

**TOWN OF EAST FREMANTLE  
and  
CITY OF FREMANTLE  
and  
CITY OF MELVILLE**

**ESTABLISHMENT AGREEMENT OF THE  
RESOURCE RECOVERY GROUP**

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## AGREEMENT

THIS ESTABLISHMENT AGREEMENT dated 10 October 2024

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

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

AND **CITY OF MELVILLE** of 10 Almondbury Road, Booragoon, Western Australia

### RECITALS

- A On 30 October 1991, the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle, Town of Kwinana, City of Melville, and City of Rockingham entered into the constitution of the Southern Metropolitan Regional Waste Management Council (**Constitution Agreement**)
- B On 22 January 1998, the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle, Town of Kwinana, City of Melville, and City of Rockingham amended the Constitution Agreement by entering into the "Establishment Agreement of the Southern Metropolitan Regional Council" (**Original Establishment Agreement**).
- C On 30 October 1998 the Original Parties entered into the "Deed of Variation of the Establishment Agreement of the Southern Metropolitan Regional Council", which varied the Original Establishment Agreement.
- D City of Canning, City of Cockburn, Town of Kwinana and City of Rockingham have subsequently withdrawn from the Regional Local Government and this Agreement.
- E On 16 February 2022, the Southern Metropolitan Regional Council was formerly renamed Resource Recovery Group.

## OPERATIVE PART

### 1. DEFINITIONS AND INTERPRETATION

In this Agreement unless the context requires otherwise:

'Act' means the Local Government Act 1995;

'Chairperson' means the Council Member elected to that office pursuant to clause 5.3;

'CEO' means the Chief Executive Officer of the Regional Local Government;

'Council' means the Council of the Regional Local Government as required by the Act;

'Council Member' means a member of the council of the Participant appointed pursuant to clause 5.1;

'Deputy Chairperson' means the Council Member elected to that office pursuant to clause 5.3;

'Dispute' means any dispute, question or difference arising between the Participants or between any of the Participants and the Regional Local Government at any time in connection with this Agreement or a Proposal or Project;

'Dispute Notice' means a written notice given by a party pursuant to clause 16.2;

'Existing Undertaking' means an undertaking of the Regional Local Government which is being carried out when this Agreement becomes operative including, without limitation;

- (a) research and education with respect to the removal, processing, treatment and disposal of waste; and
- (b) the administrative functions of the Regional Local Government related to any purpose other than a Project;

'Minister' means the Minister of the Crown to whom the administration of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

'Original Establishment Agreement' as the meaning given to it in the Recitals;

'Participants' means the Town of East Fremantle, the City of Fremantle and the City of Melville;

'Population' means the population of a Region as calculation in accordance with clause 14;

'Project' means a project or undertaking defined in a business plan referred to in clause 6.3;

'Project Participant' in relation to a Project, means a Participant which is participating in that Project under clause 6;

'Proposal' means a proposal to undertake a Project;

'Region' means the districts of the Participants declared under the Act;

'Regional Local Government' means the regional local government known as the Resource Recovery Group;

#### 1.2 Interpretation

In this Agreement unless the context requires otherwise:

- (a) clause headings, subclause headings and footnotes are for convenience only and are not to be used in the interpretation or construction of this Agreement;
- (b) words importing the singular include the plural and vice versa;
- (c) words importing any gender include all genders;
- (d) references to persons include corporations and bodies politic;
- (e) references to a person include the legal personal representatives, successors and assigns of that person;
- (f) a reference to a statute or statutory provision includes:
  - (i) a statutory provision which supplements, amends, extends, consolidates or replaces it; and
  - (ii) any applicable orders, regulations, instruments or other delegated legislation;
- (g) references to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (h) references to a right or obligation of any two or more persons confers that right, or imposes that obligation, jointly and severally;
- (i) references to a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, must be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (j) reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period must end on the last day of the next succeeding calendar month;
- (k) references to this Agreement include its schedules;
- (l) references to time are to local time in Perth, Western Australia; and
- (m) where time is to be reckoned from a day or event, such day or the day of such event must be excluded.

## **2. NAME**

The name of the Regional Local Government is the Resource Recovery Group.

## **3. REGION**

The Regional Local Government is established for the Region.

