APPENDIX 6

to

Report 12SP114 – Lake Macquarie Waste Strategy Project – Execution of Contracts for Organic Waste Processing and Green & Organic Waste Collection & Bin Supply

GREEN & ORGANIC WASTE COLLECTION AND BIN SUPPLY – CONDITIONS OF CONTRACT – SOLO WASTE PTY LTD

Green & Organic Waste Collection and Bin Supply

Conditions of Contract

Lake Macquarie City Council

Solo Waste Pty Ltd as trustee for the Solo Waste Trust T/As Solo Resources Recovery

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CONTRACT FOR GREEN WASTE AND ORGANIC WASTE COLLECTION AND BIN SUPPLY

1. INTRODUCTORY ISSUES

1.1 Contract Aims and Objectives

The Aims and Objectives of this Contract are:

(a) to achieve and maintain a high standard of performance in provision of the Services by the Contractor using best practice methods and systems;

(b) to fulfil the Council's obligations under the Council's charter in the *Local Government Act 1993* including to "properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible in a manner which is consistent with and promotes the principles of ecologically sustainable development" and "have regard to the long term and cumulative effect of its decisions";

(c) to regularly assess the performance of the Contractor and to gain continual improvement to work practices and resource recovery;

(d) to promote the health, safety and welfare of all person engaged in or affected by the Services;

(e) to minimise odour and noise impacts;

(f) to purchase environmentally preferred goods whenever possible;

(g) to facilitate a sustained effort to increase the type, quality and amount of resources recovered from the waste stream;

(h) to maximise and preserve the resource integrity and value of recoverable and reusable materials within the waste stream;

(i) to ensure the provision of ongoing effective communication and cooperation between the Council and the Contractor;

(j) to provide high standard, integrated waste and resource recovery services, based on "best practice" principles, which are complementary to national, state and regional waste management policies, as well as Council's own waste management strategy;

(k) to fulfil the Council's obligations under legislation relating to provision of waste and resource recovery services;

(l) to provide cost-effective services that users perceive as offering value for money;

(m) to maximise the recovery of organic materials.

1.2 Definitions

In this Contract the following terms will have the meanings ascribed to them:

Acceptance Hours means the hours reasonably nominated as such by the Council, except where varied by restricted acceptance hours on Christmas Day or other Public Holidays agreed and directed by the Supervising Officer in accordance with the Specification.

Alternative Collection Points means alternative locations for Customer placement of Mobile Garbage Bins for collection, determined by the Council in conjunction with the Contractor, where for example there is no space at kerb or for other reasons including safety.

Alternative Facility means a specified waste handling, processing or treatment facility, landfill, materials recovery facility or processing facility other than the "Nominated Facility", which is approved by the Council for receiving materials under this Contract.

Annexure means the Annexure to the Conditions of Contract.

Approximate Centroid means the property known as 37 Dilkera Avenue, Valentine NSW 2280 at the date of the Contract.

Audit Procedure has the meaning ascribed to it by Clause 23 of the Specification.

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

Blue Dot Service means a wheel-out wheel-back service that the Council has determined (on such evidence as Council deems appropriate) requires collection from the Premises because of infirmity of the property resident(s).

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

Business Hours means 9.00am to 5.00pm on any Business Day.

Change of Law means the enactment, promulgation, execution or ratification of, or any change in or amendment to, any laws (or in the application or official interpretation of any laws), including any consent issued under any relevant Laws which:

1. occurs after the date of the Contract;
2. occurs in Australia;
3. the Contractor is legally obliged to comply with; and
4. the Contractor did not know about and was not reasonably foreseeable to the Contractor prior to the Signing Date,

but excludes an Excluded Change in Law.

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

Clause means a clause of this Contract.

Close of Business means 5.00pm on any Business Day.

Closing Date for Tenders means the date nominated as such in Item 13 of the Annexure.

Collection Schedule means the systematic scheme prepared pursuant to Clause 4.4.2 of the Specification.

Collection Vehicle means a vehicle or vehicles used by the Contractor to perform the Services.

Confidential Information includes all information not in the public domain (otherwise than through breach of the confidentiality requirements of the Contract provided by the Council or a Tenderer to the other which is in the nature of commercial-in-confidence information of the nature referred to in Schedule 4 of the Government Information (Public Access) Act 2000 (NSW).

Contamination means all materials other than Green Waste in Phase 1 and Green Waste or Organic Waste in Phase 2 and includes:

- plastic and plastic bags
- painted or laminated timber
- particleboard
- plywood
- wire.

Contract Commencement Date means the date of this Contract.

Contract means this agreement between the Council and the Contractor relating to the provision of the Services.

Contract Determination has the meaning attributed to it in the Industrial Relations Act 1996 (NSW).

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

Contract Sum means the total amount payable under the Contract each year and includes the Lump Sum Bin Amount and the Service Rates for each year of the Contract and any provisional or contingency sums identified in Clause 10.6 of the Contract and all taxes identified in Clause 14 of the Conditions of Contract.

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

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

Contractor's Facilities means the facilities nominated and used by the Contractor to undertake the Services.

Contractor's Plant means all or any of the plant, implements, appliances and equipment used by the Contractor to undertake the Services.

Contractor's Representative is the person so described appointed under Clause 2.5.1 of the Conditions of Contract.

Council means Lake Macquarie City Council, including any of its authorised representatives or staff under the delegated authority of Council.

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

Customer means an owner or occupier of Premises in the Service Area who uses any service provided under this Contract.

Customer Service Centre means the established point of contact for customers that will allow complaints to be received, actioned and reported to Council.

Date of Tender Release means 30 November 2011.

Designated Early Start Street List means the list of all streets as so identified in the Annexure to the Specification.

Designated Late Finish Street List means the list of all streets as so identified in the Annexure to the Specification.

Dispose or Disposal means the disposal of material to an appropriately licensed landfill or other State-approved method of disposal.

Early Starts means the commencement of Services before the Start Times indicated in the Designated Early Start Street List.

Environmental Management Plan means the Management Plan specified in Clause 16 of the Specification.

Equipment see Vehicles, Plant and Equipment.

Excessive Weight means the weight of any Mobile Garbage Bin, which is unable to be physically moved by the collection vehicle lifting equipment or by the Contractor's personnel or any Mobile Garbage Bin which is deemed to pose a significant risk of damage to any equipment or vehicle or injury to any person if collected, generally being a Mobile Garbage Bin together with its contents which weighs 80 kilograms or over.

Excluded Change in Law means any Change in Law:

1. which changes the Tax applying to the parties, under the *Income Tax Assessment Act 1936* (Cth), *Income Tax Assessment Act 1997* (Cth) or *A New Tax Sysetm (Goods and Services Tax) Act 1999* (Cth); or
2. under which an amount is otherwise recovered by the Contractor through an escalation or increase in the Service Rates or any other amount payable by Council to the Contractor under this Contract.

Expiry Date means the date on which the Contract Term ends.

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

Finish Time means the time by which collection services are to be completed as specified in Clause 4.3.2(d) of the Specification.

Food Waste includes but is not limited to:

- Fruit and vegetable material
- Bread, pastries and flours (including rice and corn flours)
- Food soiled paper products (hand towels, butter wrap etc.)
- Biodegradables (cutlery, bags, polymers)
- Meat and fish material (including bones)
- All other organic based materials which can be readily composted as defined from time to time by Council.

Force Majeure Event means events or occurrences beyond the control of a Party such as:

- war, terrorism, revolution, insurrection, riot or invasion;
- earthquake, aircraft damage, fire, cyclones, lightning, winds or other acts of nature;
- industry-wide industrial relations problems and strikes affecting the Contract not caused by any issue relating solely to the Contractor's Facility;
- airport closure, airline strikes or airline industrial problems, tourist restrictions, or grounding of types of aircraft used to transport passengers domestically; or
- any act of any Government or Government Agency that materially affects the cost and/or viability of operating this Contract.

Green Waste includes:

- Prunings, cuttings and branches
- Weeds, bushes, limbs, branch trimmings, bark and soil
- Lawn clippings, leaves and cut flowers
- Cardboard and paper placed in the Third Bin
- All other plant matter derived from LMCC households through bin collection, kerbside clean up or self hauled delivery.

Green Bin means the new Organic Waste bin which will have a green lid and will be collected fortnightly in Phase 1 (Green Waste only) and weekly in Phase 2 (Green and Food Waste or "Organic Waste").

Green Waste and Organic Waste Service-Entitled Premise means any Premise entitled to an Organic Waste collection service as specified under Clause 2 of the Green Waste and Organic Waste Specification and Clauses 4.4.1, 6.1, 6.2 and 6.3 of this General Specification.

Green Waste and Organic Waste Collection Service means the collection of Green Waste and Organic Waste from Green Waste and Organic Waste Service-Entitled Premises as are specified in writing by the Council from time to time.

Gross Contamination means all materials which are not Green Waste or Organic Waste as defined in the General Specification, where it is evident upon visual inspection that excessive amounts of these materials are present within the Mobile Garbage Bin.

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

Hazardous Waste means any waste which, through toxicity, carcinogenicity, mutagenicity, teratogenicity, flammability, explosivity, chemical reactivity, corrosivity, infectiousness or other biologically damaging properties, may present danger to the life or health of living organisms when released into the environment and includes fire extinguishers, gas bottles, car batteries, paints, oils, hazardous chemicals, clinical and related wastes and cytotoxic wastes.

Incident Includes an accident, injury, property damage or environmental damage.

Initial Contract Term means the period nominated as such in the Annexure.

Industrial Action has the same meaning attributed to it in the *Fair Work Act 2009* (Cth).

Industrial Instrument means:

(a) a Modern Award;

(b) an enterprise agreement, as that term is defined in the *Fair Work Act 2009* (Cth);

(c) a transitional instrument, as that term is defined in the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);

(d) a Contract Determination; or

(e) a contract agreement, as that term is defined in the *Industrial Relations Act 1996* (NSW).

Industrial Relations and Workforce Plan has the meaning ascribed to it in Clause 17 of the Specification.

Intellectual Property includes copyright, patents, registered designs and moral rights belonging to, asserted by or used by a party which relate to the Contract.

Kerbside means the area adjacent to any road carriageway.

Lump Sum Bin Amount means the amount listed as Item 10D of the Annexure payable by the Council to the Contractor for the manufacture, supply, delivery, assembly and distribution of all Mobile Garbage Bins required by the Contractor to perform the Services under this Contract.

