

# Annexure A

## WASTE DISPOSAL AGREEMENT

entered into between

—

**THE GARDEN ROUTE DISTRICT MUNICIPALITY (GRDM)**

and

**GEORGE MUNICIPALITY (GM)**

and

**MOSSEL BAY MUNICIPALITY (MBM)**

and

**BITOU MUNICIPALITY (BM)**

and

**KNYSNA MUNICIPALITY (KM)**

## **1. INTRODUCTION**

**WHEREAS** GRDM has the powers and functions in accordance with Section 84(1)(e) of the Local Government: Municipal Structures Act (Act 117 of 1998) for solid waste disposal sites in so far as it relates to:

- the determination of a waste disposal strategy;
- the regulation of waste disposal; and
- the establishment, operation and control of waste disposal sites, bulk waste transfer facilities and waste disposal facilities for more than one local municipality in the district;

**AND WHEREAS** GRDM is the owner of Farm 419, Mossel Bay, on which it will operate a regional waste disposal site, and GM, MBM, BM and KM will make use of such a solid waste disposal site and the waste disposal facilities thereon;

**AND WHEREAS** GRDM intends to establish and construct a Regional Waste Disposal Facility on Farm 419, Mossel Bay and whereas a licence has been granted to the GRDM in terms of the Waste Act under licence number 12/9/11/L1395/9, as per Annexure 'A'.

**NOW THEREFORE** the Parties hereto agree as follows:

## **2. DEFINITIONS**

2.1 In this Agreement, except in a context indicating that some other meaning is tended,

2.1.1 Administration Costs	means the reasonable costs required by the GRDM for the proper administration and management of the services for the project term (the Administration Services) calculated at 10% of the aggregate of the cost as per the ringfenced
----------------------------	--

cost centre/(s) as set out in clause 8.2 and 8.3,  
which will be revised on an annual basis;

**2.1.2 Agreement**

means this agreement entered into between the GRDM, GM, MBM, BM and KM and includes all annexures hereto;

**2.1.3 BM**

Means the Bitou Municipality or its successors in title duly established in terms of section 12 and 14 of the Local Government: Municipal Structures Act, 1998

**2.1.4. Business Day**

means any day of the week excluding Saturdays, Sundays and Public Holidays as determined in terms of the Public Holidays Act

**2.1.5. Change in Law**

means the promulgation, adoption, enactment or change in legislation, which occurs subsequent to the Effective Date and affects the construction, ownership, operation, use or maintenance of the Regional Waste Disposal Facility required to provide GM, MBM, BM and KM with the waste disposal services provided for in this Agreement, including by way of example but not by way of limitation, the imposition of any new condition or other change which is first required by such a governmental body after the Effective Date with respect to the granting, issuance, or renewal of any required permit or licence or approval for the provision of the services

**2.1.6 Charges**

means all of the charges as agreed upon between the Parties to be levied by GRDM for the use of the Regional Waste Disposal Facility in terms of clause 8 of this Agreement

**2.1.7 Construction and  
Demolition Waste**

means waste, excluding hazardous waste, produced during the construction, alteration, repair or demolition of any structure, and includes rubble, earth, rock and wood displaced during that construction, alteration, repair or demolition and all waste defined as "building and demolition waste" in terms of the Waste Act;

**2.1.8 Contractual Term**

means the period of ten (10) years from the Effective Date;

**2.1.9 Cover material**

means clean sand or the material from earthmoving activities with the exclusion of large rocks and boulders exceeding 250mm in length which requires additional handling and treatment other than the normal covering and compaction, excluding reinforced builders rubble;

**2.1.10 CPI**

means the consumer price index excluding interest on mortgage bonds, for metropolitan and other urban areas (Base 2016=100) published from time to time by Statistics SA in Statistical Release PO141;

**2.1.11 Delivery Hours**

means the hours from 07h00 in the morning until 16h30 in the evening from Monday to Friday and 07h00 to 14h00 on Saturdays and public holidays when the need arises and on reasonable notice to GRDM, which shall be recorded in the contract entered into between GRDM and the service provider that operates the Regional Waste Disposal Facility. During peak holiday seasons, the weekend hours may be extended by mutual agreement between the Parties

