

WASTE DISPOSAL AGREEMENT

entered into between

THE OVERSTRAND MUNICIPALITY

("Overstrand")

and

THE THEEWATERSKLOOF MUNICIPALITY

("TWK")

and

THE OVERBERG DISTRICT MUNICIPALITY

("Overberg")

Table of Contents

	Page No
1. INTRODUCTION	3
2. DEFINITIONS.....	3
3. REPRESENTATION OF THE PARTIES.....	9
4. INTERGOVERNMENTAL MONITORING COMMITTEE	10
5. DEVELOPMENT OF REGIONAL WASTE DISPOSAL FACILITY	10
6. OPERATING AGREEMENT	11
7. CHARGES.....	12
8. WEIGHING OF REFUSE.....	15
9. GOVERNING LAW	16
10. CHANGE IN LAW	16
11. DURATION OF AGREEMENT.....	17
12. VARIATIONS AND AMENDMENTS	17
13. NOTICE AND DOMICILIUM	18
14. FORCE MAJEURE	19
15. DISPUTE RESOLUTION.....	20
16. SEVERABILITY	21
17. BREACH	21
18. TERMINATION OR CANCELLATION OF AGREEMENT	22

1. INTRODUCTION

WHEREAS Overberg 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 Overberg is the owner of portion 79 (a portion of portion 1) of the Farm Afdakrivier 575, known as Karwyderskraal on which it operates a regional waste disposal site, and Overstrand, TWK and Third Parties make use of such a solid waste disposal site and the waste disposal facilities thereon;

AND WHEREAS Overberg intends to establish and construct a fourth cell on portion 79 (a portion of portion 1) of the Farm Afdakrivier 575, known as Karwyderskraal;

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 intended,

2.1.1 **“Agreement”** means this agreement entered into between the Overstrand, TWK and Overberg and includes all annexures hereto;

2.1.2 **“Business Day”** means any day of the week excluding Saturdays, Sundays and Public Holidays as determined in terms of the Public Holidays Act;

2.1.3 **“Cell Four”** means the new cell to be established, constructed and operated in the Regional Waste Disposal Facility;

2.1.4 **“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 Overstrand and TWK 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.

- 2.1.5 **“Charges”** means all of the charges as agreed upon between the Parties to be levied by Overberg for the use of the Regional Waste Disposal Facility in terms of clause 7 of this Agreement;
- 2.1.6 **“Construction 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;
- 2.1.7 **“Contractual Term”** means the period from the Effective Date until the last day of the useful life of the Regional Waste Disposal Facility which is to be expected to be 55 (fifty five) years calculated from the Effective Date;
- 2.1.8 **“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;
- 2.1.9 **“CPI”** means the consumer price index increase as determined by Statistics South Africa annually as published on the date of escalation;

- 2.1.10 **“Delivery Hours”** means the hours from 08:00 in the morning until 18:00 in the evening from Monday to Friday which will include public holidays; as well as provision for delivery after hours at reasonable times and on reasonable notice to Overberg, as and when the need arises, which shall be recorded in the contract entered into between Overberg and the service provider that operates the Regional Waste Disposal Facility;
- 2.1.11 **“Effective Date”** means the date upon which Overberg notifies the other Parties in writing that the construction of Cell Four has been completed and is ready for operation;
- 2.1.12 **“Financial Year”** means a year commencing on 1 July in the one year and ending on 30 June of the following year;
- 2.1.13 **“Fixed Waste Disposal Cost”** means the fixed annual charge levied by Overberg for the use of the Regional Waste Disposal Facility in terms of clauses 7.10 to 7.13 below;
- 2.1.14 **“Force Majeure”** means any event of war, civil commotion, fire, flood, action by any government, 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;
- 2.1.15 **“Fruit Waste”** means solid waste deriving from fruits and vegetables that is biodegradable and includes the peel, skin, pulp, seeds and leaves;
- 2.1.16 **“Garden Waste”** means waste generated as a result of normal domestic gardening activities including grass cuttings, leaves, plants, flowers and other similar small and light organic matter and chipped tree branches;

