

**FIRST AMENDED AND RESTATED
CONTRACT FOR THE MANAGEMENT,
OPERATION AND MAINTENANCE OF THE
HIGHLANDS WASTE DISPOSAL FACILITY AND
THE MATERIAL RECOVERY FACILITY**

between

SWARTLAND MUNICIPALITY

with its registered office located at: 1 Church Street, Malmesbury, 7300
herein represented by the Municipal Manager in his capacity as accounting officer who
warrants that he is authorised thereto
(hereinafter referred to as "the Municipality")

and

WASTEGRO

Registration No 2014/056968/07
with its registered office located at: Highlands Landfill, Bloemendalpad, Malmesbury
herein represented by Hein Baumgarten in his capacity as managing director who
warrants that he is authorised thereto
(hereinafter referred to as "Wastegro")

The block contains several handwritten signatures in black ink. There are approximately six distinct signatures, some appearing to be initials or full names, written in a cursive or stylized manner. They are located in the bottom right corner of the document.

First Amended and Restated Agreement for the Highlands Waste Disposal Facility and Material Recovery Facility

WHEREAS, the Malmesbury Local Transitional Council (the Municipality's predecessor in law) had a valid contract with Hein Baumgarten (the Contractor's predecessor) dated 28 May 1996 in terms of which the Highlands Waste Disposal Facility and the Material Recovery Facility were managed, operated and maintained according to best practice and in an affordable and cost-effective manner; (the "**Agreement**"); and

WHEREAS, the 'Agreement' had to be reviewed and replaced to ensure compliance with significantly changed legislation including extended local government and solid waste management responsibilities within the context of the licensed waste footprint encapsulated in the Agreement, the Parties entered into a Contract for the Management, Operation and Maintenance of the Highlands Waste Disposal Facility and the Material Recovery Facility dated 22 January 2010 (the '**Revised Agreement**'), and

WHEREAS, Hein Baumgarten wished to transfer his business affairs to the Contractor (Wastegro, a company duly incorporated in terms of the Companies Act 2008 and of which Baumgarten is the owner and managing director), the Parties entered into an Agreement of Transfer of the Contract for the Management, Operation and Maintenance of the Highlands Waste Disposal Facility and the Material Recovery Facility dated 8 December 2014 in terms of which Wastegro was substituted for Baumgarten and minor amendments effected based on compliance with changed legislation (the "**Novation Agreement**"); and

WHEREAS, the legally prescribed periodic review of the Contract to keep it aligned with workable practices and legislatively compliant requires and will require the Parties to effect amendments from time to time and the Parties also desire to continuously have a consolidated workable agreement, the current periodic review combines the 'Revised Agreement' and the 'Novation Agreement' into the 'First Amended and Restated Contract' for the Management, Operation and Maintenance of the Highlands Waste Disposal Facility and the Material Recovery Facility (the "**First Amended and Restated Agreement**") which replaces all previous agreements, contracts and annexures;

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. INTERPRETATION

- 1.1** The headings to the clauses in this Contract are inserted for reference purposes only and shall in no way govern or affect the interpretation hereof.
- 1.2** In this Contract, unless inconsistent with the context, the words and expressions defined hereunder shall bear the following meanings and cognate expressions shall have corresponding meanings:

"Act"	means the National Environmental Management Waste Act, No. 69 of 2008.
"Best Practicable Environmental Option"	means the option that provides the most benefit or causes the least damage to the environment as a whole; at a cost acceptable to the community, in the long term as well as the short term;
"Business Days"	mean weekdays and exclude Saturdays, Sundays and public holidays;
"Change in law"	means the promulgation, adoption, enactment or change in any law, code, bylaw, rule or regulation, norms or standards and/or rendering of any judgement, order, decree or other governmental action of any court, administrative agency, government office, body or branch, which occurs subsequent to the Effective Date of this Contract and affects the construction, ownership, operation, use or maintenance of the Waste Disposal Facility required to provide the Municipality with the Services provided for in this Contract, including by way of example, but not by way of limitation, the imposition of any new condition or other change which is first required by such a governmental body after the

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	Effective Date with respect to the granting, issuance, or renewal of any required permit or licence or approval for the provision of the Services;
"Contract"	means this First Amended and Restated Contract together with the Annexures hereto;
"Contract Tariff"	means the tariff as escalated from time to time paid to the Contractor for the Services rendered;
"Contractor"	means Wastegro;
"Contractor Assets"	means all movable plant and equipment used at the Waste Disposal Facility unless otherwise stated in this Contract and includes the baler machine used at the MRF;
"Days"	mean calendar days (i.e. inclusive of weekdays, Saturdays, Sundays and public holidays);
"Defect"	means a part of the Services, as performed, which does not comply with the requirements of the Contract.
"Deliverable"	means any measurable, tangible, verifiable outcome, result or item that must be produced or completed including all activities related to the Management, Operation and Maintenance of the Waste Disposal Facility and the MRF;
"Designated Person"	means the person to whom the authority and responsibility to manage this Contract on behalf of the Municipality has been duly delegated;
"Effective Date"	means the date of signature of this Contract by the Party signing last in time;
"Environmental Management Plan: Operations"	means a plan including an asset management plan, a maintenance plan, a health and safety plan and other such plans, procedures, processes and systems in terms of which the Waste Disposal Facility, and where applicable the MRF, are managed, operated and maintained; which plan is herein referred to as the EMP: Operations and updated on an annual basis;
"Environmentally Sound Management"	means the taking of all practicable steps to ensure that the Waste Disposal Facility and the MRF are managed in a manner that will protect health and the environment,
"Excavation"	refers to the Contractor's bulk excavation of soil for each new waste cell to a depth equal to the legally prescriptive bottom level of a basal liner and further in compliance with the requirements of the Licensing Authority;

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"Good Engineering Practice"	means those practices, methods and equipment that are generally observed at the time in reference in prudent engineering practice for waste disposal site design, waste collection, waste handling and processing including sorting, shredding, grinding, crushing, screening and baling and waste disposal operations in order to provide the services covered by this Contract lawfully with safety, dependability, efficiency and economy in compliance with applicable government codes, if any, establishing engineering standards for similar services;
"Landfill"	means the waste area managed, operated and maintained by the Contractor on the Waste Disposal Facility.
"Licensed Facility"	means a waste disposal facility that has been issued with a Waste Management permit required in terms the National Environmental Management Waste Act No 59 of 2008, as amended, and any other approvals required by law;
"Licensing Authority"	means the provincial Department of Environmental Affairs and Development Planning.
"Maintenance"	includes the day to day maintenance activities related to the Services rendered by the Contractor and/or Subcontractor/s and all actions necessary to enable the Municipality through regular or specifically timed assessment, procurement and execution of maintenance activities to fulfil its duties and obligations in terms of this Contract at the Waste Disposal Facility and the MRF;
"Management"	includes the day to day management of all activities related to the Services rendered by the Contractor and/or Subcontractor/s and the management, oversight and reporting in respect of any activities rendered by other parties on behalf of the Municipality in the fulfilment of its obligations and duties in terms of the Contract at the Waste Disposal Facility and the MRF;
"MRF"	means the Material Recovery Facility owned by the Municipality and managed, operated and maintained by the Contractor on the Waste Disposal Facility;
"MFMA"	means the Local Government: Municipal Finance Management Act, No. 56 of 2003 as amended from time to time and all Regulations made in terms thereof;
"Month"	means a calendar month commencing on the first Day of a month and ending on the last Day of that month (e.g. 1 January to 31 January);
"Municipality"	means the Swartland Local Municipality or its successor in title or law;

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"Municipal Assets"	means all fixed infrastructure unless otherwise stated in this Contract and include bulk services, buildings, structures and other permanent installations owned by the Municipality and managed, operated and maintained by the Contractor;
"Operation"	includes the day to day operational activities related to the Services rendered by the Contractor and/or Subcontractor/s and the procurement, management, oversight and reporting in respect of any operational activities executed by other parties on behalf of the Municipality in the fulfilment of its obligations and duties in terms of the Contract at the Waste Disposal Facility and the MRF;
"Operating Year"	means a 12-month period beginning on 1 January and ending on 31 December.
"Parties"	means the Municipality and the Contractor;
"Recyclable Waste"	means waste that has been separated from the waste stream in the MRF and set aside for purposes of re-use, reclamation or recycling;
"Rehabilitation"	means the placing of 200mm of soil coverage by the Contractor on top of a filled waste cell within the timespan required by the Municipality and in compliance with any additional capping requirements which the Licensing Authority may impose on the Municipality. Any additional capping requirement by the Licensing Authority over and above the 200mm soil layer will be for the cost of the Municipality;
"Services"	mean the scope of work executed by the Contractor in fulfilling all its duties, obligations and responsibilities in terms of the Contract and includes all Management, Operation and Maintenance activities to enable fulfilment of the Municipality's duties and obligations at the Waste Disposal Facility and MRF;
"Subcontractor"	means a person or body corporate that enters into a subcontract with the Contractor to perform part of the Services;
"Systems Act"	means the Local Government: Municipal Systems Act, No. 32 of 2000 as amended from time to time and all Regulations made in terms thereof;
"Waste"	means any substance, whether or not that substance can be reduced, re-used, recycled and recovered- (a) that is surplus, unwanted, rejected, discarded, abandoned or disposed of; (b) which the generator has no further use of for the purposes of production; (c) that must be treated or disposed of; or



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- (d) that is identified as a waste by the Minister of the Department of Environmental and Water Affairs by notice in the Government Gazette, and includes waste generated by the mining, medical or other sector, but-
 - (i) a by-product is not considered waste, and
 - (ii) any portion of waste, once re-used, recycled and recovered, ceases to be waste;

"Waste Disposal Facility"

means the Highlands Class B Licensed Facility for the disposal of the General Waste Stream established on Portion of Erf 356, Abbotsdale, District Malmesbury, under Waste Management Variation Permit 19/2/5/4/F5/1/WLD080/19 and owned by the Municipality and specifically such portion of the facility inclusive of the Landfill and Municipal Assets at any given time used to render the Services provided for in this Contract

- 1.3 Any word or term not defined above shall, if the context so requires, have the same meaning as contained in Section 1 of the Act.
- 1.4 In this Contract, unless inconsistent with the context, an expression which denotes:
 - 1.4.1 any one gender includes the other genders;
 - 1.4.2 a natural person includes a juristic person and vice versa,
 - 1.4.3 the singular includes the plural and vice versa
- 1.5 The annexures to this Contract form an integral part hereof and words and expressions defined in this Contract shall, unless the context indicates otherwise, bear the same meaning in such annexures.