## **4. REGIONAL PURPOSES**

The purposes for which the Regional Local Government is established are:

- (a) to actively plan, coordinate and implement the removal, processing, treatment and disposal of waste, with the intention of implementing and advocating for the adoption of best practice processes and activities;
- (b) to lead and influence local, State and Federal Governments in the development of regional waste management policies and legislation;
- (c) to educate by providing tools to recycle right, reduce waste and live more sustainably; and

- (d) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect of the purposes referred to in clause 4(a) or 4(b),

## **5. THE COUNCIL**

### **5.1 Appointment of Members**

- (a) Each Participant must appoint two members of the council of the Participant as a Council Member.
- (b) Participants and Council Members are not required, or permitted, to appoint deputy Council Members.

### **5.2 Tenure of Council Members**

Council Members hold office until:

- (a) the member ceases to be a member of the council of the Participant;
- (b) the member is removed by the Participant by written notice to the CEO; or
- (c) the member resigns or retires.

### **5.3 Election of Chairperson and Deputy Chairperson**

- (a) The election of the chairperson and a deputy chairperson is to be conducted by the CEO in accordance with the procedure prescribed under the Act for the election of a mayor and a deputy mayor, respectively, by a council.
- (b) The Council Members must elect a chairperson and a deputy chairperson at the first meeting of the Council following:
  - (i) an ordinary election held under the Act; or
  - (ii) the resignation or retirement of the Chairperson or the Deputy Chairperson.

### **5.4 Term of Chairperson and Deputy Chairperson**

The term of the Chairperson and Deputy Chairperson is not to exceed two (2) years and ends:

- (a) at the start of the first meeting of the Council following the next ordinary election held under the Act; or
- (b) if the Chairperson or Deputy Chairperson resigns or retires by giving written notice to the CEO.

### **5.5 Role of Chairperson**

The Chairperson:

- (a) presides at meetings of the Council;
- (b) carries out civic and ceremonial duties on behalf of the Regional Local Government;
- (c) speaks on behalf of the Regional Local Government;
- (d) performs such other functions as are given to the Chairperson by the Act, any other written law or this Agreement; and
- (e) liaises with the CEO on the Regional Local Government's affairs and the performance of its functions.

### **5.6 Role of Deputy Chairperson**

The Deputy Chairperson performs the functions of the Chairperson if:

- (a) the office of Chairperson is vacant; or

- (b) the Chairperson is not available, or unable or unwilling to perform the functions of the Chairperson.

## **5.7 Role of Council Member**

A Council Member:

- (a) represents the interests of the ratepayers and residents of the Region;
- (b) facilitates communication between the community of the Region and the Council;
- (c) participates in the Regional Local Government's decision-making processes at meetings of the Council and its committees; and
- (d) performs such other functions as are given to the member by the Act or any other written law.

## **6. PROPOSALS**

### **6.1 Requirements**

The Regional Local Government must only adopt a Proposal and undertake a Project in accordance with the requirements of this clause.

### **6.2 Absolute Majority to Adopt Proposal**

The Regional Local Government must only adopt a Proposal when authorised to do so by an absolute majority of the Council.

### **6.3 Business Plan for each Project**

- (a) Where the Regional Local Government has adopted a Proposal it must:
  - (i) prepare and adopt a business plan; and
  - (ii) provide a copy of the business plan to each of the Participants.
- (b) The business plan must clearly define the Project and where the Act applies, the contents of the business plan must meet the requirements of the Act.

### **6.4 Decision to Participate in Project**

Each Participant must, within a reasonable period determined by the Council after the adoption of the business plan, decide whether to participate in the Project by giving notice of its decision to the Regional Local Government.

### **6.5 Meeting of Project Participants**

As soon as practicable after the period referred to in clause 6.4, the Regional Local Government must convene a meeting of all the Project Participants.

### **6.6 Unanimous Agreement to Terms of Project**

Before the Regional Local Government undertakes the Project, the Project Participants must, by unanimous resolution of the Council Members who are appointed by those Project Participants, agree upon:

- (a) the proportion (and the basis of its calculation) in which the Project Participants will make contributions towards:
  - (i) the acquisition of any asset of a capital nature required for the Project;



- (ii) the operating expenditure, including administrative expenses, relating to the Project;
- (b) the manner of payment of the contributions referred to in clause 6.6(a);
- (c) the proportional entitlement or liability, as the case may be (and the basis of its calculation), of a Project Participant when the withdrawal of that Project Participant from the Project takes effect; and
- (d) the manner of payment of the entitlement or liability referred to in clause 6.6(c).