2.1.12 Effective Date	means the date upon which GRDM notifies the other Parties in writing that the construction of the Regional Waste Disposal Facility has been completed and is ready for operation;
2.1.13 Financial Year	means a year commencing on 1 July in the one year and ending on 30 June of the following year;
2.1.14 Fixed Waste Disposal Costs	means the fixed annual charge levied by GRDM for the use of the Regional Waste Disposal Facility in terms of clauses 8.9 to 8.13 below
2.1.15 Force Majeure	means any event of war, civil commotion, fire, flood, action by any government, pandemics, terrorism, sabotage or embargos, industrial action, strike or labour unrest or any event beyond the reasonable control of the Party affected which directly causes either Party to be unable to comply with all or a material part of its obligations under this Agreement
2.1.16 General Waste	means waste that is defined as "general waste" in terms of Schedule 3 of the Waste Act, as amended from time to time
2.1.17 GM	means the George Municipality or its successors in title established in terms of the Local Government: Municipal Structures Act, 1998
2.1.18 Good Engineering Practice	means those practices, methods and equipment that are generally observed at the time with reference to prudent engineering practice for a waste disposal site and transfer station design, waste collection, handling, processing and disposal operations similar in size and function to those

undertaken by GRDM in order to provide the services covered by this Agreement lawfully with safety, dependability, efficiency and economy in compliance with applicable government codes, if any, establishing engineering standards for similar services

**2.1.19 Hazardous Waste**

means any waste that contains organic or inorganic elements or compounds that may, owing to the inherent physical, chemical or toxicological characteristics of that waste, have a detrimental impact on health and the environment and includes hazardous substances, materials or objects within business waste, residue deposits and residue stockpiles as outlined in Schedule 3 of the National Environmental Management: Waste Act, 2008

**2.1.20 IDP**

means the respective Integrated Development Plans of the Participating Local Municipalities and GRDM as contemplated by the Municipal Systems Act and as adopted by the respective councils of the GRDM and Participating Local Municipalities;

**2.1.21 KM**

means the Knysna Municipality or its successors in title as established in terms of sections 12 and 14 of the Local Government: Municipal Structures Act, 1998

**2.1.22 Licence**

means the Waste Management Licence (number 12/9/11/L1395/9) issued to Garden Route District Municipality on 05 February 2014 or as re-issued by any subsequent licence in respect of the Regional Waste Disposal Facility in terms of the Waste Act, annexed hereto and marked as 'A'

2.1.23 MBM	means the Mossel Bay Municipality or its successors in title established in terms of sections 12 and 14 of the Local Government: Municipal Structures Act, 1998
2.1.24 Monitoring Committee	means the monitoring committee established in terms of clause 6.6 of the License .
2.1.25 Parties	means GM, MBM, BM, KM and GRDM and <b>"Party"</b> refers to one of the Parties as the context may indicate
2.1.26 Regional Waste Disposal Facility	means the licensed Garden Route Regional Waste Disposal Facility situated on Farm 419, Mossel Bay, which is owned and operated by GRDM
2.1.27 Rehabilitation Contribution	means the portion of the Rehabilitation Costs that will be payable by GM, MBM, BM and KM as set out in clauses 8.14 to 8.18 below
2.1.28 Rehabilitation Costs	means the costs associated with rehabilitating the Regional Waste Disposal Facility
2.1.29 Ring-fenced bank Account	means an arrangement made with a bank whereby money is separated from an ordinary bank account for regulatory or contractual reasons, to be deposited and be earning interest, and where withdrawals of money will be authorised for said regulatory or contractual purposes only
2.1.30 Third Parties	means other municipalities and private users contracted by a participating municipality in the Garden Route Regional District to which GRDM

grants a right to make use of the Regional Waste Disposal Facility

2.1.31 Waste Act means the National Environmental Management: Waste Act (Act 59 of 2008) as amended from time to time

2.1.32 Waste Disposal Tariff means the variable tariff per ton of waste deposited, as indicated in clauses 8.7 and 8.8 below

### **3. INTERPRETATION**

- 3.1 Expressions in the singular also denote the plural and vice versa.
- 3.2 Words and phrases denoting natural persons refer also to juristic persons and vice versa.
- 3.3 Pronouns of any gender include the corresponding pronouns of the other genders.
- 3.4 The rule of construction that a contract shall be interpreted against the Party responsible for the drafting or preparation of the Agreement, shall not apply.
- 3.5 Where the day upon or by which any act is required to be performed falls on a day which is not a Business day, then the relevant date for performance shall be the next succeeding Business day.
- 3.6 Where any term is defined within the context of any particular clause in this Agreement, the terms so defined, unless it is clear from the clause in question that the term so defined has limited application to the relevant clause, shall bear the same meaning as ascribed to it for all purposes in terms of this Agreement in clause 2.1 above.
- 3.7 References to a statutory provision include any subordinate legislation made from time to time under that provision and include that provision as modified or re-enacted from time to time.



- 3.8 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail
- 3.9 Clause headings appear in this Agreement for purposes of reference only and shall not influence the proper interpretation of the subject matter.
- 3.10 In the event of a conflict between the clauses as contained in this agreement and the licence issued the terms of the licence will prevail.