- 2.1.17 **“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;
- 2.1.18 **“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 Overberg 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;
- 2.1.20 **“Health Care Risk Waste”** means that portion of health care waste that is hazardous and includes infectious waste, pathological waste, sharp waste, pharmaceutical waste, genotoxic waste, chemical waste, waste with heavy metals, radioactive waste, and any other health care waste which is defined as hazardous in terms of the Waste Management Series: Document 1: Minimum Requirements for the Handling, Classification and Disposal of Hazardous Waste, as published by the Department of Water Affairs and Forestry, now the Department of Water and Sanitation;
- 2.1.21 **“Household”** means a collection of individuals staying on a distinctive property and/or premises regardless of their relationship to one another;

- 2.1.22 **“Industrial Waste”** means waste generated as a result of manufacturing, maintenance, fabricating or dismantling activities, but shall not include Building Waste, General Waste, Hazardous Waste or waste generated by domestic households;
- 2.1.23 **“Karwyderskraal Monitoring Committee”** means the monitoring committee established in terms of clause 9 of the Permit;
- 2.1.24 **“Licensed facility”** means a waste disposal facility that has been issued with a Waste Management Licence required in terms of the Waste Act and any other approval required by law;
- 2.1.25 **“Overberg”** means the Overberg District Municipality or its successors in title;
- 2.1.26 **“Overstrand”** means the Overstrand Municipality or its successors in title;
- 2.1.27 **“Parties”** means Overberg, Overstrand and TWK and **“Party”** refers to one of the Parties as the context may indicate;
- 2.1.28 **“Permit”** means the permit number 19/2/5/4/E2/8/WL0098/17 issued to Overberg District Municipality on 12 February 2018 or as re-issued by any subsequent permit in respect of the Regional Waste Disposal Facility in terms of section 20 of the Waste Act;
- 2.1.29 **“Recycled Waste”** means waste that has undergone a process where waste is reclaimed for further use, which process involves the separation of waste from a waste stream for further use and the processing of that separated material as a product or raw material;
- 2.1.30 **“Regional Waste Disposal Facility”** means the licensed Karwyderskraal Sanitary Landfill Site situated on portion 79 (a portion

of portion 1) of the Farm Afdaksrivier 575, known as Karwyderskraal, which is owned and operated by Overberg for the western part of the Overberg;

- 2.1.31 **“Rehabilitation Contribution”** means the portion of the Rehabilitation Costs that will be payable by Overstrand, TWK and Third Parties as set out in clauses 7.14 to 7.20 below;
- 2.1.32 **“Rehabilitation Costs”** means the costs associated with rehabilitating the Regional Waste Disposal Facility;
- 2.1.33 **“Reinforced builders rubble”** means builders rubble still containing reinforced steel and pieces of concrete larger than the size of a brick or exceeding 250mm in length;
- 2.1.34 **“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 authorized for said regulatory or contractual purposes only;
- 2.1.35 **“Sand”** means soil/earth/sand as acceptable cover material which does not contain any other material and is without rocks and stones;
- 2.1.36 **“Third Parties”** means other municipalities and private users in the Overberg Regional District to which Overberg grants a right to make use of the Regional Waste Disposal Facility;
- 2.1.37 **“TWK”** means the Theewaterskloof Municipality or its successors in title;
- 2.1.38 **“Waste Act”** means the National Environmental Management: Waste Act (Act 59 of 2008) as amended from time to time;

- 2.1.39 **“Waste Disposal
Tariff”** means the variable tariff per ton of waste deposited, as indicated in clauses 7.7 to 7.9 below.
- 2.1.40 Expressions in the singular also denote the plural and vice versa;
- 2.1.41 Words and phrases denoting natural persons refer also to juristic persons and vice versa;
- 2.1.42 Pronouns of any gender include the corresponding pronouns of the other genders;
- 2.1.43 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;
- 2.1.44 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;
- 2.4.45 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;
- 2.1.46 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;
- 2.1.47 Where figures are referred to in numerals and in words, if there is any conflict between the two, the words shall prevail.
- 2.2 Clause headings appear in this Agreement for purposes of reference only and shall not influence the proper interpretation of the subject matter.

3. REPRESENTATION OF THE PARTIES

- 3.1 Overberg warrants and represents to Overstrand and TWK the following:
- 3.1.1 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).

3.1.2 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.

3.2 Overstrand and TWK warrant and represent to Overberg the following:

3.2.1 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).

3.2.2 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.