**6.7 Basis on which contributions are Calculated**

- (a) Where the contributions referred to in clause 6.6(a) are calculated on the basis of a unit of measurement (for example):
  - (i) number of tonnes of waste processed;
  - (ii) number of bins of waste collected;
  - (iii) numbers of hours of advice given,
 then that basis must be applied equally to all Project Participants.
- (b) This clause must not apply where, by unanimous resolution, the Project Participants decide otherwise with respect to a particular Project.

**6.8 Project Participants Not to Provide Same Services by Agreement**

- (a) Where the Regional Local Government undertakes a Project in accordance with this clause 6, the Project Participants may agree that, for an agreed term, none of them will provide any service or facility of the same kind as those the subject of the Project.
- (b) No Project Participants must provide any service or facility contrary to an agreement of the Project Participants made under clause 6.8(a).

Footnote:

The Participants envisage that in no circumstances, will any agreement reached pursuant to this clause 6.8 have an anti-competitive effect or otherwise contravene the *Competition and Consumer Act 2010*.

**7. PROJECT PARTICIPANT PAYMENTS**

**7.1 Manner of Payment of Operating Expenditure Contributions**

Unless otherwise agreed, the contributions referred to in clause 6.6 towards operating expenditure must be paid by each Project Participant to the Regional Local Government by equal and successive quarterly instalments:

- (a) the first of which must be made within 42 days (or such greater period as may be determined by the Regional Local Government) of service of a copy of the annual budget of the Regional Local Government on that Project Participant; and
- (b) the subsequent instalments must be made in advance at the commencement of each quarter of the financial year.

**7.2 Late Payment**

Unless otherwise agreed, if a Project Participant fails to pay to the Regional Local Government a sum of money owing under this clause 6 on or before the due date for payment, that Project Participant must, in addition to the sum of money due and payable, pay to the Regional Local Government interest at the overdraft rate charged by the Regional Local Government's bank on amounts of the same size as the unpaid sum, calculated from and including the due date of payment to but excluding the actual date for payment.

## **8. WITHDRAWAL FROM A PROJECT**

### **8.1 Right to Withdraw**

A Project Participant may at any time give notice of its intention to withdraw from a Project.

### **8.2 When Withdrawal to Take Effect**

The withdrawal of a Project Participant must take effect:

- (a) from the end of the financial year after the financial year in which notice under this clause 8 has been given by the Project Participant to the Regional Local Government; or
- (b) on any earlier date agreed by the Project Participants.

## **9. JOINING A PROJECT**

### **9.1 Participant Wishing to Join Existing Project**

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

### **9.2 Preparation of Amended Business Plan**

- (a) As soon as practicable after receipt of a notice under this clause 9, the Regional Local Government must:
  - (i) prepare an amended business plan for the Project in respect of the current financial year having regard to the effect of the participation of the Participant giving the notice; and
  - (ii) provide a copy of the amended business plan to the Participant and the Project Participants.
- (b) The amended business plan must include details of any additional capital expenditure necessitated by the participation of the Participant giving the notice under this clause 9 and an estimate of that additional capital expenditure.
- (c) The Participant giving the notice under clause 9 must meet the cost of preparation of the amended business plan.

### **9.3 Determination of Participation Date**

- (a) As soon as practicable after preparation and adoption of the amended business plan under clause 9.2:
  - (i) the Participating Local Governments acting reasonably, must determine the date upon which any decision by the Participant to participate in the Project is to become effective;
  - (ii) the Regional Local Government must advise the Participant of that date.
- (b) The date determined under clause 9.3(a) must not be earlier than:
  - (i) the commencement of the financial year after the financial year in which the notice was given by the Participating Local Government to the Regional Local Government;
  - (ii) unless otherwise agreed by the Project Participants and the Participant.

### **9.4 Participant to Decide**

Within 35 days after receipt of the advice referred to in clause 9.3, the Participant may give to the Regional Local Government notice of its decision to participate in the Project.

## **9.5 When Decision to Take Effect**

A Participant which gives notice under clause 9.4 is to become a Project Participant in that Project with effect on the date referred to in clause 9.3.

