WASTE NET SOUTHLAND JOINT WASTE MANAGEMENT AGREEMENT

Invercargill City Council
Gore District Council
Southland District Council
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PARTIES

INVERCARGILL CITY COUNCIL (ICC)
GORE DISTRICT COUNCIL (GDC)
SOUTHLAND DISTRICT COUNCIL (SDC)
(together the WasteNet Councils)

BACKGROUND

A. The WasteNet Councils have together constituted a joint service for the achieving of their waste management and waste minimisation objectives on a Southland Regional basis known as WasteNet Southland.

B. WasteNet Southland has as its primary focus the implementation of the WasteNet Southland Business Plan.

C. The WasteNet Councils have also agreed that WasteNet Southland should operate as a shared business unit providing shared waste management and minimisation services to each of the WasteNet Councils.

D. The WasteNet Councils have together entered into an Agreement for Waste Disposal Services for the Southland Region with AB Lime Limited dated 10 July 2003 under which AB Lime as a private landfill operator agreed to provide waste disposal services to each of the WasteNet Councils (Regional Landfill Contract).

E. The WasteNet Councils have together entered into a Joint Waste Disposal Agreement dated 11 July 2003 (JWD Agreement) setting out the arrangements between the WasteNet Councils as to their joint participation in the Regional Landfill Contract including arrangements as to:

- management of the Regional Landfill Contract and the Landfill Monitoring Group;
- the WasteNet Councils commitment to the Regional Landfill Contract;
- addition of further participants and the exit of individual WasteNet Councils from the Regional Landfill Contract;
- recovery of prior expenditure and sunk cost in relation to the Regional Landfill Contract;
- arrangements as to the Advisory Group;
- the role of ICC as WasteNet principal;
- provision of an opportunity for collaboration between the WasteNet Councils on waste management and minimisation initiatives.

F. The WasteNet Councils have together entered into a Recyclables Acceptance Contract with Southland disAbility Enterprises Incorporated (MRF Operator) for the provision of Recyclables Acceptance Services dated 29 September 2011. Initially the Recyclables Acceptance Contract provides for the provision of Recyclables Acceptance Services for ICC with both SDC and GDC having Recyclables Acceptance Services opt in rights.

G. ICC and SDC have entered into a Collection and Transfer Station Contract dated 21 December 2010 (Collection and Transfer Station Contract) for the provision of collection of kerbside recyclables and residual waste and operation of Transfer Stations and Recycle drop-off Centres services (Collection and Transfer Station...
Services). At the date of entry into that contact GDC indicated it may participate in the contract in the future.

H. GDC has elected to opt into the Collection and Transfer Station Contract.

I. SDC and GDC have elected to opt into the Recyclables Acceptance Contract.

J. The WasteNet Councils have agreed that on the entry into this Agreement the ongoing arrangements as above and the other matters covered in this Agreement shall be in effect and the JWD Agreement shall be at an end.

AGREEMENT

In consideration of the mutual benefits and covenants set out in this Agreement the WasteNet Councils agree as follows.

1. JWD AGREEMENT AND THIS AGREEMENT

JWD Agreement to cease

1.1 The WasteNet Councils agree that the JWD Agreement shall terminate and be of no further effect on 2 May 2011 (Effective Date) but without prejudice to the obligations, rights and entitlements accruing under the JWD Agreement prior to its termination.

Application of this Agreement

1.2 As from the Effective Date the ongoing arrangements between the WasteNet Councils as to WasteNet Southland, the Waste Advisory Group, the Waste Management Group, the Regional Landfill Agreement, the Recyclables Acceptance Contract and the Collection and Transfer Stations Contract shall be as set out in this Agreement.

Term of this Agreement

1.3 This Agreement commences on the Effective Date and shall continue until such date as only one party shall remain as a member of WasteNet or otherwise such date as the WasteNet Councils shall decide.

2. WASTENET COUNCILS COLLABORATION

Collaboration

2.4 The WasteNet Councils each acknowledge the requirement that local authorities should collaborate and co-operate with other local authorities and bodies to promote or achieve priorities and desired outcomes and make efficient use of resources under section 14 of the LGA 2002.

2.5 The WasteNet Councils also each acknowledge that such cooperation will enhance each party's ability to develop and implement waste management and minimisation strategies and to meet present and future needs in relation to current and projected statutory responsibilities as to waste management and minimisation under Part 4 of the Waste Minimisation Act 2008.

2.6 The WasteNet Councils acknowledge within the terms of this Agreement they are operating cooperatively as participants in a joint venture and that the joint venture is managed by a joint committee of elected members of the WasteNet Councils for the purposes of section 6(2) of the LGA 2002 known as the Waste Advisory Group (WAG).
2.7 The joint venture is the joint procurement of waste management and disposal services for the Southland Region including waste management and minimisation initiatives. The joint venture includes the continuing of WasteNet Southland and the implementation of the WasteNet Southland Business Plan and such other matters as the WasteNet Councils agree shall be included in the WasteNet Southland remit.

3. **INCLUSION OF FURTHER COUNCILS IN WASTENET**

3.8 The parties acknowledge that it may be advantageous both in terms of optimising the benefits and costs under the Services Contracts and in the efficient planning and management of waste in the wider southern South Island to include further Councils in the Service Contracts and as members of WasteNet Southland.

3.9 The inclusion of any further council into any Service Contract and/or into WasteNet Southland shall be on such terms and conditions as shall be agreed with such further party and shall require the approval of each WasteNet Council.

4. **WASTE ADVISORY GROUP**

**Waste Advisory Group**

4.10 The joint committee of the WasteNet Councils known as the Waste Advisory Group (WAG) constituted by the WasteNet Councils under the JWD Agreement shall continue.

4.11 As from the Effective Date the WAG shall comprise the Elected Members appointed by each WasteNet Council, being:

4.11.1 Two ICC Elected Members

4.11.2 Two GDC Elected Members

4.11.3 Two SDC Elected Members.

The WAG shall appoint a chairperson and a deputy chairperson. If the WAG members cannot agree the chairperson shall be one of the Elected Members appointed by ICC.