4. INTERGOVERNMENTAL MONITORING COMMITTEE

4.1 The Parties hereby agree to utilise the Karwyderskraal Monitoring Committee, to fulfil a monitoring and co-ordination function, but not a decision-making function, relating to the landfill activities and functions as set out in this Agreement for the full duration of this Agreement.

4.2 The monitoring committee shall meet according to the permit conditions on a pre-determined date at the Regional Waste Disposal Facility.

5. DEVELOPMENT OF REGIONAL WASTE DISPOSAL FACILITY

5.1 Overberg shall do the following for the duration of the Agreement:

5.1.1 Retain ownership of portion 79 (a portion of portion 1) of the Farm Afdakrivier 575 for the development, construction and operation of a Regional Waste Disposal Facility.

5.1.2 Design and construct the waste disposal facility in conformity with the Waste Act and any regulations promulgated thereunder, all applicable codes, permits, bylaws, regulations and other applicable laws, as well as in accordance with Good Engineering Practice.

5.1.3 Obtain and maintain all necessary and required statutory authorizations for the handling and disposal of General Waste at the Regional Waste Disposal Facility.

5.1.4 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 so as to ensure that the municipalities in the Overberg Regional District are in compliance with regard to waste disposal in terms of the Waste Act.

- 5.1.5 If Overberg chooses to award a contract to a private entity to design and construct Cell Four and subsequent cells and/or operate the Regional Waste Disposal Facility, it shall proceed in a diligent, orderly, and prudent manner and shall at all times keep Overstrand and TWK informed of its progress in that process.
 - 5.1.6 Operate and maintain the Regional Waste Disposal Facility so as to be capable of receiving and disposing waste from Overstrand and TWK.
 - 5.1.7 Operate the Regional Waste Disposal Facility in a manner that will minimise any adverse impact upon residents of the surrounding areas.
 - 5.1.8 Accept General Waste from Overstrand and TWK during the Delivery Hours.
 - 5.1.9 Allow and encourage the recovery of waste by Overstrand and TWK instead of disposing the waste at the Regional Waste Disposal Facility.
- 5.2 Overstrand and TWK shall do the following for the duration of the Agreement:
- 5.2.1 Ensure that all waste conforms to the Waste Act and any regulations promulgated thereunder, national legislation and the permit conditions of the Regional Waste Disposal Facility.
 - 5.2.2 Ensure that all waste that is transported to the Regional Waste Disposal Facility be covered to avoid littering en route.
 - 5.2.3 Use all reasonable endeavours to encourage the reduction of waste.
 - 5.2.4 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.
 - 5.2.5 Waste types or loads that do not conform to the prescriptions as set out above and in the permit conditions of Regional Waste Disposal Facility will not be accepted.

6. OPERATING AGREEMENT

- 6.1 The parties acknowledge that:
- 6.1.1 Overberg will be contractually bound to a private entity for the operation 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 Cell Four.

6.1.2 Overberg's financial obligations in terms of the contracts referred to in clause 6.1.1 can only be met on payment of the charges set out in clause 7 below.

6.2 The Regional Waste Disposal Facility will be operated by Overberg as a ring-fenced economic account, which account 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 Overberg in terms of the construction of Cell Four. The development of further cells will be incorporated in separate addenda to this Agreement.

7. CHARGES

7.1 Overstrand and TWK undertake to pay the applicable Charges to Overberg consisting of a Fixed Waste Disposal Cost, a variable Waste Disposal Tariff per ton of waste disposed and a Rehabilitation Contribution per ton of waste disposed.

7.2 Cover material, Garden Waste and Fruit Waste are excluded from the Waste Disposal Tariff and Overberg also need not pay for Cover Material or Garden Waste disposed at the Regional Waste Disposal Facility.

7.3 In the event of Overberg 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, Overstrand and TWK will not be held liable for the Waste Disposal Tariff, the Rehabilitation Contribution and the Fixed Waste Disposal Cost.

7.4 Overstrand and TWK undertake to pay the full amount invoiced by Overberg within 30 (thirty) days of the day of receipt of a valid invoice and to make all payments directly per electronic funds transfer into Overberg's bank account (s), particulars of which will be furnished by Overberg from time to time.