## **9.6 Calculation of New Member's Contributions**

- (a) As soon as practicable after a Participant becomes a Project Participant in a Project under clause 9.5 ("**the New Member**"), the Regional Local Government must:
  - (i) calculate the amount of the contribution of that New Member towards:
    - (I) the value of any existing assets of a capital nature acquired for the Project; and
    - (II) the operating expenditure for the current financial year in respect of the Project; and
  - (ii) ascertain the amount of the additional capital expenditure referred to in the amended business plan prepared under clause 9.2; and
  - (iii) give notice to the Project Participant and the New Member of the calculation referred to in clause 9.6(a)(i) and the amount referred to in 9.6(a)(ii).
- (b) In calculating the amounts of the contributions under clause 9.6(a)(i), the Regional Local Government must use the proportions referred to in clause 6.6(a) which have been agreed for the Project.
- (c) Unless the Project Participants agree upon another method of payment, the New Member must pay the amounts:
  - (i) in the case of the contribution towards capital assets – immediately after receipt of the notice of the calculation referred to in clause 9.6(a)(iii);
  - (ii) in the case of the contribution towards operating expenses – in the same manner as has been agreed in respect of the Project pursuant to clause 6.6(a) or as specified in clause 7 (whichever is applicable); and
  - (iii) in the case of the amount for additional capital expenditure immediately after receipt of the notice of the amount referred to in clause 9.6(a)(iii).

## **9.7 Adjustment of Equities**

As soon as practicable after payment of the contribution referred to in clause 9.6(a)(i), the Regional Local Government will pay to the Project Participants other than the New Member any amount due in respect of their equities in the capital assets which results from the participation of the New Member in the Project.

## **10. WINDING UP OF A PROJECT**

### **10.1 Winding up of Project by Resolution**

The Council Members appointed by the Project Participants of a Project may resolve, by absolute majority, to wind up the Project.

### **10.2 Division of Assets**

If a Project is to be wound up and their remains, after satisfaction of all its debts and liabilities, any property and assets of the Project then the property and assets must be realised and the proceeds along with any surplus funds must be divided among the Project Participants in the agreed proportions referred to in clause 6.6(a).

### **10.3 Division of Liabilities**

If a Project is to be wound up and there remains any liability or debt in excess of the realised property and assets of the Project then the liability or debt is to met by the Project Participants in the agreed proportions referred to in clause 6.6(a).

### **10.4 Indemnification by Project Participants of the Regional Local Government**

If a Project is wound up pursuant to this clause 10, the Project Participants must indemnify the Regional Local Government (in the agreed proportions referred to in clause 6.6(a)) with respect to that liability or debt.

## **11. EXISTING UNDERTAKINGS**

### **11.1 Application of Clause**

This clause only applies to an Existing Undertaking.

### **11.2 Contribution to Operating Expenditure**

The annual contribution of each Participant towards the operating expenditure, including administrative expenses, relating to an Existing Undertaking as disclosed in the municipal fund budget of the Regional Local Government for that financial year must be an amount which bears the same proportion to that operating expenditure as the Population of that Participant bears to the total of the Populations of all Participants.

### **11.3 Contributions to Capital Assets**

The contribution of each Participant towards the acquisition of any asset of a capital nature required for and Existing Undertaking must be an amount which bears the same proportion to the cost of the acquisition disclosed in the municipal fund budget of the Regional Local Government for that financial year as the Population of that Participant bears to the total of the Populations of all Participants.

### **11.4 Manner of Payment of Contributions**

Unless otherwise agreed, contributions referred to in clauses 11.2 and 11.3 must be paid by each Participant to the Regional Local Government by equal and successive quarterly instalments:

- (a) the first of which must be made within 42 days (or such greater period as may be determined by the Regional Local Government) of service of a copy of the annual budget of the Regional Local Government on that Participant; and
- (b) the subsequent instalments must be made in advance at the commencement of each quarter of the financial year.

### **11.5 Late Payment**

If a Participant fails to pay to the Regional Local Government a sum of money owing under this clause on or before the due date for payment, that Participant must, in addition to the sum of money due and payable, pay to the Regional Local Government interest at the overdraft rate charged by the Regional Local Government's bank on amounts of the same size as the unpaid sum, calculated from and including the due date for payment to but excluding the actual date for payment.