4.12 The functions and responsibilities of the WAG are to:

4.12.1 be the high level decision making committee for the implementation and carrying out of the WasteNet Activities within the delegations from each of the WasteNet Councils;

4.12.2 receive and approve financial monitoring reports as to the accounting between the WasteNet Councils in relation to the WasteNet Activities;

4.12.3 report to each constituent WasteNet Council as to the WasteNet Activities outcomes;

4.12.4 develop policies to ensure the smooth implementation and operation of the WasteNet Activities;

4.12.5 provide a forum for:

(a) the exchange of views and information relevant to the management of waste for each of the WasteNet Council territories;

(b) discussion as to the effectiveness of the Services Contracts including ways in which value can be added to the parties through the Services Contracts and the implementation of the WasteNet Southland Business Plan;
(c) the identification of opportunities for joint waste management and minimisation initiatives; and

(d) identification and resolution of points of tension or difficulties between the WasteNet Councils as to their respective roles under the Services Contracts and this Agreement;

4.12.6 receive reports and recommendations from the WMG and approve recommendations as permitted by each separate WasteNet Council's delegations;

4.12.7 formulate recommendations in relation to the Services Contracts, waste disposal and minimisation strategies and the implementation of the WasteNet Southland Business Plan for consideration by the Joint Committee and each of the WasteNet Councils as appropriate;

4.12.8 make recommendations to the WasteNet Councils in relation to the following:

(a) the exit by a WasteNet Council from any or all of the Services Contracts; and

(b) the inclusion of other territorial authorities into any of the Services Contracts or into WasteNet Southland;

4.12.9 make decisions generally (in accordance with each Council's delegations) in relation to the implementation of the WasteNet Southland Business Plan;

4.12.10 make recommendations to the WasteNet Councils and/or decisions (in accordance with each WasteNet Council's delegations) in relation to the Regional Landfill Contract as to the following:

(a) the portion of funding of general waste management and waste minimisation costs to be recovered through landfill charges;

(b) landfill pricing for Authorised Users; and

(c) requests from the Landfill Operator for approval of Major Industrial Users;

4.12.11 make recommendations to the WasteNet Councils and/or decisions (in accordance with each WasteNet Council's delegations) in relation to the Recyclables Acceptance Contract as to the following:

(a) the exercise of the WasteNet Extension Right pursuant to clause 2.5;

(b) the modification of the contract conditions in connection with exercise of the WasteNet Extension Right pursuant to clause 2.5;

(c) the allocation of the Contract Price payable under the contract as between the WasteNet Councils;

(d) the apportionment of the Revenue Share Payment received by the WasteNet Councils under the contract;

4.12.12 make recommendations to the WasteNet Councils and/or decisions (in accordance with each WasteNet Council's delegations) in relation to the Collection and Transfer Stations Contract as to the following:

(a) the exercise of the WasteNet Extension Right pursuant to clause 2.3;

(b) the modification of the contract conditions in connection with exercise of the WasteNet Extension Right pursuant to clause 2.3;
4.12.13 exercise such powers or functions as shall be delegated to the WAG by the WasteNet Councils (either together or separately).

4.12.14 carry out such other functions and responsibilities as the WasteNet Councils shall agree shall be functions and responsibilities of the WAG.

Waste Management Group

4.13 The WasteNet Councils shall constitute a group of council officers to be known as the Waste Management Group (WMG).

4.14 The WMG shall comprise:

4.14.1 one officer appointed by each WasteNet Council (who shall be one of the officers appointed to the WAG); and

4.14.2 the WasteNet Representative(s) under each of the Services Contracts.

4.15 The WMG shall appoint one of their number to be chairperson. If the WMG cannot agree (by a majority) the representative of ICC shall be the chairperson.

4.16 The WasteNet Councils acknowledge the value of maintaining continuity on the WMG. Each WasteNet Council will endeavour to maintain continuity of officer appointment and to ensure such appointments are at sufficient seniority level to allow effective participation and contribution of its appointed officer.

4.17 The functions and responsibilities of the WMG shall be to:

4.17.1 monitor the day to day operation of the Services Contracts.

4.17.2 make routine decisions required of the WasteNet Councils under the Services Contracts, including responses to extraordinary circumstances and contractual default and also (without limiting the foregoing) including:

(a) in relation to the Services Contracts generally:

(i) consideration of material relationship issues with contractors and the implementation of partnering both generally and in response to specific issues;

(ii) consideration of reports provided by the contractors;

(iii) consideration of extraordinary approvals required to be provided by the WasteNet Councils or the WasteNet Representative;

(iv) consideration of issues arising under any Service Contract that could have a material adverse impact on the WasteNet Councils together or any one of the WasteNet Councils separately or could give rise to liability on the part of any or all WasteNet Councils;

(v) material variations to the Services Contracts;

(vi) consideration of issues relating to contractor performance failure and the exercise of step in rights or other remedies under any Service Contract;

(vii) consideration of material force majeure or other service disruption events or circumstances and appropriate responses;

(viii) make recommendations to the WAG regarding any changes or amendments to any of the Services Contracts or any other matter relating to any of the Services
Contracts or WasteNet Southland considered outside normal contract management;

(ix) make recommendations to WAG as to the inclusion of other territorial authorities into the Services Contracts;

(b) in relation to the Regional Landfill Contract:

(i) approval of Authorised Users;

(ii) management of billing and credit issues;

(iii) management of the special waste permit procedure;

(iv) routine and otherwise non-material variations to the Regional Landfill Contract;

(v) make recommendations to the WAG as to applications by the Landfill Operator for approval of Major Industrial Users;

(vi) make recommendations to the WAG as to the portion of funding of general waste management and waste minimisation costs to be recovered through landfill charges; and

(vii) make recommendations to the WAG as to landfill charges to Authorised Users;

(c) in relation to the Recyclables Acceptance Contract:

(i) consider issues and make recommendations to the WAG relating to the capital funding of the MRF, the sale of the Kinloch Street property, the contributing of capital to the MRF and reduction of the Contract Price and the Exit Price;

(ii) make recommendations to the WAG as to the allocation of the Contract Price payable under the contract as between the WasteNet Councils;

(iii) make recommendations to the WAG as to the apportionment of the Revenue Share Payment received by the WasteNet Councils under the contract;