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

Missed Service means the failure by the Contractor to collect Waste from any Mobile Garbage Bin on the specified day of collection from any Premise within the Service Area.

Mixed solid waste (or mixed waste) is the waste that remains for collection after waste generators have source-separated green waste, food waste and recyclables.

Mobile Garbage Bin means an appropriately designed Waste container with wheels which may be used in connection with any of the Services, with 80, 120, 140, 240,

360, 660 and 1,100 litres capacity, that at a minimum complies with AS 4123 Mobile Waste Containers and any additional requirements as detailed in the Specification.

Modern Award has the meaning attributed to it in the Fair Work Act 2009 (Cth).

MUD means Multi Unit Dwelling and includes all premises with 2 or more units on one property.

Nominated Facility means a nominated waste handling, processing or treatment facility, landfill, materials recovery facility or processing facility approved by the Council for receiving materials under this Contract from any particular service,

Non-Work Days means the days nominated as such by Council, including Saturdays and Sundays, and Christmas Day.

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

OH&S means "Occupational Health and Safety".

Organic Waste means Green Waste and Food Waste as defined. It includes all Green Waste and Food Waste enclosed in plastic bags and other vessels.

It specifically excludes:

- rocks and stones
- plastic, and plastic bags
- non-organic material,
- treated, painted, stained or laminated timber,
- particleboard,
- plywood
- or wire.

Organic Waste Collection Service Contract means a contract Council may enter with a third party under which the third party will be obliged to collect Organic Waste and deliver the Organic Waste to the Organic Waste Receival Facilities.

Organic Waste Collection Service means the collection of Organic Waste from Organic Waste Service-Entitled Premises as are specified in writing by the Council from time to time.

Organic Waste Collector means a Person engaged by Council to collect Organic Waste and deliver it to the Organic Waste Receival Facilities. This may be either the Council and/or a Party(ies) with which the Council enters into an Organic Waste Collection Service Contract.

Organic Waste Processing Contract (903P) means the contract of that description between the Council and a contractor for the provision of services relating to the processing of the Organics Waste collected pursuant to this Contract.

Organic Waste Service-Entitled Premise means any Premise entitled to an Organic Waste collection service as specified.

Other Complaint means any other reasonable complaint from a Customer about the Services that is not a Missed Service or a noise complaint about Early Starts.

Out-of-Hours Acceptance Rate means, at the Services Commencement Date, the amount nominated as such in Item 10F of the Annexure.

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

Party's Representative means the Supervising Officer in the case of the Council, and the Contractor's Representative in the case of the Contractor.

Performance Management Committee Means a joint committee of the Contractor and the Council to monitor and make recommendations concerning the performance of the Services as described in Clause 18 of the Specification.

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

Person means a natural person, or a corporation, partnership, joint venture, incorporated association, government, local government authority or agency.

Personal Information means information or an opinion (including information or an opinion forming part of a database and whether or not recorded in a material form) about an individual whose identity is apparent or can reasonably be ascertained from the information or opinion, and includes such things as an individual's fingerprints, retina prints, body samples or genetic characteristics.

Phase 1 means the period during which the Contractor is required to collect Green Waste only.

Phase 2 means the period immediately following Phase 1 when the Contractor is required to collect Green Waste and Organic Waste.

Plant means all facilities, buildings, infrastructure, vehicles, plant, machinery and equipment of whatever kind required by the Contractor to perform and observe all and every of the Contractor's obligations pursuant to the Contract.

Post Consumer means materials that have been used by consumers and recovered for use as raw materials to make new products.

Premise(s) means a building of any description and land, whether built on or not.

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

Processing Facility means the facility nominated by the Council for receipt and processing of materials collected by the Contractor under the Contract or an "**Alternative Facility**".

Quality Plan has the meaning ascribed to it in Clause 15.1 of the Specification.

Quarter Date(s) means the dates marking a quarter of a financial year calendar, being 1 July, 1 October, 1 January and 1 April of any calendar year.

Scheduled Service means a service to be provided pursuant to the Contract.

Section means an identified Section of the **Tender Documents**.

Service Area means the area indicated on maps attached to the Specification, together with such additional Premises that Council may nominate during the Contract Term providing such Premises are within Council's Local Government area.

Services means all or any of the services to be performed by the Contractor as described in the Contract Documents.

Services Commencement Dates means the dates specified in Item 3 of the Annexure.

Services Commencement Date - Green means the date nominated in accordance with the terms of this Contract in the Annexure as the date of first collection of Green Waste for processing and disposal.

Services Commencement Date - Organic Waste means the date nominated in accordance with the terms of this Contract in the Annexure as the date of first collection of Organic Waste for processing and disposal.

Service-Entitled Premises means any Premise entitled to a collection service as specified in the complete listing of the addresses initially provided by Council for the Collection Schedule and subsequently updated in accordance with the provisions of the Specification.

Service Rates means for the year commencing on the Contract Commencement Date the rates specified in Items 10A, 10B, 10C, 10E and 10F of the Annexure and for each subsequent year those rates as adjusted in accordance with Clause 10 of the Conditions of Contract, except the Service Rates which are expressed in the Annexure to apply on the first day of any extension to the Contract Term.

Specification means the Specification of Services forming part of the Contract.

Start of Business means 9.00am on any Business Day.

Start Time means the commencement time of collection services specified in Clause 4.3.2(a) of the Specification.

Subcontractor means a person who provides goods or services to the Contractor in relation to this Contract approved by the Council or the Supervising Officer in writing.

Subcontractor's Statement means the statement by the Contractor which declares that the Contractor has made payments for workers compensation, pay-roll tax and remuneration as is required by s.175B of the *Workers Compensation Act 1987* (NSW), Schedule 2 Part 5 of the Pay-roll Tax Act 2007 (NSW) and s 127 of the Industrial Relations Act 1996 (NSW).

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

Variation means a contract change proposal referred to in 3 of the conditions of contract.

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

Working Day means any day which is not a Non-Work Day.

1.3 Construction of Terms

In this Contract:

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

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

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

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

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

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

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

1.4 Interpretation

1.4.1 Contract Interpretation

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

1.4.2 Amendments

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

1.4.3 Precedence

Should the Contract Documents contain any discrepancy or inconsistency, then the documents will take precedence in the order in which they are listed in the Annexure for the purpose of resolving the inconsistency.

If the discrepancy or inconsistency is not resolved by this method, the Council will make a determination resolving the discrepancy or inconsistency. No determination by the Council under this Clause will be construed as giving rise to a variation under Clause 3.

1.4.4 Severability

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

1.4.5 Whole Understanding

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

1.4.6 Governing Law

The law of the State of New South Wales governs this Contract and any legal proceedings or arbitration under this Contract. Any legal action in relation to this Contract against any party may be brought in any court of competent jurisdiction in the State of New South Wales.

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

1.4.7 Currency

All prices and payments must be in Australian currency.

1.4.8 Language

Communications under this agreement must be in the English language.

1.4.9 Measurements

Measurements must be in Australian legal units of measurement within the meaning of the *National Measurement Act 1960*.

1.5 Relationship Between the Parties

1.5.1 No Partnership

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

1.5.2 Several and Joint Liability

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

1.6 No Agency

(a) The Contractor shall not represent itself, and shall ensure that its officers, employees, agents and subcontractors do not represent themselves as being employees, partners or agent of the Council and shall not in anyway be entitled to make any contract on behalf of the Council, or to bind the Council to the performance, variation, release or discharge of any obligation.

(b) The Contractor, its officers, employees, agents and subcontractors shall not by virtue of this Contract be, or for any purpose be deemed to be, an employee, partner or agent of the Council.

1.7 No Fettering of Council's Powers

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

1.8 Contractor to Examine Information

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

1.9 No Waiver

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

1.10 Notices

1.10.1 Method of Giving Notices

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

(a) Handed to that Party's Representative; or,
(b) Delivered to that Party's address; or,
(c) Sent by pre-paid mail to that Party's address; or,
(d) Transmitted by electronic mail to that Party's Representative.

1.10.2 Time of Receipt

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

(a) If handed to that Party's Representative, immediately; or,
(b) If delivered to that Party's address, on the day of delivery; or,
(c) If sent by pre-paid mail, on the third (3) Business Day after posting; or,
(d) If transmitted by electronic mail to that Party's e-mail address at that Party's Close of Business of the first (1) Business Day after transmission.

1.10.3 Addresses of Parties

For the purposes of Clauses 1.10.1 and 1.10.2, the postal address or e-mail address of a Party is the postal address or e-mail address stated in Item 1 of the Annexure unless notice of another postal address and/or e-mail address (as applicable) has been given to the other Party.

1.10.4 Notices Issued by the Council

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

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

1.10.5 Supervising Officer

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

2. THE SERVICES

2.1 Work to be Performed

2.1.1 Contractor's Obligation

Subject to Clause 2.1.6, the Contractor will perform the Services during the Contract Term in accordance with the Contract Documents.

2.1.2 Notice of Direction

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

2.1.3 Contractor's Default Notice of Direction

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

2.1.4 Cost of Remedying Default

Any costs or charges incurred by the Council in the remedying of a default under Clause 2.1.3, including any monitoring, administration or management cost incurred as a result of the default, as determined by the Supervising Officer, must be paid by the Contractor to the Council within twenty five (25) Business Days of invoice or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

2.1.5 Better Performance

The Supervising Officer may give directions for the better performance of this Contract and the Contractor will give effect to such directions as if they constituted express terms of this Contract, provided however, that any directions giving rise to variations will be subject to the agreement of the Parties as set out in Clause 3.

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

2.1.6 Notice Period to Introduce Green Waste and Organic Waste Collection Service

(a) The Contractor acknowledges that, subject to lead time for Green Bin manufacturing and delivery, the Green Bin supply and distribution will begin as soon as possible following award of tender.

(b) The Contractor acknowledges that Phase 1 will commence on the Services Commencement Date – Green. The Services Commencement Date – Green will depend on the date of completion of the Contractor's Green Bin delivery, and will be as soon as is practical following delivery of Green Bins and not later than 1 April 2013.

(c) The Contractor acknowledges that Phase 2 will commence on the Services Commencement Date - Organic Waste and that the Council shall give the Contractor not less than six months notice of such date.

(d) The Parties shall consult prior to the determination of the dates in sub-clauses 2.1.6(a), (b) and (c) and acknowledge that the Phase 2 shall not commence until a suitable waste processing facility is available to receive waste collected during that period.

2.1.7 Delivery of Green Waste and Organic Waste for Processing

(a) During Phase 1 all Green Waste collected by the Contractor must be delivered for processing to the Nominated Facility.