#### **4. REPRESENTATION OF THE PARTIES**

- 4.1 GRDM warrants and represents to GM, MBM, BM and KM the following:
  - 4.1.1 The execution and delivery of this Agreement has been properly and lawfully authorised and this Agreement constitutes legal, valid and binding obligations enforceable in accordance with its terms (except as enforceability may be limited by applicable laws).
  - 4.1.1 To the best of its knowledge, there is no pending or threatened litigation or governmental proceedings which would affect its ability to perform its obligations under this Agreement.
- 4.2 GM, MBM, BM and KM warrant and represent to GRDM the following:
  - 4.2.1 The execution and delivery of this Agreement has been properly and lawfully authorised and this Agreement constitutes legal, valid and binding obligations enforceable in accordance with its terms (except as enforceability may be limited by applicable laws).
  - 4.2.2 To the best of their knowledge, there is no pending or threatened litigation or governmental proceedings, which would affect their ability to perform their obligations under this Agreement.

## **5. MONITORING COMMITTEE**

- 5.1 A Committee as required in terms of the Licence is hereby established and will include, amongst others, two (2) representatives from each participating Local Municipality which will meet within three (3) months of signing of this agreement.
- 5.2 The Committee's Terms of Reference and code of conduct shall be compiled by the Committee and be submitted to each participating Local Municipality's council for approval.
- 5.3 The Terms of Reference must include discussion and consultation on the determination of the tariffs and related activities.

## **6. DEVELOPMENT OF REGIONAL WASTE MANAGEMENT FACILITY**

- 6.1 Responsibilities of GRDM for the duration of the Agreement:
  - 6.1.1 Retain ownership of Farm 419, Mossel Bay, for the development, construction and operation of a Regional Waste Disposal Facility.
  - 6.1.2 Design and construct the waste disposal facility in conformity with the Waste Act, the Licence and any regulations promulgated thereunder, all applicable codes, permits, bylaws, regulations and other applicable laws, as well as in accordance with Good Engineering Practice.
  - 6.1.3 Obtain and maintain all necessary and required statutory authorisations for the handling and disposal of General and Hazardous Waste at the Regional Waste Disposal Facility.
  - 6.1.4 Use its best endeavours, within the limitations imposed by legislation and its budget, to proceed with the further development of the Regional Waste Disposal Facility in a diligent, orderly and prudent manner for the municipalities in the Garden Route Regional District.

- 6.1.5 If GRDM chooses to award a contract to a private entity to design and construct the waste disposal facility and/or operate the Regional Waste Disposal Facility, it shall proceed in a diligent, orderly, and prudent manner and shall at all times keep GM, MBM, BM and KM informed of its progress in that process.
- 6.1.6 Operate and maintain the Regional Waste Disposal Facility to be capable of receiving and disposing waste from GM, MBM, BM and KM.
- 6.1.7 Operate the Regional Waste Disposal Facility in a manner that will minimise any adverse impact upon residents of the surrounding areas.
- 6.1.8 Accept General and Hazardous Waste from GM, MBM, BM and KM during the Delivery Hours.
- 6.1.9 Allow and encourage the recovery of waste by GM, MBM, BM and KM instead of disposing the waste at the Regional Waste Disposal Facility.
- 6.1.10 Comply with all the obligations of the Licence *inter alia* with regards to the construction, the general impact management and operation, the monitoring, record keeping, reporting and auditing requirements.
- 6.2 Responsibilities of GM, MBM, BM and KM for the duration of the Agreement.
  - 6.2.1 Ensure that all waste conforms to the Waste Act and any regulations promulgated thereunder, national legislation and the licence conditions of the Regional Waste Disposal Facility.
  - 6.2.2 Ensure that GRDM are provided with the necessary details of vehicles of municipalities and/or their duly appointed contractors that will dispose of waste (i.e. registration number, licence numbers, etc.).
  - 6.2.3 Use all reasonable endeavours to encourage the reduction of waste.
  - 6.2.4 All waste shall be of a compactable standard, meaning that it is manageable to be spread and compacted as part of General Waste by the service provider on the landfill and that no additional processing is Required.

- 6.2.5 Waste types or loads that do not conform to the prescriptions as set out above and in the licence conditions of Regional Waste Disposal Facility will not be accepted.

## **7. OPERATING AGREEMENT**

### **7.1 Parties acknowledge that**

- 7.1.1 GRDM will be contractually bound to a private entity for the operation and management of the Regional Waste Disposal Facility and will be contractually bound to a financial service provider to service the loan granted to fund the establishment and construction of the Regional Waste Disposal Facility.