(iv) make recommendations to the WAG as to the exercise of the WasteNet Extension Right pursuant to clause 2.5 and the modification of the contract conditions in connection with exercise of the WasteNet Extension Right;

(d) in relation to the Collection and Transfer Station Services Contract:

(i) make recommendations to the WAG as to the exercise of the WasteNet Extension Right pursuant to clause 2.3 and the modification of the contract conditions in connection with exercise of the WasteNet Extension Right;

4.17.3 prepare and provide to the WAG all reports and advice requested by the WAG or required to be provided to the WAG under this Agreement;

4.17.4 formulate recommendations to the WAG as to the strategic direction of the Services Contracts and as to potential modifications to any of the Services Contracts;
4.17.5 undertake the periodic and other reviews required under the Services Contracts;

4.17.6 consider and formulate recommendations to the WAG as to potential combined waste management and minimisation initiatives and the implementation of the WasteNet Southland Business Plan;

4.17.7 receive reports and recommendations from the WasteNet Representative and make decisions on those recommendations that relate to the routine operation of the Services Contracts, subject to the terms of any specific delegations from the WAG;

4.17.8 exercise such powers or functions in relation to the implementation of the WasteNet Southland Business Plan as shall be delegated to the WMG by the WAG or by the WasteNet Councils;

4.17.9 oversee the provision of support services pursuant to clause 4.25;

4.17.10 formulate initiatives in relation to the enforcement and education activities of WasteNet generally and oversee the undertaking of enforcement and education functions in relation to Waste management and minimisation for the Southland Region generally and as required under the Collection and Transfer Stations Contract;

4.17.11 make recommendations to WAG as to the inclusion of other territorial authorities into WasteNet Southland;

4.17.12 exercise such further powers or functions as shall be delegated to the WMG by the WAG or by the WasteNet Councils; and

4.17.13 such other functions and responsibilities as the WasteNet Councils shall agree shall be functions and responsibilities of the WMG.

WasteNet Representative

4.18 The WasteNet Representative for each Services Contract shall be appointed (and removed and replaced) by the WMG. The WasteNet Representative may be the same or a different person under each Services Contract.

4.19 The parties acknowledge that the WasteNet Representative as at the date of this Agreement for each of the Services Contracts shall continue to be Tom Greenwood.

4.20 The WasteNet Representative shall carry out the functions of the WasteNet Representative (however described) as set out in each Services Contract.

4.21 The costs/fees of the WasteNet Representative shall be a cost to WasteNet Southland. Where the WasteNet Representative is employed by a WasteNet Council, the WasteNet Representative’s time shall be charged by the applicable WasteNet Council to WasteNet Southland on a fair and reasonable cost recovery basis.

4.22 The WasteNet Representative will operate within delegations established by the WMG and will otherwise seek the instructions of the WMG before exercising any of the WasteNet Representative powers under a Services Contract.

4.23 The WasteNet Representative shall promptly notify the WMG members as to:

4.23.1 all formal notifications given by a Services Contract Contractor;

4.23.2 any circumstance which becomes known to the WasteNet Representative which constitutes a material default by either a Services Contract Contractor, a WasteNet Council or all WasteNet Councils under a Services Contract or which with the passage of time may become a material default;
4.23.3 any actual or possible disruption to the ability of:
   (a) the Landfill Operator to accept waste under the Regional Landfill Contract;
   (b) the MRF Operator to accept Recyclables under the Recyclables Acceptance Contract; and/or
   (c) the collection and/or delivery of Collected Materials and/or the operation of Transfer Stations or Recycle Drop-off Centres under the Kerbside Collection and Transfer Station Operations Contract;

4.23.4 any other event or circumstance that could materially impact on the WasteNet Councils or any one of them in relation to any of the Services Contracts or any other WasteNet Activity.

4.24 The WasteNet Representative shall not, in his or her capacity as the WasteNet Representative, have a vote on the WMG. However this does not prevent the WasteNet Representative having voting rights on the WMG if the WasteNet Representative is also an appointee under clause 4.14.

Support Services

4.25 Support and secretariat services to the WAG and the WMG under this Agreement shall be procured as the WMG shall decide from time to time. This may include sourcing these services from one or more of the WasteNet Councils or outsourcing from a third party. The resourcing of these services may vary as between the Services Contracts support and administration functions and other functions undertaken by the WAG or the WMG.

4.26 The initial support, billing and secretariat resourcing shall be provided by the ICC. The resource shall be charged to WasteNet Southland on a fair and reasonable cost recovery basis.

Accounting

4.27 The WasteNet Councils shall ensure that good and accurate financial accounting practices are implemented and followed in relation to their activities under this Agreement.

4.28 Each party shall be entitled to inspect all accounting information and to have that information audited.

Expenditure delegations

4.29 The WasteNet Representative and the WMG may incur expense under this Agreement as established by the delegations set by the WAG.

WAG and WMG decision making

4.30 The WAG and the WMG shall endeavour to operate by consensus.

4.31 This consensus focus does not release any party from its obligations to abide by the provisions of this Agreement.

4.32 Where this Agreement provides a process or a basis for decision making as to specific issues that process or basis shall apply. In all other cases:

4.32.1 For routine matters that do not materially adversely impact any single party, where consensus cannot be achieved, matters shall be decided by majority vote with the chairperson of the WAG and or the WMG (as appropriate) having a casting vote; and

4.32.2 For material matters or any matter that does or may materially adversely impact the interest of one or more WasteNet Councils, consensus shall be
required. Where consensus as to such matter or matters cannot be achieved the decision shall be made under the dispute resolution procedures with the arbitrator having the power to make the final decision where that final decision shall be what is fair and reasonable between the WasteNet Councils taking into account the circumstances applying at the time the decision is made within the objectives of the WasteNet Councils as set out or implied in this Agreement.

4.33 If landfill charges are referred to dispute resolution under 4.32.2, then the basis for determining those charges shall be that the charges should be such amount which taking into account reasonable predictions of expected waste quantities and estimates of operating and administrative expenses is sufficient to cover those expenses and the Base Rate for waste presented payable to the Landfill Operator pursuant to the Regional Landfill Contract.

5. SERVICES CONTRACT PAYMENT OBLIGATIONS

Direct payment obligations

5.34 Fees, costs and expenses and income or rebates which are identified as applying to a particular WasteNet Council in a Services Contract shall be payable and receivable by the applicable WasteNet Council in accordance with those arrangements.