(b) During Phase 2 all Green Waste and Organic Waste collected by the Contractor must be delivered for processing to the Nominated Facility.

(c) The Contractor must report the origin of the collected load to the Processing Contractor.

(d) The Contractor must deliver monthly to Council the weighbridge dockets, or copies thereof, issued by the Nominated Facility to the vehicles depositing the waste at the Nominated Facility.

(e) The Council and the Contractor acknowledge that the Fuel and Lubricants and the Wages, Payroll Tax and Superannuation Guarantee Levy components of the Service Rates will vary by the amount per kilometre (or part thereof) specified in Item 10E of the Annexure by which the distance of the gate at the Council's landfill site at Wilton Road, Awaba differs from the gate of the facility(ies) nominated by the Council pursuant to sub-clauses 2.1.7(a) and (b).

(f) For the avoidance of doubt:

- The variation contemplated in sub-clause 2.1.7(e) may reduce or increase the Service Rates depending on whether the distance is more or less.
- The distances are the distances measured from the Approximate Centroid to the receival gates of the Wilton Road, Awaba Facility and the facility(ies) nominated by the Council pursuant to sub-clause 2.1.7(a) and (b) by the most direct route suitable for the Contractor's Collection Vehicles.
- The amount per kilometre in Item 10 of the Annexure is the amount specified at the Closing Date for Tenders and will be subject to the rise and fall provisions in Clauses 10.7 and 10.8 of these Conditions of Contract.
- In the event of any dispute as to distance the provisions of Clause 13 of these Conditions of Contract shall apply.

2.1.8 Delivery of Green Waste and Organic Waste to an Alternative Facility

The provisions of Clauses 2.1.7(c) and (d) will also apply to vary Service Rates in the event that the Council specifies an Alternative Facility during the Contract Term.

2.2 Contract Term

2.2.1 Services Commencement Date

Services under this Contract are to commence to Council on the Services Commencement Dates set forth in Item 3 of the Annexure.

2.2.2 Contract Term

The Contract Term is to be the period set forth in Item 4 of the Annexure ("initial Contract Term") plus any period for which the operation of this Contract is extended under Clause 2.2.3, and any other period for which the operation of this Contract is extended by agreement between the Parties.

2.2.3 Alignment of the Contract with Organic Waste Processing Contract

Council has a desire to align the timing of this Contract (903C) with the Organic Waste Processing Contract (903P). The initial 9 year term of this contract may be followed by two periods of up to 9 years each to allow alignment at the end of the terms of the two contracts.

2.2.4 Options to Extend Contract Term

Subject to clause 2.2.5 the Council may extend the operation of this Contract beyond the initial Contract Term set forth in Item 4 of the Annexure for periods that together are not less than the period set forth in Item 4 (a) of the Annexure and together not more than the period set forth in Item 4 (b) of the Annexure, from the expiration of the initial Contract Term. The Council must give notice of its intention to extend the operation of this Contract of at least the period set forth in Item 4 (c) of the Annexure prior to the expiration of the initial Contract Term.

2.2.5 If the Council wishes to extend the Contract term for either of the two extended periods then the notice to be given to the Contractor must be in writing and specify the period of the extension required by the Council. If the Contractor wishes to accept such extension then it must do so in writing served upon the Council and upon such service the Contract shall be deemed extended by the period specified in the Council's notice upon the same terms and conditions as this Contract except:

(a) Clause 2.2.4 shall be deemed amended such that the option exercised shall be removed from the clause; and

(b) The Service Rates to apply at the commencement of the extended term shall be the Service Rates applicable during the last quarter of the prior term of the Contract varied by the Rise and Fall provisions in clauses 10.7 and 10.8 of these Conditions of Contract.

2.2.6 Nothing in clause 2.2.5 shall prevent the Council and the Contractor negotiating an extension of the Contract for a period differing from that specified in the Council's notice specifying the period for which it wished to extend the Contract.

The extension of the initial Contract Term may be exercised by the Council by two separate extensions, the first being for up to nine (9) years from the expiry of the initial Contract Term of nine (9) years and the second for up to nine (9) years from the expiry of the first extension. The total possible Contract Term is 27 years from the Services Commencement Date – Green.

2.3 Fees

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

2.4 Reports

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

2.5 Contractor's Representative

2.5.1 Appointment of Representative

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

2.5.2 Availability of Representative

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

Regular meetings must initially be scheduled at least weekly from Contract signature to the end of Commissioning of the processing facility. After the end of Commissioning meetings will be held at least monthly.

If the Supervising Officer waives or decreased the frequency of these meetings he/she may reinstate these meetings at any time.

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

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

2.5.3 Address and Telephone Numbers

The Contractor will provide the Supervising Officer with the address of the Contractor's Representative and a telephone number on which the Contractor's Representative may always be contacted (24 hours per day, 7 days per week). This address must be located in the Lake Macquarie Council area and must be attended between 8.00 am and 5.00 pm on all Business Days. The Contractor will notify the Council immediately in writing of any change of address or telephone numbers of the Contractor's Representative.

2.5.4 Directions to Representative

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

2.5.5 Knowledge of Representative

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

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

The Council and the Supervising Officer may at all times when the Contractor's Facilities are available for service under the Contract access and inspect those Facilities and associated Vehicles, Plant and Equipment and records to satisfy themselves that the Contractor is complying with its obligations under this Contract.

3. CHANGES IN THE SERVICES

3.1 Service Changes in Case of Emergencies

Where in the opinion of the Supervising Officer an emergency exists which poses a risk to public health, public safety or the environment the Council may direct the Contractor to provide additional or varied Services.

Where the Contractor is directed to provide additional or varied Services under this Clause it must be paid at rates determined under the Contract or, if no such rates are available at a reasonable rate for the Services provided. Any dispute concerning such payments must be determined pursuant to Clause 13.

Where the Contractor is unable or unwilling to provide such additional or varied services the Supervising Officer may take appropriate actions to remedy the situation. The Council's additional costs in taking this action will be shared equally by the Contractor and the Council where they can be demonstrated as being outside the control of the Contractor and will be paid in full by the Contractor where they could reasonably be seen to be within its reasonable control. Any dispute concerning such payments must be determined pursuant to Clause 13.

3.2 Service Changes for Convenience

The Supervising Officer may direct the Contractor to:

(a) vary the extent of the Services;
(b) vary the character, quality or mode of performance of the Services; or
(c) carry out any work of a character similar to the Services.

The Contractor may also at any time request changes to Services provided under this Contract.

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

In a number of circumstances, for example where a service evolves, increases or is subject to external influence, the Contractor is required to notify the Council of such changes. The Contractor must notify the Council as soon as possible if any event(s) is/are likely to give rise to a variation. Failure to reasonably notify the Council may obviate any claim.

The value, if any, of any variation must be added to or subtracted from any payment to the Contractor. The value of each variation will be determined by the Supervising Officer by applying:

(a) any relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this Clause; or
(b) reasonable rates or prices if there are no relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this Clause. If the variation involves a decrease in the Services or the omission of part of the Services, the Supervising Officer must make a reasonable allowance for the Contractor's profit and overheads.

Conformity with the Contract Aims and Objectives must be used to guide any decisions on variations.

3.3 Variations not to Vitiate Contract

No variation under Clauses 3.1 or 3.2 will in any way vitiate or invalidate the Contract.

3.4 Innovation and Trials

During the Contract Term the Contractor is invited to propose innovative arrangements to the provision of the Services for incorporation in the current or future contracts.

Service trials may be undertaken provided the Council is satisfied that improved performance will result. Prior to any such trial, the Contractor and the Council must negotiate a price, set evaluation criteria and performance measures for the trial.

The Council may, at its discretion, use persons other than the Contractor to conduct trials.

3.5 Improved Services and Mutual Benefit

During the Contract Term either party may propose changes to Services that will deliver service improvements, improved resource recovery and performance outcomes or reduced costs. Where these proposals achieve benefits which constitute a significant variation to financial impact of the Contract then these will be shared between the parties at a rate agreed by the Parties, or if such a rate cannot be agreed at a rate determined by the Supervising Officer.

4. CONTRACTOR'S OBLIGATIONS

4.1.1 Contractor to Comply with Statutory and Legal Obligations

The Contractor must ensure that all legal obligations that arise, whether by or under this Contract, statute, Industrial Instrument in equity or at common law, as a consequence of or in connection with the performance of the Services are fully complied with. This includes ensuring that all persons employed or engaged by the Contractor to provide the Services also comply with legislative requirements.

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

(a) Where any person, facility, premises, vehicle, plant, equipment, or activity is required to be licensed, registered, approved or accredited the Contractor must ensure that the appropriate licence, registration, approval or accreditation is in force and current at all times during the performance of the Services.

(b) Where development consent is required to be obtained pursuant to Part 4 of the *Environmental Planning and Assessment Act 1979* in respect of the use of any land, the Contractor must ensure such consent is obtained and is in force prior to the commencement of, and at all times during, such use.

(c) Irrespective of who performs the Services, the Contractor must ensure the Services are performed in a safe manner and in accordance with all relevant legislation and Codes of Practice, including but not limited to the:

- *Dangerous Goods Act 1975*;
- *Environmental Planning and Assessment Act 1979*;

- *Environmentally Hazardous Chemicals Act 1995*;
- *Environmentally Hazardous Chemicals Amendment Act 1996*;
- *Fair Work (State Referral and Consequential and Other Amendments) Act 2009* (Cth);
- *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cth);
- *Fair Work Act 2009* (Cth);
- *Industrial Relations (Commonwealth Powers) Act 2009* (NSW);
- *Industrial Relations Act 1996*;
- *Local Government Act 1993*;
- *Occupational Health and Safety Act 2000*;
- *Protection of the Environment Operations Act 1997*;
- *Road Transport (General) Act 1999*;
- *Road Transport (Safety and Traffic Management) Act 1999*;
- *Transport Industry Waste Collection and Recycling Contract Determination* or any replacement Contract Determination, if it applies to the Contractor or any of the Contractor's
- *Transport Industry - Waste Collection and Recycling (State) Award*;
- *Transport Industry - Waste Collection and Recycling (State) Award*; and
- *Waste Avoidance and Resource Recovery Act 2001*;
- *Waste Management Award 2010* or any replacement Modern Award, if it applies to the Contractor or any of the Contractor's employees;
- *Work Health and Safety Act 2011 (NSW)*
- *Workers Compensation Act 1987*; and
- *Workplace Injury Management and Workers Compensation Act 1998*

and all regulations, awards, codes and/or guidelines pursuant to any of such Acts and any enactments in lieu of such Acts as may be repealed.