## **11.6 Winding up of Existing Undertakings**

The Council may resolve, by absolute majority, to wind up an Existing Undertaking.

## **11.7 Division of Assets**

If an Existing Undertaking is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the Existing Undertaking then the property and assets must be realised and the proceeds along with any surplus funds, must be divided among each of the Participants in the same proportion as the contributions of a particular Participant to the assets of that Existing Undertaking bear to the total of the contributions of all Participants.

## **11.8 Division of Liabilities**

If an Existing Undertaking is to be wound up and there remains any liability or debt in excess of the realised property and assets of the Existing Undertaking then the liability or debt is to be met by each of the Participants in the same proportion as the contributions of a particular Participant to the assets of that Existing Undertaking bear to the total of the contributions of all Participants.

## **12. WINDING UP OF THE REGIONAL LOCAL GOVERNMENT**

### **12.1 Winding Up by Council Resolution**

The Council may resolve, by absolute majority, to wind up the Regional Local Government.

### **12.2 Procedure on Winding up**

If the Council resolves to wind up the Regional Local Government then:

- (a) each Project is to be wound up separately;
- (b) each Existing Undertaking is to be wound up separately;
- (c) the provisions of clauses 10.2, 10.3 and 10.4 must apply to the winding up of each Project; and
- (d) the provisions of clauses 11.7 and 11.8 must apply to the winding up of each Existing Undertaking.

## **13. WITHDRAWAL OF A PARTICIPANT FROM THE REGIONAL LOCAL GOVERNMENT**

### **13.1 Withdrawal**

A Participant may, at any time, give notice of its intention to withdraw from the Regional Local Government.

### **13.2 When Withdrawal to Take Effect**

The withdrawal of a Participant must take effect from the end of the financial year after the financial year in which notice of the withdrawal has been given by the Participant to the Regional Local Government.

### **13.3 Entitlement or Liability of Withdrawing Participant**

As soon as practicable after the withdrawal of a Participant takes effect, the Regional Local Government must:

- (a) distribute to the Participant an amount equal to the proceeds and any surplus funds which would have been payable if the Regional Local Government was wound up; or
  - (b) be entitled to recover from the Participant an amount equal to the liability or debt which would be payable by the Participant if the Regional Local Government was wound up,
- as the case may be.

## **14. POPULATION**

The Population of a Participant means the estimated resident population of that Participant as set out in Table 5 (Estimated Resident Population, Local Government Areas, Western Australia) of the statistics last published by the Australian Bureau of Statistics titled "Regional Population" or any substitute therefor accepted by the Government of the Commonwealth of Australia from time to time as a measure of resident population provided that if at any time the statistics are discontinued or suspended or if in the opinion of the Regional Local Government the method of computation thereof is substantially altered there must be substituted therefor such alternative method of establishing resident populations of the Participant as the Regional Local Government may resolve.

## **15. BORROWINGS**

Part 6, Division 5, Subdivision 3 of the Act is to apply.

Footnote:

1. Section 3.66(4) of the Act provides that Part 6, Division 5, subdivision 3 does not apply in relation to a regional local government unless this Agreement provides that it does.
2. Part 6, Division 5, subdivision 3 of the Act deals with borrowings and includes the power to borrow and restrictions on borrowings.

## **16. DISPUTE RESOLUTION**

### **16.1 Dispute**

- (a) The parties agree that any Dispute will be resolved in accordance with this clause 16.
- (b) It is a condition precedent to the commencement of proceedings for the resolution of a Dispute under clause 16.5 that the parties have first complied with clauses 16.2 and 16.3.
- (c) Nothing in this clause 16 prevents the parties from agreeing to implement an alternative dispute resolution procedure, such as mediation, in addition to the requirement of this clause 16.

### **16.2 Notice of Dispute**

If any Dispute arises then the party raising the Dispute must deliver by hand or send by certified mail to the other parties a written Dispute Notice which:

- (a) adequately identifies and provides details of the Dispute; and
- (b) states that the notice is a Dispute Notice given under this clause.

### **16.3 Conferences**

- (a) If the Dispute is not resolved within 10 business days after a Dispute Notice is given to the other parties, each party must nominate one representative from its management to confer to resolve the Dispute.
- (b) If the Dispute is not resolved within 15 business days after a Dispute Notice is given to the other parties, each party must nominate one representative from its senior management to confer to resolve the Dispute.

