



Corowa Shire

...the choice

REFERENCE: BP:MTH – Legal 620 - Contract Waste Management
CONTACT: MR BOB PARR

16 May 2013

Mr Matthew Rogers
Kell Moore Lawyers
571 Kiewa Street
ALBURY NSW 2640

Dear Sir

RE: KERBSIDE WASTE CONTRACT WITH TRANSPACIFIC CLEANAWAY PTY LTD

Please find attached Contract executed by Council and returned as requested for Transpacific Cleanaway Pty Ltd.

Council has retained one original Contract for our legal records.

Should you require any further information please contact Mr Bob Parr on 6033 8960 during normal business hours.

Yours faithfully

B CORCORAN
GENERAL MANAGER

Encl.

DATED

2013



Corowa Shire

**COROWA SHIRE COUNCIL
ABN 43 874 223 315**

and

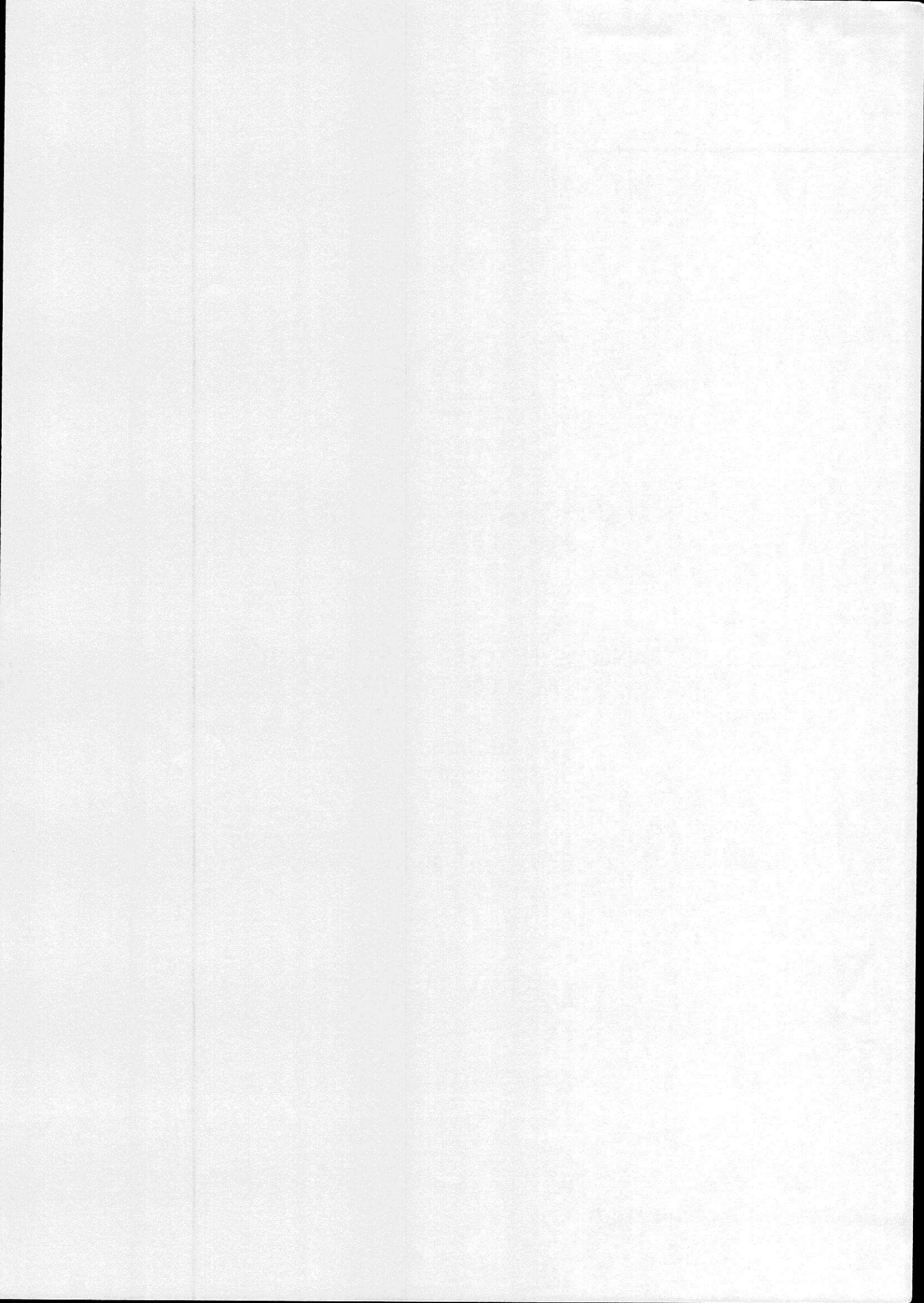
**TRANSPACIFIC CLEANAWAY PTY LTD
ACN 000 164 938**

**Section C
Conditions of Contract**

CONTRACT NO: FIL10/01249



571 Kiewa Street
ALBURY NSW 2640
Tel: (02) 6021 2844
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Ref: MSR:110901



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BETWEEN **COROWA SHIRE COUNCIL ABN 44 970 341 154** of 100 Edward Street, Corowa, New South Wales, 2646 (**Council**).

and

TRANSPACIFIC CLEANAWAY PTY LTD ACN 000 164 938 of Level 1, 159 Coronation Drive, Milton, Queensland, 4064 (**Contractor**).

1. INTRODUCTORY ISSUES

1.1 Contract Aims and Objectives

The Aims and Objectives of this Contract are:

- (a) to achieve and maintain a high standard of performance in provision of the Services by the Contractor using best practice methods and systems;
- (b) to fulfil the Council's legislative obligations to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible in a manner which is consistent with and promotes the principles of ecologically sustainable development and have regard to the long term and cumulative effect of its decisions;
- (c) to regularly assess the performance of the Contractor and to gain continual improvement to work practices and resource recovery;
- (d) to promote the health, safety and welfare of all persons engaged in or affected by the Services;
- (e) to minimise noise impacts;
- (f) to purchase environmentally preferred goods whenever possible;
- (g) to facilitate a sustained effort to increase the type, quality and amount of resources recovered from the waste stream;
- (h) to maximise and preserve the resource integrity and value of recoverable and reusable materials within the waste stream;
- (i) to ensure the provision of ongoing effective communication and cooperation between the Council and the Contractor;
- (j) to provide high standard, integrated waste and resource recovery services, based on "best practice" principles, which are complementary to national, state and regional waste management policies, as well as Council's own waste management strategy;
- (k) to fulfil the Council's obligations under legislation relating to provision of waste and resource recovery services;
- (l) to provide cost-effective services that offer value for money.

1.2 Definitions

In this Contract, the following terms will, have the meanings indicated:

Annexure means the Annexure to this Contract.

Authority includes any Government (State or Federal), Government departments, statutory corporation or other body having power to affect the manner of provision of the Services or the need for the provision of the Services by the Council.

Business Day means a day on which trading banks are open for business in Sydney, New South Wales.

Change of Law means:

- (a) the introduction of;
 - (b) a change in, or in the interpretation or administration of; or
 - (c) the repeal of;
- a Law on or after the Contract Commencement Date.

Claim means a statement prepared by the Contractor, containing such information as the Supervising Officer may require, which sets out the Services provided in a given period and the amount believed by the Contractor to be due under this Contract as payment for these Services.

Clause means a clause of this Contract.

Contract Commencement Date means 1 July 2012.

Contract means this agreement.

Contract Documents means the documents listed in Item 2 of the Annexure.

Contract Sum means the total amount payable under this Contract.

Contractor means the Party or Parties described as such in the Contract and includes any employee, agent or subcontractor acting on behalf of the specified Contractor.

Contractor's Representative is the person appointed under Clause 2.5.1.

Contract Term has the meaning ascribed to it by Clause 2.2.2.

Council's Code of Conduct means any regulations, guide, policy or standards that Council sets from time to time for the conduct of its staff.

Equipment - see "Vehicles, Plant and Equipment".

Facility/Facilities means facilities used by the Contractor to provide Services under this Contract.

Food and Garden Waste Commencement Date means 16 September 2013, or earlier by agreement between the Parties.

Food and Garden Waste Service means all or any of the services to be performed by the Contractor as described in the Contract Documents and forming part of the Tender that relate to the proposed collection, processing and disposal of food and garden waste.

Force Majeure Event means an event beyond the reasonable control of the Party that the Party has taken all reasonable efforts to minimise.

GST has the meaning attributed to it in *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth)*.

Law means the requirements of all statutes, rules, ordinances, codes, regulations, proclamations, by-laws, environmental planning instruments or consents of any Authority.

Material(s) means any item put out for collection as part of any of the Services.

Notice of Dispute means the notice served by a party to this Contract pursuant to Clause 13.2.

Party/Parties means any party or parties to this Contract.

Party's Representative/Party's Representatives means the representative(s) nominated by each Party in writing to the other Party to act as its representative(s) in the administration of this Contract [i.e., the Contractor's Representative and the Supervising Officer].

Performance Security has the meaning ascribed to it in Clause 12.2.

Plant - see "Vehicles, Plant and Equipment".

Premises and Service-Entitled Premises have the meanings ascribed to them in the Specification.

Principles of ecologically sustainable development are as defined in the *Local Government Act 1993 (NSW)*.

Services means all or any of the services to be performed by the Contractor as described in the Contract Documents and forming part of the Tender, inclusive of the following components:

- (a) refuse (general garbage) service; and
- (b) recyclables service; and
- (c) garden waste service (from the Services Commencement Date until the Food and Garden Waste Commencement Date); and
- (d) Food and Garden Waste Service (from the Food and Garden Waste Commencement Date).

Services Commencement Date means the date or dates determined in accordance with Clause 2.2.1.

Service Rates means for the year commencing on the Contract Commencement Date the rates specified in the Tender and for each subsequent year those rates as adjusted in accordance with Clause 10.

Specification means the specification of Services attached to this agreement, which includes any or all of the following General Specification, Garbage Specification, Recyclables Specification and Food and Garden Waste Specification.

Supervising Officer means the person appointed from time to time by the Council to represent the Council in the administration of this Contract.