4.1.2 Repeals

Where legislation applying to this Contract is repealed, then any replacement legislation shall govern the performance of this Contract in substitution for the repealed legislation. If there is no such replacement legislation, or the parties cannot agree on the application of the replacement legislation, the parties must negotiate in good faith to reach agreement on varying the Contract to accommodate the repeal. If the parties fail to reach agreement within a reasonable time the matter shall be resolved by expert determination pursuant to Clause 13 and the parties agree to be bound by such determination.

4.1.3 Change in Law

(a) If:

(1) a Change in Law occurs; and

(2) the Contractor acting reasonably considers that the Change in Law will directly and necessarily increase or decrease the scope of the Services or the cost of performing the Services (**Change in Law Services**),

then the Contractor must within 30 days of becoming aware of, or ought reasonably to have been aware of, the relevant Change in Law, notify the Council representative by way of a notice which complies with clause 4.1.3(c) (**Change in Law Notice**).

(b) The Contractor must not perform any Change in Law Services until it has complied with the balance of this clause 4.1.3 and clause 3.2 if the Change in Law also gives rise to a direction of the Supervising Officer to change the Services.

(c) A Change in Law Notice must be in writing and detail:

(1) the reasons why (including any supporting information) the Contractor considers the relevant change is a Change in Law;

(2) if the Change in Law involves an increase to the scope of the Services, any additional obligations, costs or resources reasonably required to perform the Services which the Contractor will incur as a result of the Change in Law Services;

(3) the obligations under the agreement that the Contractor considers it would not be able to comply with (if any) if the Contractor does not perform the Change in Law Services (including any part of the Services which would be prohibited as a consequence of the Change in Law);

(4) whether the Change in Law can be mitigated by, or gives rise to the opportunity for, an innovation pursuant to clause 3.4;

(5) if the Change in Law involves a decrease to the scope of the Services, the obligations under the agreement that the Contractor reasonably considers it is no longer required to comply with as a result of the Change in Law and the resulting reduction in cost; and

(6) any other information relevant to the Change in Law and its application to the Services.

(d) Within 30 days of receipt of a Change in Law Notice, and without limiting the Contractor's obligations to comply with all laws, the Council may:

(1) dispute that there has been a Change in Law, in which case, the dispute will be referred for resolution under clause 13;

(2) confirm that there has been a Change in Law but dispute the Contractor's assessment of the Change in Law Services, in which case, the dispute will be referred for resolution under clause 13;

(3) confirm that there has been a Change in Law and the description of the Change in Law Services, in which case, the Contractor must perform (or omit, as relevant) the Change in Law Services and, without limiting the Contractor's obligation to mitigate the effect of a Change in Law under clause 4.1.3(f), the Change in Law is deemed to be a Variation for the purposes of clause 3.2; or

(4) if the Services may be varied so that the Change in Law Services are not required, direct a variation to the Services in accordance with clause 3.2 (and, in this case, the variation does not need to be agreed with the Contractor).

(e) Following agreement by the parties or resolution of the effect of a change in Law in accordance with clause 4.1.3, the Council will increase the Service

Rates to account for the net increase ni costs (if any) incurred by the Contractor in complying with the Change in Law.

(f) The Contractor must mitigate the effect of a Change in Law if a Change in Law occurs.

(g) The Council may direct the Contractor to provide additional information in the Change in Law Notice, in which case, the Contractor must re-submit its updated Change in Law Notice within 7 days and clause 4.1.3(e) applies again.

(h) Except as expressly stated in this clause:

(1) the Council is not liable for, or in connection with, any Claim by the Contractor; and

(2) the Contractor is absolutely barred from making any Claim

arising out of, or in connection with, any change to any Law (including a Change in Law).

(i) If the Council becomes aware of a Change in Law, the Council may issue a change in Law Notice regarding that change in Law notwithstanding that the Contractor has not notified the Council of the Change in Law under this provision or otherwise. Upon receipt of a Change in Law Notice from the Council, the Contractor may:

(1) accept the Change in Law Notice, in which case, the Contractor must perform (or omit, as relevant) the Change in Law Services and clauses 4.1.3(e) will apply;

(2) amend the Change in Law Notice, in which case the Contractor must comply with the whole of this clause 4.1.3 as if it was submitting a new Change in Law Notice; or

(3) dispute that there has been a Change in Law, in which case, the dispute, and the determination of the effect of the Change in Law, are referred to clause 13 for resolution.

(j) The procedures outlined in this clause 4.1.3 do not in any way diminish the obligation of the Contractor under this agreement to minimise costs and to maximise savings in accordance with Good Industry Practice.

4.2 Contractor to Maintain Records

4.2.1 Records

The Contractor must maintain records in a format acceptable to and agreed by the Council of:

(a) All licences, approvals, consents, accreditations, orders, directions and instructions that relate to the performance of the Services, including details of renewal or expiry dates and any restrictions that might apply, and any variations to the Contract of notices issued under the Contract;

(b) Detailed audit results of collected Green Waste and/or Organic Waste contamination rates;

(c) Data describing the number of lifts undertaken and properties serviced, from time to time

(d) All complaints concerning the Contractor's Services by regulatory authorities, the Council and residents and the actions taken to rectify them;

(e) The results of any investigations made into complaints;

(f) Any accidents or other incidents where a possibility of injury to persons or property damage arose;

(g) Any breach of this Contract by the Contractor;

(h) Detailed information on all Green Waste and/or Organic Waste including the weight of all loads delivered each day to the Processing Facility and the registration number for the Collection Vehicle which delivered each load

(i) All receipts from disposal facilities including details of any NSW Government Levies paid by the Contractor;

(j) All weighbridge dockets from disposal facilities for any given month;

(k) Implementation of the Quality Plan, Environmental Management Plan, Education Plan, Industrial Relations and Workforce Plan, Emergency Plan and OH&S Management System; and

(l) Any other information reasonably requested by the Supervising Officer.

4.2.2 Time Limits for Record Keeping

All records in this Clause must be kept by the Contractor in accordance with requirements of the State Records Authority of New South Wales. The Contractor may hand over storage of records to LMCC at the end of the Contract.

4.2.3 Council Access to Records

(a) During the performance of this Contract, the Contractor shall keep and maintain records as outlined in Clause 4.2.1 and Clause 4.2.2 and permit the Supervising Officer or any person authorised by the Supervising Officer access to its premises and access to any of such records.

(b) The Contractor shall ensure that the provisions of subcontracts provide the Supervising Officer or any delegate or person authorised by the Supervising Officer with at least the same level of access to subcontractors' premises, and to records and accounts in connection with, relevant to, or impacting on, the performance of work under the subcontracts as is required for the Contractor under this Clause 4.2.

(c) The Supervising Officer shall comply with, and shall require any delegates or person authorised by the Supervising Officer to comply with, any reasonable Contractor or subcontractor safety and security requirements or codes of behaviour for the premises.

4.3 Reports

The Contractor must:

(a) deliver a report, in a format approved by the Supervising Officer, on the records it is required to keep under clause 4.2.1 to the Supervising Officer monthly;

(b) if directed by the Supervising Officer provide some or all of the data contained in the report to the Supervising Officer on a computer disc in a spreadsheet or database package nominated by the Supervising Officer; and

(c) make the records available on demand for inspection by the Supervising Officer or a person nominated by the Supervising Officer. If directed by the Supervising Officer, the Contractor must prepare a report on any issue

arising from the records within any reasonable period specified by the Supervising Officer.

4.4 Contractor to Act in Support of Council's Obligations

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

Where the Council makes a direction under Clause 4.4, up to fifty two (52) hours per calendar year of Contractors' staff time is to be available at no charge to the Council in total under this Clause and Clause 5.4. Where Council requires additional time by Contractors' staff the Contractor is to provide a diary of time spent and may recover staff costs from Council at a fixed rate of that person's hourly where hourly paid or at the rate of 1/1200 of annual base salary per hour where that person is on salary.

4.5 Confidentiality and the Media

4.5.1 Confidential Information

Where in connection with this Contract, Confidential Information is provided to or produced by a party, that party shall ensure that any person receiving or producing the information protects the confidential nature of the information except:

(a) where disclosure of the information is required by law or statutory duties; or

(b) to the extent that the Council would be prevented from exercising its Intellectual Property rights under this Contract.

4.5.2 Disclosure of Confidential Information

(a) Where it is necessary to disclose Confidential Information to a third party, other than a legal advisor or for a purpose listed in Clause 4.5.1, the Party wishing to make the disclosure must obtain the written consent of the other party to the Contract.

(b) The Contractor shall not, in marking information supplied to the Council, misuse the term "Confidential". The marking of information as "Confidential" does not affect the legal nature and character of the information.

4.5.3 The Media

The Contractor must:

(a) Not either itself or through its employees, agents or sub-contractors make any statement to the media on behalf of the Council or in relation to the performance of the Contract;

(b) Refer all enquiries from the media relating to the performance of the Contract to the Supervising Officer or to the media officer nominated by the Supervising Officer; and

(c) Notify the Supervising Officer immediately of any event arising in the course of performing the Contract, which may receive media attention.

4.6 Use of the Council Name or Logo

The Contractor must not use the Council logo without the prior written consent of the Supervising Officer, which may be given subject to such conditions as the Supervising Officer considers appropriate.

Likewise the Council must not use the Contractor's logo without the prior written consent of the Contractor, which may be given subject to such conditions as the Contractor considers appropriate.

5. CONTRACTOR'S EMPLOYEES

5.1 Generally

(a) The Contractor must provide a sufficient number of employees with adequate skills, training and qualifications to carry out promptly and effectively the Services under this Contract and otherwise to perform the obligations of the Contractor under this Contract to the satisfaction of the Council.

(b) The Contractor must observe all laws and Industrial Instruments, applicable to the Contractor's employees. The Contractor's employees will not be considered to be the Council's employees.

(c) The Contractor must provide upon request by Council or the Supervising Officer evidence of any enterprise or industrial awards in place with relevant unions or groups of employees that cover employees performing Services under this Contract.

(d) The Contractor must comply with all anti-discrimination laws and ensure its employees do not breach those laws.

(e) When required by the Council the Contractor must provide evidence and records to demonstrate it is complying with the requirements of this Clause 5.1.

5.2 Staff Presentation and Identification

(a) The Contractor must ensure that all staff and subcontractors performing the Services are appropriately attired and wear name badges.