- (c) If the Dispute is not resolved within 20 business days of the conference held in accordance with clause 16.3(b):
  - (i) if this Agreement requires it, or the parties otherwise agree, a party may refer the Dispute to expert determination in accordance with clause 16.4; or
  - (ii) a party may refer the Dispute to arbitration in accordance with clause 16.5.

#### 16.4 Expert Determination

- (a) An **Expert** is a person, having the qualification set out in clause 16.4(b):
  - (i) selected by the parties within 10 Business Days after the Expert Determination Notice is given by the party wishing to progress the relevant Dispute to the other party; or
  - (ii) if the parties fail to agree as to the Expert, a person nominated by the President at the time of the Resolution Institute (WA Chapter) who must choose the expert on the basis of the type of Dispute and the nature of the expertise necessary to consider the relevant issues.
- (b) An Expert must:
  - (i) have suitable and reasonable qualifications as well as commercial and practical experience in the area of the Dispute;
  - (ii) be independent of each party and not be, or have been, an employee, agent, contractor, advisor or consultant of either party; and
  - (iii) have no interest or duty which conflicts or may conflict with the Expert's function as an expert.
- (c) If an Expert Determination Notice is given:
  - (i) the parties must, within 5 Business Days after an Expert is selected or nominated, arrange for the Expert to be appointed; and
  - (ii) each party must use its reasonable efforts to provide the Expert with any information reasonably required by the Expert (within the time period identified by the Expert) and in any event each party must provide the Expert with its preferred position in relation to the Dispute based on its understanding of the relevant facts.
- (d) The Expert acts as an expert and not as an arbitrator.
- (e) The Expert will have no power to apply or to have regard to the provisions of any proportionate liability Legislative Requirements which might, in the absence of this clause 16.4(e), have applied to any Dispute referred to the Expert under this clause 16.4
- (f) The parties agree that:
  - (i) the Dispute is to be resolved according to the rules of the Resolution Institute (WA Chapter), current as at the date the Expert Determination Notice is given (**Expert Determination Rules**); and
  - (ii) they must abide by the Expert Determination Rules and must procure the Expert's agreement to resolve the Dispute according to those rules.
- (g) The parties must use their best efforts to enable the Expert to give the parties a written decision within 30 Business Days after the Dispute is referred to the Expert.
- (h) The Expert's decision is final and binding except where:
  - (i) the monetary value of the claim or the monetary value of the determination is greater than \$500,000.00 (five hundred thousand dollars) and neither party has issued a notice under clause 16.2; or
  - (ii) there has been manifest error.

- (i) Each party must pay an equal proportion of the Expert's costs and the costs of the Expert's advisers unless the Expert, in its absolute discretion, decides otherwise.

## 16.5 Arbitration

- (a) If:
  - (i) A dispute is not able to be resolved under 16.3(b) and 16.3(c); or
  - (ii) a matter is referred to an Expert under clause 16.4 and:
    - (A) the monetary value of a claim or the monetary value of a determination is greater than \$5 (five) hundred thousand; and
    - (B) within 20 Business Days of the Expert making its determination a party notifies the other party that it does not accept the Expert's determination,either party may commence arbitration proceedings.
- (b) The arbitration will be conducted in accordance with the provisions of the *Commercial Arbitration Act 2012 (WA)* and the ACICA Rules and will be final and binding.
- (c) The arbitral tribunal will (unless otherwise agreed) consist of a single arbitrator appointed in accordance with the ACICA Rules.
- (d) The place of arbitration is Perth, Western Australia.
- (e) The arbitration will be conducted in English.

## 16.6 Legal Representatives

The Participants consent to each other and to the Regional Local Government being legally represented at any arbitration.

Footnotes:

Amendment of Agreement

1. The Participants may amend this Agreement by agreement made with the Minister's approval – see section 3.65(1) of the Act.

Admission of Other Local Governments

2. This Agreement can be amended to include another local government as a party to the amending agreement – see section 3.65(2) of the Act.