7.5 Disputes will not be accepted as reason for non-payment.

7.6 Overberg will repay to Overstrand the costs the latter incurred for the design of Cell Four, which costs are R1 164 403.00 (one million one hundred and sixty four thousand four hundred and three rand)(VAT excluded).

Waste Disposal Tariff

7.7 The Waste Disposal Tariff shall be calculated based on the costs incurred by Overberg in operating the Regional Waste Disposal Facility, currently Cell Four, including but not limited to fees for contractors, contract administration, external 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 and shall exclude any costs of a non-cash nature, e.g. depreciation, impairment and provisions. The Rehabilitation Cost will not form part of the operational cost allocation to the users of the service, but will be a separate charge.

- 7.8 Overstrand and TWK shall each be liable to pay Overberg the agreed Waste Disposal Tariff of R88.03 (eighty eight rand and three cents) (VAT excluded), per ton of waste deposited for the first year following the Effective Date. For builders rubble, excluding Cover Material, a disposal tariff of R100.00 (one hundred rand) (VAT excluded) will be charged per ton for the first year following the Effective Date.
- 7.9 The Waste Disposal Tariff and disposal tariff for builders rubble, shall be revised annually and formally agreed to in writing by the Parties 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. If agreement is not reached by 28 February of the subsequent year, or by such alternative date as may be agreed in writing by the Parties, then the Waste Disposal Tariff for the previous year shall continue to apply.

Fixed Waste Disposal Cost

- 7.10 The Fixed Waste Disposal Cost is calculated in accordance with Overberg's loan repayment obligations which are to be incurred for the purpose of constructing Cell Four. The loan repayment period shall be aligned to the estimated useful life of Cell Four. The remaining estimated useful life will be determined annually during October of that Financial Year. Instalments on the loan repayment shall also be adjusted accordingly.
- 7.11 Payments of the Fixed Waste Disposal Cost shall be aligned to the actual loan repayment instalment due and will be payable by the users of the service 30 (thirty days) prior to actual loan repayment instalment due date and only on receipt of a valid invoice from Overberg with substantiating documents from the financial institution where the loan was obtained.
- 7.12 The Fixed Waste Disposal Cost shall be divided proportionately between Overstrand, TWK and Third Parties based on projected usage of Cell Four and any correction based on the actual usage must be adjusted with subsequent payments annually before the end of September of that Financial Year. For the remainder of the first Financial Year following the Effective Date, the annual Fixed Waste Disposal Cost shall be as follows:

7.12.1 Overstrand shall be liable for R2,239,665.00 (two million two hundred and thirty nine thousand six hundred and sixty five rand) (VAT excluded); and

7.12.2 TWK shall be liable for R871,088.00 (eight hundred and seventy one thousand and eighty eight rand) (VAT excluded);

Which amounts will in this instance be regarded as the best estimate only for the purposes of this Agreement.

7.13 Any escalation in the Fixed Waste Disposal Cost shall be aligned to any escalation in the actual loan repayment instalment and shall be reviewed and agreed upon between the Parties annually before the end of November of that Financial Year. If agreement is not reached by 28 February of the subsequent year, or by such alternative date as may be agreed by the Parties in writing, then the Fixed Waste Disposal Cost for the previous year shall continue to apply.

Rehabilitation Contribution

7.14 The Regional Waste Disposal Facility will be required to be rehabilitated at the end of its useful lifespan.

7.15 Overstrand, TWK and Third Parties, being the users of the Regional Waste Disposal Facility, shall be liable proportionately to contribute towards the Rehabilitation Costs of the Regional Waste Disposal Facility from the Effective Date through payment of the Rehabilitation Contribution in accordance with clauses 7.16 to 7.20 below.

7.16 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 paragraph 13 of the Permit, inclusive of post-closure monitoring only of the Regional Waste Disposal Facility as specified in the Permit conditions. 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 and must at all times be in accordance with written certification of the amount and the requirement for incurring expenditure in compliance with the conditions of the Permit, by the appointed consulting engineer. Overstrand, TWK and Third Parties shall be notified in writing of, and supplied with a copy of such written certification by the appointed consulting engineer, which must be agreed upon in writing between the Parties, prior to the withdrawal of funds from this ring-fenced bank account.