(b) The Council may direct the Contractor that certain uniforms, clothing, safety equipment and name badges may or may not be used.

(c) The Council may direct the Contractor as to the standard of cleanliness, repair and presentation of uniforms, clothing, safety equipment that is acceptable.

(d) The Contractor must comply with any directions given under Clause 5.2 (b) and (c).

5.3 Conduct of Employees

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

(a) Conduct themselves in a friendly, courteous, civil and inoffensive manner;

(b) Carry out their duties at all times with as little inconvenience and disturbance to others as possible, and without causing any nuisance;

(c) Conduct themselves in accordance with the Council's Code of Conduct and any Act or regulation and report to the Council any conduct which attempts to induce any public official to act corruptly in the administration of this Contract;

(d) Collect ONLY Materials specified under the Contract. The collection of additional materials for money or other consideration is prohibited without the written consent of the Council. If the Contractor's employees are found collecting such materials the Council may, in addition to any other remedies, recover the estimated costs of disposal and/or reprocessing such materials for the period which such materials are shown to have been collected or in the absence of clear evidence of the period from the beginning of the Contract.

5.4 Legal Proceedings

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

Where the Council makes a request under this Clause, up to fifty two (52) hours per calendar year of Contractors' staff time is to be available at no charge to the Council in total under this Clause and Clause 4.4. Where the Council requires additional time by Contractors' staff the Contractor is to provide a diary of time spent and may recover staff costs from the Council at a fixed rate of that person's hourly rate where hourly paid or at the rate of 1/1200 of annual base salary per hour where that person is on salary.

5.5 Removal of Employees

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

5.6 Counselling of Employees

The Contractor shall, when directed by notice from the Supervising Officer, be required to refer at the Contractor's cost any employee or subcontractor engaged in the performance of the Contract to independent counselling or training in relation to addressing any actions of misconduct or poor performance in the carrying out of the Services, where in the opinion of the Council those actions include a failure to fulfil the requirements for the Conduct of Employees detailed in Clause 5.3 without prejudice to the Council's rights under Clause 5.5.

5.7 Industrial Disputes and Interruptions to Service

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

If any industrial dispute results in the cessation or interruption of any part of the Services for more than two (2) Working Days the Council may have the Services carried out by other persons and, without prejudice to any other right or remedy available to it, call upon the Contractor to reimburse it for any cost or expense in carrying out any such work or deduct the amount of any such cost or expense from money payable under this Contract to the Contractor. The Council will act reasonably and consult with the Contractor's representative before exercising its rights to have the Services carried out by other persons.

5.8 Indemnity

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

5.9 Payroll Tax

The Contractor must:

(a) Pay any payroll tax and compulsory superannuation contributions in respect of wages or salaries paid to the Contractor's employees; and,

(b) Ensure that all subcontractors pay any payroll tax and compulsory superannuation contributions in respect of wages or salaries paid to the subcontractor's employees.

5.10 Payment of Employees and Subcontractors

The Contractor warrants that it will pay its subcontractors and employees in a timely fashion and in accordance with any applicable Industrial Instrument and/or statute.

5.11 Government Authorities and Termination

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

(a) Recommend the Contractor vary the terms of this Contract in accordance with Clause 3; or,

(b) Terminate this Contract by notice in writing to the Contractor and upon delivery of such notice this Contract will be cancelled and no Party will be liable to any other Party for any costs, damages, compensation, charges or expenses suffered or incurred by any Party arising out of such termination. However, such termination will be without prejudice to the rights of the Council and the Contractor in respect of any breach or default under this Contract occurring prior to such termination.

6. SUBCONTRACTING

6.1 Generally

(a) Any assignment or subcontracting will not be binding on the Council unless it is done in accordance with this Clause 6.

(b) The Contractor will not, except pursuant to Clause 6.2, subcontract or assign the whole or any portion of its rights and obligations under this Contract, and no subcontractors or assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council unless the relevant subcontract or assignment has received consent pursuant to Clause 6.2.

6.2 Subcontracting and Assigning

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

6.3 Transfer From Existing Contractual Arrangements

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

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

6.4 Contractor to Provide Information

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

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

6.5 Contractor Still to be Liable

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

6.6 Change in Beneficial Ownership

For the purpose of this Clause 6, if the Contractor is a company, an assignment of this Contract will include any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor. This Clause does not apply if the Contractor is a public company listed on an Australian or overseas Stock Exchange or a subsidiary of any such company.

7. CONTRACTOR'S VEHICLES, PLANT AND EQUIPMENT

7.1 General

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

(a) comply with all applicable Acts, regulations and by-laws; and,
(b) are suitable for the purpose for which they are to be used;
(c) are maintained in good repair and condition; and
(d) are safe and without risks to health.

7.2 Deficient Vehicles, Plant and Equipment

7.2.1 Notice of Deficiency

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

(a) specifying the deficiency;
(b) stating a date by which the deficiency is to be remedied; and

(i) stating that the item of the Contractor's Vehicles, Plant and Equipment is not to be further used in the performance of the Services or otherwise in connection with this Contract until the deficiency has been remedied; or

(ii) stating that the item of the Contractor's Vehicles, Plant and Equipment may only be used subject to specified conditions until the deficiency has been remedied;

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

7.2.2 Reasons for Direction

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

8. PROPERTY

8.1 Damage to Property

The Contractor will immediately remedy any damage done by its employees, agents or subcontractors to any property of the Council or any other person. Should the Contractor fail to do so, the Council may effect the necessary repairs or pay reasonable compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any reasonable compensation will be paid on demand by the Contractor to the Council or may be deducted from any moneys due or becoming due to the Contractor under this Contract, at the option of the Council.

8.2 Damage to Mobile Garbage Bins Used in this Contract

Where the Contractor damages Mobile Garbage Bins it will repair at its cost the Mobile Garbage Bins. Where the Council is dissatisfied with a repair the Council may direct the Contractor to carry out a further repair or replace the damaged Mobile Garbage Bin at the Contractor's cost. This will preferably be done at the time of damage occurring.

8.3 Cost of Damage

The Council will determine the cost of effecting any necessary repairs or the amount of reasonable compensation to be paid to the owner of any property in accordance with Clause 8.1, which may include any professional fees and costs that are deemed by the Council to be attributable to the application of Clause 8.1.

8.4 Independent Determination

Where the costs determined under Clause 8.1 exceed ten thousand dollars ($10,000) the Contractor may request an independent expert review of the costs. The costs of such review are to be added to the amount of the claim for costs of damage. If, after obtaining an independent expert review of the costs, the Parties cannot agree on an amount to satisfy Clause 8.1, the Contractor may commence dispute resolution procedures under this Contract.

8.5 Independent Expert

For the purposes of Clause 8.4 an "independent expert" shall be a person agreed upon by the Council and the Contractor as having the skills necessary to carry out the review. If no such agreement is reached within 21 days of the Contractor's request for such review, either the Council or the Contractor may request the President for the time being of the Law Society of New South Wales to nominate the independent expert and the expert so nominated shall be appointed to carry out the review.

9. INSURANCE, RISK, RESPONSIBILITY AND INDEMNITY

9.1 Workers' Compensation

9.1.1 Obligation to Insure

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

9.1.2 Indemnity

The Contractor will indemnify the Council from any liability, costs, penalties or additional premiums the Contractor or its subcontractors may incur under the provisions of the *Workers Compensation Act 1987* arising from any aspect of the Services to be performed by the Contractor under this Contract.

9.2 Public Liability Insurance

The Contractor must hold current public liability insurance ("the Public Liability Policy") in the names of the Contractor, its subcontractors, the Council and the Supervising Officer, providing coverage for an amount of at least that stated in Item 7 of the Annexure. The Public Liability Policy will be effected with an insurer approved by the Council which approval will not be unreasonably withheld. The Public Liability Policy will cover such risks and be subject only to such conditions and exclusions as are approved by the Council. Nothing in the clause shall prevent the Contractor effecting the required insurance pursuant to a "Group" or "Global" policy which covers the risk specified in Item 7 of the Annexure and notes the interest of the Council as a principal and includes a principal's liability clause, cross liability clause, and hold harmless clause.

9.3 Vehicles, Plant and Equipment Insurance

The Contractor must insure its Vehicles, Plant and Equipment in respect of any liability as required by law and also in respect of any injury or damage to person or property as may be caused by the negligent use of any such Vehicles, Plant or Equipment in the course of performing the Services. Despite anything else in this clause the minimum third party liability damage cover must be not less than $30 million. Such policy must be endorsed to include a principal's liability clause, cross liability clause and hold harmless clause.

9.4 Bi-Annual Review of Insurance

At least once in every two (2) years after the Contract Commencement Date the Council and the Contractor together with such insurance advisors, on their own behalf and at their cost, as any Party may require, must meet and review the insurances held in respect of the Contract. All insurances under this provision must be taken out and maintained in a form and with reputable and financially sound insurers approved by the Council, such approval not to be unreasonably withheld.

9.5 Proof of Insurance

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

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

9.6 Failure to Produce Proof of Insurance

If the Contractor, or a subcontractor, fails within ten (10) Business Days of receiving a request from the Council to produce evidence of compliance with insurance obligations required by this Contract or fails to effect or to keep in force any of the insurances required by this Contract to the satisfaction of the Council, the Council may effect and maintain the insurance and pay the premiums. The premium paid will be a debt due to the Council from the Contractor and the Council may refuse payment of any moneys due to the Contractor under this Contract until evidence of compliance with insurance obligations required by this Contract is produced by the Contractor to the satisfaction and approval of the Council. The rights given by this Clause 9 are in addition to any other right.

9.7 Indemnity

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

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

(b) The Contractor shall not be liable under Clause 9.7 (a) to indemnify the Council, its employees, representatives, officers and agents for the proportionate share of any actions, proceedings, liabilities, losses, damages, demands, claims, suits, fines and other penalties, costs, charges and expenses caused by the negligent act or omission of the Council, its employees, representatives, officers and agents.

9.8 Reimbursement by Contractor

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

9.9 Indemnities and Releases of Liability Continue

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

10. PAYMENTS

10.1 Payment Rates

The Council will pay the Contractor:

(a) the Lump Sum Bin Amount as and when the Contractor is required to pay an invoice for the manufacture, supply, delivery, assembly or distribution of the Mobile Garbage Bins with any remaining Lump Sum Bin Amount to be payed once all the Mobile Garbage Bins have been distributed by the Contractor; and

(b) the Service Rates that apply at the time for the other Services provided by the Contractor under this Contract.