## 17. NOTICES AND OTHER COMMUNICATIONS

### 17.1 Service of notices

- (a) A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
  - (i) in writing, in English and signed by a person duly authorised by the sender; and
  - (ii) hand delivered or sent by prepaid post or facsimile to the recipient's address for Notices specified below, as varied by any Notice given by the recipient to the sender.
- (b) Notice details:
  - (i) Town of East Fremantle:
    - (A) Address: 135 Canning Highway, East Fremantle, Western Australia
    - (B) Email: [admin@eastfremantle.wa.gov.au](mailto:admin@eastfremantle.wa.gov.au)
  - (ii) City of Fremantle
    - (A) Address: William Street, Fremantle, Western Australia



- (B) Email: info@fremantle.wa.gov.au
- (iii) City of Melville
  - (A) Address: 10 Almondbury Road, Booragoon, Western Australia
  - (B) Email: melinfo@melville.wa.gov.au

## 17.2 Effective on receipt

A Notice given in accordance with clause 17.1 takes effect when taken to be received (or at a later time specified in it), and is taken to be received:

- (a) if hand delivered, on delivery;
- (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia);
- (c) in the case of email, on the date of sending if sent prior to 4:00 p.m. local time on a Business Day at the physical address of the intended recipient, provided the sender does not receive an email message showing the failure of the email to be delivered. Non-receipt by the sender within two hours of sending of an email message showing the failure of the email to be delivered shall constitute prima facie evidence that the email was sent and received

but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.

## 17.3 Definitions

For the purpose of this clause

- (a) **Business Day** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the place where the notice is sent; and
- (b) **Business Hours** means from 9.00am to 5.00pm on a Business Day.



EXECUTED by the Participants

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

\_\_\_\_\_

Mayor

\_\_\_\_\_

Chief Executive Officer

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

  
\_\_\_\_\_

Mayor

  
\_\_\_\_\_

Chief Executive Officer



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

  
\_\_\_\_\_

Mayor

  
\_\_\_\_\_

Chief Executive Officer





7 October 2024

Ms Gail Bowman  
Chief Executive Officer  
City of Melville  
Locked Bag 1  
Booragoon WA 6954

Mr Glen Dougall  
Chief Executive Officer  
City of Fremantle  
PO Box 807  
Fremantle WA 6959

Mr Jonathon Throssell  
Chief Executive Office  
Town of East Fremantle  
PO Box 1097  
Fremantle WA 6959

## **To whom it may concern**

### Amended Establishment Agreement

On 22 January 1998, the City of Canning, City of Cockburn, Town of East Fremantle, City of Fremantle, City of Kwinana, City of Melville, and City of Rockingham entered into the "Establishment Agreement of the Southern Metropolitan Regional Council" (Establishment Agreement). On 16 February 2022, the Southern Metropolitan Regional Council was formerly renamed Resource Recovery Group.

In 2021 it was proposed that the Establishment Agreement be amended to include various updates.

The City of Canning (2010), City of Cockburn (2017), City of Kwinana (2021) and City of Rockingham (2012) withdrew from the Resource Recovery Group prior to the proposed amendments being progressed.

In May 2023, as the then remaining members, the Town of East Fremantle, City of Fremantle, and City of Melville agreed the terms of an amended Establishment Agreement. The proposed amended Establishment Agreement was provided to the Minister for Local Government for approval, in accordance with the requirements of the Local Government Act.

Following the provision of the amended Establishment Agreement to the Minister, the Town of East Fremantle gave notice to withdraw from the Resource Recovery Group. That withdrawal took effect on 30 June 2024. The formal excision of the Town of East Fremantle from the Establishment Agreement has been documented in a document titled Deed of Settlement and Release and dated 2 October 2024.

Ministerial approval to the amended Establishment Agreement was received on 18 September 2024.



As a result of the Town of East Fremantle having withdrawn from the Resource Recovery Group and no longer being a party to the Establishment Agreement, it is acknowledged that the Town of East Fremantle is not required to execute the amended Establishment Agreement, and it would not be appropriate for the Town of East Fremantle to do so.

Please countersign below to confirm this acknowledgment.

Yours faithfully




**BRENDAN DOHERTY**  
**ACTING CHIEF EXECUTIVE OFFICER**


Acknowledged by:



.....  
Jonathon Throssell, Chief Executive Officer  
For and on behalf of the Town of East Fremantle



.....  
Glen Dougall, Chief Executive Officer  
For and on behalf of the City of Fremantle



.....  
Gail Bowman, Chief Executive Officer  
For and on behalf of the City of Melville