Group payment obligations

5.35 Fees, costs and expenses and income or rebates which are identified as applying to the WasteNet Councils as a group in a Services Contract shall be payable and receivable by the WasteNet Councils participating in that Services Contract in accordance with the specific provisions of this Agreement or as otherwise agreed by the parties.

6. WASTE NET SOUTHLAND OPERATIONAL FUNDING

General operational funding

6.36 All fees, costs and expenses and income or rebates which do not accrue to a particular WasteNet Council under clauses 5.34 or 5.35 shall, unless the parties agree otherwise, be revenues or expenses of WasteNet Southland as a whole.

6.37 The general operational costs of WasteNet Southland, the WAG and the WMG including:

6.37.1 the provision of support services for all WasteNet Activities;

6.37.2 the provision of the WasteNet Representative under each Services Contract;

6.37.3 all costs and expenses incurred in the carrying out of the WasteNet Activities; and

6.37.4 all costs and expenses incurred in the management of the Services Contracts;

6.37.5 and Collection and transfer Station Contract bad debts;

6.37.6 Regional Landfill Contract bad debts; and

6.37.7 bad debts under any other Services contract

shall be paid by WasteNet from WasteNet general funds received pursuant to clause 6.36.
6.38 All operational surpluses for any year shall, unless the parties agree otherwise, be retained by WasteNet as a WasteNet reserve to be carried forward to subsequent years operational requirements.

6.39 Any shortfall in WasteNet funding shall -be funded by the WasteNet Councils in such proportions, to be set as at 1 July in each year, as the WAG shall agree and failing agreement shall be pro rata on the basis of the population of each WasteNet Council as at 1 July.

6.40 Any surpluses that the WasteNet Councils resolve to distribute shall be allocated in such proportions as the WAG shall agree and failing agreement in accordance with the pro rata proportions determined in accordance with clause 6.39.

6.41 Accounting shall be on a 30 June year end basis. Adjustments as to any surplus or shortfall will be made not later than 30 days after the production of financial statements for each year.

7. REGIONAL LANDFILL CONTRACT ARRANGEMENTS

Commitments

7.42 The WasteNet Councils shall each comply with their obligations under the Regional Landfill Contract. In particular (but without limiting the generality of this clause) the WasteNet Councils shall each present all Acceptable Waste to the Landfill Operator under and in accordance with the Regional Landfill Contract.

7.43 The WasteNet Councils will work together and shall establish waste collection, concentration and transfer policies and practices that are consistent with their obligations under the Regional Landfill Contract and this Agreement.

Waste Diversion

7.44 The WasteNet Councils acknowledge the adverse implications for the WasteNet Councils under the Regional Landfill Contract in relation to waste diversion. Whilst acknowledging the intention and right of each of the WasteNet Councils separately to set their own transfer station charging and kerbside waste collection charges, the WasteNet Councils agree to consult together as to these charges.

7.45 The WasteNet Councils will also each use reasonable endeavours to avoid waste diversion as set out in clause 7 of the Regional Landfill Contract.

7.46 Should waste diversion occur and the Landfill Operator give notice under clause 7.4 of the Regional Landfill Contract, the WasteNet Councils shall consult together and, unless they shall agree otherwise, use reasonable endeavours to identify strategies which will either prevent the waste diversion occurring or produce alternative sources of waste revenues for the Landfill Operator.

7.47 The WasteNet Councils will, unless they shall agree otherwise, also co-operate in implementing such strategies and use reasonable endeavours to avoid the loss of exclusivity under clause 7.7 of the Regional Landfill Contract.

Gate rates

7.48 The WasteNet Councils acknowledge that the transfer station and kerbside waste collection services they provide are effectively limited to the territories they serve and that due to the practical constraints of distance and cost the services they each provide, do not compete with those provided by the others.

7.49 Within the confines of good local government and market industry practice, and as permitted by the Commerce Act 1986, the WasteNet Councils agree to consult together as to the underlying approach to pricing of transfer station and kerbside waste collection services to their communities.
7.50 This consultation will include the allocation of revenues and costs under this Agreement to each party and the basis on which revenues and costs are attributed to the transfer station, kerbside waste collection services and landfill gate charges to Authorised Users under the Regional Landfill Contract.

7.51 The WasteNet Councils acknowledge that they are each subject to the same imperatives as to the funding of their activities as set out in section 101(3) of the LGA 2002 and that they consider that consistency in approach as to the extent to which actions or inactions of particular individuals or groups contribute to the need to provide waste disposal services and the way in which this is reflected in services pricing is to the advantage of each WasteNet Council and the communities they serve.

7.52 The WasteNet Councils also acknowledge the flexibility allowed local authorities as to the setting of waste charges under section 46 Waste Minimisation Act 2008 which provides that the charges for a service, facility or activity provided by the WasteNet Council in accordance with its waste management and minimisation plan may be higher or lower than cost recovery where the charge or lack of charge will provide an incentive or disincentive that will promote the objectives of its waste management and minimisation plan.

7.53 The WMG shall monitor outcomes in relation to the Regional Landfill Contract and the joint waste disposal activities of the WasteNet Councils (including cross territories movement of waste) and where such outcomes are not achieving the objectives of their waste management plans, the WasteNet Councils will consult in order to find equitable solutions for achieving such objectives including a review of economic and other incentives and disincentives.

**Revenues, expenses, working capital and bad debts**

7.54 The WasteNet Councils shall be jointly responsible for bad debt management and recovery arising under the Regional Landfill Contract. Bad debts arising under the Regional Landfill Contract shall be a WasteNet Southland cost.

7.55 Working capital in relation to the Regional Landfill Contract shall be provided by ICC with reasonable working capital costs charged to the WasteNet Southland.

7.56 All Regional Landfill Contract revenues shall be attributed to WasteNet Southland. All Regional Landfill Contract costs including administration, resourcing, bad debts and joint financing costs (if any) shall be debited to WasteNet Southland.