10.2 Submission of Claims

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

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

10.3 Payment

(a) The Council will pay to the Contractor the invoiced amount within twenty five (25) Business Days of acceptance by the Council,

(b) The Council will accept the claim if it is certified by the Supervising Officer as being correct and subject to any conditions or adjustments notified by the Council to the Contractor.

10.4 Correction of Payments

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

When such adjustments occur the Contractor will provide invoices to Council to support any corrections within twenty (20) Business Days of being advised of them.

10.5 Interest on Overdue Payments

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

10.6 Provisional and Contingency Sums

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

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

10.7 Service Rates Reviews

A rise and fall condition shall apply to the Service Rates and the appropriate rise and fall adjustment shall be calculated as set out in Clauses 10.7 and 10.8 for the duration of the Contract unless by mutual agreement this basis is changed.

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

Such adjustments shall be made at three (3) monthly intervals on 1 July, 1 October, 1 January and 1 April in each year. The first such adjustment shall occur on the first of such dates which occurs at least three (3) months after the Services Commencement Date.

10.8 Calculation of Revised Service Rates

(a) For the purpose of calculating rise and fall amounts, the following formulae shall be used:

(i) Wages, Payroll Tax and Superannuation Guarantee Levy Rise and Fall

$$\mathbf{R1} = \frac{\mathbf{(A - B)\,F}}{\mathbf{B}}$$

(ii) Fuels and Lubricants Rise and Fall

$$\mathbf{R2} = \frac{\mathbf{(C - D)\,F}}{\mathbf{D}}$$

(iii) Tyres, Workers Compensation Insurance, Vehicle Registration and Insurance and other materials Rise and Fall

$$\mathbf{R3} = \frac{\mathbf{(E - G)\,F}}{\mathbf{G}}$$

(iv) Costs and Profit Return Rise and Fall

$$\mathbf{R4} = \frac{\mathbf{(E - G)\,F}}{\mathbf{G}}$$

Where:

R1, **R2**, **R3** and **R4** = Rise and Fall factor amounts as decimals.

F = The Rise and Fall percentage factor nominated by the Contractor in the Contractor's tender to perform the Services as specified in Item 11 in the Annexure as being the proportion of the Service Rates applicable to that particular segment, applied as a percentage and entered as a decimal.

A = A1 (1+ A2 + A3). Where A1 is the amount specified in the *Waste Award* 2010- Clause 19 Classification Level 6 as first published for the quarter for which a Rise and Fall claim is being made. A2 is the payroll tax expressed as a percentage of A1 and entered in the equation as a decimal, A3 is the Superannuation Guarantee Levy expressed as a percentage of A1 and entered in the equation as a decimal.

B = B1 (1+ B2 + B3). Where B1 is the amount specified in the *Waste Award 2010* - Clause 19 Classification Level 6 as first published for the December 2011 quarter. B2 is the payroll tax expressed as a percentage of B1 and entered in the equation as a decimal, B3 is the Superannuation Guarantee Levy expressed as a percentage of B1 and entered in the equation as a decimal.

C = The net average daily Terminal Gate Price for Sydney for diesel fuel ("TGP") for the 90 days prior to the commencement of the quarter for which the Rise or Fall is to be determined less the

current daily diesel fuel rebate, if any, applicable to the Contractor. The TGP for Sydney for diesel fuel is the price so published on the Australian Institute of Petroleum's website www.aip.com.au. The Contractor agrees that a rise and fall adjustment will not be made with respect to any reduction in the diesel fuel rebate in the 2012/2013 financial year.

D = The TGP for the 90 days prior to the Closing Date for Tenders specified in Item 13 of the Annexure.

E = The index number allocated by the Australian Bureau of Statistics as the Consumer Price Index: All Groups Sydney as published by the aforesaid Bureau for the quarter for which a Rise and Fall claim is being made.

G = The index number allocated by the Australian Bureau of Statistics as the Consumer Price Index: All Groups Sydney as published by the aforesaid Bureau for the December 2011 quarter.

(b) To calculate the actual amount to be applied as Rise and Fall, the Council shall apply the following formula:

ARF = **Rf** x **T** x **N**

Where:

ARF = The actual Rise or Fall in the Service Rate expressed in dollars.

Rf = The total of R1, R2, R3 and R4 as calculated pursuant to subparagraph (a) expressed to six decimal places.

T = The Service Rate for each Service-Entitled Premises.

N = The number of Service-Entitled Premises for which the relevant services are rendered.

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

If the *Waste Management Award* 2010 ceases to exist for any reason then the parties shall select some similar award for the purposes of the formula in Clause 10.8 and in the event that they cannot agree on a selection then the matter shall be resolved pursuant to Clause 13 of the Conditions of Contract.

10.9 Periods of Non-Performance

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

10.10 Certification of Payments

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

(a) It has carried out a reported number of Services to Service-Entitled Premises, measured by specified measuring equipment

(b) It has paid all wages and allowances owing to any of its employees in respect of the work claimed for;

(c) It has paid all amounts due to any person, including any relevant government taxes, levies or charges, in respect of the work claimed for to which it has subcontracted any of its rights and obligations under this Contract;

(d) It has made any payments that it is required to make in respect of the Contractor's Vehicles, Plant and Equipment and the Facilities up to the end of the period to which the claim applies;

(e) It has paid all superannuation components payable.

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

10.11 Power to Pay Employees and Subcontractors

If the Supervising Officer has evidence that:

(a) Any wages or allowances due to the Contractor's employees are unpaid;

(b) The Contractor has failed to pay any amounts due to any party to which it has subcontracted any of its rights and obligations under this Contact; or,

(c) The Contractor has failed to make any payment that it is required to make in respect of its Vehicles, Plant and Equipment or facilities,

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

Nothing in this Clause will in any way oblige the Council to make any payment to any of the Contractor's employees or subcontractors or any such third parties. Any payments that may be made by the Council under this Clause will be deemed to have been made on behalf of the Contractor. The parties acknowledge that Federal or State legislation may require the Council to make payments or deductions on behalf of the Contractor. This payment or deduction does not alter the relationship between the parties under this Contract, namely, there is no employment relationship between the Council and the Contractor or the Council and any persons providing the Services under this Contract on behalf of the Contractor.

10.12 Payments if Council exercises options to extend the Contract Term

10.12.1 Applicability of clause

This clause 10.12 applies if the Council exercises either or both of its options to extend the Contract Term pursuant to clause 2.2.3.

10.12.2 Service Rates to apply

Despite anything else in this Contract the Service Rates which will apply for the provision of the Services commencing on the first day of the first extension period arising from the

exercise of the Council's option to extend the Contract Term shall be the amount specified in Item 12 of the Annexure. That amount shall be subject to the Rise and Fall provisions of this Contract and shall carry through to the second option period if Council exercises its second option to extend the Contract Term.

10.12.3 For the avoidance of doubt:

(a) The amount specified in Item 12 of the Annexure is in dollars as at the Closing Date for Tenders;

(b) The actual Service Rates to be paid by the Council will be the amount specified in Item 12 of the Annexure varied in accordance with clauses 10.7 and 10.8;

(c) The percentages for Item F in the formula in clause 10.8(a) will not change for the calculation of Rise and Fall to the Service Rates specified in Item 12 in the Annexure;

(d) The relevant quarter to be used for Item E in the formula in clause 10.8(a) for the initial Service Rates for the first extension period is the quarter which last ended prior to the commencement of the first extension period.

11. DEFAULTS AND TERMINATION

11.1 Default by Contractor

11.1.1 Council to Give Notice

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

Such notice:

(a) will signify that it is a notice under this Clause; and,

(b) will specify the default, refusal or neglect on the part of the Contractor upon which it is based.

11.1.2 Council's powers

If, within ten (10) Business Days after receipt of the notice, the Contractor fails to demonstrate to the Council's satisfaction that the default will be rectified, or the order, instruction, direction or determination will be carried out or given effect to and this Contract satisfactorily performed, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:

(a) treat the matter as a dispute under Clause 13 of this Contract;

(b) suspend all payments under this Contract until the Contract dispute is resolved;

(c) terminate or take over this Contract including the use of the Contractor's plant.

The suspension of payment under this Clause by the Council, will not in any way affect the continuing obligations of the Contractor under this Contract. Suspension of payment may be

continued until the default has been rectified or the order, instruction, direction or determination is carried out or given effect to.

11.2 Payments on Termination

11.2.1 Limit of Payments

In the event of termination of this Contract under Clauses 11.1 or 11.3 or as a result of Force Majeure, the Council will be liable to make payments to the Contractor only in respect of any portion of the Services which have been properly executed and not paid for at the date of termination.

11.2.2 Payment for Losses and Expenses

In the event of a termination under Clauses 11.1 or 11.3, the Contractor must pay to the Council the amount of all costs, losses and expenses incurred by the Council by reason of or arising from the termination including but not limited to all professional fees, Council's costs and costs of making alternative arrangements for provision of the Services.

11.2.3 Council's Determination

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

11.2.4 The Council may Retain Moneys

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

11.3 Insolvency of Contractor

If:

(a) the Contractor (being a natural person) becomes bankrupt;

(b) the Contractor (being a natural person) files or is served with a petition in bankruptcy;

(c) the Contractor (being a natural person) is served with a bankruptcy notice;

(d) the Contractor makes an assignment for the benefit of its creditors;

(e) the Contractor informs the Council that the Contractor is insolvent or unable to pay its debts;

(f) a meeting of creditors of the Contractor is called with a view to entering into a scheme of arrangement or composition with creditors or placing the Contractor under official management;

(g) the Contractor enters a scheme of arrangement or composition with creditors;

(h) the Contractor is placed under administration;

(i) a receiver or receiver and manager or agent for any creditor is appointed to take possession of any asset or carry on the whole or any part of the Contractor's business;

(j) a resolution is passed for the winding up of the Contractor;

(k) an application is made to a Court for the winding up of the Contractor and such application is not dismissed within twenty (20) Business Days of such application being filed;

(l) a winding up order is made in respect of the Contractor;

(m) execution is levied against the Contractor by any person;

(n) a liquidator or provisional liquidator is appointed to the Contractor,

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

11.4 Termination of this Contract by the Contractor

11.4.1 Contractor's Right to Terminate

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

(a) dispute under this Contract;

(b) any legal proceedings commenced in respect of this Contract;

(c) adjustment or conditional approval by the Council within ten (10) Business Days of delivery of a claim for payment,

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

11.4.2 Payments upon Termination

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

(a) Any portion of the Services which have been properly executed and not paid for at the date of termination; and,

(b) The cost of materials or goods properly ordered for the performance of the Services by the Contractor for which the Contractor has paid, or for which the Contractor is legally bound to pay (excluding the cost of the Mobile Garbage Bins which has been paid for by the Council via the Lump Sum Bin Amount), provided that such goods and materials will, on the making of the payment by the Council, become the property of the Council and be transferred to the Council's ownership and possession by the Contractor and provided further that these costs are limited to the value of the goods and materials transferred to the Council or to the cost of such goods paid by the Contractor whichever is the lesser.

