, including (without limitation) any right in respect of any event of default by the other party, to the extent that the right or power has been expressly waived in writing by a director, secretary or other officer of that party, irrespective of any previous waiver of any other breach of the same or any other provision of this Agreement.

26.5 Entire Agreement

This Agreement is the entire agreement between the parties and may only be varied if such variation is in writing and signed by both parties.

26.6 Counterparts

This Agreement may be entered into in any number of counterparts, and by the parties to it on different counterparts, each of which when executed and delivered will be an original.

26.7 Legal costs

Each party shall pay its own legal costs of and incidental to the preparation of this Contract.

26.8 Severance

Any provision of this Agreement which is prohibited, invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, invalidity or unenforceability but that shall not invalidate the remaining provisions of this Agreement or affect the validity or enforceability of such provision in any other jurisdiction.

27. DAMAGE CAUSED TO THIRD PARTY OR COUNCIL PROPERTY

27.1. Property Damage

The Contractor when requested by the Waste Management Officer, shall repair, replacement or clean-up any third party or Council property damaged or otherwise made unsuitable or unsafe by a collection vehicle when undertaking Services as part of this Contract. Should the Contractor fail to remedy the relevant damage within ten (10) Business Days of the relevant damage occurring, the Council may remedy the relevant damage (either by itself or engaging others) and may pay reasonable compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any reasonable compensation will be paid on demand by the Contractor to the Council or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

27.2. Cost of Repair

The Council and the Contractor (or an independent expert, appointed under Clause 27.3), will determine the cost of effecting any necessary repairs or the amount of reasonable compensation to be paid to the owner of any property in accordance with Clause 27.1, which may include any professional fees of the independent expert (if applicable) and costs that are deemed by the Council to be attributable to the application of Clause 27.1.

27.3. Independent Expert

Independent Expert For the purposes of Clause 27.3, an 'independent expert' will be a person agreed upon by the Council and the Contractor as having the skills necessary to determine the cost of repairs or compensation under Clause 27.2. If no such agreement is reached within three (3) weeks of the Council referring the matter to the Contractor for consultation under Clause 27.2, either the Council or the Contractor may request the President for the time being of the Law Society of Tasmania to nominate the independent expert and the expert so nominated will be appointed to determine the cost of repairs or compensation under Clause 27.2.