**Landfill users charges**

7.57 The WasteNet Councils acknowledge that WasteNet Southland will charge:

7.57.1 Authorised Users (i.e. third party users) directly; and

7.57.2 Each WasteNet Council directly for waste presented by STAS Agents (i.e. WasteNet Council contractors).

**Billing**

7.58 Billing will be managed by WasteNet Southland on a centralised basis as the WMG shall decide. Initially (and until the WMG shall decide otherwise) all billing will be managed by ICC.

**Authorised Users**

7.59 The WMG shall be responsible for the approval of Authorised Users pursuant to the Regional Landfill Contract. The WMG shall develop policies for such approvals. The policy shall be submitted to the WAG for approval.

7.60 The Authorised User approval policy shall take into account:
7.60.1 credit issues;
7.60.2 the nature of the waste to be presented by the Authorised User;
7.60.3 the proposed Authorised User’s track record as to responsible waste contracting and compliance with environmental and other waste requirements and the Landfill Operator’s landfill access requirements; and
7.60.4 such other matters and as shall be considered appropriate.

8. RECYCLABLES ACCEPTANCE CONTRACT ARRANGEMENTS

Initial ICC Commitment

8.61 The parties acknowledge that as at the date of execution of the Recyclables Acceptance Contract only ICC had committed to the presentation of Recyclables.

Notified Services Commencement Dates

8.62 The parties acknowledge that SDC and GDC have each given notification of a Notified Services Commencement Date for presentation of Recyclables pursuant to clause 2.3.2 of the Recyclables Acceptance Contract as follows:

SDC 2 May 2011
GDC 1 July 2012

8.63 The parties also acknowledge that SDC and GDC agreed to enter into and execute the Recyclables Acceptance Contract on the basis that unless and until they (separately) commenced presentation of Recyclables pursuant to the Recyclables Acceptance Contract, all costs, expenses and payments payable by the WasteNet Councils to the MRF Operator under the Recyclables Acceptance Contract shall be payable by ICC.

MRF processing fee

8.64 As from the applicable Notified Services Commencement Dates as set out in clause 8.62 the applicable WasteNet Council shall be a participant in the Recyclables Acceptance Contract and shall be responsible for payment of a share of the Contract Price payable from time to time under the Recyclables Acceptance Contract pro rata on the basis of the population of each WasteNet Council participating in the Recyclables Acceptance Contract.

MRF Revenue Share Payment

8.65 As from the applicable Notified Services Commencement Dates as set out in clause 8.62 the applicable WasteNet Council shall be entitled to a share of the Revenue Share Payment payable from time to time under the Recyclables Acceptance Contract pro rata on the basis of the population of each WasteNet Council participating in the Recyclables Acceptance Contract.

Recyclables Acceptance Contract revenues and costs

8.66 Other than provided in clauses 8.64 and 8.65, all Recyclables Acceptance Contract revenues shall be attributed to WasteNet Southland. All Recyclables Acceptance Contract costs including administration, resourcing, bad debts and joint financing costs (if any) shall be debited to WasteNet Southland.

Compliance with Recyclables Acceptance Contract

8.67 Each WasteNet Council participating in the Recyclables Acceptance Contract agrees with the other WasteNet Councils:

8.67.1 to present all Recyclables collected by that WasteNet Council from the kerbside collection and from Transfer Stations and Recycle Drop Off
Centres to the MRF Operator for acceptance pursuant to and within the terms of the Recyclables Acceptance Contract; and

8.67.2 to comply with the obligations of the WasteNet Councils under the Recyclables Acceptance Contract.

9. **COLLECTION AND TRANSFER STATION CONTRACT ARRANGEMENTS**

Commitment

9.68 The parties acknowledge that only ICC and SDC have committed to the Collection and Transfer Stations Contract as at the commencement of that contract.

9.69 Pursuant to clause 1.4 of the Collection and Transfer Stations Contract ICC and SDC have the right to introduce GDC into the Contract by way of accession.

GDC Accession

9.70 The parties have agreed that GDC shall be introduced into the Collection and Transfer Stations Contract as from 1 July 2012 (GDC Commencement Date) on the basis set out in the Accession Deed as negotiated by the parties (including the Collection and Transfer Stations Contract contractor) and intended to be signed contemporaneously with the execution of this Agreement.

9.71 As from the GDC Commencement Date GDC shall be a participant in the Collection and Transfer Stations Contract and shall be responsible for direct payments due under that contract.

Collection Contract revenues and costs

9.72 Other than is provided otherwise in this Agreement or shall be agreed by the WAG all Collection and Transfer Stations Contract revenues shall be attributed to WasteNet Southland. All Collection and Transfer Stations Contract costs including administration, resourcing, joint financing costs (if any) and bad debts shall be debited to WasteNet Southland.

Compliance with Collection and Transfer Station Contract

9.73 Each WasteNet Council participating from time to time in the Collection and Transfer Stations Contract agrees with the other WasteNet Councils to comply with the obligations of the WasteNet Council under the Collection and Transfer Stations Contract.

10. **WITHDRAWAL OF A PARTY**

Services Contracts

10.74 The WasteNet Councils acknowledge that they have committed to the Services Contracts for the term of each Services Contract and that the WasteNet Councils do not have unilateral rights to withdraw from the Services Contracts.

Joint Waste Management Agreement

10.75 The WasteNet Councils therefore confirm that they shall each remain bound by this Agreement in relation to each Service Contract for at least as long as the Services Contract shall continue.

10.76 A party can only withdraw from this Agreement in relation to a Services Contract or from the general provisions of this Agreement with the approval of the others (which may be given or withheld in their complete discretion and which approval may be given on conditions which (without limiting the generality of their discretion) can include:

10.76.1 the exiting of the withdrawing party from the applicable Services Contract;
10.76.2 the exiting of the withdrawing party from participation in the implementation of the WasteNet Southland Business Plan under this Agreement;

10.76.3 the exiting of the withdrawing party from any further joint arrangements under this Agreement; and/or

10.76.4 the payment by the withdrawing party of compensation for the extra overhead, costs or damages that might be sustained by the other WasteNet Councils under the Services Contract or this Agreement.

