

MEMORANDUM OF UNDERSTANDING

Between

And

Bunbury Harvey Regional Council

South West Regional Waste Solution

1. BACKGROUND

- 1.1. The Parties wish to enter into this Memorandum of Understanding (MOU) for the purposes of having the Bunbury Harvey Regional Council nominated as a key component of the South West (WA) Regional Waste Solution.
- 1.2. This MOU sets out the framework for the establishment of a cooperative relationship between the Parties.
- 1.3. The terms of this MOU are not exhaustive.
- 1.4. Nothing in this MOU affects any other agreement(s) which may exist between the Parties as at the date of this MOU or at any subsequent date.

2. NON-BINDING MOU

- 2.1. With the exception of clause 10 (Confidentiality), this MOU is being signed by the Parties to evidence their in-principle non-binding intentions. This MOU outlines the framework of a working relationship between the parties. The Parties acknowledge that no legally binding obligations are intended to arise between them as a result of signing this document.
- 2.2. The Parties acknowledge and agree that if binding obligations are required the Parties will prepare a formal written agreement in accordance with clause 7. Any action taken by any party in anticipation of approvals in the absence of formal application approvals, will be at the sole risk of that Party.
- 2.3. Despite anything expressed or implied to the contrary in this MOU (including the use of words of obligation, agreement or commitment "like", "must", "will", "shall", "agree to", and "obligation" etc) the Parties do not intend for this MOU to be, nor shall this MOU be, legally binding or give rise to legal relations between the Parties. No partnership or joint venture is created by this MOU, and neither Party can commit the other financially or otherwise to third parties.

3. COLLABORATION AND OBJECTIVES

- 3.1. Agrees that Bunbury Harvey Regional Council, through its Stanley Road and Banksia Road facilities, plays an integral part in a South-West Regional Waste solution.
- 3.2. Works together to support new technologies and waste diversion strategies to meet 'zero waste to landfill' at the earliest opportunity.
- 3.3. Supports that a hub + spoke model within the region is important an attempt to minimise 'waste miles', i.e., the travel time for waste cartage.
- 3.4. Supports a regional approach to the separation of waste through a Material Recovery Facility.
- 3.5. Seeks support from the Western Australian Government to establish an integrated Regional Waste Solution for the South West Region

4. RESPONSIBILITIES OF THE PARTIES

- 4.1. Each Party will identify the key Senior Executives to form a Working Group. The Chair will be nominated from the Working Group membership, and endorsed by the Working Group, and will:
 - a. Meet at least four times a year to discuss the relationship and progress made on the achievement of the objectives identified in 3.
 - b. Develop a plan for its management and oversight of the objectives. The agreed plan will include the following processes:
 - i. Communication plan and process for regular communication between representatives of the Parties in relation to this MOU;
 - ii. Recommendations (if at all required) will be made by consensus. In the case of recommendations requiring individual Council support or endorsement, including BHRC, such recommendations are to be unencumbered and may require subsequent approval by BHRC and/or the Council/s of the Party/ies;
 - iii. Procedures for reviewing and reporting the progress of collaborative activities and projects initiated under this MOU; and
 - iv. Procedures for identifying and prioritising new opportunities for collaboration.
 - c. Identify resources and stakeholders to work together as a Working Group. The Working Groups key accountabilities will be to:
 - i. Document its terms of reference, acknowledging that the key purpose of the Working Group is to identify and prioritise the opportunities for collaboration between the organisations, ensuring that the collaborations relate to achievement of the strategic objectives;
 - ii. Develop and deliver implementation plans for the achievement of a specific strategic objective or objectives; and
 - iii. Measure and evaluate progress and priorities, and report back to the Working Group as set out in this MOU.

5. OPERATING FRAMEWORK

5.1. Within six months of the signing of this MOU, or at such later time as agreed between the Parties, and/or on a case-by-case project basis subject to clause 7, the Parties must agree on a framework for the delivery of the objectives and agreed projects and outcomes.

6. INTELLECTUAL PROPERTY

6.1. This MOU does not transfer any interest in Intellectual Property. All issues relevant to the ownership of Intellectual Property, including Background Intellectual Property and Project Intellectual Property will be determined in the respective written agreement covering the specific collaboration program that the Parties have decided to proceed with and subject to clause 7.

7. FURTHER AGREEMENTS FOR ACTIVITIES AND PROJECTS

7.1. Each collaborative activity or project to be initiated under this MOU are expressly “subject to contract” until a final written legally binding contract or agreement is entered into separately by the Parties. Such contract or agreement will set out the obligations of each party, including but not limited to funding, responsibilities, intellectual property ownership and protection, confidentiality, risk allocation and indemnity obligations to be undertaken by each party in relation to that activity.

8. TERM AND TERMINATION

8.1. The term of this MOU will commence on the date of execution and will continue for a term of four years, unless terminated earlier in accordance with this MOU.

8.2. Any of the Parties may terminate their involvement in this MOU at any time by written notice of termination to the other Party and such notice will take effect 20 Business Days from the date of that notice, unless the Parties determine an alternative date in writing, or the notice to terminate has been cancelled by the originating Party.