2. RECORDAL AND OBJECTIVE

It is recorded that –

- 2.1 The Waste Disposal Facility is managed, operated and maintained according to Good Engineering Practice by the Contractor at a cost which provides significant value for money to the Municipality;
- 2.2 The Municipality has extended the Services of the Contractor based on the licensed waste footprint as provided for in the Revised Agreement to encapsulate changed circumstances in respect of waste volumes received, excavation requirements and fixed infrastructure on the Waste Disposal Facility and the Contractor is providing such extended Services on the basis of the current tariff and escalation formula as provided for in clauses 8.2 and 8.3;
- 2.3 Due to legislative and logistical changes and requirements impacting on the Municipality and the Contractor's duties and obligations since the conclusion of the Revised Agreement entered into by the Parties on 22 January 2010 and taking into account the changes affected by the Novation Agreement entered into by the Parties on 8 December 2014, the First Amended and Restated Contract hereby concluded replaces the existing contracts, its amendments and annexures in its entirety with the provision that all currently valid provisions are included herein;
- 2.4 Although the Contractor established the MRF at own financial cost and manages, operates and maintains it as a separate facility, all health, safety and environment related terms and conditions contained herein shall apply mutatis mutandis to the MRF due to it being situated on the Waste Disposal Facility;
- 2.5 The Contractor may not make any improvements and/or changes and/or extensions which will result in a fixed asset to the MRF without the prior written approval of the Municipality and when this First Amended and Restated Contract expires or terminates for whichever reason, the Municipality will be the owner of the MRF's related infrastructure without the Contractor having the right to remove or replace any fixed assets or to expect any compensation therefor.

- 2.6 Notwithstanding the provisions of clause 2.5, the Municipality may at expiry or termination of this Contract for whichever reason, require the Contractor to remove any equipment and materials associated with the MRF from the Waste Disposal Facility.

3. PERMIT, BY-LAWS, REQUIREMENTS AND WORK SPECIFICATIONS

3.1 The Contractor will provide the Services in accordance with:

- 3.1.1 The permit issued by the then Department for Water Affairs and Forestry as amended by the Department of Environmental Affairs and Development Planning (D E&DP);
- 3.1.2 The Environmental Management Plan: Operations (EMP: Operations) of the Waste Disposal Facility which includes all other plans, programmes, procedures or the like applicable to the Waste Disposal Facility and where appropriate also to the MRF, as detailed in this Contract;
- 3.1.3 The Site Development Plan;
- 3.1.4 The "Minimum Requirements for Waste Disposal by Landfill" published by DWS; and
- 3.1.5 The Municipal Waste Management By-law

4. WARRANTIES AND REPRESENTATIONS

4.1 The Municipality warrants and represents to the Contractor that:

- 4.1.1 the execution and delivery of this Contract has been authorised by all appropriate actions of its municipal Council and this Contract constitutes legal, valid and binding obligations upon it enforceable in accordance with its terms and conditions;
- 4.1.2 it has complied with all relevant legislative provisions required to enter into this Contract and more specifically the Municipality confirms that:
 - 4.1.2.1 it has completed the consultation processes in compliance with the Systems Act and the MFMA;
 - 4.1.2.2 it has complied with the provisions of Section 33 of the MFMA

4.2 The Contractor warrants and represents to the Municipality that:

- 4.2.1 It has the power and capacity to execute this Contract, perform all Services, exercise all its rights and accepts all its liabilities under this Contract;
- 4.2.2 It is in possession of and fully conversant with the terms and conditions of the documents listed in clauses 3.1.1, 3.1.2, 3.1.3, 3.1.4 and 3.1.5 above and accepts that these are mutatis mutandis terms and conditions of this Contract and that a contravention of or non-compliance with any of these terms or conditions would be regarded as a breach of this Contract;
- 4.2.3 It is a 'competent person' in terms of Construction Regulation, 2003;
- 4.2.4 It will act in full co-operation with the Municipality to further comply with provisions in the Systems Act and the MFMA that oblige the Municipality to fulfil certain legal requirements throughout the duration of this Contract;
- 4.2.5 It acknowledges that no information provided to it by any municipal officials or service providers of the Municipality will indemnify it from any duties, obligations or risks in the execution of this Contract.

5. COMMENCEMENT AND DURATION

5.1 This Contract will commence on the Effective Date.

- 5.2 The Contract will expire when the licensed waste footprint has reached its full capacity in accordance with the minimum requirements applicable to the Waste Disposal Facility.

6. GUARANTEE

- 6.1 The Contractor shall provide to the Municipality on or within fourteen (14) Days of the Effective Date of the Contract, the current valid guarantee of an Insurance Company or Bank ("the Guarantor") which is jointly and severally bound with the Contractor, in accordance with the provisions of the Guarantee, for an amount of R275,000.00 (TWO HUNDRED AND SEVENTY FIVE THOUSAND RAND); which amount is equal to one (1) Month's payment to the Contractor for the due performance of the Contract. The Form of Guarantee to be submitted is attached as Annexure 1 hereto.
- 6.2 The Municipality shall be empowered to withhold all payments for Services until the Contractor has complied with his obligation in terms of clause 6.1.
- 6.3 Expenditure incurred in obtaining the guarantee and the Form of Guarantee to be entered into shall be borne by the Contractor.
- 6.4 The Form of Guarantee shall be returned to the Guarantor within thirty (30) Days after expiry of the Contract.

7. INSURANCES

- 7.1 The Contractor shall provide to the Municipality on or within fourteen (14) Days of the Effective Date of the Contract and thereafter annually, proof of public liability insurance to the amount of R10 000 000 (ten million rand) covering both the Contractor and the Municipality against their respective liability for the death of or injury to any person or loss of or damage to any property arising out of or in the course of the performance of the Contract. The Insurance Company shall be subject to approval by the Municipality.
- 7.2 The Contractor shall provide to the Municipality on or within fourteen (14) Days of the Effective Date of the Contract and thereafter annually, proof of insurance of Contractor's assets including motor, plant and tools, electronic equipment, office contents and all other resources not specifically mentioned but essential to the effective performance of the Services in respect of this Contract.
- 7.3 The Contractor shall further insure the contents of the supervisor's house and the store against all loss and damages for an amount equal to the replacement value thereof as annually assessed by a reputable Insurance Company.
- 7.4 The Contractor shall maintain the insurance policies referred to in clauses 7.1, 7.2, and 7.3 for the duration of this Contract and provide the Municipality with proof of the renewal notices annually at the beginning of the Operating Year. Annual renewal of the policies will allow for inflation adjustments.
- 7.5 If the Contractor fails to effect and keep in force any of the insurances referred to in clauses 7.1, 7.2 and 7.3, or any other insurance which it may be required to effect in terms of the Contract, then and in any such case the Municipality may effect and keep in force such Insurance and pay such premium or premiums as may be necessary for that purpose and from time to time deduct the amount so paid by the Municipality as aforesaid from any monies due or which may become due to the Contractor or recover the same as a debt due from the Contractor.
- 7.6 The Contractor shall maintain the appropriate Workman's Compensation Insurance and annually provide the Municipality with a letter of Good Standing in respect of the Compensation for Occupational Injuries and Diseases Act, 1993.