11. **INDEMNITIES**

11.77 Each party shall be liable for and shall indemnify the other WasteNet Councils (severally) against any liability, expense, loss, claim, proceedings, fine, penalty or damage (and including all legal or other fees or expenses reasonably incurred by the other WasteNet Councils arising out of any of the below on a solicitor client basis but excluding all consequential losses) arising out of:

11.77.1 the failure by the party to properly perform its obligations under any Services Contract or this Agreement; or

11.77.2 the negligence omission or wilful misconduct of the party its employees or its agents in relation to any Services Contract or this Agreement provided that the party shall not be liable if and to the extent such liability is caused:

11.77.3 by the default or omission of any other of the WasteNet Councils in the performance of their obligations under the Services Contract or this Agreement; or

11.77.4 by the negligence, omission or wilful misconduct of any other of the WasteNet Councils or their consultants, agents or employees or any of its subcontractors or their agents or employees in relation to the Services Contract or this Agreement.

11.78 The party providing the WasteNet Representative (if any) shall be liable for and shall indemnify the other WasteNet Councils (severally) against any liability, expense, loss, claim, proceedings, fine, penalty or damage (and including all legal or other fees or expenses reasonably incurred by the other WasteNet Councils arising out of any of the below on a solicitor client basis but excluding all consequential losses) arising out of:

11.78.1 the failure by the WasteNet Representative to properly perform his or her obligations under any Services Contract or this Agreement; or

11.78.2 the negligence omission or wilful misconduct of the WasteNet Representative in relation to any Services Contract or this Agreement provided that the party shall not be liable if and to the extent such liability is caused:

11.78.3 by the default or omission of any other of the WasteNet Councils in the performance of their obligations under the Services Contract or this Agreement; or

11.78.4 by the negligence, omission or wilful misconduct of any other of the WasteNet Councils or their consultants, agents or employees or any of its subcontractors or their agents or employees in relation to the Services Contract or this Agreement.

**Defence of actions**

11.79 If any party or parties shall be prosecuted or shall face any claim, action, proceeding, fine penalty or damage (each being referred to in this clause as an
'Indemnified Claim') for which such party or parties shall seek to be indemnified by one or both of the other WasteNet Councils under clause 11.77 or clause 11.78 then the party or parties making such Indemnified Claim shall:

11.79.1 promptly upon becoming aware of the existence of the circumstances giving rise to such Indemnified Claim give notice of such circumstances to the other parties;

11.79.2 consult with the other parties as to the response to such Indemnified Claim;

11.79.3 use its best endeavours to minimise the effects of such circumstance and to mitigate the liability of the other party or parties under clause 11.77 or 11.78 in relation to such Indemnified Claim; and

11.79.4 take all reasonable action to vigorously defend or oppose such Indemnified Claim.

**Payment of indemnified moneys**

11.80 All moneys payable by one party to another under clause 11.77 or 11.78 shall be payable upon receipt of written demand.

**12. Dispute Resolution**

**Amicable resolution**

12.81 A Dispute (Dispute) is any dispute, disagreement or difference of opinion arising under this Agreement, as to:

12.81.1 the meaning or application of any part of the Agreement; or

12.81.2 any other matter arising under the Agreement.

**Notice of dispute**

12.82 A party claiming that a dispute has arisen must give written notice to the other WasteNet Councils, specifying the nature of the dispute. On receipt of such a notice and without limiting the application of the clauses below relating to dispute resolution, the WasteNet Councils shall endeavour to resolve the dispute amicably and expeditiously using informal dispute resolution techniques agreed by them.

**Referral to senior management**

12.83 If the WasteNet Councils are unable to settle a dispute amicably, any party may issue a notice referring the dispute to the senior management of the WasteNet Councils to resolve.

12.84 Within 10 Working Days of service of such a notice, senior management representatives of each party shall meet and attempt to resolve the dispute. Any resolution shall be unanimous, recorded in writing and binding when signed by all WasteNet Councils.

**Referral to mediation**

12.85 A dispute may be referred to mediation where:

12.85.1 the senior management representatives fail to meet within 10 Working Days of referral; or

12.85.2 the senior management representatives fail to resolve a dispute within 10 Working Days of referral; or

12.85.3 none of the WasteNet Councils requires referral to senior management representatives.
12.86 In such case any party may by notice in writing to the others require the dispute to be submitted to mediation.

Mediation

12.87 If any dispute is submitted to mediation under clause 12.86, the following shall apply:

12.87.1 The mediation shall be conducted by a single mediator.

12.87.2 The WasteNet Councils shall endeavour to agree on a mediator.

12.87.3 If the WasteNet Councils cannot agree on a single mediator within 10 Working Days of service of notice of intention to commence mediation, any party may request the Executive Director of LEADR New Zealand Incorporated to appoint a sole mediator.

12.87.4 The mediator shall discuss the matter with the WasteNet Councils (separately or jointly as the mediator may determine) and endeavour to procure a resolution of the dispute by agreement.

12.87.5 All discussions in the mediation shall be without prejudice and shall not, save in the case of proceedings to enforce settlement concluded by mediation, be referred to in any later proceedings.

12.87.6 The WasteNet Councils shall bear their own costs in mediation and shall pay the cost of the mediator in equal shares.

Arbitration

12.88 If the WasteNet Councils cannot resolve the dispute by mediation under clause 12.87, then any party may by written notice to the others refer the Dispute to arbitration in accordance with the Arbitration Act 1996 on the following terms:

12.88.1 A single arbitrator shall be appointed.

12.88.2 If the WasteNet Councils fail to agree on an arbitrator, then the Executive Director of LEADR New Zealand Incorporated shall appoint the arbitrator.

12.88.3 The place of arbitration shall be Invercargill.

12.88.4 No person who has participated in an informal dispute resolution of the Dispute shall act as arbitrator.

12.88.5 The arbitrator will proceed promptly to deliver an award. The WasteNet Councils shall co-operate fully in this respect.

12.88.6 The WasteNet Councils agree that the arbitrator's decision shall, subject to clause 4 and 5 of the Second Schedule to the Arbitration Act 1996, be final and binding.

12.88.7 The WasteNet Councils shall bear their own costs in arbitration and (in the absence of an arbitrator’s award to the contrary) shall pay the costs of the arbitrator in equal shares.

Performance of obligations

12.89 Pending the settlement of the Dispute, the WasteNet Councils shall continue to perform all their obligations under this Agreement except, none of the WasteNet Councils shall be obliged to pay any money which is the subject of the Dispute.