Tender means the Tender Return Schedules and all other documentation submitted by the Contractor in response to the Request for Tender which now forms part of the Contract Documents.

Vehicles, Plant and Equipment means all or any of the vehicles, plant, implements, appliances and equipment used by the Contractor for carrying out its obligations under this Contract whether or not owned by the Contractor.

1.3 Construction of Terms

In this Contract:

Headings: Headings and underlinings are for convenience and do not affect interpretation.

Number: Words expressed in the singular include the plural and vice versa.

Gender: A reference to a gender includes a reference to any other gender.

Grammatical Forms: Where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning.

Reference to any Statute: A reference to any Act, regulation, planning instrument, local law or by-law includes all Acts, regulations, planning instruments, local laws or by-laws amending, consolidating or replacing same, and a reference to an Act includes all regulations, planning instruments, local laws and by-laws made under that Act.

Successors and Permitted Assigns: A reference to a Party in a document includes that Party, its legal representatives, successors and permitted assigns.

Reference to Documents: A reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document.

1.4 Interpretation

1.4.1 Contract Interpretation

No rule of contract interpretation will be applied in the interpretation of this Contract to the disadvantage of one Party on the basis that it prepared or put forward any document comprising part of this Contract.

1.4.2 Amendments

An amendment of any Clause in this Contract must be in writing and signed by the Parties.

1.4.3 Precedence

Should the Contract Documents contain any discrepancy or inconsistency, then the documents will take precedence in the order in which they are listed in the Annexure for the purposes of resolving the discrepancy or inconsistency. If the discrepancy or inconsistency is not resolved by this method, the Council will make a determination resolving the discrepancy or inconsistency. No determination by the Council under this Clause will be construed as giving rise to a variation under Clause 5.

1.4.4 Severability

If any part of this Contract is or becomes illegal, invalid or unenforceable in a relevant jurisdiction, the legality, validity or enforceability of the remainder of this Contract will not be affected and this Contract will be read as if that part had been deleted.

1.4.5 Whole Understanding

This Contract constitutes the whole understanding between the Parties, and embodies all terms and conditions of the transaction.

1.4.6 Legislation

The Contractor must obey and ensure that its employees and any agents or subcontractors obey any Acts, Regulations and local laws in any way applicable to the work to be performed under this Contract.

The Contractor will comply with:

- (a) the *Fair Work Act 2009* (Cwlth);
- (b) the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth);
- (c) the *Industrial Relations (Commonwealth Powers) Act 2009* (NSW); and

- (d) all other applicable Acts, Regulations, Awards and local laws applicable to the Contract from time to time.

1.4.7 Governing Law

The law of the State of the origin of the Council named in Item 1 of the Annexure governs this Contract and any legal proceedings or arbitration under this Contract. Any legal action in relation to this Contract against any party may be brought in any court of competent jurisdiction in that State.

Each Party by execution of this Contract irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

1.4.8 Currency

All prices and payments shall be in Australian currency.

1.4.9 Language

Communications under this agreement shall be in the English language.

1.4.10 Measurements

Measurements shall be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960 (Cwlth)*.

1.5 Relationship Between the Parties

1.5.1 No Partnership

Nothing in this Contract will be deemed to create a partnership between the Parties to this Contract nor will such a relationship be deemed to exist between the Parties arising out of any circumstances associated with this Contract.

1.5.2 Several and Joint Liability

If the Contractor consists of two (2) or more parties, this Contract binds each of them severally and all of them jointly.

1.6 No Agency

The Contractor will not:

- (a) hold itself out as being an agent of the Council, or being in any way entitled to make any contract on behalf of the Council, or to bind the Council to the performance, variation, release or discharge of any obligation; or,
- (b) hold out its employees or agents or allow its employees or agents to hold themselves out as being employees or agents of the Council.

1.7 No Fettering of Council's Powers

It is acknowledged and agreed that this Contract does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any legislation.

1.8 Contractor to Examine Information

The Contractor warrants that it has examined all information and has made all enquiries relevant to its obligations under this Contract and is aware of all risks, contingencies, costs, difficulties and other circumstances in any way connected with the performance of its obligations under this Contract.

1.9 No Waiver

No time or other indulgence granted by one Party to this Contract to any other Party, or any variation of the terms and conditions of this Contract, or any judgment or order obtained by one Party to this Contract against any other Party, will in any way amount to a waiver of any of the rights or remedies of the Parties against one another in relation to the terms of this Contract. Additionally, a waiver by a Party to this Contract in respect of any breach of any provision of this Contract by the other Party shall not be deemed to be a waiver of any other or of any subsequent breach. The failure of a Party to enforce at any time any of the provisions of this Contract shall in no way be interpreted as a waiver of such provision.

1.10 Notices

1.10.1 Method of Giving Notices

A notice required or permitted to be given by one Party to another under this Contract will be in writing, addressed to the other Party and:

- (a) handed to that Party's Representative; or,
- (b) delivered to that Party's address; or,
- (c) sent by pre-paid mail to that Party's address; or,
- (d) transmitted by facsimile to that Party's facsimile number.

Notices under this Contract may not be served by email.

1.10.2 Time of Receipt

A notice given to a Party in accordance with Clause 1.10.1 will be treated as having been duly given and received:

- (a) if handed to that Party's Representative, immediately; or,
- (b) if delivered to that Party's address, on the day of delivery; or,
- (c) if sent by pre-paid mail, on the third (3) Business Day after posting; or,
- (d) if transmitted by facsimile to that Party's facsimile number and a correct and complete transmission report is received, on the day of transmission.

1.10.3 Addresses of Parties

For the purposes of Clauses 1.10.1 and 1.10.2, the postal address or facsimile number of a Party is the postal address, facsimile number stated in Item 1 of the Annexure unless notice of another postal address and/or facsimile number has been given to the other Party.

1.10.4 Notices Issued by the Council

Where a notice is given by the Council under this Contract it must be issued by the Supervising Officer or the General Manager of the Council.

When the Contractor receives a notice from the Supervising Officer or General Manager purporting to be issued on behalf of the Council the Contractor is entitled to accept that the notice has been issued with the knowledge and authority of the Council.

1.10.5 Supervising Officer

Unless the context otherwise requires all functions of the Council under this Contract may be performed by the Supervising Officer and any notice required to be given or received by the Council may be given by, or served on, the Supervising Officer.

1.11 Access to Information

- (1) The Contractor must, within 7 days of receiving a written request by the Council to provide access to information under the *Government Information*

(*Public Access*) Act 2009, provide the Council with immediate access to the following information contained in records held by the Contractor:

- (a) information that relates directly to the performance of the Services provided to the Council by the Contractor pursuant to the Contract;
 - (b) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Services pursuant to the Contract; and
 - (c) information received by the Contractor from the Council to enable it to provide the Services pursuant to the Contract.
- (2) For the purposes of sub-clause (1), information does not include:
- (a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margin;
 - (b) information that the Contractor is prohibited from disclosing to the Council by provision made by or under any Act, whether of any State or Territory, or of the Commonwealth; or
 - (c) information that, if disclosed to the Agency, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.
- (3) The Contractor will provide copies of any of the information in sub-clause (1), as requested by the Council, at the Contractor's own expense.
- (4) Any failure by the Contractor to comply with any request pursuant to sub-clause (1) or (3) will be considered a breach of an essential term and will allow the Council to terminate the Contract in accordance with Clause 11.1.

1.12 Consultation for Access to Information

- (1) The Council will take reasonably practicable steps to consult with the Contractor before providing any person with access to information relating to the Contract, in response to an access application under the *Government Information (Public Access) Act 2009 (GIPA Act)*, if it appears that:
- (a) the information:
 - i. includes personal information about the Contractor or its employees;
 - ii. concerns the Contractor's business, commercial, professional or financial interests; or
 - iii. concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or
 - iv. concerns the affairs of a government of the Commonwealth or another State (and the Contractor is that government);

- (b) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and
 - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (2) If, following consultation between the Council and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) within 5 days of the conclusion of the consultation process.
- (3) In determining whether there is an overriding public interest against disclosure of government information, the Council will take into account any objection received by the Contractor.
- (4) If the Contractor objects to the disclosure of some or all of the information but the Council nonetheless decides to release the information, the Council must not provide access until it has given the Contractor notice of the Council's decision and notice of the Contractor's right to have that decision reviewed.
- (5) Where the Council has given notice to the Contractor in accordance with sub-clause (4), the Council must not provide access to the information:
 - (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (b) where any review of the decision duly applied for is pending.
- (6) The reference in sub-clause (5)(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

2. THE SERVICES

2.1 Work to be Performed

2.1.1 Contractor's Obligation

The Contractor will perform the Services during the Contract Term in accordance with the Contract Documents.

2.1.2 Notice of Direction

In addition to any other right the Council may have, if the Contractor fails to meet any of its obligations under Clause 2.1.1 for any reason, the Supervising Officer may give notice to the Contractor directing the Contractor to remedy the failure. Any notice given under this Clause may specify a time within which the failure must be remedied which is to be at the Council's discretion but must be reasonable.

2.1.3 Contractor's Default Notice of Direction

If the Contractor fails to remedy a default in accordance with a notice issued under Clause 2.1.2, the Council may arrange for the default to be remedied by others.

2.1.4 Cost of Remedying Default

Any costs or charges incurred by the Council in the remedying of a default under Clause 2.1.3, including any monitoring, administration or management cost incurred as a result of the default, as determined by the Supervising Officer, must be paid by the Contractor to the Council within ten (10) Business Days of invoice or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

2.1.5 Better Performance

The Supervising 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 3.

When issuing directions for better performance these directions must be consistent with the aims and objectives set out for this Contract in Clause 1.1.

2.2 Contract Term

2.2.1 Commencement Date of Services

The Services under this Contract are to commence on the dates specified in Item 3 of the Annexure.

2.2.2 Contract Term

The Contract Term is to be the period detailed in Item 4 of the Annexure.

2.2.3 Extension of Contract Term

Not Applicable to this Contract.

2.3 Fees

The Contractor will pay all fees, charges and costs incurred in its performance of the Services, except as stated, if at all, in the service Specification for each part of the Services or in Item 5 of the Annexure.