8. FINANCIAL ARRANGEMENTS

8.1 PAYMENT

- 8.1.1 The Municipality shall pay the Contractor for the performance of the Services by direct deposit or internet banking to such bank account as the Contractor may nominate from time to time in writing, free of all charges, within seven (7) Days of receipt of an original tax invoice and stipulated supporting documents; which invoice and supporting documents shall be submitted by the 25th of each Month.
- 8.1.2 If the Contractor does not receive payment by the due date, it shall be entitled to charge interest on the unpaid amount, which is payable by the Municipality, at the prime interest rate charged by his bank and certified by such bank, plus 2% (two percent) per annum, and calculated from the due date of payment.
- 8.1.3 If any item or part of an item in an invoice submitted by the Contractor is disputed by the Municipality, the latter shall before the due date of the payment, give notice thereof with reasons to the Contractor, but shall not delay payment of the balance of the invoice. The Parties shall endeavour to resolve such dispute within five (5) Business Days of the Contractor being informed thereof and, once rectified, payment shall be effected within five (5) Business Days thereafter. Should the Parties not be able to resolve the dispute within five (5) Business Days, clause 8.3 shall apply to disputed amounts which are finally determined to be payable to the Contractor.
- 8.1.4 In respect of Maintenance and Operational work that are part of the Municipality's obligations and executed on its behalf by the Contractor, the Contractor will obtain three (3) quotations with a validity of thirty (30) calendar days and submit such to the Municipality for approval, whereupon the Contractor will appoint, manage and oversee the work of the selected service provider on the same terms and conditions approved by the Municipality.
- 8.1.5 The Municipality will budget an annual amount of R200,000.00 (TWO HUNDRED THOUSAND RAND) for provisional costs and the Contractor will submit an invoice for work done in terms of clause 8.1.4 with its monthly invoice as stipulated in clause 8.1.1 including therewith supporting documents to prove the effective execution of the work.

8.2 CONTRACT TARIFF

- 8.2.1 The Contractor's Contract Tariff as further set out in Annexure 2 hereto, is inclusive of all costs to render the Services in terms of this Contract.
- 8.2.2 The Contract Tariff consists of a fixed tariff and a variable tariff per ton calculated in accordance with the total volume of waste disposed annually at the Landfill. The Fixed Tariff is based on the population figure and the volume of waste disposed is based on an annually adjusted waste generation factor per capita of the population served by the Waste Disposal Facility. The population figure as adjusted in January of each year, using data from July the previous year, shall be used for the calculation of payments for that Operating Year.

8.3 PRICE ADJUSTMENT

- 8.3.1 The fixed tariff shall be adjusted quarterly on 1 April, 1 July, 1 October and 1 January of each year and the variable tariff on a monthly basis using the Baxter formula, as detailed in Annexure 2 hereto, with May 2009 as the base month.

The weights applicable to the components of the fixed tariff are as follows:

Plant:	Table 4, P0151.1	–	Moving, grading, levelling, scraping, excavating, tamping, compacting and extracting machinery	–	35%
Labour:	Table 3, P0141	–	Western Cape All Items	–	65%

The weights applicable to the components of the variable tariff are as follows:

Material:	Table 2, P0151.1	–	Civil Engineering	–	5%
Plant:	Table 4, P0151.1	–	Moving, grading, levelling, scraping, excavating, tamping, compacting and extracting machinery	–	10%
Fuel:	Table 1, P0142.1	–	Diesel	–	85%

The value of $x = 10\%$

- 8.3.2 Due to the late publication of the indexes, the latest available indexes shall provisionally be used for the respective price adjustments.

8.4 SUSPENSION AND FORCE MAJEURE

- 8.4.1 Should the Contractor be forced to fully suspend or delay the performance of the Services due to a *Force Majeure Event*, the Contractor shall at least be paid the fixed tariff per Month for a period not less than 60 (sixty) Days. The Municipality may extend the said period and pay to the Contractor for such an extended period a monthly amount based on its own discretion in order to sustain the operations of the Contractor.
- 8.4.2 If Services are in total or partly suspended by the Municipality due to no fault of the Contractor, the Contractor shall be entitled to reimbursement of all reasonable costs incidental to the prompt and orderly suspension of the Services; pro-rata payment for the part of the Services carried out; and the fixed tariff per Month for a period not less than 90 (ninety) Days. The Municipality may extend the said period and pay to the Contractor for such an extended period a monthly amount based on its own discretion in order to sustain the operations of the Contractor.

9. HUMAN RESOURCES

9.1 LEGISLATION

- 9.1.1 The Contractor shall be obliged to comply with all applicable labour legislation (including all amendments thereto and regulations and directives issued pursuant to any such legislation) including, without limitation the following:
- The Occupational Health and Safety Act 85 of 1993 (OHSA)
 - The Labour Relations Act 66 of 1995 (LRA)
 - The Basic Conditions of Employment Act 75 of 1997 (BCEA)
 - The Employment Equity Act 55 of 1998 (EEA)
 - The Promotion of Equality and Prevention of Unfair Discrimination Act 4 of 2000
 - The Skills Development Act 97 of 1998 (SDA)
 - The Skills Development Levies Act of 1999 (SDLA)
 - National Minimum Wage Act 9 of 2018 (NMWA) and its annual amendment.

9.2 PERSONNEL

- 9.2.1 The Contractor shall employ and provide all personnel to perform the Services and shall take all measures necessary and provide all materials and equipment necessary to enable its staff to perform their duties in an efficient manner.
- 9.2.2 A list of all personnel employed by the Contractor in the performance of this Contract and their respective duties must be submitted to the Municipality within seven (7) Days after the Effective Date of this Contract and thereafter an updated list including details of personnel turnover, e.g. death, dismissal, resignation, etc. must be included in the Quarterly Report submitted to the Municipality.

9.3 REMUNERATION AND CONDITIONS OF EMPLOYMENT

- 9.3.1 The Contractor shall not pay rates of wages and observe hours and conditions of employment less favourable to its employees than the prescribed national minimum wage and/or as established by statutory authority for the trade or industry in the district where the work is carried out.
- 9.3.2 The quarterly adjustment of the fixed tariff as per clause 8.3.1 shall take the annual increase in the prescribed national minimum wage into account, also retrospectively if so required.

9.4 CARE OF EMPLOYEES

- 9.4.1 The Contractor shall maintain adequate and suitable sanitary and first-aid services, change facilities and a supply of potable water for its employees.

9.5 CONDUCT

- 9.5.1 The Contractor shall ensure that the behaviour of its employees towards users of the Waste Disposal Facility is at all times courteous and respectful.

9.6 RESTRAINT OF EMPLOYMENT

- 9.6.1 The Contractor must for the duration of this Contract refrain from offering an employment contract, consultancy or any other contract to a person who
- (a) Is an official of the Municipality or a municipal entity of the Municipality,
 - (b) Was such an official during the period of one (1) year preceding the offer of employment, consultancy or any other contract.
- 9.6.2 The Contractor must for a period of three (3) years from the Effective Date of this Contract refrain from offering an employment contract, consultancy or any other contract to an employee of the Municipality who was directly involved with the negotiation of this Contract.

10. HEALTH AND SAFETY

- 10.1 The Contractor shall ensure compliance with safety legislation and regulations and with any safety specifications and directives that may be issued by the Municipality.
- 10.2 The Contractor shall enter into the Occupational Health and Safety Compliance Agreement attached hereto as Annexure 3 with the Municipality in terms of which the Contractor assumes certain responsibilities in respect of health and safety matters to comply with the provisions of Sections 8 and 37(2) of the OHS Act.
- 10.3 The Contractor shall in respect of the Waste Disposal Facility and the MRF, abide by the stipulations of the Health and Safety Plan as provided for in clause 9.6 of the Occupational Health and Safety Compliance Agreement.
- 10.4 The Contractor shall ensure that its operations do not endanger any member of the public.

11. ENVIRONMENT

- 11.1 The Contractor shall be obliged to comply with all relevant waste and environmental legislation (including all national and provincial norms, standards, guidelines, regulations and other directives issued in advance or in pursuance of such legislation) in particular as applicable and without limitation the following:
- The National Environmental Management Act 107 of 1998 (NEMA)
 - The National Environmental Management Waste Act 59 of 2008 (NEM:WA)
 - The National Norms and Standards for Disposal of Waste to Landfill, 2013
 - The National Waste Classification and Management Regulations, 2013
 - The National Norms and Standards for the Assessment of Waste for Landfill Disposal, 2013
 - The National Norms and Standards for the Sorting, Shredding, Grinding, Crushing, Screening or Baling of General Waste, 2017
 - Waste Tyre Regulations, 2017.
- 11.2 The Contractor shall be responsible for the full and continuous implementation of the EMP: Operations that inter alia stipulates the practices required for Environmentally Sound Management.

12. MUNICIPALITY'S OBLIGATIONS

12.1 DESIGNATED PERSON

- 12.1.1 The Municipal Manager acting as the accounting officer of the Municipality and the person responsible for the implementation of the Contract has delegated the daily contract management and monitoring of the Contract to the Director Civil Engineering of the Municipality.
- 12.1.2 The Municipality has the right to change such Designated Person based on any internally changed circumstances and in accordance with its powers of delegation and will notify the Contractor one (1) month in advance of any such change occurring.

12.2 ENVIRONMENTAL MANAGEMENT PLAN: OPERATIONS (EMP: OPERATIONS)

- 12.2.1 The Municipality shall as soon as reasonably possible after the Effective Date, provide the Contractor with a legally compliant EMP: Operations to replace the existing Operations Plan, which plan will be reviewed and updated as may be required but at least on an annual basis.

12.3 INFORMATION

- 12.3.1 The Municipality shall timely provide to the Contractor, free of cost, all available information and data in the Municipality's possession that may be required for the performance of the Services.
- 12.3.2 The Municipality shall provide the Contractor with reasonable assistance required in obtaining other relevant information that the latter may require in order to perform the Services.

12.4 DECISIONS

- 12.4.1 The Municipality shall within a reasonable time, give its decision on any matter properly referred to it in writing by the Contractor so as not to delay the rendering of the Services.