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

12. SECURITY

12.1 Performance Security

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

12.2 Amount and Form of the Performance Security

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

12.3 Recourse to the Performance Security

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

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

12.4 Return of the Performance Security

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

12.5 Replacement or “top up” of the Performance Security

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

12.6 Replacement Performance Security

Without limiting Clause 12.4, where the expiry of any Performance Security precedes the expiry of this Contract, the Contractor agrees that it will not, less than twenty (20) Business Days prior to the expiry of any Performance Security:

(a) procure the extension of the expiry date under that Performance Security by one (1) year or such lesser period as determined by the Council and provide to the Council a letter duly executed by the relevant bank or similar institution confirming such extension; or

(b) procure the issue to the Council of a replacement Performance Security which is for a term of at least one (1) year or such lesser period as determined by the Council and in the form and amount specified in Clause 12.2 and otherwise satisfies and is governed by the terms and requirements of this Contract for the provision of the Performance Security it is replacing.

In addition to any other right of the Council to draw on the Performance Security, the Council may make a drawing on the Performance Security if the obligation to provide a replacement Performance Security pursuant to this Clause 12.6 is not satisfied by ten (10) Business Days prior to the expiry of that Performance Security, in which event the Council may have recourse to the full face value of that Performance Security and hold that amount as Performance Security, in accordance with this Contract.

12.7 Appointment as Attorney

The Contractor irrevocably appoints the Council as its attorney to do any acts and execute any documents that may be necessary to ensure payment of the whole or part of the Performance Security to the Council under Clause 12.3.

12.8 Council's Right to Terminate

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

13. DISPUTE RESOLUTION

13.1 Resolution of Dispute

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

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

Nothing in this Clause 13 prevents:

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

(b) a Party terminating this Contract pursuant to any Clause of this Contract;

(c) the Parties meeting at any time to seek to resolve a dispute.

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

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

13.2 Notice of Dispute

If the Council or the Contractor becomes aware of a dispute between Council and the Contractor, that Party must within two (2) Business Days of becoming aware of the dispute notify the other Party of the existence and nature of the dispute by serving on the other Party a notice setting out detailed particulars of the dispute including, if appropriate, references to documents and provisions of the Contract which relate to the dispute ("Notice of Dispute").

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

13.3 Further Information

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

13.4 Negotiation

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

(a) One or more representatives of each Party in dispute will meet, within ten (10) Business Days of the receipt by a Party of a Notice of Dispute or the further information, if any, required pursuant to Clause 13.3 (whichever be the later), to discuss and attempt to resolve the dispute; and,

(b) If those representatives do not resolve the dispute within five (5) Business Days of their first meeting then within ten (10) Business Days of that first meeting the General Managers of the Parties in dispute must meet to discuss and attempt to resolve the dispute.

13.5 Appointment of Mediator

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

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

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

13.6 Initial Mediation Meeting

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

(a) Identify the subject matter of the dispute;

(b) Identify the provisions of this Contract relevant to the dispute;

(c) Discuss each other’s position in relation to the dispute;

(d) Listen to any comments made by the mediator; and,

(e) Attempt to resolve the dispute by mutual agreement.

13.7 Mediation

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

With the consent of the Parties in dispute, the mediator may appoint a neutral expert of the mediator’s choice to provide assistance in relation to the mediation.

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

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

13.8 Arbitration or Litigation

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

(a) any Party in dispute may terminate the mediation proceedings by written notice to the other Party;

(b) that written notice must identify the matters that are still in dispute; and,

(c) the service of that notice is a condition precedent to the commencement of arbitration or litigation proceedings.

13.9 Time Limits

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

13.10 Interface with the Waste Processing Contractor

If a dispute relates to a matter that is relevant to or will or may impact upon the Processing Facility, or the collection and delivery of material to the Processing Facility, a representative of the Contractor operating the Processing Facility may be invited to attend dispute resolution meetings and be involved in the dispute resolution process to provide information and comments on the matter in Dispute.

13.11 Continuing Provision of Services

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

14. TAXES AND TAX PAYMENTS

14.1 Contract Sum Includes All Tax

The Service Rates include all sales tax, excise duties, consumption tax, value added tax (but not GST) and other like imposts or taxes presently imposed.

14.2 The Council May Recover Excess Tax Payments

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

(a) any tax or impost paid by the Contractor and charged to the Council for the Services where an exemption concession or rebate applies; and,

(b) any tax or impost incorporated into payments made by the Council under the Contract which may be subsequently recovered by the Contractor from the Australian Taxation Office or any other person.

14.3 Taxable Supply

It is expressly agreed that the recipient of any taxable supply under this Contract must pay in addition to the agreed consideration for such supply the amount of any GST payable by the supplier of such taxable supply. The supplier of such taxable supply must provide the recipient of such supply with a tax invoice. The expressions “taxable supply”, “tax invoice”, “supplier” and “recipient” each have the meaning attributable to them in *A New Tax System (Goods and Services Tax) Act 1999 (Commonwealth).*

14.4 Survival of Clause

This Clause 14 survives termination or expiration of the Contract.

15. FORCE MAJEURE (EVENTS AND INTERRUPTIONS OF SERVICES)

15.1 Claim of Force Majeure

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

(a) Details of the Force Majeure Event;

(b) Details of the obligations affected;

(c) Details of the action that the Party has taken to remedy the situation and details of the action that the Party proposes to take to remedy the situation;

(d) An estimate of the time during which the Party will be unable to carry out its obligations due to the Force Majeure Event;

(e) An estimate of the costs the Party will incur to remedy the situation and the proposed funding arrangements; and,

(f) Details of all insurance monies which the Party will be able to rely on in making good damage caused by the Force Majeure Event.

15.2 Suspension of Rights and Obligations

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

15.3 Provision of Further Information

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

15.4 Duty to Mitigate

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

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

15.5 End of Period of Force Majeure

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

15.6 Termination after Extended Force Majeure

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

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

15.7 Interruption of Service

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

16. ACKNOWLEDGMENT

The Contractor acknowledges that:

(a) it has relied on its own enquiries in preparing its Tender; and,

(b) this Contract constitutes the entire agreement between the Council and the Contractor.

17. STAMP DUTY AND COSTS

(a) The Contractor must pay all stamp duty on or arising in connection with this Contract and any other related documentation.

(b) Each Party will bear its own legal and other costs and expenses arising directly or indirectly with respect to the preparation, execution, completion and performance of this Contract and any other related documentation.

18. CUMULATIVE RIGHTS

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

19. FURTHER ASSURANCE

19.1 Further Documents

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

19.2 Council's Statutory Functions

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

20. GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009

20.1 Access to Information

(1) The Contractor must, within seven (7) days of receiving a written request by the Council, provide the Council with access to the following information contained in records held by the Contractor:

(a) information relating directly to the performance of the Services provided to the Council by the Contractor pursuant to this Contract;

(b) information collected by the Contractor from members of the public to whom it provides, or offers to provide, the Services; and

(c) information received by the Contractor from the Council to enable it to provide the Services pursuant to this Contract.

(2) For the purposes of sub-clause (1), information to be provided to the Council does not include:

(a) information that discloses or would tend to disclose the Contractor's financing arrangements, financial modelling, cost structure or profit margins; or

(b) information that the Contractor is prohibited from disclosing to the Council by provision made by or under any Act of the Parliament of NSW or the Commonwealth; or

(c) information that, if disclosed to the Council, could reasonably be expected to place the Contractor at a substantial commercial disadvantage in relation to the Council, whether at present or in the future.

(3) The Contractor will provide copies of any of the information in sub-clause (1) as requested by the Council at the Contractor's own expense.

(4) Any failure by the Contractor to comply with any request pursuant to sub-clauses (1) or (3) will be considered a breach of an essential term of this Contract and will allow the Council to terminate the Contract by giving notice in writing of its intention so to do with the termination to take effect seven (7) days after receipt of the notice. Once the Contractor receives the notice, if it fails to remedy the breach within the seven (7) day period to the satisfaction of the Council, then the termination will take effect seven (7) days after receipt of the notice.

(5) This clause is included in this Contract to facilitate the Council's obligations under s.121 of the Government Information (Public Access) Act 2009 (NSW) ("GIPA Act").

20.2 Consultation

(1) The Council will take reasonable steps to consult with the Contractor before providing any person with access to information relating to this Contract in response to an application under the GIPA Act if it appears that:

(a) the information sought to be accessed

(i) includes personal information about the Contractor, its officers or its employees; or

(ii) concerns the Contractor's business, commercial, professional or financial interests; or

(iii) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Contractor; or

(iv) concerns the affairs of a Government of the Commonwealth or a State of the Commonwealth and the Contractor is that Government

(b) the Contractor may reasonably be expected to have concerns about the disclosure of the information; and

(c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.

(2) If, following consultation between the Council and the Contractor, the Contractor objects to disclosure of some or all of the information, the Contractor must provide details of any such objection (including the information objected to and the reasons for any such objection) in writing within five (5) days of the conclusion of the consultation process.

(3) In determining whether there is an overriding public interest against disclosure of the information, the Council will take into account any objection received from the Contractor.

(4) If the Contractor objects to the disclosure of some or all of the information and the Council nonetheless decides to release the information, the Council must not provide such access until it has given the Contractor notice of the Council's decision and notice of the Contractor's right to have that decision reviewed.

(5) Where the Council has given notice to the Contractor in accordance with sub-clause (4), the Council must not provide access to the information:

(a) before the period for applying for review of the decision under Pt 5 of the GIPA Act has expired; or

(b) where any review of the decision duly applied for is pending.

(6) The reference in sub-clause 5(a) to the period for applying for review of the decision under Pt 5 of the GIPA Act does not include the period that may be available by way of extension of time to applying for review.

(7) This clause is included in this Contract to inform the Contractor of the Council's obligations under s.54 of the GIPA Act and the Contractor's rights under that section.