- 7.1.2 GRDM's financial obligations in terms of the contracts referred to in clause 7.1.1 can only be met on payment of the charges set out in clause 8 below.

- 7.2 The Regional Waste Disposal Facility will be operated by GRDM as a ring-fenced cost centre, which will provide for all operational costs (including future rehabilitation and monitoring of the site according to national norms and standards) and which costs will include the costs of servicing any loan taken up by GRDM in terms of the construction of Regional Waste Disposal Facility.

- 7.3 Separate ringfenced cost centres may be created for the various types of waste services if the participating municipalities differs.

## **8. CHARGES**

- 8.1 When determining the tariffs for Fixed Waste Disposal, Waste disposal and the rehabilitation contribution the cost as per the ringfenced cost centres must be included in the calculations. When calculating the tariff, the cost must exclude depreciation charges whilst it must include the redemption portion of the loan.
- 8.2 The latest actual results of the cost centres must be included in the calculation of cost reflective tariffs considering the conditions in 8.1 .
- 8.3 GM, MBM, BM and KM undertake to pay the applicable Charges including but not limited to GRDM a Fixed Waste Disposal Cost, a variable Waste Disposal Tariff per ton of waste disposed and a Rehabilitation Contribution per ton of

waste disposed that is based on cost reflected tariffs for the cost centre/(s) as determined in clause 8.2 and 8.3.

- 8.4 In the event of GRDM being unable to accept or refusing to accept General Waste at the Regional Waste Disposal Facility, save as a consequence of a Force Majeure, in which case clause 14 will be applicable, GM, MBM, BM and KM will not be held liable for the Waste Disposal Tariff, the Rehabilitation Contribution and the Fixed Waste Disposal Cost.
- 8.5 GM, MBM, BM and KM undertake to pay the full amount invoiced by GRDM within 30 (thirty) days of the day of receipt of a valid invoice and to make all payments directly per electronic funds transfer into GRDM's bank account (s), particulars of which will be furnished by GRDM from time to time.
- 8.6 Disputes will not be accepted as reason for non-payment, except in the case where the Municipality questions the correctness of any specific account. In order for a dispute to be registered with the GRDM, the following procedures must be followed:

By the relevant Municipality:

- (i) The Municipality must submit the dispute in writing to the Accounting Officer of GRDM before or on the due date for payment specified in the account concerned or as soon as reasonably possible thereafter;
- (ii) It must clearly state that it is a dispute;
- (iii) No dispute will be registered verbally whether in person or over the telephone;
- (iv) The full nature of the dispute must be described in the correspondence referred to above;
- (v) The onus will be on the Municipality to ensure that it receives a written acknowledgement of receipt of the dispute from GRDM;
- (vi) In the interim the Municipality must pay the average of the last four months' accounts as calculated by GRDM where such history of the account is available. Where no such history is available, the Municipality must pay without prejudice

of rights an estimate provided by GRDM before payment due date until the matter is resolved.

By GRDM:

On receipt of the query or dispute, the following actions are to be taken:

- (i) All incoming queries or disputes must be registered on the document management system. Within 14 days after receipt of a query it must be answered via e-mail, telephonically or by normal mail;
- (ii) If the Municipality is not satisfied with the reply or the corrective actions regarding the query and a formal written dispute is received, the authorised official of GRDM must ensure that the dispute is taken to the Chief Financial Officer for a final decision;
- (iii) A written acknowledgement of receipt of the dispute must be provided to the Municipality within 7 days;
- (iv) GRDM should not institute enforcement proceedings against the Municipality for an amount or an account entry that is in dispute until it has resolved the dispute;
- (v) All investigations regarding disputed amounts must be concluded by Chief Financial Officer or his/her delegate within 21 calendar days from receipt thereof;
- (vi) The Municipality shall be advised in writing of the findings and if the dispute has not been resolved the proceeding as set out in clause 17 (Dispute) must be followed.

### **Waste Disposal Tariff**

- 8.7 The Waste Disposal Tariff shall be calculated based on the costs incurred by GRDM in operating the Regional Waste Disposal Facility, including but not limited to fees for contractors, administration cost, audit, water and gas monitoring, weighbridge calibration, maintenance on pipework, maintenance of fences, clearing of alien vegetation, personnel equipment and site visits. Any

costs referred to, inclusive of calculations of apportioned costs, shall be strictly in relation to the operating of the Regional Waste Disposal Facility. The Rehabilitation Cost will not form part of the operational cost allocation to the users of the service, but will be a separate charge.