12.5 ASSISTANCE

- 12.5.1 The Municipality shall co-operate with the Contractor and shall not interfere with or obstruct the proper performance of the Services. The Municipality shall as soon as practicable:
- authorize the Contractor to act as its agent insofar as may be necessary for the performance of the Services;
 - provide all relevant data, information, reports, correspondence and the like, which become available;
 - assist in the obtaining of all approvals, licenses and permits from the national and provincial authorities having jurisdiction over the Contract;
- 12.5.2 Unless otherwise communicated, the designated person named in the Contract has complete authority in giving instructions and receiving communications on the Municipality's behalf and interpreting and defining the Municipality's policies and requirements with regard to the Services.

12.6 OTHER SERVICE PROVIDERS

- 12.6.1 Notwithstanding the provision of clause 8.1.4, the Municipality may at its own cost, procure and appoint such other service providers as may be required for the execution of work not included in the Services but which is necessary for the successful implementation of the Contract.
- 12.6.2 The Contractor may be required to manage or oversee the work or services of service providers procured and appointed by the Municipality in terms of clause 12.6.1 on behalf of the Municipality.

12.7 NOTIFICATION OF MATERIAL CHANGE

- 12.7.1 The Municipality shall immediately advise the Contractor on becoming aware of:
- any matter other than a change in legislation which will materially change, or has changed the scope and/or manner of execution of the Services, or
 - a material defect or deficiency in the Services.

12.8 PAYMENT

- 12.8.1 The Municipality shall pay the Contractor the Contract Tariff in accordance with the provisions of clause 8.2 of the Contract which Contract Tariff is inclusive of any administrative, managerial, oversight and reporting activities undertaken by the Contractor in terms of clauses 8.1.4 and 12.6.2.

12.9 WATER AND ELECTRICITY SUPPLY

- 12.9.1 The Municipality is responsible to ensure a continuous bulk supply of electricity and potable water to the Waste Disposal Facility. Should a scheduled interruption in the supply for any period exceeding two (2) hours, the Municipality shall immediately inform the Contractor thereof including the expected duration of such interruption.
- 12.9.2 In case of the bulk supply of water or electricity be interrupted for a period exceeding forty eight (48) hours, the Municipality shall to the mutual satisfaction of the Contractor, put alternative measures in place to ensure sufficient potable water and electricity supply to the Waste Disposal Facility.

12.10 CONTRACT MANAGEMENT AND MONITORING

- 12.10.1 In compliance with Section 116(2) of the MFMA and Section 5 of the Municipal Public Private Partnership Regulations published in terms of the MFMA, the Municipality will manage and monitor the implementation of the Contract and ensure enforcement thereof including compliance with all permit conditions inter alia through the following measures:
- (a) monthly performance monitoring;
 - (b) quarterly or, if the Municipality so decides, monthly unannounced inspections of the Waste Disposal Facility to evaluate the rendering of the Services as well as the general appearance and operation of the Landfill;
 - (c) quarterly auditing of the Waste Disposal Facility and its appearance and the operation of the Landfill by external auditors appointed and remunerated by the Municipality;
 - (d) quarterly, minuted contract meetings at which meetings compliance with and practicalities in respect of all aspects addressed in the Contract will be dealt with as well as any specific matters raised by either the Municipality or the Contractor;
 - (e) obligatory Quarterly Reports to be submitted by the Contractor in the first week of the Month following the completion of a previous quarter, which reports shall include all matters that require written reporting as stipulated in the Contract.

12.11 PERIODIC CONTRACT REVIEW

- 12.11.1 In compliance with Section 116(1)(ii) of the MFMA and Section 5 of the Municipal Public Private Partnership Regulations published in terms of the MFMA, the Municipality shall do a periodic review of the Contract, at least every three (3) years.

12.12 PERFORMANCE MANAGEMENT AND MONITORING

- 12.12.1 In compliance with Section 46(1) of the Systems Act and Section 5 of the Municipal Public Private Partnership Regulations published in terms of the MFMA, the Municipality will monitor the performance of the Contractor on an on-going basis and prepare an annual performance report of the Contract by June of each year to form part of the Municipality's annual report for the duration of the Contract.
- 12.12.2 The Contractor's performance in respect of the Services will be monitored and evaluated in terms of the Performance Monitoring System set out in Annexure 4 hereto including the penalties that would apply in respect of unsatisfactory performance by the Contractor.

13. CONTRACTOR'S GENERAL OBLIGATIONS

The Contractor is bound to the following –

13.1 SERVICES

- 13.1.1 The Contractor shall render the Services in accordance with the documents listed in clause 3 of the Contract with all reasonable care, diligence and skill, in accordance with Good Engineering Practice and Best Practicable Environmental Options.
- 13.1.2 Notwithstanding any stipulations in this Contract, any repairs and/or replacement of Municipal Assets on the Waste Disposal Facility and at the MRF necessitated by wilful damage thereof by the Contractor, its employees, sub-contractors and/or agents or due to the neglect of its maintenance obligations by the Contractor, shall be done and paid for by the Contractor.

13.2 EXERCISE OF AUTHORITY

- 13.2.1 The Contractor shall have no authority to relieve other service providers appointed by the Municipality in terms of clause 12.6.1 to undertake work or services in respect of the Waste Disposal Facility of any of their duties, obligations, or responsibilities under their respective agreements or contracts, unless expressly authorised by the Municipality in response to an application by the Contractor in writing to do so.
- 13.2.2 Where the Contractor is required in terms of clause 12.6.2 to manage or oversee the work or services of other service providers on behalf of the Municipality, the Municipality shall issue instructions related to such work, services, contract or agreement only through the Contractor.

13.3 CO-OPERATION WITH OTHERS

- 13.3.1 If the Contractor is required to perform any services in co-operation with other service providers appointed by the Municipality as per clause 12.6.1 he may make recommendations to the Municipality in respect of the work to be performed by such other service providers.

13.4 APPROVAL

- 13.4.1 The Contractor shall obtain the Municipality's prior approval in writing before taking, inter alia, any of the following actions:
- any operational deviations in respect of the Landfill;
 - any improvements and/or changes and/or extensions to the MRF;
 - any improvements and/or changes and/or extensions to the structures, buildings and infrastructure on the Waste Disposal Facility;
 - the appointment of Subcontractors

13.5 NOTICE OF CHANGE

- 13.5.1 Within fourteen (14) Days, of becoming aware of any matter that will materially change or has changed the scope and/or manner of execution of the Services, the Contractor shall give notice thereof to the Municipality.

14. ASSETS

14.1 FIXED INFRASTRUCTURE

- 14.1.1 The following Municipal Assets are available on the Waste Disposal Facility and managed, operated and maintained by the Contractor on a daily basis:
- Material recovery facility
 - Weighbridge and weighbridge office
 - Supervisor house and related services infrastructure
 - Store and related services infrastructure

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- Office
- Sanitation facilities
- Security fence
- Electric fence
- Access gate
- Potable water supply
- Electricity supply
- Borehole for dust purposes
- Monitoring boreholes

- 14.1.2 The baler machine located at the MRF is owned, managed, operated and maintained by the Contractor at its own cost and for its own account.

14.2 MOVABLE PLANT AND EQUIPMENT

- 14.2.1 Unless otherwise stated in this Contract, all movable machinery and equipment used for rendering the Services are the Contractor's Assets and as such supplied, owned, operated and maintained by the Contractor.
- 14.2.2 A list of all machinery and equipment made available and used by the Contractor in the performance of the Services including make, model, year of first registration and expected lifespan must be submitted to the Municipality within seven (7) Days after the Effective Date and thereafter an updated list including all such details must be included in the Quarterly Report submitted to the Municipality.
- 14.2.3 The Contractor shall provide sufficient and suitable machinery and equipment to meet all the requirements of the Services and maintain such in a good and safe working condition.
- 14.2.4 The Contractor shall, when so ordered by the Municipality, remove from the Waste Disposal Facility all unsuitable, outdated and obsolete machinery and equipment.

15. TYPES OF WASTE

- 15.1 The Highlands Waste Disposal Facility is classified as a Class B site and may only receive general, i.e. non-hazardous and non-health care waste.
- 15.2 The Contractor shall ensure that non-permitted wastes are not disposed at the Landfill.

16. CONTRACTOR MANAGEMENT SYSTEMS AND PROCESSES

16.1 EMP: OPERATIONS

- 16.1.1 The Contractor shall manage, operate and maintain the Waste Disposal Facility and MRF, for the duration of this Contract in accordance with an approved EMP Operations provided by the Municipality.
- 16.1.2 The Contractor may suggest in writing deviations or changes to the EMP Operations but may not effect such changes or deviate from the EMP Operations without the prior written approval of the Municipality.

16.2 ASSET MANAGEMENT PLAN AND REGISTER

- 16.2.1 The Contractor shall implement the asset management plan provided by the Municipality as part of the EMP: Operations and keep an updated register of the Municipal Assets including therein the description, location, date and value of these assets.
- 16.2.2 A separate register of the Contractor's Assets including the value of assets but excluding recovered material shall be kept by the Contractor which register shall be provided to the Municipality on an annual basis.