- 7.17 In the instance of any surplus provision available in the dedicated ring-fenced bank account at the end of the useful lifespan of the Regional Waste Disposal Facility, over and above the total expense required for rehabilitation as certified in writing by the appointed consulting engineer at that date, such surplus must be apportioned in accordance with the contributions received over the total period and be paid out within 60 (sixty) days after said written certification, to Overstrand, TWK and Third Parties who paid Rehabilitation Contributions during the useful lifespan of the Regional Waste Disposal Facility.
- 7.18 In the instance of termination of the Agreement or permanent suspension of the Permit of the holder thereof for the utilisation of the Regional Waste Disposal Facility between the Overstrand, TWK and Third Parties, the final certification and pay-out of any surplus funding must be treated as the end of the useful lifespan of the Regional Waste Disposal Facility.
- 7.19 The Rehabilitation Costs and Rehabilitation Contribution shall be reviewed annually, by a duly appointed consulting engineer appointed by Overberg after consultation with Overstrand and TWK, 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.
- 7.20 For the remainder of the first Financial Year following the Effective Date the Rehabilitation Contribution will be R13.53 (thirteen rand and fifty three cents) (VAT excluded) per ton of waste deposited.

8. WEIGHING OF REFUSE

- 8.1 Overberg 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 of.
- 8.2 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. Overberg, Overstrand, TWK, 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.

Overberg 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.

- 8.3 Should Overstrand and/or TWK dispute the tonnage as reflected in the weighbridge calculation it will be investigated by Overberg and its decision, with reasons therefore, shall be given to Overstrand and TWK within 10 (ten) Business Days after receipt of the dispute.
- 8.4 Should Overstrand and/or TWK not be satisfied with the decision or the reasons given, it may resort to the provisions of clause 15.
- 8.5 Overstrand and TWK shall have the right to inspect the weighbridge and weigh records at any time subject to reasonable notice being given of such envisaged inspection.
- 8.6 Overberg shall, at its own cost, have the weighbridge calibrated at least once every two years by the supplier thereof or other competent and authorised authority and provide Overstrand and/or TWK with a certified copy of the findings.
- 8.7 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), Overberg 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.
- 8.8 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.
- 8.9 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.

9. GOVERNING LAW

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

10. CHANGE IN LAW

If, after the Effective Date, as a direct result of a Change in Law, Overberg shall incur an increase in the cost of construction, operation or maintenance of the Regional Waste Disposal Facility to be utilised by Overstrand, TWK and Third Parties, related solely to a Change in Law, then the Charges contemplated in clause 7 will be

increased accordingly in consultation with Overstrand and TWK to ensure that Overberg 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. Overberg shall provide Overstrand and TWK 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 15 of this Agreement.

11. DURATION OF AGREEMENT

11.1 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.

11.2 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 Overstrand from Overberg for the repayment of the costs incurred for the design of Cell Four as mentioned in clause 7.6 above.

12. VARIATIONS AND AMENDMENTS

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

12.2 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.

12.3 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.

12.4 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.

12.5 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 the other Parties, which consent will not be unreasonably withheld.

13. NOTICE AND DOMICILIUM

13.1 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:

13.1.1 Overstrand:

Address: 1 MAGNOLIA STREET, HERMANUS, 7200
Tel: (028) 313 8000
Fax: (028) 313 2093
Email: enquiries@overstrand.gov.za

13.1.2 Theewaterskloof

Address: 6 PLEIN STREET, CALEDON, 7230
Tel: (028) 214 3300
Fax: (028) 214 1289
Email: twkmun@twk.org.za

13.1.3 Overberg:

Address: 26 LONG STREET, BREDASDORP, 7280
Tel: (028) 425 1157
Fax: (028) 425 1014
Email: info@odm.org.za

13.2 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.

13.3 All notices, communications or processes in terms of this Agreement shall be in writing.

13.4 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:-

13.4.1 By registered mail on the 5th (fifth) Business day after posting;

13.4.2 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

13.4.3 By hand during normal business hours at the time of delivery.

13.5 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.

14. FORCE MAJEURE

14.1 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.

14.2 Where a Party is (or claims to be) affected by an event of Force Majeure:

14.2.1 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

14.2.2 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.

14.3 The Party claiming relief shall serve written notice on the other Party 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.

14.4 A subsequent written notice shall be served by the Party claiming relief on the other Party 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 14.2.1, 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).

14.5 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.