- 8.8 GM, MBM, BM and KM shall each be liable to pay GRDM a Waste Disposal Tariff in accordance with GRDM's Council's approved tariff listing as reviewed and approved annually in so far as it complies with section 8.1 of this agreement.

### **Fixed Waste Disposal Cost**

- 8.9 The Fixed Waste Disposal Cost is calculated in accordance with GRDM's loan repayment obligations which are to be incurred for the purpose of constructing the Regional Waste Disposal Facility.
- 8.10 The loan repayment terms are a ten (10) year contract with a floating or fixed interest rate as per the final decision by GRDM. Instalments on the loan repayment shall also be adjusted in accordance with any changes to the floating interest rate as stated above if required.
- 8.11 In line with the debt agreement with the Lender, GRDM will, on a monthly basis, invoice the participating municipalities/parties their proportionate contribution, which amount must be paid within thirty (30) days of statement.
- 8.12 The Fixed Waste Disposal Cost shall be divided proportionately between GM, MBM, BM and KM based on waste disposal data as per weighbridge records recorded at the facility. The proportion to be repaid by the Parties, will be reviewed on an annual basis and agreed between the Parties. For the first financial year (or part thereof), the following percentages of the repayment instalments is applicable to the Parties, namely

GM – 42%

MBM – 33%

BM – 11%

KM – 14%

- 8.13 Any change in the Fixed Waste Disposal Cost shall be aligned to any change in the actual loan repayment instalment, which shall be applied to the applicable invoice as soon as there is a change in the floating interest rate.

#### **Rehabilitation Contribution**

- 8.14 The Regional Waste Disposal Facility will be required to be rehabilitated at the end of its useful lifespan.
- 8.15 GM, MBM, BM and KM, being the users of the Regional Waste Disposal Facility, shall be liable to contribute based on the agreed proportion towards the Rehabilitation Costs of the Regional Waste Disposal Facility from the Effective Date through payment of the Rehabilitation Contribution in accordance with clauses 8.16 to 8.18 below.
- 8.16 The Rehabilitation Contribution shall be deposited into a dedicated ring-fenced bank account, kept by the holder of the Permit for the rehabilitation in terms of the conditions contained in the Licence, inclusive of post-closure monitoring. The total interest generated in respect of the funds must be retained in the dedicated ring-fenced bank account. Withdrawals from this ring-fenced account shall be for the purpose of rehabilitation expenses only.
- 8.17 The Rehabilitation Costs and Rehabilitation Contribution shall be reviewed annually, by a duly appointed consulting engineer appointed by GRDM after consultation with GM, MBM, BM and KM, before the end of November of that Financial Year in accordance with the budget time frames, for implementation by 1 July of the subsequent year. The Rehabilitation Costs and Rehabilitation Contribution will be adjusted in accordance with the determination of the duly appointed consulting engineer as agreed upon between the Parties in writing.
- 8.18 For the first Financial Year following the Effective Date the Rehabilitation Contribution will be determined once the cost has been determined by duly appointed consulting engineers.



## **9. WEIGHING OF REFUSE**

9.1 GRDM shall establish and maintain a weighbridge at the Regional Waste Disposal Facility, which weighbridge will be used to weigh a loaded vehicle delivering waste, and after having disposed of its contents at the Regional Waste Disposal Facility, the unloaded vehicle thereafter being weighed again, the difference constituting the amount of waste so disposed.

9.2 Deliveries shall be recorded separately. Unless otherwise agreed, each incoming and outgoing vehicle shall be weighed with gross weight, time and truck identification indicated on a weigh record. GM, MBM, BM, KM and Third Parties and the driver of each vehicle shall receive a copy of the weigh ticket, which shall include at least the following information:

- Date and time of delivery
- Vehicle identification number
- Driver information
- Tons delivered
- Load description as per pre-determined category

GRDM shall retain all weigh tickets until audited by the Parties' external auditors. The weigh tickets shall be used by the Parties as a basis for the calculations required herein and shall be verified at least annually.

9.3 Should GM, MBM, BM and/or KM dispute the tonnage as reflected in the weighbridge calculation it will be investigated by GRDM and its decision, with reasons therefore, shall be given to GM, MBM, BM and KM within 10 (ten) Business Days after receipt of the dispute.

9.4 Should GM, MBM, BM and/or KM not be satisfied with the decision or the reasons given, it may resort to the provisions of clause 17.