16.3 RISK MANAGEMENT

16.3.1 The Contractor shall put risk management processes in place to

- Ensure the risks identified by the Municipality in the EMP Operations are dealt with appropriately (avoided or mitigated);
- Identify further risks and critical assets and inform the Municipality thereof;
- Evaluate and quantify risk probability and impact;
- Ensure that residual risks are well understood and insured

16.3.2 Risk types would inter alia include health and safety matters, financial risks, public and general liability, asset level risks, environmental risks and the risks associated with interruption of the Services

16.4 FINANCIAL MANAGEMENT

16.4.1 The Contractor shall implement sound financial management, accounting and record-keeping practices.

16.4.2 The Contractor shall annually for the purpose of the performance review, submit to the Municipality a letter from its bankers to verify its financial good standing as well as a tax compliance status pin valid for twelve (12) months.

16.5 RECORD-KEEPING AND REPORTING

16.5.1 The Contractor shall maintain written daily records of the following aspects and include all of these or only such as determined by this Contract and the Municipality, in the Quarterly Report:

- All vehicles and types of waste entering and exiting the Waste Disposal Facility, i.e.:
 - Quantities of waste received (including vehicle registration number, mass of the vehicle and load of the vehicle);
 - Type and mass / tonnage of the waste
 - Time and date of access and exit;
- Daily position of depositing on site
- Quantity of cover placed
- Complaints lodged
- Accidents on the Waste Disposal Facility and at the MRF
- Site Protocol Violations
- Breakdowns and stoppages
- Rainfall
- Unusual Incidents on the Waste Disposal Facility and at the MRF
- Quantities (mass) of recovered material leaving the MRF
- Quantities of Builder's Rubble and soil waste diverted from landfilling
- Quantities of organic waste diverted from landfilling

16.5.2 The Quarterly Report shall also include updated lists of personnel and plant used to render the Services.

16.5.3 The Municipality shall supply a computer and printer and the Contractor shall operate and maintain the computer, printer and the associated weighbridge data-capturing equipment including the provision of all consumables and software.

16.5.4 The Contractor shall keep back-up files of all data captured at the weighbridge and all records required in terms of this Contract inclusive of those mentioned in clause 16.5.1 for a period of three (3) years.

16.5.5 The Contractor shall be responsible for the replacement of the computer, printer and weighbridge data-capturing equipment at own cost if such replacement is necessary due to theft, wilful damage or neglect of maintenance obligations.

16.5.6 The Municipality will be responsible for the replacement of the computer, printer and weighbridge data-capturing equipment if any such replacement is necessitated by the Municipality's need for more effective operations, in which case the replacement shall be done by the Contractor on the Municipality's behalf following the process set out in clauses 8.1.4 and 8.1.5

16.6 CHARGES FOR DISPOSAL

- 16.6.1 No payments for disposal will be accepted at the Waste Disposal Facility. Invoices for disposal, based on the weighbridge records, will be managed by the Municipality.
- 16.6.2
- 16.6.3 A notice board displaying vehicle sizes and/or mass and disposal fees applicable will be erected at the access gate to the Waste Disposal Facility by the Municipality and maintained by the Contractor.

16.7 SUPERVISOR

- 16.7.1 The Contractor shall provide a full-time site supervisor. The experience and the qualifications of the supervisor shall comply with the 'Minimum Requirements for Waste Disposal by Landfill' as issued by DWS.
- 16.7.2 Only one household and that being an employee as appointed by the Contractor, may live in the residence on the Waste Disposal Facility.

16.8 SANITATION

- 16.8.1 The Contractor shall ensure the supply of adequate and well-maintained sanitation facilities for its employees near the off-loading point and as may reasonably be required by its personnel.

16.9 CHANGES TO BUILDINGS AND STRUCTURES

- 16.9.1 Should the Contractor wish to install any other fixed infrastructure or erect any further structures or buildings or make any changes, improvements or extensions to Municipal Assets on the Waste Disposal Facility, it must obtain the prior written approval of the Municipality.

17. OPERATIONS

17.1 HOURS OF WORK

- 17.1.1 The Landfill will be open Mondays to Saturdays (including public holidays that fall on any of these days) from 08:00 to 18:00 to the public for the disposal of waste. The Landfill will be closed on Sundays (including public holidays that fall on a Sunday) and Christmas Day and New Year's Day.

17.2 ACCESS CONTROL AND NOTICE BOARDS

- 17.2.1 The Contractor shall ensure that access to the Waste Disposal Facility is controlled by competent, reliable and courteous employees able to keep the required records.
- 17.2.2 No person or vehicle shall be allowed to gain such access other than through the main access gate and only vehicles with waste permitted in accordance with the permit conditions shall be allowed on the Landfill.
- 17.2.3 All legally required notice boards must be provided at the Waste Disposal Facility where visible to the public and kept in good order.
- 17.2.4 Well visible, directive signs shall be provided from the Waste Disposal Facility's entrance to the off-loading point at the working face as well as the alternative disposal site referred to in clause 17.10.
- 17.2.5 Companies or individuals that provide commercial services for the collection and transport of waste in the municipal area must visibly display an original municipal waste licence disc in the front window of the vehicle and be able to provide proof of the municipal waste licence authorisation in order to be allowed access to the Landfill.

17.3 VOICE AND DATA COMMUNICATION

- 17.3.1 The Contractor shall provide / install and maintain for the duration of the Contract, voice and data communication at the Waste Disposal Facility.

17.4 OPERATION OF WEIGHBRIDGE

- 17.4.1 The Contractor shall employ a weighbridge control officer suitably qualified to identify the waste loads, operate the weighbridge and capture the data of incoming waste and outgoing material recovered at the MRF onto the system as stipulated.
- 17.4.2 The supervisor must be notified of waste not conforming to the permit conditions and the details of the waste as well as the vehicle and owner must be recorded.
- 17.4.3 The Contractor shall determine which waste loads shall be diverted to the MRF and which waste loads shall be disposed at the Landfill

17.5 USE OF PLANT AND EQUIPMENT

- 17.5.1 All machinery and equipment shall be operated by properly qualified, licensed and experienced operators and no employees not assigned or qualified to work near operative machinery should be allowed to do so

17.6 WASTE DEPOSITION AND COMPACTION

- 17.6.1 Waste deposition will be conducted in adherence with proven sanitary landfill principles based on the 'National Norms and Standards for Disposal of Waste to Landfill' as applicable; the 'Waste Disposal Facility permit' conditions applicable to the of spreading, compacting and daily covering of waste and as detailed in the EMP: Operations.
- 17.6.2 Tyres must be dealt with on the Landfill in accordance with the Waste Tyre Regulations.

17.7 COVER MATERIAL

- 17.7.1 Approved sources of cover material include:
- Soil from excavated cells;
 - Material stockpiled from previous excavations;
 - Chipped garden waste not used for composting
 - Building rubble
- 17.7.2 Sufficient material for the covering of waste on a daily basis must be made available by the Contractor. In addition, a strategically placed emergency stockpile of cover material, sufficient for three (3) working days' operation, should always be maintained.

17.8 CONTROL OF LITTER

- 17.8.1 The Contractor is expected to make use of functional movable litter fences in order to prevent wind-blown litter from leaving the Landfill. The litter fences must be kept in a good state of repair and be available for deployment at all times. They must be of such a construction as to be efficient in moderate to high winds.
- 17.8.2 The Contractor shall be responsible for the collection of refuse and litter along the access road to the site as well as wind-blown and scattered refuse and litter on the Waste Disposal Facility and properties adjacent to the Waste Disposal Facility.

17.9 SPECIAL WASTE

- 17.9.1 Special waste of a type/s allowed in terms of the Waste Disposal Facility permit conditions must be disposed at specially prepared areas in accordance with Best Practicable Environmental Option and the EMP: Operations.
- 17.9.2 The Contractor shall implement measures to avoid or limit contact of users of the Landfill with the special waste.

17.10 ALTERNATIVE CELL FOR ADVERSE CONDITIONS

- 17.10.1 The Contractor shall make provision for a wet weather cell on the main disposal site which has a surface of coarse well drained material, such as builder's rubble and coarse ash, which can be used as the disposal area when conditions become too wet in other areas or other adverse conditions such as fire on the active disposal site prevent normal disposal operations.

17.11 SALVAGING

- 17.11.1 The Contractor shall not under normal circumstances salvage material from the working face of the Landfill. All waste recovery must be conducted in the MRF.
- 17.11.2 No scavenging shall be allowed on the working face.

17.12 BURNING OF WASTE

- 17.12.1 Any fire on the Waste Disposal Facility or at the MRF must immediately be extinguished.
- 17.12.2 The Contractor shall not burn garden or other waste on the Landfill.

17.13 CONTROL OF NUISANCES

- 17.13.1 Effective pest control measures against flies, rodents, etc. as approved by the Municipality must be maintained on a daily basis.
- 17.13.2 The Contractor shall take such further measures to reduce where possible odours, dust and noise.

17.14 SITE DRAINAGE SYSTEM

- 17.14.1 The Contractor shall prevent undue contact between waste and stormwater to minimise the volume of contaminated run-off and leachate.
- 17.14.2 All water that has been in contact with waste will be considered as contaminated water and other water sources with which such contaminated water comes into contact, will also be considered as contaminated.
- 17.14.3 The Municipality shall take water samples from the monitoring boreholes every six (6) Months for analyses. The Municipality will provide the Contractor with the results.

17.15 MAINTENANCE OF PUBLIC ROAD SURFACE

- 17.15.1 When excessive amounts of mud have been deposited on the access road to the site by vehicles leaving the site, the Contractor will remove the mud from the road surface at his own cost.