Where the Contractor has a debt owing to Council which is in arrears to Council's standard trading terms, then Council reserves the right to withhold payment of moneys due to the Contractor until the Contractor's debt has been cleared.

2.4 Reports

The Contractor will provide the Supervising Officer with written reports on any aspect of the Services if and as requested to do so in writing by the Supervising Officer or as specified elsewhere in the Contract Documents.

2.5 Contractor's Representative

2.5.1 Appointment of Representative

The Contractor will appoint a representative to be responsible for the day to day performance of the Services and the supervision of all persons employed or engaged in carrying out the Services (the "Contractor's Representative") as specified in Item 6 of the Annexure. The Contractor will notify the Supervising Officer immediately in writing should a new Contractor's Representative be appointed.

2.5.2 Availability of Representative

The Contractor's Representative must be available to meet the Supervising Officer daily at Council's offices to discuss delivery of the Services and to agree how any problems or

complaints are being addressed. If the Supervising Officer waives these meetings he/she may reinstate these meetings at any time.

In addition the Contractor's Representative must be available and able to be contacted by the Council by telephone each day during the hours specified in Item 6 of the Annexure.

The Contractor's Representative must have available, at all times, an appropriate and reliable motor vehicle and mobile communication system by which the Council can contact the Contractor's Representative.

2.5.3 Address and Telephone Numbers

The Contractor will provide the Supervising Officer with the address of the Contractor's Representative and a telephone number on which the Contractor's Representative may always be contacted. This address must be located in the Albury/Wodonga Region and must be attended between 8.30 a.m. and 5.00 p.m. on all Business Days.

The Contractor will notify the Council immediately in writing of any change of address or telephone numbers of the Contractor's Representative.

2.5.4 Directions to Representative

The Parties agree that any direction, instruction, notice, determination, approval or other communication made or given to a Party's Representative will be deemed to have been made or given to that Party.

2.5.5 Knowledge of Representative

The Parties agree that any matter within the knowledge of a Party's Representative is deemed to be within the knowledge of that Party.

2.6 Council's and Supervising Officer's Right of Access

The Council and the Supervising 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.

3. CHANGES IN THE SERVICES

3.1 Service Changes in Case of Emergencies

Where in the opinion of the Supervising 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.

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 13.

3.2 Service Changes for Convenience

Either Party may at any time request changes to Services provided under this Contract.

Variations to the Services may only occur with the agreement of all affected Parties under this Contract however such agreement shall not unreasonably be withheld by any Party.

Any request to vary the Services must be made not later than a reasonable time before the variation is to take effect and with such information as is reasonably required for any other Party to assess the request.

In deciding if a particular variation is reasonable the Parties shall have regard to the Contract Aims and Objectives set out in Clause 1.1. These Contract Aims and Objectives shall be used to guide any decisions on variations.

4. CONTRACTOR'S OBLIGATIONS

4.1 Contractor to Comply with Statutory and Legal Obligations

The Contractor must ensure that all legal obligations that arise, whether by or under this Contract, statute, in equity or at common law, as a consequence of or in connection with the performance of the Services are fully complied with.

The Contractor's obligations, as created by this Clause include, without limitation, the following:

- (a) Where any person, facility, premises, vehicle, plant, equipment, or activity is required to be licensed, registered, approved or accredited the Contractor must ensure that the appropriate licence, registration, approval or accreditation is in force and current at all times during the performance of the Services.
- (b) Where a development consent (NSW) or a planning permit (Vic) is required to be obtained in respect of the use of any land, the Contractor must ensure such consent is obtained and is in force prior to the commencement of, and at all times during, such use.
- (c) Irrespective of who performs the Services, the Contractor must ensure the Services are performed in a safe manner and in accordance with all relevant legislation and Codes of Practice, all regulations, awards, codes and/or guidelines pursuant to any Acts and any enactments in lieu of such Acts as may be repealed.

4.2 Contractor to Maintain Records

The Contractor is to maintain copies of all licences, approvals, consents, accreditations, orders, directions and instructions that relate to the performance of the Services, including details of renewal or expiry dates and any restrictions that apply, and any variations to this Contract or notices issued under this Contract until the date six (6) months after the completion of the performance of the Services in their entirety or the date six (6) months after termination of this Contract, whichever is the later.

4.3 Contractor to Act in Support of Council's Obligations

If the Council has any legal obligations that the Council cannot fulfil without a person involved in the performance of the Services acting (or not acting) in a particular manner in relation to the performance of the Services, then the Council may direct the Contractor to ensure that such person (whether the person is the Contractor, an employee or officer of the Contractor, a subcontractor, an employee or officer of a subcontractor or any other person) acts (or does not act) in that manner. Any such direction must be complied with immediately, or if a timeframe is specified in the direction, in accordance with that timeframe. The Contractor must ensure that the terms of any engagement of a subcontractor to perform part of the Services allow the Contractor to comply with the provisions of this Clause.

Where the Council makes a direction under Clause 4.3, up to forty (40) hours per calendar year of Contractors' staff time is to be available at no charge to Council in total under this Clause and Clause 5.4. Where Council requires additional time by Contractors' staff the Contractor is to provide a diary of time spent and may recover staff costs from Council at a fixed rate of that person's hourly rate plus fifty percent (50%) where hourly paid or at the rate of 1/1200 of annual base salary per hour where that person is on salary.

5. CONTRACTOR'S EMPLOYEES

5.1 Generally

- (a) The Contractor must provide a sufficient number of employees with adequate skills, training and qualifications to carry out promptly and effectively the Services under this Contract and otherwise to perform the obligations of the Contractor under this Contract to the satisfaction of the Council.
- (b) The Contractor must observe all laws creating employee entitlements including industrial awards, enterprise agreements and Industrial or Arbitration Tribunal decisions applicable to the Contractor's employees. The Contractor's employees will not be considered to be the Council's employees.
- (c) The Contractor must provide upon request by Council or the Supervising Officer evidence of any enterprise or industrial awards in place with relevant unions or groups of employees that cover employees performing Services under this Contract.
- (d) The Contractor must comply with all anti-discrimination laws and ensure its employees do not breach those laws.
- (e) When required by the Council the Contractor must provide evidence and records to demonstrate it is complying with the requirements of this Clause 5.1.

5.2 Staff Presentation and Identification

- (a) The Contractor must ensure that all staff and subcontractors performing the Services are appropriately attired and wear name badges.
- (b) The Council may direct the Contractor that certain uniforms, clothing, safety equipment and name badges may or may not be used.
- (c) The Council may direct the Contractor as to the standard of cleanliness, repair and presentation of uniforms, clothing, safety equipment that is acceptable.
- (d) The Contractor must comply with any directions given under Clause 5.2 (b) and (c).

5.3 Conduct of Employees

The Contractor will ensure that all of its employees and subcontractors:

- (a) conduct themselves in a friendly, courteous, civil and inoffensive manner;
- (b) carry out their duties at all times with as little inconvenience and disturbance to others as possible, and without causing any nuisance;
- (c) conduct themselves in accordance with the Council's Code of Conduct and any Act or regulation and report to the Council any conduct which attempts to induce any public official to act corruptly in the administration of this Contract;
- (d) collect ONLY Materials specified under the Contract. The collection of additional materials for money or other consideration including trade waste and business wastes is prohibited without the written consent of the Council. If the Contractor's employees are found collecting such materials Council may, in addition to any other remedies, recover the estimated costs of disposal and/or reprocessing such materials for the period which such materials are shown to have been collected or in the absence of clear evidence of the period from the beginning of the Contract.

5.4 Legal Proceedings

The Contractor and its employees must upon request and without any expense to the Council attend as witnesses for the Council in all cases where prosecutions are laid or where legal proceedings are instituted against the Council or by the Council against another person.

Where the Council makes a request under this Clause, up to forty (40) hours per calendar year of Contractors' staff time is to be available at no charge to Council in total under this Clause and Clause 4.3. Where Council requires additional time by Contractors' staff the Contractor is to provide a diary of time spent and may recover staff costs from Council at a fixed rate of that person's hourly rate plus fifty percent (50%) where hourly paid or at the rate of 1/1200 of annual base salary per hour where that person is on salary.

5.5 Removal of Employees

The Council in its absolute discretion may by notice in writing from the Supervising Officer to the Contractor require that any employee, agent or subcontractor be removed, within a stated time, from any activity involved in performing the Services.

5.6 Industrial Disputes and Interruptions to Service

If an industrial dispute results in the cessation or interruption of any of the Services which remains unresolved for a period of more than two (2) consecutive Business Days, the Contractor must at the written instruction of the Council immediately notify the dispute to the appropriate Industrial Commission or Tribunal and request an immediate compulsory conference between the parties concerned and must take all reasonable steps to endeavour to resolve such disputes. If the Contractor fails to so notify such dispute as required by this Clause, the Council will be entitled to take all necessary action to remedy the situation.

5.7 Indemnity

The Contractor indemnifies the Council in respect of all moneys paid by the Council to any employee of the Contractor, subcontractor, Authority, superannuation fund or insurer arising from any legal obligation of the Council following the failure of the Contractor to pay any money to any such person or entity.

5.8 Payroll Tax

The Contractor must:

- (a) pay any payroll tax in respect of wages or salaries paid to the Contractor's employees; and,
- (b) ensure that all subcontractors pay any payroll tax in respect of wages or salaries paid to the subcontractor's employees.

5.9 Payment of Employees and Subcontractors

The Contractor warrants that it will pay its subcontractors and employees in a timely fashion and in accordance with any applicable contract, award, enterprise agreement and/or statute.

5.10 Government Authorities and Termination

If the Contractor is prevented from carrying out the Services by any order, notice or direction from any competent Authority or by law then the Council may, at its option:

- (a) recommend the Contractor vary the terms of this Contract in accordance with Clause 3; or,
- (b) terminate this Contract by notice in writing to the Contractor and upon delivery of such notice this Contract will be cancelled and no Party will be liable to any other Party for any costs, damages, compensation, charges or expenses suffered or incurred by any Party arising out of such

termination. However, such termination will be without prejudice to the rights of the Council and the Contractor in respect of any breach or default under this Contract occurring prior to such termination.