- 9.5 GM, MBM, BM and KM shall have the right to inspect the weighbridge and weigh records at any time subject to reasonable written notice being given of such envisaged inspection
- 9.6 GRDM shall, at its own cost, have the weighbridge calibrated at least once every year by the supplier thereof or other competent and authorised authority and provide GM, MBM, BM and/or KM with a certified copy of the findings.
- 9.7 In the event of it being found that the weighbridge was malfunctioning to the extent that it was inaccurate by more than 10% (ten per cent), GRDM will have the weighbridge repaired as soon as reasonably possible. During the period the weighbridge is being repaired, the weight of the material will be determined by means of the average of similar loads received.
- 9.8 Any deviation exceeding 10% (ten per cent) will result in accounts previously rendered and the tonnages registered to be adjusted retrospectively for the two months prior to the weighbridge being calibrated after malfunctioning.
- 9.9 In the event of a power failure or where the electricity supply is delayed by the supplier, the weight of the material will be determined by means of the average of similar loads received.

## **10. WASTE OWNERSHIP**

Provided that the Municipal Waste delivered by the Municipality to the Garden Route Regional Waste Management Facility complies with the conditions of the Licence, ownership and risk of the waste shall pass to the GRDM upon delivery thereof at the Facility.

## **11. GOVERNING LAW**

This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.

## **12. CHANGE IN LAW**

If, after the Effective Date, as a direct result of a Change in Law, GRDM shall incur an increase in the cost of construction, operation or maintenance of the Regional Waste Disposal Facility to be utilised by GM, MBM, BM and KM, related solely to a Change in Law, then the Charges, contemplated in clause 8 will be increased accordingly in consultation with GM, MBM, BM and KM to ensure that GRDM is able to recover the additional costs. The increase shall be effective on the beginning of the next Financial Year after the Change of Law comes into effect. GRDM shall provide GM, MBM, BM and KM with evidence of the additional costs incurred or to be incurred as a result of the Change in Law. Should any of the Parties dispute the increase in the Charges, that dispute shall be dealt with in terms of the provisions of clause 17 of this Agreement.

## **13. DURATION OF AGREEMENT**

- 13.1 This Agreement shall commence on the Effective Date and shall endure for the whole Contractual Term, subject to the successful compliance with the statutory requirements set out in Section 33 of the Local Government: Municipal Finance Management Act (Act 56 of 2003) within a period of 6 (six) months from date of signature of this Agreement by the last signatory.
- 13.2 Should any one or all of the Parties not be able to successfully complete the abovementioned statutory requirements within the time period afforded, or any extended period as agreed upon in writing between the Parties, this Agreement shall lapse, in which case no party will have a claim against the other Party, save for the claim of Standard Bank from GRDM for the repayment of the costs incurred for the construction of the Regional Waste Disposal Facility as mentioned in clause 8.9 above.

## **14. VARIATIONS AND AMENDMENT**

- 14.1 The Parties acknowledge that this Agreement contains the entire agreement between them.

- 14.2 No variation, alteration, cancellation of, or addition hereto shall be of any force or effect unless reduced to writing and signed by all Parties to this Agreement or their duly authorised representatives.
- 14.3 No indulgence, leniency or extension of time which any Party ("the Grantor") may grant or show to any other Party, shall in any way prejudice the Grantor or preclude the Grantor from exercising any of its rights in the future.
- 14.4 The Parties consent to the non-exclusive jurisdiction of the High Court of South Africa, Western Cape Local Division, for any proceedings arising out of or in connection with this Agreement.
- 14.5 Except as provided for elsewhere in this Agreement, a Party may not cede any or all of that Party's rights or delegate any or all of that Party's obligations under this Agreement without the prior written consent of all other Parties.

## **15. NOTICE AND DOMICILIA**

- 15.1 The Parties hereto respectively choose domicilium citandi et executandi ("*domicilium*") for the purpose of all payments to be made, any notices, demands, process or communications intended for either Party and for all purposes of and in connection with this Agreement, as follows:

### **15.1.1 GRDM**

Address: 54 York Street, George, 6530

Tel: 044 803 1354

Fax:

Email: [records@gardenroute.gov.za](mailto:records@gardenroute.gov.za)

**15.1.2 GM**

Address: 82 Meade Street, George, 6530

Tel: 044 801 9111

Fax:

Email: gmun@george.gov.za

**15.1.3 MBM**

Address: 101 Marsh Street, Mossel Bay

Tel: 044-606 5000

Fax:

Email: admin@mosselbay.gov.za

**15.1.4 BM**

Address: 4 Sewell Street, Plettenberg Bay, 6600

Tel: 044-501 3000

Fax:

Email: records@plett.gov.za

**15.1.5 KM**

Address: 5 Clyde Street, Knysna

Tel: 044-302 6300

Fax:

Email: knysna@knysna.gov.za

- 15.2 The Parties shall be entitled to change their *domicilium* from time to time, provided that any new *domicilium* selected by it shall be situated in the Republic of South Africa, shall be an address other than a box number, and any such change shall only be effective upon receipt of notice in writing by the other party of such change.
- 15.3 All notices, communications or processes in terms of this Agreement shall be in writing.
- 15.4 Any notice, communication or any process addressed by one of the Parties to the other shall be deemed to have been sufficiently served and/ or delivered upon the Party:-
- 15.4.1 By registered mail on the 5th (fifth) Business day after posting;
- 15.4.2 By fax or electronic mail on the date of fax transmission or e-mail to the mentioned number or email address if transmitted prior to 13h00 failing which, it shall be deemed to have been received on the first normal Business Day following date of transmission;
- 15.4.3 By hand during normal business hours at the time of delivery;
- 15.4.4 The above clauses will not be so construed as to oust the service procedures, specifically those of personal service as depicted in any applicable legislation of the Republic of South Africa.

## **16. FORCE MAJEURE**

- 16.1 As a result of a Force Majeure event, the Party claiming relief shall be relieved from liability under this Agreement to the extent that by reason of the Force Majeure event it is not able to perform all or a material part of its obligations under this Agreement.
- 16.2 Where a Party is (or claims to be) affected by an event of Force Majeure:
- 16.2.1 it shall take all reasonable steps to mitigate the consequences of such an event upon the performance of its obligations under this Agreement, resume performance of its obligations affected by the event of Force Majeure as soon

as practicable and use all reasonable endeavours to remedy its failure to perform; and

- 16.2.2 it shall not be relieved from liability under this Agreement to the extent that it is not able to perform, or had not in fact performed, its obligations under this Agreement due to its failure to comply with its obligations under this Agreement.
- 16.3 The Party claiming relief shall serve written notice on the other parties within 10 (ten) Business Days of it becoming aware of the relevant event of Force Majeure. Such initial notice shall give sufficient details to identify the particular event claimed to be an event of Force Majeure.
- 16.4 A subsequent written notice shall be served by the Party claiming relief on the other parties within a further 10 (ten) Business Days which shall contain such relevant information relating to the failure to perform (or delay in performing) as is available, including (without limitation) the effect of the event of Force Majeure on the ability of the Party to perform, the action being taken in accordance with clause 16.2.1 the date of the occurrence of the event of Force Majeure and an estimate of the period of time required to overcome it (and/or its effects).
- 16.5 The Party claiming relief shall notify the other as soon as the consequences of the event of Force Majeure have ceased and when performance of its affected obligations can be resumed.
- 16.6 If, following the issuance of any notice referred to in clause 16.4 the Party claiming relief receives or becomes aware of any further information relating to the event of Force Majeure (and/or any failure to perform), it shall submit such further information to the other Parties as soon as reasonably possible.
- 16.7 The Parties shall endeavour to reach consensus within 30 (thirty) days from notification of occurrence of an event of force majeure, to any modifications to this Agreement which may be equitable having regard to the nature of an event or events of Force Majeure, failing which ~~this agreement shall terminate~~ clause 17 (Dispute Resolution) shall apply.

## **17 DISPUTE RESOLUTION**

- 17.1 This Agreement shall be governed by and constructed in accordance with the laws of the Republic of South Africa.
- 17.2 In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicable, including the initiation of direct negotiations with senior management, representatives or negotiations through an intermediary.
- 17.3 Should a dispute between the parties, despite such mediation, remain unresolved for a period of 30 (thirty) days after being so referred, either of the aforementioned Parties may declare such dispute a formal intergovernmental dispute by notifying the other Party of such declaration in writing, in accordance with section 41 of the Intergovernmental Relations Framework Act (Act 13 of 2005) to settle the dispute, the costs to be borne by the Parties involved equally.
- 17.4 In accordance with the section 42(2) of the Intergovernmental Relations Framework Act (Act 13 of 2005) the parties agree that the dispute shall be submitted to and decided by arbitration on notice given by either Party to the other Party or Parties in terms of this clause.
- 17.5 Such arbitration shall be held in George or such other place as may be agreed to between the Parties in accordance with the provisions of the Arbitration Act (Act 42 of 1965), save that:
- 17.5.1 the Arbitrator who shall act as an expert, shall have the absolute discretion to determine the procedure to be adopted.
- 17.5.2 it being agreed the intention, if possible, the arbitration shall be held and concluded within 20 (twenty) Business Days after it has been demanded.
- 17.6 Save as otherwise specifically provided in this Agreement, the Arbitrator shall be, if the question in dispute is:
- 17.6.1 primarily an accounting matter - an independent accountant of not less than 10 (ten) years' standing, as may be agreed upon between the Parties;