17.16 SURPLUS SOIL

- 17.16.1 The Contractor shall store the surplus soil available due to changes in the depth of cell excavation on the Landfill at a location indicated by the Municipality, which location will be as near as possible to the point of excavation. The Municipality shall have the right to remove such soil and, if so available gravel, without any cost from the Landfill for own use.

17.17 PROTOCOL

- 17.17.1 The Contractor shall maintain a record and the details of the occurrence of all vehicles that violate the Waste Disposal Facility's protocol. A report of the violation must be given to the vehicle driver and distributed to the driver's direct supervisor and the Municipality. Types of incidences considered to be violations should be indicated on the site rules as displayed at the entrance to the Waste Disposal Facility.

17.18 EMERGENCY SERVICES

- 17.18.1 The Contractor shall be available for emergency services on a 24/7 basis and be able to contact his supervisor at the Waste Disposal Facility on a 24/7 basis whether per radio or telephone or cell phone connection

17.19 MATERIAL RECOVERY

- 17.19.1 The Contractor shall be responsible for the optimal and continuous operation of the MRF, within the sustainable economic constraints of the recycling market, in order to minimise the volume of waste to be disposed at the Landfill.

18. MAINTENANCE

18.1 MAINTENANCE PLAN

- 18.1.1 The EMP: Operations provided by the Municipality shall include a maintenance plan and the Contractor shall implement all planned maintenance as stipulated therein.
- 18.1.2 The Contractor shall keep a separate record of all unplanned and emergency maintenance in respect of Municipal Assets and include such record in its Quarterly Report to the Municipality for possible inclusion in the annually updated maintenance plan of the EMP: Operations.

18.2 BUILDINGS AND STRUCTURES

- 18.2.1 The Contractor shall maintain the interior of all buildings and structures, including the supervisor's house, the weighbridge office, the Contractor's office, the store and sanitation facilities to the satisfaction of the Municipality.
- 18.2.2 The Municipality shall maintain the exterior of all buildings and structures, including the supervisor's house, the weighbridge office, the Contractor's office, the store and sanitation facilities.
- 18.2.3 The Municipality shall determine when the buildings must be painted with the interior to be done at the cost of the Contractor and the exterior at the cost of the Municipality.
- 18.2.4 The Contractor shall leave all buildings and structures including the MRF in a good and clean condition when the Contract expires or terminates to the satisfaction of the Municipality.
- 18.2.5 To fulfil its obligations in respect of clause 18.2.1 and 18.2.4 the Contractor shall:
- 18.2.5.1 Maintain, replace and/or repair all electrical globes, fittings, switches, water-bearing taps, locks, handles and windows;
 - 18.2.5.2 Maintain and/or replace carpets, floor coverings and tiles, as applicable.
 - 18.2.5.3 Prevent and/or clear any blockages and/or obstruction of any drains, sewage pipes and/or water pipes;
 - 18.2.5.4 Repair or replace any broken, damaged or missing items pertaining to clauses 18.2.5.1, 18.2.5.2 and 18.2.5.3 unless these items are recorded as being broken, damaged or missing prior to the Effective Date and the Parties mutually agree that the Municipality shall repair or replace such items.
- 18.2.6 Any work to be done in terms of clause 18.2.3 or repairs and/or replacements to be done in terms of clause 18.2.5.4 by the Municipality shall be done on its behalf by the Contractor following the process set out in clauses 8.1.4 and 8.1.5.

18.3 ACCESS ROADS

- 18.3.1 The Contractor shall ensure that all access roads on the Waste Disposal Facility are maintained in a good condition to the satisfaction of the Municipality; which roads must be:
- Usable in both wet and dry conditions;
 - Comfortably able to accommodate two large passing vehicles;

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- Sufficiently smooth and even without potholes to enable large loaded vehicles to travel at 20 kph, without damage or discomfort;
- Watered during dry weather for dust suppression and sufficient surfacedrainage for wet weather

18.4 PLANT

- 18.4.1 Machinery and equipment shall be kept in good working order. In the event of a breakdown, the Contractor shall notify the Municipality and provide back-up machinery or equipment within seventy two (72) hours to ensure that the proper operation of the Landfill is not placed in jeopardy.

18.5 STORM WATER DRAINAGE

- 18.5.1 The Contractor shall keep the storm water drainage channels in a good condition and blockage free and take all possible measures to avoid the bacterial or chemical pollution of underground water sources

18.6 FIRE EQUIPMENT

- 18.6.1 The Contractor shall be responsible for the management of all fire related equipment provided, maintained and installed by the Municipality on the Waste Disposal Facility and the fire related equipment installed in the MRF.
- 18.6.2 The Contractor shall continuously, with or without the involvement of the Municipality's designated person, assess the adequacy of the fire related equipment installed on the Waste Disposal Facility and in the MRF and make recommendations to the Municipality on how to make improvements, which improvements if and when approved by the Municipality, shall be done by the Municipality.
- 18.6.3 The annual servicing of fire equipment shall be done by the Municipality.
- 18.6.4 The Municipality shall be responsible for the refilling of fire extinguishers within three (3) calendar days after usage thereof for whichever reason.

18.7 WATER AND ELECTRICITY

- 18.7.1 The Municipality shall be responsible for the maintenance of all water and electricity reticulation infrastructure on the Waste Disposal Facility and at the MRF.
- 18.7.2 The Contractor shall regularly check for any water and electricity losses and the repair and/or replacement of reticulation infrastructure so detected shall be done by the Municipality.
- 18.7.3 The Contractor shall regularly check the effectiveness of water pressure pumps including such at the borehole and the repair or replacement thereof if necessary, shall be done by the Contractor on the Municipality's behalf following the process set out in clauses 8.1.4 and 8.1.5.
- 18.7.4 All water and electricity used by the Contractor on the Waste Disposal Facility and at the MRF is for its account. Such consumption shall be invoiced to the Contractor as per the Municipality's normal billing system.

18.8 FENCES, GATES AND ENTRANCE

- 18.8.1 The Contractor shall keep the entrance to the Waste Disposal Facility in a clean and neat state.
- 18.8.2 The Contractor shall be responsible for the continuous monitoring and maintenance of the fences, including the electric fence installed by the Municipality as well as the gates of the perimeter area which should be kept in a good condition, free of bush and tree overgrowth.
- 18.8.3 The repair or replacement of gates, fencing and related infrastructure shall be done by the Contractor on the Municipality's behalf following the process set out in clauses 8.1.4 and 8.1.5.

18.9 WEIGHBRIDGE

- 18.9.1 The Contractor shall be responsible for the maintenance of the weighbridge to ensure that the weighbridge is in a good functional condition and the calibration of the weighbridge shall be done biennially by the Contractor on the Municipality's behalf following the process set out in clauses 8.1.4 and 8.1.5.

18.10 CONVEYOR BELTS

- 18.10.1 The prescribed eight hundred (800) hour interval servicing of the conveyor belts in the MRF shall be done by the Contractor on the Municipality's behalf following the process set out in clauses 8.1.4 and 8.1.5.

18.11 GARDENS

- 18.11.1 All newly planted trees must be watered on a regular basis and dead trees must be replaced with similar trees by the Municipality.

19. EXCAVATION OF AIRSPACE

- 19.1 The Contractor shall continuously excavate future airspace including new cells in accordance with the site development plan, the EMP: Operations and the requirements of the Licensing Authority.

20. REHABILITATION

- 20.1 The Contractor shall rehabilitate the waste body when filled in accordance with the EMP: Operations, the 'Minimum Requirements for Waste Disposal by Landfill' and the requirements of the Licensing Authority, by placing a layer of 200mm soil over the covered waste body or over any additional capping layers required of the Municipality by the Licensing Authority.

21. VARIATION ORDERS

- 21.1 The Municipality may without changing the objectives or fundamental scope of the Contract, order variations to the Services in writing or may request the Contractor to submit proposals, including the time and cost implications, for variations to the Services.
- 21.2 The reasonable cost of preparation and submission of such proposals and the incorporation into the Contract of any variations to the Services ordered by the Municipality including any change in the Contract Tariff, shall be agreed between the Contractor and the Municipality.
- 21.3 Where a variation is necessitated by default or breach of Contract by the Contractor, any additional cost attributable to such variation shall be borne by the Contractor.

22. LIABILITY AND INDEMNITY

22.1 LIABILITY OF THE CONTRACTOR

- 22.1.1 The Contractor shall be liable to the Municipality arising out of or in connection with the Contract if a breach of clause 13.1 is established against it.
- 22.1.2 If a Defect arose from a failure of the Contractor to comply with its obligation to provide the Services and the Contractor does not correct the Defect within a reasonable time stated in a notification by the Municipality, the Municipality may appoint another service provider to correct the Defect and the Contractor shall pay to the Municipality the cost of having the Defect corrected by such other service provider inclusive of the procurement costs of obtaining such other services.

22.2 DURATION OF LIABILITY

- 22.2.1 Notwithstanding the terms of the Prescription Act No. 68 of 1968 (as amended) or any other applicable statute of limitation the Contractor shall not be held liable for any loss or damage resulting from any occurrence unless a claim is formally made within a period of one (1) year from the date of termination or completion of the Contract.