6. SUBCONTRACTING

6.1 Generally

- (a) Any assignment or subcontracting will not be binding on the Council unless it is done in accordance with this Clause 6.
- (b) The Contractor will not, except pursuant to Clause 6.2, subcontract or assign the whole or any portion of its rights and obligations under this Contract, and no subcontractors or assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council unless the relevant subcontract or assignment has received consent pursuant to Clause 6.2.

6.2 Subcontracting and Assigning

The Contractor will be entitled to assign or subcontract the whole or any part of its rights and obligations under this Contract only with the prior written consent of the Council, which consent may not be unreasonably withheld but which may be given subject to such conditions as the Council considers appropriate.

6.3 Transfer From Existing Contractual Arrangements

Where an existing contractual arrangement exists between Council and the Contractor for any or all of the Services described in this Contract this Contract supersedes the earlier arrangements to the extent that Services are included within this Contract.

No compensation will apply to the Contractor for the transfer of existing arrangements under this Clause 6.3.

6.4 Contractor to Provide Information

With any application for the consent of the Council to any assignment or subcontracting, the Contractor must provide all such information as may be required by the Council, including, but not limited to, evidence that the proposed assignee or subcontractor will be capable of performing any obligations of the Contractor under this Contract that are to be subcontracted or assigned.

This may include details of motor vehicles and equipment, employees, facilities, management, staff, systems and financial resources proposed to be used by the assignee or subcontractor.

6.5 Contractor Still to be Liable

Unless otherwise agreed in writing by the Council, no assignment or subcontracting of any rights or obligations of the Contractor under this Contract will relieve the Contractor from any liability under this Contract or at law in respect of the performance or purported performance of this Contract and the Contractor will be responsible for the acts and omissions of any subcontractor or assignee or any subcontractor's or assignee's employees and agents as if they were the acts or omissions of the Contractor.

6.6 Change in Beneficial Ownership

For the purpose of this Clause 6, if the Contractor is a company, an assignment of this Contract will include any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor. This Clause shall not apply if the Contractor is

a public company listed on an Australian or overseas Stock Exchange or a subsidiary of any such company.

7. CONTRACTOR'S VEHICLES, PLANT AND EQUIPMENT

7.1 Generally

The Contractor will ensure that all of its Vehicles, Plant and Equipment being used in the performance of this Contract:

- (a) complies with all applicable Acts, regulations and by-laws; and,
- (b) are suitable for the purpose for which they are to be used; and,
- (c) are maintained in good repair and condition; and
- (d) all existing Vehicles are replaced with new Vehicles in accordance with the Fleet Plan annexed to this Contract and marked Schedule B – Fleet Plan.

The Parties agree that Council has accepted the Contractor's tendered submission identified as *Alternative 2* and annexed to this Contract as Schedule C. It is agreed that the price structure for *Alternative 2*, Option 1 will be applied from the Contract Commencement Date until the Food and Green Waste service commences operation. From the date that the Food and Green Waste service commences operation until the completion of the Contract Term, the parties agree that the price structure for *Alternative 2*, Option 2 will be applied (subject to variations in accordance with this Contract).

7.2 Deficient Vehicles, Plant and Equipment

7.2.1 Notice of Deficiency

If the Supervising Officer considers that any item of the Contractor's Vehicles, Plant and Equipment is deficient, having regard to the requirements of Clause 7.1, the Supervising Officer may give notice to the Contractor:

- (a) specifying the deficiency;
- (b) stating a date by which the deficiency is to be remedied;
- (c) stating that the item of the Contractor's Vehicles, Plant and Equipment is not to be further used in the performance of the Services or otherwise in connection with this Contract until the deficiency has been remedied;
- (d) stating that the item of the Contractor's Vehicles, Plant and Equipment may only be used subject to specified conditions until the deficiency has been remedied; and,

may require the Contractor to obtain the Council's approval before using the item of Vehicles, Plant and Equipment which has been subject to a notice of deficiency.

7.2.2 Reasons for Direction

Any notice given under this Clause will give reasons for the Council's direction.

8. PROPERTY

8.1 Damage to Property

The Contractor will immediately remedy any damage done by its employees, agents or subcontractors to any property of the Council or any other person. Should the Contractor fail to do so, the Council may effect the necessary repairs or 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.

8.2 Damage to Mobile Bins Used in this Contract

Where the Contractor damages mobile bins it will repair at its cost the mobile bins. Where the Council is dissatisfied with a repair the Council may direct the Contractor to carry out a further repair or replace the damaged mobile bin at the Contractor's cost.

8.3 Cost of Damage

The Council 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 8, which may include any professional fees and costs that are deemed by the Council to be attributable to the application of Clause 8.

Where the costs determined under Clause 8 exceed ten-thousand dollars (\$10,000) the Contractor may request an independent expert review of the costs. The costs of such review are to be added to the amount of the claim for costs of damage. If, after obtaining an independent expert review of the costs, the Parties cannot agree on an amount to satisfy Clause 8, the Contractor may commence dispute resolution procedures under this Contract.

9. INSURANCE, RISK, RESPONSIBILITY AND INDEMNITY

9.1 Workers' Compensation

9.1.1 Obligation to Insure

The Contractor must insure in respect of any liability, loss, claim or proceedings whatsoever as required by law relating to workers' compensation or employers' liability by any person employed by it in or about the execution of the Services and must ensure that every subcontractor is insured against any such liability in the case of employees of such subcontractor.

9.1.2 Indemnity

The Contractor will indemnify the Council from any liability, costs, penalties or additional premiums the Contractor or its subcontractors may incur under the provisions of the *Workers Compensation Act 1987(NSW)* and *Accident Compensation (Workcover Insurance) Act 1993 (Vic)*, whichever is applicable, arising from any aspect of the Services to be performed by the Contractor under this Contract.

9.2 Public Liability Insurance

The Contractor must hold current public liability insurance ("the Public Liability Policy") in the name of the Contractor providing coverage for an amount of at least that stated in Item 7 of the Annexure. The Contractor warrants that the Public Liability Policy will cover the Services provided by the Contractor under the Contract. The Contractor will provide the Council with a copy of the Certificate of Currency of Public Liability Policy annually, or as requested. The Contractor will ensure that any subcontractors engaged by it under this Contract will hold current public liability insurance for an amount of at least that stated in Item 7 of the Annexure.

9.3 Vehicles, Plant and Equipment Insurance

The Contractor must insure its Vehicles, Plant and Equipment in respect of any liability as required by law and also in respect of any injury or damage to person or property as may be caused by the negligent use of any such Vehicles, Plant or Equipment in the course of performing the Services.

9.4 Bi-Annual Review of Insurance

Deleted.

9.5 Proof of Insurance

Before the Contractor commences work under this Contract and whenever requested in writing by the Council, the Contractor must produce evidence to the satisfaction and approval of the Council of the insurances effected and maintained.

The effecting of insurance does not limit the liabilities or obligations of a Party under other provisions of this Contract.

9.6 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. The premium paid will be a debt due to the Council from the Contractor and the Council may 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 the Council. The rights given by this Clause 9 are in addition to any other right.

9.7 Indemnity

- (a) Subject to Clause 9.7 (b), the Contractor must at all times hold harmless and keep indemnified the Council, its employees, representatives, officers and agents from and against all actions, proceedings, liabilities, losses, damages, demands, claims, suits, fines and other penalties, costs, charges and expenses (including all reasonable legal fees and other expenses of legal proceedings) and causes of action arising directly out of or directly related to the performance of the Services by the Contractor, its employees, agents, subcontractors and assigns (including without limitation the observance, fulfilment, non-observance or non-fulfilment of any term, condition or requirement of this Contract).

The indemnity of the Contractor under this Clause will extend to any acts or omissions of the Contractor, its agents and employees and any assignees or subcontractors and includes indemnity in relation to personal injury, property and economic loss.

- (b) The Contractor shall not under Clause 9.7 (a) be liable to indemnify the Council, its employees, representatives, officers and agents for the proportionate share of any actions, proceedings, liabilities, losses, damages, demands, claims, suits, fines and other penalties, costs, charges and expenses caused by the negligent act or omission of the Council, its employees, representatives, officers and agents.
- (c) The Contractor will not be liable for any special, exemplary, punitive or consequential loss or damage (including without limitation, loss of profit, loss of opportunity and loss of goodwill) incurred by the Council, its employees, representatives, officers or agents, either directly or indirectly in connection with this Contract.

9.8 Reimbursement by Contractor

The Contractor must, on demand, reimburse the Council, its employees, representatives, officers and agents for any financial loss incurred by that person, including fines and other penalties, for which the Contractor indemnifies that person pursuant to this Clause 9.

9.9 Indemnities and Releases of Liability Continue

The indemnities and releases of liability contained in this Clause 9 continue in full force and effect after the termination of this Contract by a Party or the Parties for any reason.

10. PAYMENTS

10.1 Payment Rates

The Contractor will be paid for Services provided under this Contract at the Service Rates that apply at the time the Services are supplied.

10.2 Submission of Claims

Each month the Contractor shall deliver to the Council a Claim for payment for the Services provided in that month. The Claim for payment must be in the form of a tax invoice for GST purposes and supported by evidence of the amount due to the Contractor and such other information as the Council may reasonably require to verify the amount due including the Services performed and the Service Rates applicable to those Services.

The Council shall approve or dispute the Claim in writing to the Contractor within ten (10) Business Days. Where the Council approves the Claim subject to conditions or adjustment or rejects a Claim, the Council shall notify the Contractor of such conditions or adjustment within ten (10) Business Days of submission of the Claim by the Contractor.

10.3 Payment

Council must, within thirty (30) Business Days of submission by the Contractor, pay a Claim subject to any conditions or adjustments notified by the Council to the Contractor.

10.4 Correction of Payments

At any time the Council may correct any error discovered in any previous payment, and may add to or deduct from any payments due to the Contractor under this Contract to compensate for such error.

When such adjustments occur the Contractor will provide invoices to Council to support any corrections within thirty (30) Business Days of being advised of them.

10.5 Interest on Overdue Payments

If any moneys due to any Party are not paid by the date on which they should have been paid, then interest shall be payable thereon from the due date until the date on which they are paid. The rate of interest shall be the rate stated in Item 8 of the Annexure and if no rate is stated the rate shall be ten percent (10%) per annum, compounded quarterly.