8.3. On termination of this MOU, the Parties agree and acknowledge that the terminating Party will have no right to claim compensation.

8.4. The termination of or any change(s) to this MOU will not terminate or otherwise affect any activity or project that is the subject of any legally binding agreement between the Parties flowing from or in any way related to this MOU or its subject matter.

9. CONFIDENTIALITY – BINDING ON ALL PARTIES

9.1. Each Party acknowledges and undertakes to protect the confidentiality and integrity of any Confidential Information acquired by it or by virtue of, or in connection with, this MOU.

9.2. Each Party must not:

- a. Directly or indirectly make or allow, permit or suffer anyone else to make use of, other than for the purposes of this MOU, the Confidential Information; and
- b. Disclose to any other person the Confidential Information other than those of its employees, officers, agents, auditors and legal, business and financial advisors who legitimately and reasonably require such Confidential Information in order to properly discharge the duties;
 - i. Which they were employed or engaged to discharge; and
 - ii. Which they would ordinarily and reasonably be expected to discharge on account of such employment.

- c. Clause 10.1 does not apply to a Party if;
 - i. It is required to disclose the Confidential Information under a provision of a statute in operation in Australia; or
 - ii. The Parties agree in writing to disclose the Confidential Information.
- d. Each Party agrees that it will ensure that its officers, employees, agents and auditors comply with the obligations of confidentiality specified in clause 10.

9.3. This clause 10 shall survive the termination or expiration of this MOU.

10. EARLY AND SUFFICIENT NOTICE

10.1. Subject to clause 10 (Confidentiality), each Party will give the other early and/or sufficient notice of any of its planned events or activities that are likely to either impact upon, or provide opportunity to collaborate with, the other.

11. FREEDOM OF INFORMATION ACT 1992, FINANCIAL MANAGEMENT ACT 2006 AND AUDITOR GENERAL ACT 2006

11.1. This MOU and information regarding it is subject to the Freedom of Information Act 1992. The Parties may publicly disclose information in relation to the MOU in accordance with the Freedom of Information Act 1992, including its terms and the details of the other Parties.

11.2. Despite any express or implied provision of this MOU to the contrary, the powers and responsibilities of the Auditor General under the Financial Management Act 2006 and the Auditor General Act 2006 are not limited or affected by this MOU.

12. INVITATIONS

12.1. Employees, officials and elected representatives of each Party will adhere to all relevant:

- a. gifts and hospitality policies and codes of conduct as are applicable; and
- b. protocol and Governance requirements for the process around invitations to joint initiatives.

13. USE OF NAME AND LOGO

13.1. No Party shall use the name or logo, or any variation thereof, of the other Party without first obtaining its written consent and subject to any directives which may apply to that written consent including compliance with a Party's brand policies and style guidelines.

14. VARIATION

14.1. This MOU may be varied or modified at any time by agreement between the Parties. Any changes to this MOU must be made by a separate written instrument which is signed by a duly authorised signatory of each Party.

15. GOVERNING LAW

15.1. This MOU shall be governed by the laws of Western Australia and any disputes determined exclusively by Western Australian courts and any courts able to hear appeals therefrom.

15.2. Any formal legally binding agreement will be governed by the laws of Western Australia.

16. GENERAL OBLIGATIONS

16.1. Notwithstanding the non-binding nature of this MOU, each Party will at all times:

- (a) Comply with all Laws; and
- (b) Co-operate fully with all Parties in the administration and compliance of this MOU.

17. DEFINITIONS

In this MOU the following definitions apply unless the context otherwise requires:

Confidential Information means information that:

- (a) is by its nature confidential or is marked confidential; or
- (b) is specified by either Party to be confidential, including any information specified to be confidential in the MOU; or
- (c) contains information relating to the planning or business operations or any other activities including but not limited to procurement, staff, administrative, financial and marketing activities.

Law means all applicable present and future laws including:

- (a) all acts, ordinances, regulations, by-laws, orders, awards and proclamations of the State or the Commonwealth of Australia;
- (b) principles of law or equity; and
- (c) standards, codes, policies and guidelines.

Legal includes under or on account of, or pertaining to, and Law.

Memorandum of Understanding or **MOU** means this Memorandum of Understanding, including its recitals and any schedules and annexures.

Party means each of Bunbury Harvey Regional Council, Cities of Busselton & Bunbury and the Shires of Harvey, Collie, Dardanup, Capel, Donnybrook-Balingup, Nannup, Manjimup, Bridgetown-Greenbushes, Boyup Brook, Augusta-Margaret River as the context requires, and **Parties** means all of them.

State means the State of Western Australia.

Signed for and on behalf of **Shire of Augusta Margaret River** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of **Shire of Boyup Brook** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Bridgetown Greenbushes** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **City of Bunbury** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **City of Busselton** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Capel** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Collie** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Dardanup** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Donnybrook Balingup** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Harvey** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Manjimup** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **Shire of Nannup** by:

Signature

Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

Signed for and on behalf of the **BUNBURY HARVEY REGIONAL COUNCIL** by:

Signature Name (*please print*)

Title (*please print*)

Date: ____/____/____

In the Presence of:

Signature of Witness

Name of Witness (*please print*)

DRAFT