Compliance with dispute resolution regime

12.90 A party to this Agreement may not commence any court or arbitration proceedings relating to a Dispute unless it has complied with the clauses above relating to
dispute resolution (except where the party seeks urgent interlocutory or injunctive relief).

**Survival of provisions**

12.91 On the termination of this Agreement for any reason the following provisions shall survive:

12.91.1 the obligations to pay moneys accruing up to the date this Agreement terminates or arising as a consequence of termination;

12.91.2 the indemnities in clause 11; and

12.91.3 the media, confidentiality and official information provisions in clause 14.

### 13. FORCE MAJEURE

#### Force Majeure Event

13.92 A party will not be liable for any act, omission or failure to fulfil its obligations under this Agreement if such act, omission or failure arises from any cause reasonably beyond its control (a Force Majeure Event), which includes (without limitation):

13.92.1 Earthquake (including fire following) or volcanic eruption.

13.92.2 Tidal waves or Tsunami.

13.92.3 Ionizing radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste, from the combustion of nuclear fuel, from radioactive toxic explosion or by other hazardous properties of any explosive nuclear assembly or nuclear components.

13.92.4 War and other hostilities (whether war be declared or not) invasion, act of foreign enemies, mobilization, requisition or embargo.

13.92.5 Rebellion, revolution, insurrection, military or usurped power or civil war.

13.92.6 Terrorism, piracy or sabotage.

13.92.7 Fire, tempest and flood.

13.93 The party which cannot carry out its obligations under this Agreement must give the other WasteNet Councils notice as soon as practicable of the cause and insofar as it is known the probable extent to which the party giving the notice will be unable to perform or will be delayed in performing its obligation under this Agreement.

13.94 On the issue of notice of a Force Majeure Event the obligations of the party giving the notice will be suspended insofar as that party is prevented during the continuation or intervention of such cause to carry out its obligations under this Agreement.

13.95 The party giving notice which is affected by the Force Majeure Event must take all reasonable steps to mitigate the effects of and eliminate the intervening event and must resume performance of its obligations as promptly as is practicably possible.

### 14. MEDIA AND CONFIDENTIALITY

#### Publicity and publication

14.96 The WasteNet Councils shall endeavour to agree all public or media statements prior to release. However this clause shall not be construed as restricting the right of each of the WasteNet Councils to discuss any aspect of this Agreement in open Council meetings and have such deliberations reported in the media or to make statements in relation to the Agreement as in the party's reasonable opinion are necessary or desirable in the performance of that party's role as a territorial authority.
or in the interests of full public debate of all issues relevant to a territorial authority, its community and its ratepayers.

Confidentiality

14.97 The WasteNet Councils acknowledge that they will each come into possession of Confidential Information about the others under and in relation to this Agreement.

14.98 The WasteNet Councils agree that all Confidential Information shall be treated as confidential. The WasteNet Councils shall each take all reasonable precautions to ensure that the Confidential Information is not in any way disclosed to any third party (other than as is required to perform obligations under this Agreement or to obtain any consent or approval, or to any other party a party may need to consult with in relation to this Agreement) during or after the term of this Agreement.

Official information legislation

14.99 The WasteNet Councils acknowledge that each of them is subject to the Local Government Official Information and Meetings Act 1987 and that under that Act any of them may be required to release information about the Agreement, the Services Contracts, any activity undertaken under this Agreement or the other WasteNet Councils.

14.100 The WasteNet Councils will only release information relating to one of the other WasteNet Councils under the Local Government Official Information and Meetings Act 1987 through the other party unless compelled by a competent authority, in which case it will immediately advise the other party as to the information released.

15. General

No partnership

15.101 Nothing in this Agreement constitutes the WasteNet Councils as partners or as agents for each other. No party has any authority to bind the other or act on its behalf except to the extent expressly provided for in this Agreement.

Amendment

15.102 This Agreement cannot be amended, modified or varied or supplemented except in writing signed by duly authorised representatives of each of the WasteNet Councils.

Severance

15.103 The illegality, invalidity or unenforceability of any provision in this Agreement will not affect the legality, validity or enforceability of any other provisions.

Waiver

15.104 No right under this Agreement shall be deemed to be waived except by notice in writing signed by each party.

15.105 A waiver for either party will not prejudice its rights in respect of any subsequent breach of this Agreement by the other WasteNet Councils.

15.106 Subsequent to any failure by any party to enforce any clause of this Agreement, or any forbearance, delay or indulgence granted by a party will not be construed as a waiver of any party’s rights under this Agreement.

No assignment

15.107 The WasteNet Councils shall not assign, sublet, subcontract or transfer the whole or any substantial right or obligation under the Agreement without the written consent of the others (not to be unreasonably withheld or delayed).
15.108 Unless specifically stated to the contrary in any written consent to an assignment or subcontracting, no assignment or subcontract shall release or discharge a party from any liability or obligation under this Agreement.

**Governing law and jurisdiction**

15.109 This Agreement will be governed by and construed according to the law of New Zealand. The WasteNet Councils hereby agree to submit to the non-exclusive jurisdiction of the Courts of New Zealand.

**Costs**

15.110 Each party shall bear its own costs incurred in the preparation and execution of this Agreement.

**Entire agreement**

15.111 This Agreement represents the entire agreement between the WasteNet Councils as to the matters contained herein. No party shall be bound by any prior warranty or representation as to such matters unless included in this Agreement.

**Notices**

15.112 All notices and other communication provided for or permitted under this Agreement which are required to be in writing, will be sent by registered mail with postage prepaid or by hand delivery or by facsimile as follows:

15.113 The addresses for notices are:

The Invercargill City Council:

Chief Executive
Civic Administration Building
101 Esk Street
Invercargill

Telephone: 03 211 1777
Facsimile: 03 211 1432

The Gore District Council:

Chief Executive
Council Offices
29 Civic Avenue
Gore

Telephone: 03 209 0330
Facsimile: 03 209 0357

The Southland District Council:

Chief Executive
Council Offices
15 Forth Street
Invercargill

Telephone: 03 218 7259
Facsimile: 03 218 9460

or such other address that each party may notify in writing from time to time. Such notice given:

- in person is deemed served upon delivery;
• by registered mail is deemed to be served 3 Working Days after postage;
• by facsimile is deemed to be served upon the receipt of the correct
electronic confirmation that the facsimile has been transmitted successfully.