10.6 Provisional and Contingency Sums

Where the Contract provides for the payment of provisional and contingency sums the amount of these has been determined by Council and are included in the total Contract Sum.

Expenditure against these sums may only occur at the direction of the Supervising Officer. Any claims by the Contractor from these amounts must be identified separately in accounts. Any unused amounts from these sums at the end of each year of the Contract shall remain with Council and may not be carried over from year to year.

10.7 Service Rates Reviews

A rise and fall condition shall apply to the Service Rates and the appropriate rise and fall adjustment shall be calculated as set out in Clause 10.8 for the duration of the Contract unless by mutual agreement this basis is changed.

Subject to Clauses 20 and 21, rise and fall adjustments made in accordance with this Clause shall be deemed to cover all increases and decreases in costs incurred by the Contractor in carrying out its obligations under the Contract.

Such adjustments shall be made at three (3) monthly intervals on 1 July, 1 October, 1 January and 1 April each year. The first such adjustment on the Services Commencement Date shall be limited to any change in the disposal cost at the Albury Waste Management Centre. The first CPI and fuel adjustment shall occur on 1 October 2012 and shall be limited to adjustments for the previous quarter only.

10.8 Calculation of Revised Service Rates (Rise and Fall)

The applicable Service Rates shall be adjusted quarterly in accordance with Clause 10.7 by adjusting the applicable component rates as follows:

$$\begin{aligned} \text{Revised Service Rate} = & \text{Tendered Collection Component} \times (0.85 \left(\frac{A}{B}\right) + 0.15 \left(\frac{C}{D}\right)) + \\ & \text{Tendered Processing Component} \times (0.85 \left(\frac{A}{B}\right) + 0.15 \left(\frac{C}{D}\right)) + \\ & \text{Tendered Disposal Component} \times \left(\frac{E}{F}\right) \end{aligned}$$

Where:

Collection Component = the fees associated with the Contractor collecting each component of the Services.

Processing Component = the fees, if any, associated with those components of the Services that are processed being the recyclable service and the Food and Garden Waste Service (from the date that it commences operation)

Disposal Component = the fees, if any, associated with those components of the Services that are disposed of at the Albury Waste Management Centre, being the refuse service and garden waste service (until the date that the garden waste service is superseded by the Food and Garden Waste Service).

Note: For the avoidance of doubt, the rise and fall formula will only apply those components applicable to the Council.

A = the Consumer Price Index Number for the quarter immediately preceding the relevant review date. Where the release of data (from the ABS) for the reference quarter occurs after the dates given in Clause 10.7, the adjustment shall be made as soon as possible after the data is available and applied retrospectively back to the adjustment date.

B = the Consumer Price Index Number for the quarter immediately preceding the Services Commencement Date.

The CPI Indexes shall be obtained from the Australian Bureau of Statistics Publication 6401.0 Consumer Price Index available at the following address, www.abs.gov.au/ under Summary/ Consumer Price Index/ Selected Tables – Capital Cities. All adjustments shall be based on the Consumer Price Index Table 1 ALL GROUPS, Index Numbers (a) – Weighted average of eight capital cities.

C = the Automotive Fuel - Melbourne index for the quarter immediately preceding the relevant review.

D = the Automotive Fuel - Melbourne index for the quarter immediately preceding the Services Commencement Date.

The Automotive Fuel – Melbourne index shall be obtained from the Australian Bureau of Statistics Publication 6401.0 Consumer Price Index available at the following address, www.abs.gov.au/ under Downloads/ Table 11. Download .xls spreadsheet then press Ctrl F to search for “automotive fuel”, and find, “Automotive Fuel; Melbourne”, then click on the Series ID, A2328601K.

E = Current Disposal Rate = the Albury Waste Management Centre disposal rate effective on the date of review.

F = Base Disposal Rate = the Albury Waste Management Centre disposal rate at the date of 4 October 2011 being the date of tender submission.

In the event that the Australian Bureau of Statistics ceases to publish the Consumer Price Index or the basis upon which that published Index is calculated is changed then Council may nominate another suitable Index for the purpose of calculation of Rise and Fall under this Contract.

10.9 Periods of Non-Performance

The Council will not be required to make any payment to the Contractor in respect of any of the Services that are not performed, or are not performed in accordance with this Contract.

10.10 Certification of Payments

On submitting a Claim for any payment under this Contract, the Contractor will certify in writing to the Supervising Officer that:

- (a) it has paid all wages and allowances owing to any of its employees in respect of the work claimed for;
- (b) it has paid all amounts due to any person, including any relevant government taxes, levies or charges, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under this Contract;
- (c) it has made any payments that it is required to make in respect of the Contractor's Vehicles, Plant and Equipment and the Facilities up to the end of the period to which the claim applies;
- (d) it has paid all superannuation components payable.

The Supervising Officer may require that any such certification by the Contractor is confirmed by a statutory declaration to the same effect by a person authorised to make such a declaration on the Contractor's behalf prior to the making of any payment to the Contractor under this Contract.

10.11 Power to Pay Employees and Subcontractors

If the Supervising Officer has evidence that:

- (a) any wages or allowances due to the Contractor's employees are unpaid;
- (b) the Contractor has failed to pay any amounts due to any party to which it has subcontracted any of its rights and obligations under this Contract; or,
- (c) the Contractor has failed to make any payment that it is required to make in respect of its Vehicles, Plant and Equipment or facilities,

the Council may deduct such amounts as appear to be due to the Contractor's employees or subcontractors or to any third party with an interest in any of the Contractor's Vehicles, Plant and Equipment or Facilities from any payments due to the Contractor under this Contract, and withhold the moneys until it has been provided with evidence to the satisfaction of the Council that all wages and allowances due to the Contractor's employees or amounts due to the Contractor's subcontractors or such third parties have been paid. If no such evidence is provided to the Council within five (5) Business Days, the Council may pay to the Contractor's employees any wages and allowances or to the subcontractors and such third parties any amounts which appear to be unpaid to the extent of the moneys which have been withheld from payments to the Contractor.

Nothing in this Clause will in any way oblige the Council to make any payment to any of the Contractor's employees or subcontractors or any such third parties. Any payments that may be made by the Council under this Clause will be deemed to have been made on behalf of the Contractor.

11. DEFAULTS AND TERMINATION

11.1 Default by Contractor

11.1.1 Council to Give Notice

Should the Contractor default in the performance or observance of any obligation it has under this Contract, or refuse or neglect to carry out or give effect to any order, instruction, direction or determination which the Council is empowered to give or make under this Contract, and which is given or made in writing to the Contractor, the Council may give notice requiring the Contractor to explain why the powers contained in this Clause should not be exercised.

Such notice:

- (a) will signify that it is a notice under this Clause; and,
- (b) will specify the default, refusal or neglect on the part of the Contractor upon which it is based.

11.1.2 Council's powers

If, within five (5) Business Days after receipt of the notice, the Contractor fails to demonstrate to the Council's satisfaction that the default will be rectified, or the order, instruction, direction or determination will be carried out or given effect to and this Contract satisfactorily performed, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:

- (a) suspend payment under this Contract;
- (b) treat the matter as a dispute under Clause 13 of this Contract;
- (c) suspend all payments under this Contract until the Contract dispute is resolved;
- (d) terminate or take over this Contract.

The suspension of payment under this Clause by the Council, will not in any way affect the continuing obligations of the Contractor under this Contract. Suspension of payment may be continued until the default has been rectified or the order, instruction, direction or determination is carried out or given effect to.

11.2 Payments on Termination

11.2.1 Limit of Payments

In the event of termination of this Contract under Clause 11.1 or as a result of Force Majeure, the Council will be liable to make payments to the Contractor only in respect of any portion of the Services which have been properly executed and not paid for at the date of termination.

11.2.2 Payment for Losses and Expenses

In the event of a termination under Clause 11.1, the Contractor must pay to the Council the amount of all costs, losses and expenses incurred by the Council by reason of or arising from the termination including but not limited to all professional fees, Council's costs and costs of making alternative arrangements for provision of the Services.

11.2.3 Council's Determination

The Council will determine the amounts payable by the Contractor and the Council pursuant to this Clause 11 as soon as practicable after the termination of the Contract. The Council will give notice of such determination under this Clause to the Contractor. Any amounts payable under this Clause by the Contractor and the Council must be paid within ten (10) Business Days of the receipt of notice by the Contractor of the Council's determination.

11.2.4 Council may Retain Moneys

The Council may retain moneys payable to the Contractor pursuant to this Clause 11 until the amount payable by the Contractor to the Council under Clause 11 has been determined by the Council and paid by the Contractor. Alternatively, the Council may set off against moneys payable by it to the Contractor, any moneys payable by the Contractor to the Council.

11.3 Insolvency of Contractor

If:

- (a) the Contractor (being a natural person) becomes bankrupt;
- (b) the Contractor (being a natural person) files or is served with a petition in bankruptcy;
- (c) the Contractor (being a natural person) is served with a bankruptcy notice;
- (d) the Contractor makes an assignment for the benefit of its creditors;
- (e) the Contractor informs the Council that the Contractor is insolvent or unable to pay its debts;
- (f) a meeting of creditors of the Contractor is called with a view to entering into a scheme of arrangement or composition with creditors or placing the Contractor under official management;
- (g) the Contractor enters a scheme of arrangement or composition with creditors;
- (h) the Contractor is placed under administration;
- (i) a receiver or receiver and manager or agent for any creditor is appointed to take possession of any asset or carry on the whole or any part of the Contractor's business;
- (j) a resolution is passed for the winding up of the Contractor;
- (k) an application is made to a Court for the winding up of the Contractor and such application is not dismissed within twenty (20) Business Days of such application being filed;
- (l) a winding up order is made in respect of the Contractor;
- (m) execution is levied against the Contractor by any person;
- (n) a liquidator or provisional liquidator is appointed to the Contractor,

then the Council may terminate this Contract by notice in writing to the Contractor or take over the Services under this Contract by notice in writing to the Contractor.