- 17.6.2 primarily a legal matter - a practising advocate or attorney of not less than 10 (ten) years' standing, as may be agreed upon between the parties;
- 17.6.3 any other matter - an independent and suitably qualified person, as may be agreed upon between the Parties.
- 17.7 If any agreement cannot be reached on whether the question in dispute falls under clauses 17.6.1 or 17.6.2 or 17.6.3 above or upon a particular arbitrator in terms of clause 17.6 within 5 (five) Business Days after the arbitration has been demanded, then the President for the time being of the Legal Practice Council of the Western Cape, shall determine whether the questions in dispute falls under clauses 17.6.1, 17.6.2 or 17.6.3 and nominate the arbitrator in terms of the relevant sub-clause within 5 (five) Business Days after the Parties have failed to agree, so that the arbitration can be held and concluded as soon as possible within the 20 (twenty) Business Days referred to in clause 17.5.2
- 17.8 This clause shall constitute each Party's irrevocable consent to the arbitration proceedings, and no Party shall be entitled to withdraw here from or to claim at such arbitration proceedings that it is not bound by this clause.
- 17.9 Each of the Parties hereby irrevocably agrees that the decision of the Arbitrator in the arbitration proceedings shall be final and binding on each of them, will be carried into effect; and can be made an order of any Court to whose jurisdiction the Parties are subject.
- 17.10 Nothing herein prohibits any party to obtain urgent relief in a Court of Law. Urgent procedures and/or procedures calling for an interdict and/or motions proceeding/s will not be subject to arbitration. The arbitration clause is inserted to allow for a speedy conclusion of the merits of dispute, but the parties are under no obligation to refer a matter to arbitration.

## **18. SEVERABILITY**

- 18.1 Clause 17 is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated

- 18.2 In the event of any condition or provision of the Agreement being held to be invalid or unenforceable, the rest of the Agreement remains intact, enforceable, valid and binding.

## **19. BREACH**

- 19.1 Subject to clause 17 above, in the event that a Party to this Agreement fails to comply with any provisions of this Agreement, the other Party ("the aggrieved party") shall furnish such Party with a notice of breach;
- 19.2 The aggrieved Party shall serve the other Party with a notice of breach, clearly setting out the nature and extent of the breach and direct the party to remedy such breach with a period of seven (7) business days.
- 19.3 If such breach is not remedied by the date and to the extent, as stipulated in the notice of breach, the aggrieved Party must refer the breach to be dealt with in terms of clause 17 (Dispute).

## **20 TERMINATION OR CANCELLATION OF AGREEMENT**

- 20.1 The termination and/or cancellation of this Agreement may occur –
- 20.1.1 at the expiry of the Contractual Term of this Agreement
- 20.1.2 by mutual written consent of all parties
- 20.1.3 due to an event of Force Majeure in terms of clause 16 resulting in a Party not being able to perform a material part of its obligations under this Agreement.
- 20.2 Termination and/or cancellation of this Agreement by a party shall:
- 20.2.1 be without prejudice to any accrued rights and obligations, excluding financial obligations that is not in dispute, under this Agreement as at the date of termination; and
- 20.2.2 not affect the continuing rights and obligations of the remaining parties to this agreement.

20.3 That 12 (twelve) months prior to the expiry of the Contractual Term of this Agreement further negotiations will be entered to into between the parties regarding the further extension of this Agreement and the conditions thereto.

**21. FINANCIAL COMMITMENT BY THE PARTIES**

21.1 In the event that any one of the Municipalities withdraw from this Agreement, the remaining Municipalities will not be held liable for payment of the portion of such party`s charges, as stipulated in clause 8 of this Agreement, towards GRDM.

21.2 That in the event of any of the Municipalities withdrawing from this Agreement GRDM will within seven (7) days of the withdrawal of any Municipality revert to clause 17 (Dispute) above.

**The District Municipality**

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023**

Signature: \_\_\_\_\_

**MG STRATU**

**MUNICIPAL MANAGER**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**George Municipality**

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023**

Signature: \_\_\_\_\_

**DR. M GRATZ**

**MUNICIPAL MANAGER**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**Mossel Bay Municipality**

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023**

Signature: \_\_\_\_\_

**CB PUREN**

**MUNICIPAL MANAGER**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**Bitou Municipality**

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023**

Signature: \_\_\_\_\_

**M MEMANI**

**MUNICIPAL MANAGER**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

**Knysna Municipality**

**SIGNED AT \_\_\_\_\_ ON THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2023**

Signature: \_\_\_\_\_

**O SEBOLA**

**MUNICIPAL MANAGER**

**AS WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_