22.3 INDEMNITY BY THE CONTRACTOR

- 22.3.1 Notwithstanding any provisions of this Contract or any other contractual relationship as may exist between the Contractor and the Municipality, the Municipality shall not be responsible for any loss, damage, injury or death, howsoever caused, to the Contractor or to its employees, and the Contractor hereby indemnifies the Municipality and holds the Municipality harmless against all and any claims, losses, demands, liability, costs and expenses of whatsoever nature, which the Municipality may, at any time sustain or incur arising out of the circumstances referred to herein, provided that such loss, damage, injury or death is not caused by the wilful action or omission of the Municipality.
- 22.3.2 The Contractor hereby assumes liability for any loss or damage that is caused by the Contractor's negligence, or through the negligence of any of its employees, and the Contractor hereby indemnifies the Municipality for such loss or damage, whether caused by the Contractor's breach of any of the terms of this Contract, or by delict.

22.4 EXCEPTIONS

- 22.4.1 The Contractor shall have no liability whatsoever for actions, claims, losses or damages occasioned by:
- (a) the Municipality omitting to act on any recommendation, or overriding any act, decision or recommendation, of the Contractor, or requiring the Contractor to implement a decision or recommendation with which the Contractor disagrees or on which it expresses a serious reservation; or
 - (b) the improper execution of the Contractor's instructions by agents, employees or independent contractors of the Municipality, provided such is proven.

23. CONTRACT COMPLETION, SUSPENSION AND TERMINATION

23.1 COMPLETION OF SERVICES

- 23.1.1 Unless terminated in terms of the Contract, the Contract shall be concluded as determined in clause 5.2.

23.2 SUSPENSION OF SERVICES

- 23.2.1 The Municipality may temporary suspend all or part of the Services by notice to the Contractor who shall immediately act to stop the performance of the Services and minimise further expenditure.
- 23.2.2 When Services are suspended, the Contractor shall be entitled to payment as determined in clause 8.4.2.

23.3 FORCE MAJEURE

- 23.3.1 The failure of a Party to fulfil any of its obligations under the Contract shall not be considered to be a breach of, or default under, this Contract insofar as such inability arises from an event of Force Majeure, provided that the Party affected by such an event has taken all reasonable precautions, due care and reasonable alternative measures in order to meet the terms and conditions of this Contract, and has informed the other Party as soon as possible about the occurrence of such an event.
- 23.3.2 Should the Contractor be unable to render the Services due to an event of Force Majeure, he shall be entitled to payment as determined in clause 8.4.1.

23.4 TERMINATION

- 23.4.1 The Municipality may terminate the Contract by giving such notice as stipulated or deemed reasonably appropriate with respect to the circumstances:
- (a) if the Contractor does not remedy a failure in the performance of his obligations other than a material breach of the Contract within thirty (30) Days after having been notified thereof, or within any further period as the Municipality may have subsequently approved in writing;
 - (b) if a Court of Law has imposed a sentence against the Contractor for whichever reason and the Contractor neglects to obey such sentence or to lodge an appeal within twenty one (21) Days; or
 - (c) if the Contractor takes any steps to cede or assign its assets in favour of its debtors or to enter into a compromise with its debtors or becomes insolvent or liquidated;
 - (d) if the Contractor subcontracted all or part of the Services to a Subcontractor without the prior written approval of the Municipality; or
 - (e) if, as the result of *Force Majeure*, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (60) Days;
- 23.4.2 The Contractor may terminate the Contract, by giving not less than thirty (30) Days written notice to the Municipality after the occurrence of any of the following events:
- (a) if the Municipality fails to pay any monies due to the Contractor in terms of the Contract and not subject to dispute pursuant to Clause 28 within forty five (45) Days after receiving written notice from the Contractor that such payment is overdue; or
 - (b) If, as the result of *Force Majeure*, the Contractor is unable to perform a material portion of the Services for a period of not less than sixty (60) Days; or
 - (c) If, as the result of suspension of services, the Contractor is unable to perform a material portion of the Services for a period of not less than ninety (90) Days; or
 - (d) if the Municipality is in material breach of a term of the Contract and fails to rectify such breach within thirty (30) Days of the receipt of a written notice from the Contractor requiring it to do so.
- 23.4.3 Upon termination of this Contract pursuant to Clauses 23.4.1(e) or 23.4.2, the Municipality shall remunerate the Contractor in terms of the Contract for Services satisfactorily performed prior to the effective date of termination and reimburse the Contractor any reasonable cost incident to the prompt and orderly termination of the Contract.
- 23.4.4 Should the Contractor be prevented by death or illness of key personnel or any other circumstances beyond its control from performing the Services in terms of the Contract, the Contract shall be terminated without prejudice to the accrued rights of either Party against the other.
- 23.4.5 On termination of this Contract, the Contractor shall return all municipal owned or to be owned assets in the condition that the assets have been installed, managed, operated and maintained in accordance with this Contract and Good Engineering Practice.
- 23.4.6 On termination of this Contract for whichever reason, permanent employees of the Contractor shall be dealt with in compliance with relevant labour legislation.

23.5 RIGHTS AND LIABILITIES OF THE PARTIES

- 23.5.1 Completion, suspension or termination of the Contract shall not prejudice or affect the accrued rights or liabilities of the Parties.

  
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24. FORCE MAJEURE

- 24.1 A *Force Majeure Event* shall occur when either Party is prevented or restricted directly or indirectly from performing all or any of that Party's obligations in terms of this Contract for any cause beyond its reasonable control.
- 24.2 Either Party affected by a *Force Majeure Event* will be excused the non-performance of any of its obligations under this Contract during the period that such event and its consequences shall continue (but only to the extent it is so delayed or prevented from performing partially or at all by the *Force Majeure Event*), and, provided that notice has been given in terms of this Contract, shall not be liable for any delay or failure in the performance of any of its obligations in terms of this Contract or losses or damages whether general, special or consequential which the other Party may suffer due to or resulting from any such delay or failure.
- 24.3 Either of the Parties shall give written notice to the other Party at the earliest possible opportunity in writing of the occurrence of the event constituting a *Force Majeure Event*, together with details thereof and a good faith estimate of the period of time for which it will endure.
- 24.4 At all times whilst a *Force Majeure Event* shall continue, the Parties will meet at regular intervals to discuss and investigate, and if possible, to implement other practical ways and means to overcome the consequences of such a *Force Majeure Event*, with the objective of minimising the impact of Services interruption.
- 24.5 If, due to a *Force Majeure Event*, the performance of a Party's duties and obligations is only partially affected, such Party shall remain liable for the performance of those duties and obligations not affected by the *Force Majeure Event*.

25. DOMICILIA

- 25.1 The Parties hereto respectively choose their *domicilia citandi et executandi* for all notices, demands, process or communications intended for either Party and for all purposes of and in connection with this Contract, as follows:

The Municipality	The Municipal Manager Swartland Municipality Church Street Malmesbury 7300
Wastegro	The Managing Director 4 Malan Street Malmesbury 7300

- 25.2 The Parties shall be entitled to change their *domicilia* from time to time, provided that any new *domicilium* selected by it shall be situated in the Republic of South Africa, shall be an address other than a box number, and any such change shall only be effective upon receipt of notice in writing by the other Party of such change.
- 25.3 A notice or communication, sent by one Party to another Party shall unless otherwise proved be deemed to be received:
- 25.3.1 on the same Day, if delivered by hand;
- 25.3.2 on the same Day, if sent by telefax transmission, the telefax numbers of the Parties hereto being:
- | | |
|------------------|----------------|
| the Municipality | (022) 487 9440 |
| Wastegro | 082 3353 177 |

25.3.3 on the same Day, if sent by e-mail, the e-mail addresses of the Parties hereto being:

the Municipality maraisp@swartland.org.za

Wastegro hern@wastegro.co.za

25.3.4 on the seventh Day after posting, if sent by prepaid registered mail.

26. DISPUTE RESOLUTION

26.1 SETTLEMENT

26.1.1 The Parties shall negotiate in good faith with a view to settling any dispute or claim arising out of or relating to the Contract and may not initiate any further proceedings until either Party has, by written notice to the other, declared that such negotiations have failed.

26.1.2 Failing settlement either Party may in writing request mediation / arbitration in which case the provisions of clause 26.2 shall apply.

26.2 MEDIATION / ARBITRATION

26.2.1 Subject to clause 26.1, all disputes or differences whatsoever which may at any time (whether during the continuance in effect of this Contract or after its discharge or cancellation) arise between the Parties to this Contract concerning this Contract or its construction or effect, or to the meaning or interpretation of any provisions of this Contract, or as to the rights, duties or liabilities of the Parties under and by virtue of this Contract or otherwise, or as to any other matter in any way arising out of the subject matter of this Contract will be referred (if the matter cannot be resolved between the Parties in terms of clause 26.1), directly to mediation by a mediator appointed by Arbitration Foundation of South Africa ("AFSA") or in the event of not being in existence, such body as the Parties may agree upon.

26.2.2 The Parties intend that the mediator will consider and if possible determine the dispute within seven (7) Days of referral, which may be extended by written agreement between the Parties. If the dispute cannot be resolved in this manner, then it will be referred to arbitration as provided for hereunder.

26.2.3 The Arbitration shall be held in Cape Town in terms of the rules and procedures of AFSA.

26.2.4 Three (3) arbitrators shall be appointed, one (1) by the Municipality, one (1) by the Contractor and one (1) by AFSA.