11.4 Termination of this Contract by the Contractor

11.4.1 Contractor's Right to Terminate

If the Council has failed to pay to the Contractor any amount due under Clause 10, other than an amount being the subject of:

- (a) dispute under this Contract;
- (b) any legal proceedings commenced in respect of this Contract;
- (c) adjustment or conditional approval by the Council within ten (10) Business Days of delivery of a claim for payment,

within ten (10) Business Days of the expiry of any period for payment, the Contractor may give notice in writing to the Council stating that a notice of termination under this Contract may be served if payment is not made within a further ten (10) Business Days. If the Council fails to make payment within ten (10) Business Days of the receipt of such notice, then the Contractor may by notice to the Council either suspend the Services or terminate Services to Council. Any suspension of the Services to Council by the Contractor under this Clause will not prevent the Contractor terminating this Contract during the period that the Services are suspended.

11.4.2 Payments upon Termination

Upon termination of this Contract by the Contractor under Clause 11.4.1, without prejudice to the accrued rights or remedies of the Parties or the other liabilities of the Parties under this Contract which may have accrued prior to termination, the Council will, after taking into account amounts previously paid under this Contract, make payments to the Contractor in respect of:

- (a) any portion of the Services which have been properly executed and not paid for at the date of termination; and,
- (b) the cost of materials or goods properly ordered for the performance of the Services by the Contractor for which the Contractor has paid, or for which the Contractor is legally bound to pay, provided that such goods and materials will, on the making of the payment by the Council, become the property of the Council and be transferred to the Council's ownership and possession by the Contractor and provided further that these costs are limited to the value of the goods and materials transferred to the Council or to the cost of such goods paid by the Contractor whichever is the lesser.

The amount of any payments to be made by the Council under this Clause and any steps required to effectively transfer ownership and possession of any materials or goods referred to in Clause 11.4.2 (including the proportions in which each Party to this Contract is to bear the costs of the taking of any such steps) will be determined by the Council. Each Party will take any steps determined by the Council to effectively transfer ownership and possession of the material or goods under this Clause.

12. SECURITY

12.1 Performance Security

The Performance Security is required to be provided by the Contractor for the purpose of ensuring due and proper performance of the Services.

12.2 Amount and Form of the Performance Security

Within twenty (20) Business Days of the date of acceptance of the Tender or before the Services Commencement Date, whichever is the earlier, the Contractor will deliver to the Council cash, or an irrevocable, unconditional bank guarantee from a bank or similar institution approved by the Council in favour of the Council in a form acceptable to the Council for the sum stated in Item 9 of the Annexure the ("Performance Security").

12.3 Recourse to the Performance Security

In the event of any failure by the Contractor to carry out and complete its obligations under this Contract, the Council may have recourse to the Performance Security in respect of any moneys for which the Contractor may be liable to the Council under this Contract. Without limiting the rights of the Council under this Clause, the Council may deduct from the Performance Security any sum payable to the Council under Clauses 10 and 11.

In the event that the Council has recourse to the Performance Security then the Council must notify the Contractor within ten (10) Business Days thereafter.

12.4 Return of the Performance Security

Unless the Council has exercised a right under Clause 12.3, the Performance Security will be returned to the Contractor at the conclusion of the Contract Term providing all liabilities under this Contract have been met.

12.5 Replacement of the Performance Security

If the Council has applied the Performance Security or any part thereof to rectify or part rectify any breach of this Contract the Contractor shall within five (5) Business Days of service of the notice on the Contractor pursuant to Clause 12.3 provide a replacement Performance Security or "top up" of the same amount to be held on the same terms as this Clause 12 to the intent that the Performance Security will be maintained in the amount specified in Clause 12.2.

12.6 Appointment as Attorney

Deleted

12.7 Council's Right to Terminate

If the Contractor fails to meet its obligations under Clause 12.2 or 12.5, the Council may immediately terminate this Contract. In the event of a termination of this Contract under this Clause, Clauses 11.2 and 11.3 will operate to the extent that they are applicable, as if the termination had been made by the Council under Clause 11.1.

13. DISPUTE RESOLUTION

13.1 Resolution of Dispute

If a dispute arises between the Contractor and the Council, any Party seeking to resolve the dispute must do so in accordance with the provisions of this Clause 13.

Reasonable compliance with this Clause 13 is a condition precedent to any entitlement to claim, relief or remedy whether by way of proceedings in a court or other tribunal in respect of the dispute.

Nothing in this Clause 13 prevents:

- (a) a Party seeking urgent injunctive or declaratory relief from a court in connection with a dispute without first having attempted to negotiate and settle the dispute in accordance with this Clause 13;

- (b) a Party terminating this Contract pursuant to any Clause of this Contract;
- (c) the Parties meeting at any time to seek to resolve a dispute.

The Parties' obligations under this Contract will continue despite any dispute between the Parties.

Despite any provisions in this Clause 13, the Parties will try to resolve disputes before any Notice of Dispute is served.

13.2 Notice of Dispute

If Council or the Contractor becomes aware of a dispute between Council and the Contractor, that Party must notify the other Party of the existence and nature of the dispute by serving on the other Party a notice setting out detailed particulars of the dispute including, if appropriate, references to documents and provisions of the Contract which relate to the dispute ("Notice of Dispute").

A copy of this Notice of Dispute and all subsequent correspondence between the Parties on that matter must be supplied to the Supervising Officer at the same time it is issued to the other Party.

13.3 Further Information

A Party who receives a Notice of Dispute pursuant to Clause 13.2 may, within five (5) Business Days after such receipt, reasonably require the Party who served the Notice of Dispute to provide further or more detailed information relating to the dispute.

13.4 Negotiation

Upon receipt of a Notice of Dispute and, if applicable, the provision of further or more detailed information in relation to the dispute under Clause 13.3, the Parties must negotiate to resolve the dispute as follows:

- (a) one or more representatives of each Party in dispute will meet, within ten (10) Business Days of the receipt by a Party of a Notice of Dispute or the further information, if any, required pursuant to Clause 13.3 (whichever be the later), to discuss and attempt to resolve the dispute; and,
- (b) if those representatives do not resolve the dispute within five (5) Business Days of their first meeting then within ten (10) Business Days of that first meeting the General Managers of the Parties in dispute must meet to discuss and attempt to resolve the dispute.

13.5 Appointment of Mediator

If a dispute is not resolved within ten (10) Business Days of the meeting of the General Managers of the Parties in dispute pursuant to Clause 13.4 (b), then the dispute must be referred to a mediator.

The Parties in dispute must agree upon the selection and appointment of a mediator who will act in respect of the dispute. The Parties in dispute may agree to appoint a different mediator at any time.

If no agreement is reached between the Parties in dispute on the selection and appointment of the mediator within fifteen (15) Business Days of the meeting of the General Managers pursuant to Clause 13.4 (b), then any Party in dispute may request the chief executive of the Australian Commercial Disputes Centre Limited to appoint a mediator, and any mediator so appointed shall be the mediator for the dispute pursuant to this Clause 13.

13.6 Initial Mediation Meeting

The Parties in dispute must as soon as practicable after notification of the dispute to the mediator, confer in the presence of the mediator to:

- (a) identify the subject matter of the dispute;
- (b) identify the provisions of this Contract relevant to the dispute;
- (c) discuss each other's position in relation to the dispute;
- (d) listen to any comments made by the mediator; and,
- (e) attempt to resolve the dispute by mutual agreement.

13.7 Mediation

The mediation will be conducted by the mediator at a time, place and in a manner agreed between the Parties in dispute or otherwise in accordance with the rules of the Australian Commercial Dispute Centre Limited in force at the time of the service of the Notice of Dispute pursuant to Clause 13.2.

With the consent of the Parties in dispute, the mediator may appoint a neutral expert (**Expert**) of the mediator's choice to provide assistance in relation to any technical issues arising out of the mediation, including matters under Clauses 20 and 21. The Expert must:

- (a) act as an expert and not as an arbitrator; and
- (b) act independently of, and act fairly and impartially as between the Parties, giving each Party a reasonable opportunity of presenting its case and countering any arguments of any opposing Party, and a reasonable opportunity to make submissions on the procedure or the expert determination.

The determination of the Expert:

- (c) must be in writing, accompanied by reasons;
- (d) will be final and binding on the Parties, except in the case of manifest error; and
- (e) is not an arbitration within the meaning of any statute.

The Parties agree that the mediator will act as an aid to assist them to resolve the Dispute and not as an arbitrator or decider of any matter.

The Parties in dispute will share equally the costs of the mediation and any neutral expert appointed by the mediator unless otherwise agreed by the Parties.

13.8 Arbitration or Litigation

If the mediation does not commence within twenty (20) Business Days after appointment of the mediator or is not completed within thirty (30) Business Days of such date then:

- (a) any Party in dispute may terminate the mediation proceedings by written notice to the other Party;
- (b) that written notice must identify the matters that are still in dispute; and,
- (c) the service of that notice is a condition precedent to the commencement of arbitration or litigation proceedings.

13.9 Time Limits

The Parties in dispute may agree to extend any of the time limits in this Clause 13.

13.10 Continuing Provision of Services

Despite the existence of a dispute under this Contract the Contractor must continue to perform the Services in accordance with this Contract.

14. TAXES AND TAX PAYMENTS

14.1 Service Rates Exclude GST

The Service Rates exclude GST.

14.2 The Council May Recover Excess Tax Payments

The Council shall have the right to recover as a debt from the Contractor the following amounts:

- (a) any tax or impost paid by the Contractor and charged to the Council for the Services where an exemption concession or rebate applies; and,
- (b) any tax or impost incorporated into payments made by the Council under the Contract which may be subsequently recovered by the Contractor from the Australian Taxation Office or any other person.

14.3 Survival of Clause

This Clause 14 shall survive termination or expiration of the Contract.

15. FORCE MAJEURE (EVENTS AND INTERRUPTIONS OF SERVICES)

15.1 Claim of Force Majeure

If by reason of a Force Majeure Event occurring, any Party is wholly or partially unable to carry out its obligations under this Contract that Party must, as soon as it becomes aware of the Force Majeure Event, give to the other Parties written notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event;
- (b) details of the obligations affected;
- (c) details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to take to remedy the situation;
- (d) an estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event;
- (e) an estimate of the costs the Party will incur to remedy the situation and the proposed funding arrangements; and,
- (f) details of all insurance monies which the Party will be able to rely on in making good damage caused by the Force Majeure Event.