15.114 Any such notice which has been served on a non working day or after 5:00pm on a
Working Day is deemed served on the first Working Day after that day.

16. DEFINITIONS AND INTERPRETATION
Definitions
16.115 In this Agreement the following definitions apply:

Agreement means this agreement and includes the schedules and any additional
documents specified in the Agreement.

Collection and Transfer Station Contract means the Solid Waste Collection and
Transfer Station Services Contract as referred to in paragraph G of the Background
to this Agreement.

Collection and Transfer Station Services means the Services to be provided by
the contractor under the Collection and Transfer Station Contract.

Confidential information means any information relating to the Agreement or the
parties other than:

• has been published or otherwise has become part of the public domain
  other than through acts or omissions of the recipient; or

• has been furnished by the recipient by persons other than the Council
  (which term includes persons employed by or acting for the Council) as a
  matter of legal right and without restriction on disclosure; or

• was already in the possession of the recipient without restriction or
disclosure; or

• to the extent the information is required to be disclosed by any law or in
  relation to any proceedings or action before any court, tribunal, or other
  competent authority or body.

Effective Date means the date this Agreement is effective pursuant to clause 1.1.

Elected Member means a member of the governing body of each of the WasteNet
Councils elected under the Local Electoral Act 2001.

GST means goods and services tax chargeable under the GST Act.


Landfill Operator means AB Lime Limited, the contractor under the Regional
Landfill Contract.


MRF Operator means Southland disAbility Enterprises Limited the contractor under
the Recyclables Acceptance Contract.

Recyclables Acceptance Contract means the Recyclables Acceptance Contract
entered into by the WasteNet Councils with Southland disAbility Enterprises Limited
as described in paragraph F of the Background to this Agreement

Recyclables Acceptance Services means the service for the acceptance and
processing of Recyclables to be provided by the MRF Operator pursuant to the
Recyclables Acceptance Contract.
**Regional Landfill Contract** means the waste disposal services agreement as described in paragraph D of the Background to this Agreement.

**Services Contracts** means the:

- Regional Landfill Contract;
- Recyclables Acceptance Contract;
- Collection and Transfer Stations Services Contract; and
- Such other contracts as the WasteNet Councils agree shall be managed by WasteNet and the WAG from time to time.

**Waste Advisory Group or WAG** means the joint committee of the WasteNet Councils known as the Waste Advisory Group as described in clause 4.10.

**WasteNet Activities** means:

- the development and implementation of the WasteNet joint waste management and minimisation strategies;
- the implementation of the WasteNet Southland Business Plan; and
- the management and administration of the Services Contracts;
- such other activities and functions as shall be delegated or assigned to WasteNet Southland by the WasteNet Councils from time to time.

**WasteNet Councils** means ICC, GDC and SDC together.

**WasteNet Representative** means the WasteNet Representative under each Services Contract appointed under clause 4.18 of this Agreement.

**WasteNet Southland** means the shared services business unit known as WasteNet Southland formed by the WasteNet Councils as described in this Agreement.

**WasteNet Southland Business Plan** means the joint business plan of the WasteNet Councils known as the WasteNet Southland Business Plan (Version 1.0:2007) as that plan may be amended from time to time and includes any further joint plan adopted by the WasteNet Councils in substitution for or addition to the WasteNet Southland Business Plan.

**WMG** means the Waste Management Group as described in clause 4.13.

**Working Day** means any day other than a Saturday, Sunday, or a public holiday applying in Southland.

**Interpretation**

16.116 In this Agreement unless the context otherwise requires:

16.116.1 all monetary amounts are stated exclusive of GST and in New Zealand dollars unless provided otherwise.

16.116.2 where the context permits the singular includes the plural and vice versa.

16.116.3 references to a party means a party to this Agreement and includes their respective successors and permitted assignees (as the case may be).

16.116.4 references to clauses, schedules and attachments are to clauses, schedules and attachments (if any) to this Agreement (unless otherwise stated).
16.116.5 all schedules or appendices to this Agreement shall have the same effect as if set out in the body of this Agreement.

16.116.6 where the context permits references to a party include the party’s employees, agents and officers.

16.116.7 all references to legislation include all subordinate legislation, any re-enactment of or amendment to that legislation and all legislation passed in substitution for that legislation.

16.116.8 references to a person include a natural person, firm, corporation, association trust, state, or agency of state, government department or municipal authority or other entity whether incorporated or not and whether or not having a separate legal personality.

16.116.9 the headings in this Agreement shall not be used in its interpretation.

16.116.10 words and expressions defined are indicated by capital letters for convenience.

16.116.11 obligations that bind more than one person shall bind those persons jointly and severally.

16.116.12 ambiguities or discrepancies shall not invalidate the Agreement.

16.116.13 if there is a conflict between the provisions of the Agreement, the provisions shall take priority in the following order:

(a) terms and conditions of Agreement;

(b) the schedules;

(c) additional documents as specified in the Agreement.

16.116.14 reference to a 'law' or 'laws' means a statute, regulation bylaw or any other requirement of a governmental or semi-governmental organisation.

16.116.15 The language of this Agreement is English. All notices and communications of any kind required under or arising in connection with this Agreement shall be in English.

16.116.16 Defined terms are capitalised. Defined terms shall have the meaning set out in this Agreement. In addition capitalised expressions that are not defined in this Agreement that are defined in the applicable Services Contract shall have the meanings set out in that Services Contract.

16.116.17 References to clauses in the Services Contract are (unless indicated otherwise) references to clauses in the Contract Conditions portion of the Services Contract.
WasteNet Joint Waste Management Agreement

EXECUTION

Executed as an agreement.
Dated 14 December 2011

The common seal of the
INVERCARGILL CITY COUNCIL was affixed in the presence of:

Chief Executive Officer

Mayor

The common seal of the
SOUTHLAND DISTRICT COUNCIL was affixed in the presence of:

Chief Executive Officer

Mayor

The common seal of the
GORE DISTRICT COUNCIL was affixed in the presence of:

Chief Executive Officer

Mayor

Version: Final
13 October 2011