26.2.5 The arbitrators shall be, if the question in issue is:

26.2.5.1 Primarily an accounting matter, a practicing chartered accountant of not less than ten (10) years standing, as agreed upon between the Parties;

26.2.5.2 Primarily a legal matter, a practising counsellor of not less than ten (10) years' standing, as agreed upon between the Parties;

26.2.5.3 Any other matter, a suitably qualified person, as agreed upon between the Parties.

26.2.6 If the Parties cannot agree upon whether any dispute is, for purposes of this clause an accounting matter, a legal matter or any other matter, within one (1) Business Day after the arbitration has been demanded, then such matter shall be deemed to be a legal matter.

26.2.7 The Parties irrevocably agree that any decision in such arbitration proceedings

26.2.7.1 Shall be binding on them;

26.2.7.2 Shall be carried into effect;

26.2.7.3 Shall include such order as to cost as the arbiters deem fit.

- 26.2.8 This clause 26.2 shall be severable from the remaining provisions of this Contract and shall continue to be of application for a period of one (1) year following the termination or purported cancellation of this Contract.
- 26.2.9 The arbitrators' decision, which shall be a majority decision, shall be final and binding on the Parties to this dispute.
- 26.2.10 The provisions of this clause shall not preclude any Party from access to any appropriate court of law for:-
- 26.2.10.1 Interim relief in the form of an interdict, mandamus or other for specific performance pending the outcome of an arbitration in terms hereof or in respect of such arbitration; or
- 26.2.10.2 Another form of relief on the basis of facts which are not disputed, provided that if a bona fide dispute arises in the course of the proceedings that shall be stayed pending on arbitration on the dispute in terms thereof, or
- 26.2.10.3 An order for the payment of a liquidated amount in money on the basis of facts which are not bona fide in dispute at the commencement of such proceedings.

27. ILLEGAL AND IMPOSSIBLE REQUIREMENTS

- 27.1 The Contractor shall notify the Municipality immediately in writing, on becoming aware that the Contract requires it to undertake anything that is illegal or impossible.

28. CONFLICT OF INTEREST

- 28.1 The Contract Tariff as provided for in clause 8.2 shall constitute the Contractor's sole remuneration in terms of the Contract, or the Services, and the Contractor shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract, or in the discharge of its duties and obligations under the Contract, and shall use its best efforts to ensure that its personnel, any Subcontractors, and agents of either of them shall, similarly, not receive any additional remuneration.
- 28.2 Clause 28.1 shall not apply in respect of the management, operation and maintenance of the MRF.

29. SUBCONTRACTING

- 29.1 The Contractor may not subcontract any work that it has the skill and competency to perform
- 29.2 A subcontract shall be valid only if it is a written Contract by which the Contractor entrusts performance of a part of the Services to a Subcontractor
- 29.3 The Contractor shall not subcontract to nor engage a Subcontractor to perform any part of the Services without the prior written authorization of the Municipality. The services to be sub-contracted and the identity of the Subcontractor shall be notified to the Municipality. Within fourteen (14) Days of receipt of the notification and a full motivation why such services are to be subcontracted, the Municipality shall notify the Contractor of its decision, stating reasons, should it withhold such authorization. If the Contractor enters into a subcontract with a Subcontractor without the prior approval of the Municipality, the Municipality may forthwith terminate the Contract.
- 29.4 The Municipality shall have no contractual relationships with Subcontractors. However, if a Subcontractor is found by the Municipality to be incompetent, the Municipality may request the Contractor either to provide a Subcontractor with qualifications and experience acceptable to the Municipality as a replacement, or to resume the performance of the relevant part of the Services itself
- 29.5 The Contractor shall advise the Municipality without delay of the variation or termination of any subcontract for performance of all or part of the Services.

First Amended and Restated Agreement for the Highlands Waste Disposal Facility and Material Recovery Facility

- 29.6 The Contractor shall be responsible for the acts, defaults and negligence of Subcontractors and their agents or employees in the performance of the Services, as if they were the acts, defaults or negligence of the Contractor, its agents or employees. Approval by the Municipality of the subcontracting of any part of the Contract or of the engagement by the Contractor of Subcontractors to perform any part of the Services shall not relieve the Contractor of any of his obligations under the Contract.

30. INDEPENDENCE

- 30.1 The Contractor shall refrain from entering into any relationship that could be perceived as compromising its independence of judgement, or that of Subcontractors or its personnel.

31. OWNERSHIP OF DOCUMENTS

- 31.1 Copyright of all documents prepared by the Contractor in accordance with the relevant provisions of the copyright Act (Act 98 of 1978) relating to the Contract shall be vested in the Municipality. Where copyright of any other documents of use to the Contract, is vested in the Contractor, the Municipality shall be entitled to use the documents or copy them only for the purposes for which they are intended in regard to the Contract provided it obtains the Contractor's permission to copy for such use; which permission shall not be unreasonably withheld.
- 31.2 The ownership of data and factual information collected by the Contractor and paid for by the Municipality shall, after payment by the Municipality, lie with the Municipality.
- 31.3 The Municipality shall have no right to use any documents prepared by the Contractor whilst the payment of any monies due to the Contractor in terms of the Contract is overdue.

32. PUBLICITY AND PUBLICATION

- 32.1 The Contractor shall not release public or media statements or publish material related to the Services within one (1) year of completion of the Services without the written approval of the Municipality, which approval by the Municipality shall not be unreasonably withheld.

33. GOVERNING LAW

- 33.1 The terms and conditions of this Contract shall be interpreted and governed in accordance with the laws of the Republic of South Africa.

34. CHANGE IN LAW

- 34.1 If after the commencement of the Contract, the cost or other relevant component of the Services is altered as a result of changes in, or additions to, any statute, regulation or by-law, or the requirements of any authority having jurisdiction over any matter in respect of the Services, then the Contract Tariff and other relevant provisions shall subject to clause 36 be adjusted in order to reflect the impact of those changes, provided that, within thirty (30) Days of first having become aware of the change, the Contractor furnished the Municipality with detailed justification for the adjustment to the Contract Tariff or any such other relevant provisions.

35. ENTIRE AGREEMENT

- 35.1 This Contract, including all exhibits and annexures hereto, whether new, amended or restated, embodies the entire agreement and understanding of the Parties hereto in respect of the performance of the Services as at the Effective Date and supersedes all prior agreements, contracts, representations, warranties, promises, covenants, arrangements, communications, and understandings, oral or written, express or implied, between or among the parties with respect to the subject matter hereof, including, without limitation, the Revised Agreement and the Novation Agreement and no representations, terms, conditions or warranties not contained herein shall be binding upon the Parties.

36. VARIATIONS AND CANCELLATION

- 36.1 No agreement varying, adding to, deleting from or cancelling this Contract shall be effective unless reduced to writing and signed by or on behalf of the Parties. No such variation or cancellation shall detrimentally impact on the Municipality's other rights and remedies in terms of this Contract, including the right to claim damages

37. COST

- 37.1 Each of the Parties shall bear its own legal and related costs incurred in connection with the negotiation, preparation and execution of this Contract

38. CESSION AND ASSIGNMENT

- 38.1 From the Effective Date and for the duration of the Contract, neither Party shall cede, delegate, assign, make over or transfer or otherwise dispose of any of its rights or obligations arising from this Contract to any third party without the prior written consent of the other Party.
- 38.2 Any purported assignment or cession by either Party without said written consent by the other Party shall be void

39. SEVERABILITY AND DIVISIBILITY

- 39.1 This Contract and all other agreements and contracts contemplated in terms of this Contract are indivisible.
- 39.2 If any provision of this Contract is found or held to be invalid or unenforceable, such term shall be severable and the validity of all other terms of this Contract shall not be affected thereby.

40. CONFIDENTIALITY

- 40.1 Both Parties shall keep all sensitive information obtained by them in the context of the Contract confidential and shall not divulge it without the written approval of the other Party

41. GOOD FAITH

- 41.1 The Parties shall act in good faith in all matters concerning this Contract including the interpretation thereof and fully co-operate to fulfil the terms and conditions of this Contract.

42. PREVENTION OF CORRUPTION

- 42.1 Both the Municipality and the Contractor shall take all reasonable steps to ensure that no corruption by either employees or agents or Subcontractors or other service providers associated with any of the Services or provisions of the Contract takes place
- 42.2 In case corrupt action does occur and becomes known the other Party to this Contract will be notified and fully informed in writing without undue delay.


First Amended and Restated Agreement for the Highlands Waste Disposal Facility and Material Recovery Facility

THUS DONE AND SIGNED at Malmesbury on this the 29th day of October 2020

in the presence of the undersigned witnesses

AS WITNESSES:



1. 
2. 



.....
FOR AND ON BEHALF OF SWARTLAND
MUNICIPALITY WHO WARRANTS
BY HIS SIGNATURE THAT HE IS DULY
AUTHORISED THERETO

THUS DONE AND SIGNED at Malmesbury on this the 7th day of NOVEMBER 2020

in the presence of the undersigned witnesses.

AS WITNESSES:

1. 
2. 


.....
FOR AND ON BEHALF OF THE CONTRACTOR
WHO WARRANTS BY HIS SIGNATURE THAT HE
IS DULY AUTHORISED THERETO

First Amended and Restated Agreement for the Highlands Waste Disposal Facility and Material Recovery Facility

ANNEXURE 1:

Performance Guarantee

ANNEXURE 2:

Contract Tariff Stipulations

ANNEXURE 3:

Occupational Health and Safety Compliance Agreement

ANNEXURE 4:

Performance Management System



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