15.2 Suspension of Rights and Obligations

Once a Party notifies the others of a Force Majeure Event, the notifying Party's obligations under this Contract (other than its obligations to make payments already owing) will, to the extent only that such obligations are affected by the Force Majeure Event, be suspended.

15.3 Provision of Further Information

Upon the notice under Clause 15.1 having been given the Party giving such notice must provide the other Party promptly with all further relevant information, pertaining to the Force Majeure Event, that the other Party requests.

15.4 Duty to Mitigate

Following a notification pursuant to Clause 15.1, the Parties will promptly meet to identify alternative viable means of providing the Services affected and to mitigate the effect of the Force Majeure Event.

All reasonable efforts to mitigate the Force Majeure Event must be implemented promptly.

15.5 End of Period of Force Majeure

Subject to the Clause 15.6, the suspension of one or more obligations of a Party pursuant to Clause 15.2 ends when that Party is able to recommence fulfilment of each such obligation. At such time that Party must issue a notice to that effect to the other Party, and immediately recommence the performance of each such obligation.

15.6 Termination after Extended Force Majeure

If a Party is rendered wholly or partially unable to carry out its obligations in relation to this Contract due to a Force Majeure Event for a period of more than five (5) consecutive Business Days, the Parties must meet in an endeavour to identify any alternative viable means to provide the suspended Services. Failing an alternative means being agreed upon within ten (10) Business Days of the start of the Force Majeure Event any Party may terminate this Contract immediately by written notice to the other party.

In the event of a termination of this Contract under this Clause 15.6, the provisions of this Contract relating to termination set out in Clause 11.2 and Clause 11.4.2 apply.

15.7 Interruption of Service

Should the performance of Services under this Contract become interrupted by reason of industrial disputes or any other cause then, subject to Clause 2.1, the Council may have that work carried out by other persons and, without prejudice to any other right or remedy available to it, call upon the Contractor to reimburse it for any cost or expense in carrying out any of such work or deduct the amount of any such cost or expense from money payable under this Contract to the Contractor.

16. ACKNOWLEDGMENT

The Contractor acknowledges that:

- (a) it has relied on its own enquiries in preparing its Tender; and,
- (b) this Contract constitutes the entire agreement between the Council and the Contractor.

17. STAMP DUTY AND COSTS

- (a) The Contractor must pay all stamp duty on or arising in connection with this Contract and any other related documentation.
- (b) Each Party will bear its own legal and other costs and expenses arising directly or indirectly with respect to the preparation, execution, completion and performance of this Contract and any other related documentation.

18. CUMULATIVE RIGHTS

The rights or remedies conferred on any Party by this Contract are in addition to all rights and remedies of that Party at law or in equity.

19. FURTHER ASSURANCE

19.1 Further Documents

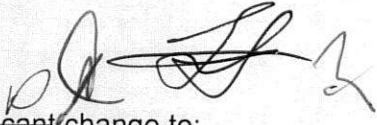
Each Party will sign, execute and complete all further documents necessary to effect, perfect or complete the provisions of and the transactions contemplated by this Contract.

19.2 Council's Statutory Functions

Nothing in this Contract shall fetter the Council in the exercise of its discretions in the exercise of any consent function imposed upon the Council by any law and no compensation shall be payable by the Council to the Contractor for any loss or damages suffered by the Contractor arising from the valid exercise by the Council of any such function.

20. CHANGE IN LAW

If there is a Change in Law which:

- 
- (a) necessitates a significant change to:
 - (A) the Services; or
 - (B) a fee or charge which the Contractor or Council is obliged to pay; and
 - (b) which causes the Contractor or Council to incur more or less cost than otherwise would have been incurred,

then the Contractor or the Council may request the other Party to vary the agreed fees or charges provided reasonable written documentation evidencing the variation is supplied. The Parties each acknowledge that this clause should not be applied in circumstances where the Change in Law is, or will be, reflected in CPI adjustments under the Rise and Fall formula in Clause 10.8 of this Contract.

Each Party agrees to act reasonably in considering a request for variation. Should the Parties fail to reach agreement then the Parties may seek a resolution in accordance with Clause 13.

21. CARBON SCHEME COSTS

Either Party may rely upon Clause 20 in the event of any variation in costs and liabilities arising from the introduction of or amendment to the Carbon Scheme, or its subsequent repeal, provided that the initiating Party can substantiate to the other Party a connection with providing the Services.

In this clause:

- (a) Costs and liabilities includes, without limitation, costs or liabilities arising from:
 - (A) a requirement to obtain and surrender Permits or pay a shortfall charge;
 - (B) a requirement to pay a tax, duty, charge, levy, excise, impost, fee, charge, expense or other financial requirement;

- (C) increased cost of goods and services provided to the Contractor which are required in order for the Contractor to provide the Services;
 - (D) expenditure for the purpose of offsetting or implementing abatement action to reduce Greenhouse Gas emissions; and
 - (E) monitoring, gathering information and preparing reports to comply with any law relating to Greenhouse Gas emissions.
- (b) "Greenhouse Gas" has the meaning given by the *National Greenhouse and Energy Reporting Act 2007* (Cwlth).
- (c) "Carbon Scheme" means any law which has as one of its purposes the reduction, offset or management of Greenhouse Gas emissions and includes, without limitation, a law in connection with:
- (A) a carbon pricing mechanism, other emissions trading schemes or any other mechanism of pricing Greenhouse Gas emissions;
 - (B) a tax or duty
 - (C) a requirement to take action to reduce, minimise or offset Greenhouse Gas emissions, fuel or energy use.
- (d) "Permit" means any unit, certificate, licence, offset or other permit required under any Carbon Scheme.

22. SPECIAL CONDITIONS

The Parties have agreed to adopt the special conditions set forth in Schedule A.

SCHEDULE A - SPECIAL CONDITIONS**1. PERFORMANCE BENCHMARK**

- 1.1 The Parties agree that the annual Performance Benchmark being the threshold of maximum number of complaints per year deemed to trigger a default under the General Specification, including, but not limited to, the payment of damages under Clause 22 of Section D, Part 1 of the Specification, is:

Complaint Type	Corowa Shire Council
Missed Services	26
Early Starts	0
Other Customer Complaints	26

- 1.2 The Parties agree that missed services and customer complaints are only incurred when it has been substantiated that the bin was correctly presented to the kerb before the service. This substantiation will require Cleanaway to provide evidence from its on truck cameras that the bin was not presented and that the truck attended the premises within the times prescribed within the Tender documents.
- 1.3 Where the Contractor is the cause of the customer complaint, then the bin must be collected within 24 hours of the reported complaint.
- 1.4 Where the customer complaint is not the fault of the Contractor, then the Council may at its discretion request the Contractor to collect the bin at a time agreed by the parties after considering the proximity of its vehicles to the location of the missed bin. If the Council directs the Contractor to collect a bin, the Contractor may levy a charge on Council of \$98.50 per hour to be calculated by reference to the nearest vehicle to the missed bin and from the time that vehicle departs from its usual daily route to the time it returns to its usual daily route.
- 2. COMPOSTING FACILITY**
- 2.1 The Parties agree that it is a fundamental condition of this Contract that the Contractor commence the Food and Garden Waste Service by 16 September 2013.
- 2.2 In the event that the Contractor does not commence the Food and Garden Waste Service by 16 September 2013, the Parties agree that the Contractor will be in default of this Contract entitling the Council to rely upon Clause 11 and/or Clause 13 and/or any other remedy available to the Council.
- 2.3 For the avoidance of doubt, the Parties agree that failure to comply with this Clause may result in termination of the Contract and Council may enforce its rights under the Contract including, but not limited to, use of the Performance Security.
- 2.4 Despite Special Conditions 2.2 and 2.3, the Council will not seek to enforce the Food and Garden Waste Commencement Date if the Contractor provides reasonable justification for any delay that is outside of its control. The parties acknowledge that legal proceedings and/or delays caused by other Government

agencies in providing concurrence will be relevant considerations for the purposes of this Special Condition.

3. BINS

3.1 The Parties acknowledge that acceptance of the alternative tender submitted by the Contractor included a variation to the Specification relating to the supply of bins.

3.2 The use of existing bins is conditional upon the following:

- (a) Council agreeing to pay for the capital cost of any refuse bin lids requiring replacement;
- (b) the Contractor agreeing to provide its labour, logistics and management skills to replace the refuse bin lids free of any charge;
- (c) the timing for replacement of the refuse bin lids is to be agreed between the Parties, but is to occur prior to the Food and Garden Waste Commencement Date in order to assist with a consistent marketing campaign.

3.3 The Parties acknowledge that the Contractor will provide bins at its cost for the Food and Garden Waste Service (with bin lids to be lime green colour) to all households that do not presently have a green waste bin.

4. COLLECTION OF COMMERCIAL WASTE

4.1 Despite Clause 5.3 of this Contract and the Specifications, the parties acknowledge that the Contractor is permitted to collect commercial waste concurrently with municipal waste, subject to the Contractor providing the Council with necessary documentation and/or information to enable an accurate division of municipal and commercial waste for each truck.

5. CONTAMINATION REDUCTION PROCEDURE AND POLICY

5.1 The Parties acknowledge that the introduction of the Food and Garden Waste Service will involve education of the community. It is in the interests of both Parties that the levels of contamination be minimised. The Parties agree to work cooperatively on the development of a Contamination Reduction Procedure and Policy and necessary education campaigns.

5.2 The Parties acknowledge that the Contamination Reduction Procedure and Policy (when it is prepared) will include a positive obligation on Council to withdraw from the Service bins (Recycling and/or Food and Garden Waste) in circumstances where the occupant of the household is deemed to be a repeat offender.

6. MATERIALS RECYCLING FACILITY

6.1 Council acknowledges that the Contractor proposes to establish a new Materials Recycling Facility (MRF). The Contractor has notified Council that for operational reasons it will need to close the existing MRF prior to the new MRF becoming operational.