14.6 If, following the issue of any notice referred to in clause 14.4 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 Party as soon as reasonably possible.

14.7 The Parties shall endeavour to agree 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.

15. DISPUTE RESOLUTION

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

15.2 In the event of any dispute arising from this Agreement, the Parties shall make every effort to settle such dispute amicably, including the initiation of direct negotiations with senior management, representatives or negotiations through an intermediary.

15.3 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.

15.4 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.

15.5 Such arbitration shall be held in Cape Town 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:

15.5.1 the Arbitrator who shall act as an expert, shall have the absolute discretion to determine the procedure to be adopted,

15.5.2 it being agreed the intention, if possible, the arbitration shall be held and concluded within 20 (twenty) Business Days after it has been demanded.

15.6 Save as otherwise specifically provided in this Agreement, the Arbitrator shall be, if the question in dispute is:

15.6.1 primarily an accounting matter – an independent accountant of not less than 10 (ten) years' standing, as may be agreed upon between the Parties;

15.6.2 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;

- 15.6.3 any other matter – an independent and suitably qualified person, as may be agreed upon between the Parties.
- 15.7 If any agreement cannot be reached on whether the question in dispute falls under clauses 15.6.1 or 15.6.2 or 15.6.3 above or upon a particular arbitrator in terms of clause 15.6 within 5 (five) Business Days after the arbitration has been demanded, then the President for the time being of the Law Society of the Western Cape, shall determine whether the questions in dispute falls under clauses 15.6.1, 15.6.2 or 15.6.3 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 15.5.2.
- 15.8 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.
- 15.9 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.

16. SEVERABILITY

- 16.1 Clause 15 is severable from the rest of the Agreement and shall therefore remain in effect even if this Agreement is terminated.
- 16.2 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.

17. BREACH

- 17.1 Subject to clause 15 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.
- 17.2 The aggrieved Party shall afford the other Party a 7 (seven) Business Days period in the notice of breach, clearly setting out the nature and extent of the breach, to remedy such breach.
- 17.3 If such breach is not remedied by the date and to the extent, as stipulated in the notice of breach, the aggrieved Party may:
- 17.3.1 cancel this Agreement and claim damages;
 - 17.3.2 enforce specific performance and claim damages; or

17.3.3 avail itself of any other remedy available in law.

17.4 In the event of breach of this Agreement, the defaulting Party undertakes to pay all attorney-and-client costs plus VAT, collection commission and tracing costs plus VAT which the aggrieved Party may incur in enforcing or cancelling of this Agreement.

18. TERMINATION OR CANCELLATION OF AGREEMENT

18.1 The termination and/or cancellation of this Agreement may occur-

18.1.1 at the expiry of the Contractual Term of this Agreement;

18.1.2 if the Parties agree thereto in writing;

18.1.3 due to a Force Majeure in terms of clause 14 above resulting in a Party not being able to perform a material part of its obligations under this Agreement.

18.2 Save as otherwise expressly provided in this Agreement termination and/or cancellation of this Agreement shall:

18.2.1 be without prejudice to any accrued rights and obligations under this Agreement as at the date of termination; and

18.2.2 not affect the continuing rights and obligations of the Parties to this Agreement.

THUS DONE AND SIGNED ON THIS THE _____ DAY OF _____ 2018
in _____.

WITNESSES:

1. _____

2. _____

**FOR AND ON BEHALF OF THE
OVERSTRAND MUNICIPALITY, WHO
WARRANTS BY THIS SIGNATURE
THAT HE IS DULY AUTHORISED
THERE TO**

THUS DONE AND SIGNED ON THIS THE _____ DAY OF _____ 2018
in _____.

WITNESSES:

- 1. _____
- 2. _____

FOR AND ON BEHALF OF THE
THEEWATERSKLOOF
MUNICIPALITY, WHO WARRANTS
BY THIS SIGNATURE THAT HE/SHE
IS DULY AUTHORISED THERETO

THUS DONE AND SIGNED ON THIS THE _____ DAY OF _____ 2018
in _____.

WITNESSES:

- 1. _____
- 2. _____

FOR AND ON BEHALF OF THE
OVERBERG DISTRICT
MUNICIPALITY, WHO WARRANTS
BY THIS SIGNATURE THAT HE IS
DULY AUTHORISED THERETO