21. SPECIAL CONDITIONS

The Parties have agreed to adopt the special conditions, if any, set forth in the Schedule.

SCHEDULE

Specification of Services

SUBCONTRACTORS STATEMENT RE WORKERS COMP ETC

New South Wales

SUBCONTRACTOR'S STATEMENT

REGARDING WORKER'S COMPENSATION, PAYROLL TAX AND REMUNERATION (Note1 – see back of form)

For the purposes of this Statement a "subcontractor" is a person (or other legal entity) that has entered into a contract with a "principal contractor" to carry out work.

This Statement must be signed by a "subcontractor" (or by a person who is authorised, or held out as being authorised, to sign the statement by the subcontractor) referred to in any of s175B *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007*, and s127 *Industrial Relations Act 1996* where the "subcontractor" has employed or engaged workers or subcontractors during the period of the contract to which the form applies under the relevant Act(s). The signed Statement is to be submitted to the relevant principal contractor.

SUBCONTRACTOR'S STATEMENT **(Refer to the back of this form for Notes, period of Statement retention, and Offences under various Acts.**

Subcontractor: ..... ABN: .....
(Business name)

of .....
(Address of subcontractor)

has entered into a contract with ..... ABN:.....
(Business name of principal contractor) **(Note 2)**

Contract number/identifier ..... **(Note 3)**

This Statement applies for work between: ...../...../..... and ...../...../..... inclusive, **(Note 4)**

subject of the payment claim dated: ...../...../..... **(Note 5)**

I, ... a Director or a person authorised by the Subcontractor on whose behalf this declaration is made, hereby declare that I am in a position to know the truth of the matters which are contained in this Subcontractor's Statement and declare the following to the best of my knowledge and belief:

(a) The abovementioned Subcontractor has either employed or engaged workers or subcontractors during the above period of this contract. Tick **[ ]** if true and comply with **(b)** to **(g)** below, as applicable. If it is not the case that workers or subcontractors are involved or you are an exempt employer for workers compensation purposes tick **[ ]** and only complete **(f)** and **(g)** below. You must tick one box. **(Note 6)**

(b) All workers compensation insurance premiums payable by the Subcontractor in respect of the work done under the contract have been paid. The Certificate of Currency for that insurance is attached and is dated ...../...../..... **(Note 7)**

(c) All remuneration payable to relevant employees for work under the contract for the above period has been paid. **(Note 8)**

(d) Where the Subcontractor is required to be registered as an employer under the *Payroll Tax Act 2007*, the Subcontractor has paid all payroll tax due in respect of employees who performed work under the contract, as required at the date of this Subcontractor's Statement. **(Note 9)**

(e) Where the Subcontractor is also a principal contractor in connection with the work, the Subcontractor has in its capacity of principal contractor been given a written Subcontractor's Statement by its subcontractor(s) in connection with that work for the period stated above. **(Note 10)**

(f) Signature ..... Full name.....

(g) Position/Title ..... Date ...../...../.....

NOTE: *Where required above, this Statement must be accompanied by the relevant Certificate of Currency to comply with section 175B of the Workers Compensation Act 1987.*

Notes

1. This form is prepared for the purpose of section 175B of the *Workers Compensation Act 1987*, Schedule 2 Part 5 *Payroll Tax Act 2007* and section 127 of the *Industrial Relation Act 1996*. If this form is completed in accordance with these provisions, a principal contractor is relieved of liability for workers compensation premiums, payroll tax and remuneration payable by the subcontractor.

   A principal contractor can be generally defined to include any person who has entered into a contract for the carrying out of work by another person (or other legal entity called ***the subcontractor***) and where employees of the subcontractor are engaged in carrying out the work which is in connection with the principal contractor's business.

2. For the purpose of this Subcontractor's Statement, a principal contractor is a person (or other legal entity), who has entered into a contract with another person (or other legal entity) referred to as the subcontractor, and employees/workers of that subcontractor will perform the work under contract. The work must be connected to the business undertaking of the principal contractor.

3. Provide the unique contract number, title, or other information that identifies the contract.

4. In order to meet the requirements of s127 *Industrial Relations Act 1996,* a statement in relation to remuneration must state the period to which the statement relates. For sequential Statements ensure that the dates provide continuous coverage.

   Section 127(6) of the *Industrial Relations Act 1996* defines remuneration *'as remuneration or other amounts payable to relevant employees by legislation, or under an industrial instrument, in connection with work done by the employees.'*

   Section 127(11) of the *Industrial Relations Act 1996* states *'to avoid doubt, this section extends to a principal contractor who is the owner or occupier of a building for the carrying out of work in connection with the building so long as the building is owned or occupied by the principal contractor in connection with a business undertaking of the principal contractor.'*

5. Provide the date of the most recent payment claim.

6. For Workers Compensation purposes an exempt employer is an employer who pays less than $7500 annually, who does not employ an apprentice or trainee and is not a member of a group.

7. In completing the Subcontractor's Statement, a subcontractor declares that workers compensation insurance premiums payable up to and including the date(s) on the Statement have been paid, and all premiums owing during the term of the contract will be paid.

8. In completing the Subcontractor's Statement, a subcontractor declares that all remuneration payable to relevant employees for work under the contract has been paid.

9. In completing the Subcontractor's Statement, a subcontractor declares that all payroll tax payable relating to the work undertaken has been paid.

10. It is important to note that a business could be both a subcontractor and a principal contractor, if a business 'in turn' engages subcontractors to carry out the work. If your business engages a subcontractor you are to also obtain Subcontractor's Statements from your subcontractors.

Statement Retention

The principal contractor receiving a Subcontractor's Statement must keep a copy of the Statement for the periods stated in the respective legislation. This is currently up to seven years.

Offences in respect of a false Statement

In terms of s127(8) of the Industrial Relations Act 1996, a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence if:

(a) the person is the subcontractor;
(b) the person is authorised by the subcontractor to give the statement on behalf of the subcontractor; or
(c) the person holds out or represents that the person is authorised by the subcontractor to give the statement on behalf of the subcontractor.

In terms of s175B of the *Workers Compensation Act* and clause 18 of Schedule 2 of the Payroll *Tax Act 2007* a person who gives the principal contractor a written statement knowing it to be false is guilty of an offence.

Further Information

For more information, visit the WorkCover website www.workcover.nsw.gov.au, Office of State Revenue website www.osr.nsw.gov.au , or Office of Industrial Relations, Department of Commerce website www.commerce.nsw.gov.au . Copies of the *Workers Compensation Act 1987*, the *Payroll Tax Act 2007* and the *Industrial Relations Act 1996* can be found at www.legislation.nsw.gov.au.

ANNEXURE

Item 1	The Council is: Lake Macquarie City Council of 126-138 Main Road Speers Point NSW 2284 | Box 1906 HRMC NSW 2310 The email address of the Council is:. council@lakemac.nsw.gov.au The Contractor is: Solo Waste Pty Ltd as trustee for the Solo Waste Trust T/As Solo Resources Recovery, of 25-27 Oakdale Road, Gateshead NSW 2290. The email address of the Contractor is: scott.geer@solo.com.au.
Item 2	Contract documents: • Conditions of Contract; • The Specification; • The Performance Security (if in the form of a Bank Guarantee); • The Tenderer's relevant Tender Return Schedules; • Council's letter of Acceptance of Tender; and • Any and all associated subcontracts managed pursuant to this Contract.
Item 3 (Clause 2.2.1)	Services Commencement Date: Approximately 1 January 2013 for new Green Bin delivery Approximately 1 April 2013 for Green Waste Collection Approximately 6 April 2015 for Organic Waste Collection
Item 4 (Clause 2.2.2)	Initial Contract Term: Nine (9) years. See also Clause 2.2.3 "Alignment of Contract with Organic Waste Processing Contract"
Item 4 (a) (Clause 2.2.3)	Minimum Extension Period: NIL
Item 4 (b) (Clause 2.2.3)	Maximum Extension Period: Eighteen years executed by two (2) extensions. See also Clause 2.2.3 "Alignment of Contract with Organic Waste Processing Contract"
Item 4 (c) (Clause 2.2.3)	Notice of Intention: One year.
Item 5 (Clause 2.3)	Fees, charges and costs for which the Contractor is not to be responsible: NONE.
Item 6 (Clause 2.5.2)	The hours each day when the Contractor's Representative is to be available. Between the hours of 8:00 a.m. and 5:00 p.m. Monday to Friday.
Item 7 (Clause 9.2)	The minimum amount of coverage under the Public Liability Policy is Twenty Million Dollars ($20,000,000) per event (or such other amount as the Council may nominate from time to time).

Item 8 (Clause 10.5)	Interest rate on overdue payments. The interest rate payable at the time of the default under the NSW Supreme Court Rules relating to interest on unpaid judgement debts.
Item 9 (Clause 12.2)	The amount of the Performance Security is: An amount determined by the Council as being equal (to the nearest $1,000 above) to five percent (5%) of the estimated total annual payments due to the Contractor under the Contract during its first year after the Services Commencement Date - Green. The Council may vary this amount annually to reflect variations to such payments and the bank guarantee must be replaced or a further bank guarantee provided by the Contractor to reflect any such variation.
Item 10A (Clause 10.1)	*Item 10A (Clause 10.1) has been redacted as it contains commercially confidential information. This information has been distributed to Councillors under separate cover.*
Item 12 (Clause 10.12.1)	Service Rates if Contract Term extended As set out in the Items 10A (A3), (B3) and 10C of this Annexure
Item 13 (Clause 10.8(a))	Closing Date for Tenders 2:00pm 3 April 2012
Item 14 (Clause 6.4 - Specification)	Service Rates - Special Events As set out in Item 10C of this Annexure
Item 15 (Clause 6.5 - Specification)	Service Rates - Temporary Collection Services Temporary collection services – Supply, delivery and collection of Mobile Garbage Bins will be $5.00 per Mobile Garbage Bin (where the Mobile Garbage Bin is delivered by a collection vehicle)

Executed as an Agreement

THE COMMON SEAL of LAKE MACQUARIE CITY COUNCIL

was hereunto affixed on the day of .....20 in pursuance of a resolution of the Council passed on the

day of 20

in the presence of:

Mayor	General Manager
Print name	Print name

EXECUTED BY

Solo Waste Pty Ltd as trustee for the Solo Waste Trust T/As Solo Resources Recovery

in accordance with s.127 of the Corporations Act 2001 (Cth):

Director/Secretary	Director
Print name	Print name