6.2 It is an essential term of this Contract that the new MRF be operational by no later than 16 September 2013.

- 6.3 The Contractor agrees to provide to Council confirmation that it has purchased the essential machinery for the new MRF within 30 days of the Contract Date. Production of a copy of the manufacturers receipt or contract for the purchase of the primary MRF components will satisfy this requirement.
- 6.4 The Contractor warrants that the new MRF will be established in either Wodonga or Albury.

ALTERNATIVE PRICING AND SELECTION OF SERVICES

- 7.1 The parties agree that Council has accepted the Contractor's tendered submission identified as Alternative 2. It is agreed that the price structure for Alternative 2, Option 1 will be applied from the Contract Commencement Date until the Food and Green Waste Service commences operation. From the date that the Food and Green Waste Service commences operation until the completion of the Contract Term the parties agree that the price structure for Alternative 2, Option 2 will be applied (subject to variations in accordance with this Contract).
- 7.2 The Council agrees that when Alternative 2, Option 1 is applied it accepts that the Services proposed by the Contractor and identified in the tender submission are:
- (a) Collection cost for refuse and recycling;
 - (b) Processing of recycling (no cost to Council);
 - (c) Premium Education Package.
- 7.3 The Council agrees that when Alternative 2, Option 2 is applied it accepts that the Services proposed by the Contractor and identified in the tender submission are:
- (a) Collection cost for refuse, recycling and Food and Garden Waste Service;
 - (b) Processing of recycling (no cost to Council)
 - (c) Processing cost for Food and Garden Waste Service;
 - (d) Bin Hire Rate for Food and Garden Waste Service only;
 - (e) Biobag replacement; and
 - (f) Premium Education Package.

SCHEDULE B - FLEET PLAN (OPTION TWO)

The attached table is the Fleet Plan proposed by the Contractor and agreed to by Council as an acceptable replacement timetable for Vehicles for the Term.

	Vehicle Registration	Vehicle model	Purchase Date	Disposal/Acquisition Year
Start	QTM - 425	Acco 6x4	Aug-01	Dispose Yr 4
Start	TKG - 383	Acco 4x2	Apr-05	Dispose Yr 4
Start	TKG - 378	Acco 6x4	Apr-05	Dispose Yr 4
Start	TPY - 563	Acco 6x4	Jul-05	Dispose Yr 5
Start	TPY - 564	Acco 6x4	Jul-05	Dispose Yr 5
Start	TPY - 565	Acco 6x4	Jul-05	Dispose Yr 6
Start	TPY - 566	Acco 6x4	Jul-05	Dispose Yr 6
Start	UHE - 983	Acco 6x4	Apr-07	Dispose Yr 7
Start	UWK - 977	Acco 6x4	Jun-07	Dispose Yr 7
Start	UHE - 984	Acco 6x4	Dec-07	Dispose Yr 8
Start	WFY - 979	Acco 6x4	Feb-08	Dispose Yr 8
Start	UHE - 987	Acco 6x4	Feb-08	Dispose Yr 9
Start	WFY - 980	Acco 6x4	Mar-08	Dispose Yr 9
Start	WSR - 979	Acco 4x2	Oct-08	Dispose Yr 10
Start	WSR - 980	Acco 4x2	Oct-08	Dispose Yr 10
Start	WSR - 982	Acco 6x4	Oct-08	Dispose at contract end
Start	WTZ - 569	Isuzu NPR200 4x2	Jan-09	Dispose at contract end
Start		Acco 6x4 24m3	Jun-12	Dispose at contract end
Start		Acco 6x4 33m3	Jun-12	Dispose at contract end
Start		Acco 6x4 33m3	Jun-12	Dispose at contract end
Start		Acco 6x4 33m 3	Jun-12	Dispose at contract end
Start		Acco 6x4 24m3	Jun-12	Dispose at contract end
Start		Acco 6x4 24m3	Jun-12	Dispose at contract end
Start		Acco 6x4 24m3	Jun-12	Dispose at contract end
Replacement		Acco 4x2 19m3		Purchase Yr 4
Replacement		Acco 6x4 24m3		Purchase Yr 4
Replacement		Acco 6x4 25m3		Purchase Yr 4
Replacement		Acco 6x4 25m3		Purchase Yr 5
Replacement		Acco 6x4 24m3		Purchase Yr 5
Replacement		Acco 6x4 24m3		Purchase Yr 6
Replacement		Acco 6x4 24m3		Purchase Yr 6
Replacement		Acco 6x4 24m3		Purchase Yr 7
Replacement		Acco 6x4 33m3		Purchase Yr 7
Replacement		Acco 6x4 24m3		Purchase Yr 8
Replacement		Acco 6x4 24m3		Purchase Yr 8
Replacement		Acco 6x4 24m3		Purchase Yr 9
Replacement		Acco 6x4 24m3		Purchase Yr 9
Replacement		Acco 6x4 24m3		Purchase Yr 10
Replacement		Acco 6x4 24m3		Purchase Yr 10

SCHEDULE C - PRICING SCHEDULE

Prices exclude GST	Alternative 2					
	12 years: Gerogery - Gore Facility					
	Option 1			Option 2		
	Refuse	Recycling	Greenwaste	Refuse	Recycling	Organics
Council	\$/week	\$/fortnight	\$/fortnight	\$/fortnight	\$/fortnight	\$/week
Albury						
Collection Component	\$0.88	\$0.99	\$1.39	\$0.98	\$0.99	\$0.86
Disposal/Processing Cost	\$1.00		\$0.88	\$1.13		\$85.96 /tonne
Bin Hire Rate			\$0.12			\$0.14
Biobag replacement						\$0.24
Premium Education Package		\$0.09			\$0.09	
Wodonga						
Collection Component	\$0.88	\$0.99	\$1.39	\$0.98	\$0.99	\$0.86
Disposal/Processing Cost						\$85.96 /tonne
Bin Hire Rate			\$0.12			\$0.14
Biobag replacement						\$0.24
Premium Education Package		\$0.09			\$0.09	
Indigo						
Collection Component	\$4.940	\$3.315	\$6.673	\$3.033	\$3.315	\$6.330
Disposal/Processing Cost						\$85.96 /tonne
Bin Hire Rate			\$0.260			\$0.780
Biobag replacement						\$1.040
Premium Education Package		\$0.195			\$0.195	
Indigo Rural						
Collection Component	\$10.400	\$6.500		\$8.150	\$6.500	
Disposal/Processing Cost						
Bin Hire Rate						
Biobag replacement						
Premium Education Package		\$0.195			\$0.195	
Corowa						
Collection Component	\$1.40	\$1.72		\$1.65	\$1.72	\$1.23
Disposal/Processing Cost						\$85.96 /tonne
Bin Hire Rate						\$0.20
Biobag replacement						\$0.24
Premium Education Package		\$0.09			\$0.09	
Greater Hume						
Collection Component	\$1.37	\$1.63		\$1.37/week	\$1.63	
Disposal/Processing Cost						
Bin Hire Rate						
Biobag replacement						
Premium Education Package						
Bin supply						
MGB 140L	\$52/ea			\$52/ea		
MGB 240L	\$65/ea			\$65/ea		

ANNEXURE

- Item 1** The Council is: Corowa Shire Council ABN 43 874 223 315
of 100 Edward Street (PO Box 77), Corowa, NSW, 2646.
The facsimile number of the Council is: 02 6033 3317
- The Contractor is: Transpacific Cleanaway Pty Ltd ACN 000 164 938
of Level 1, 159 Coronation Drive, Milton, Queensland, 4064.
The facsimile number of the Contractor is: 02 6024 5853
- Item 2** Contract Documents:
- Conditions of Contract (Section C as amended by this Contract)
 - The Specification (Section D)
 - The Contractor's submitted Tender including Return Schedules
 - Council's letter of Acceptance of Tender
 - The Performance Security (if in the form of a Bank Guarantee)
 - Any and all associated subcontracts managed pursuant to this Contract.
- Item 3** Services Commencement Date:
(Clause 2.2.1) 1 July 2012.
(Special Food and Garden Waste Commencement Date:
Condition 2.1) 16 September 2013
- Item 4** Contract Term:
(Clause 2.2.2) 12 years.
- Item 4 (a)** Not Applicable
(Clause 2.2.3)
- Item 4 (b)** Not Applicable
(Clause 2.2.3)
- Item 4 (c)** Not Applicable
(Clause 2.2.3)
- Item 5** Fees, charges and costs for which the Contractor is not to be
(Clause 2.3) responsible:
The landfill Disposal cost for refuse only is the responsibility of Council.
- Item 6** Contractor's Representative: David Collins
(Clause 2.5.2) The hours each day when the Contractor's Representative is to be
available: 8.30am and 5.00pm Monday to Friday.
- Item 7** The minimum amount of coverage under the Public Liability Policy is
(Clause 9.2) Twenty Million Dollars (\$20,000,000) (or such other amount as the
Council may nominate from time to time).
- Item 8** Interest rate on overdue payments.
(Clause 10.5) The Reserve Bank Cash Rate, plus 4%.

Item 9
(Clause 12.2)

The amount of the Performance Security is:

An amount determined by the Council as being equal (to the nearest \$1,000 above) to five percent (5%) of the estimated total annual payments due to the Contractor under the Contract during its first year. The Council may vary this amount annually to reflect variations to such payments and the bank guarantee must be replaced or a further bank guarantee provided by the Contractor to reflect any such variation.

Executed as an Agreement

THE SEAL of **COROWA SHIRE COUNCIL**
ABN 43 874 223 315 was affixed in accordance with *Reg 400 Local Government (General) Regulation 2005* and witnessed by the following persons:



Fred Longmire

Mayor

FRED LONGMIRE

Print name

302

General Manager

ANNE COLEMAN

Print name

EXECUTED by **TRANSPACIFIC CLEANAWAY PTY LTD ACN 000 164 938** by/without affixing its common seal pursuant to Section 127(1) of the *Corporations Act 2001*:

Kevin Campbell
.....
Signature of Director

KEVIN CAMPBELL
.....
Name of Director

Kellie Leanne Smith
.....
Signature of Director/Secretary

Kellie Leanne Smith
.....
Name of Director/Secretary