

**LIQUID TRADE WASTE SERVICES AGREEMENT**

**BETWEEN**

**(MIDWESTERN REGIONAL COUNCIL)**

**AND**

**(APPLICANT)**

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## **BETWEEN**

1. The Midwestern Regional Council

## **AND**

2. The Applicant

## **RECITALS**

- A. The Council is the owner and operator of a sewerage system within the **Mudgee, Gulgong, Rylstone & Kandos** area.
- B. The Applicant has made application to the Council to discharge liquid trade waste from the Premises into the Council's sewerage system.
- C. The application has been approved by the Council on certain conditions ("the Approval"), including the condition that the Council and the Applicant enter into this Agreement.
- D. The Director-General of the Department of Energy, Utilities and Sustainability has concurred in the Approval in accordance with clause 28 of the *Local Government (General) Regulation 2005*.
- E. The Approval does not operate until this Agreement has been executed by both parties.
- F. The parties enter this Agreement in consideration of the mutual promises contained herein.

## **OPERATIVE PART**

### **1. Definitions and Interpretation**

#### **1.1 In this Agreement, unless the context otherwise requires:**

"**Act**" means the *Local Government Act 1993* (NSW).

"**Annexure**" means the annexure to this Agreement.

"**Annual Management Plan**" means the annual management plan of the Council, as adopted by the Council from time to time.

“**Applicant**” means the entity named as such in the Annexure.

“**Approval**” means the approval described in Recital C.

“**Council**” means the council named as such in the Annexure.

“**Liquid Trade Waste Services**” mean the making available by the Council of its sewerage system for connection to the Premises, for the purpose of discharge by the Applicant of its liquid trade waste.

“**Premises**” means the premises described in the Annexure.

**1.2 Unless the context otherwise requires:**

- (a) A reference to this Agreement is a reference to this Agreement, including the Annexure, as amended from time to time in accordance with its terms.
- (b) A reference to the discharge of liquid trade waste means the discharge of liquid trade waste by the Applicant from the Premises to the Council’s sewerage system.
- (c) A reference to any legislation is a reference to such legislation as amended from time to time.
- (d) Where the Applicant is comprised of more than one person, each obligation of the Applicant will bind those persons jointly and severally and will be enforceable against them jointly and severally.

**2. Liquid Trade Waste Services**

*The Council will provide the Liquid Trade Waste Services to the Applicant on the terms of this Agreement.*

**3. Additional Conditions for discharge of liquid trade waste**

- 3.1 The Applicant may discharge liquid trade waste to the Council’s sewerage system in accordance with the Approval and subject to this Agreement.
- 3.2 The Applicant must comply with all applicable Acts, regulations, by laws, proclamations and orders and with any lawful direction or order given by or for the Council or any other competent authority.

- 3.3 The Applicant must not discharge liquid trade waste contrary to this Agreement or the Approval or in any manner which may have an adverse effect on any person or property (including the sewerage system and the ecological system in the waters, land or area receiving sewage treatment works effluent or biosolids), or which may cause the Council to be in breach of any applicable Act, regulation, by law, proclamation or order or of any lawful direction given by or for any competent authority.
- 3.4 The Applicant must at its own cost monitor its discharges in accordance with the requirements set out in the Approval and must maintain records of such monitoring for inspection by the Council for such period as may be specified in the Approval.
- 3.5 The Council will carry out routine sampling and testing of the waste stream.
- 3.6 Where any flow-metering device is installed, the Applicant must at its own cost cause the device to be calibrated at least annually by a person or company approved by the Council. The Applicant must obtain a calibration certificate and provide a copy of the certificate to the Council within one month of receiving it.
- 3.7 If the Applicant is required to cease discharging liquid trade waste for any period, then the Applicant must cease discharging such waste for the period specified.
- 3.8 Where the Applicant ceases to discharge waste in the circumstances prescribed in clause 3.7, the Council may, at its discretion, elect to refund part of the annual trade waste fee on a pro rata basis, calculated according to the period of suspension.
- 3.9 If this Agreement is terminated, the Applicant must immediately cease to discharge liquid trade waste.

#### **4. Fees and Charges**

- 4.1 In accordance with the section 560 of the *Local Government Act*, Council will levy all water supply, sewerage and liquid trade waste fees and charges on the owner of the property.
- 4.2 In consideration of provision of the Liquid Trade Waste Services, the fees and charges as specified in the Council's Annual Management Plan and notified by Council to the owner and the Applicant must be paid to the Council, including fees for sampling and testing by Council in accordance with the Approval.
- 4.3 Fees and charges payable will include both non-residential sewerage charges and liquid trade waste fees and charges.
- 4.4 All monies payable to the Council must be paid within the time specified in the notice of charge.

#### **5. GST**

- 5.1 To the extent that a party to this Agreement ("GST Supplier") is or becomes liable to pay GST in connection with any Supply made under this Agreement and the amount of any such GST is not included in the amount payable under this Agreement:
  - (a) the GST Supplier may add to the price of the Supply an amount equal to the GST payable on the Supply ("GST Amount").
  - (b) the other party will pay the GST Supplier the price for the Supply in accordance with this Agreement plus the GST Amount.
- 5.2. If, for any reason, the GST Supplier's GST liability in respect of a particular Supply is different from the amount of GST paid by the other party:
  - (a) the GST Supplier must immediately repay to the other party the amount of any excess paid by the other party above the GST Supplier's GST liability; or
  - (b) the other party must pay the deficiency in the amount previously paid by the other party to the GST Supplier for that Supply, as appropriate

5.3. The Applicant warrants that it is registered for GST purposes as at the date of this Agreement and will continue to be so for the term of this Agreement.

## **6. Term**

6.1 This Agreement will commence from the date it is signed on behalf of the Council, and will continue until the Applicant's Approval is revoked or the Applicant permanently ceases to discharge liquid trade waste pursuant to the Approval, whichever is the earlier. Upon such revocation or permanent cessation of the approved activity this Agreement shall automatically terminate by operation of this clause.

6.2 Termination of this Agreement is without prejudice to any accrued rights or obligations of either Party.

## **7. Powers of the Council**

7.1. The Council may enter the Premises at a reasonable hour in the daytime or at any hour during which business is in progress or is usually carried on at the Premises for the purpose of conducting any inspection, examination, testing, monitoring or sampling to determine whether the Applicant is complying with the conditions of this Agreement.

7.2 The Applicant acknowledges that the Council has statutory powers available to it under the Local Government Act 1993 and other Acts to issue orders and directions to the Applicant in relation to the discharge of liquid trade waste. The Applicant undertakes to comply with each such order or direction that may be notified by the Council to the Applicant within the time specified for compliance in that order or direction.

7.3. The Applicant releases the Council from any liability to the Applicant for any loss or damage due to the disruption of the Applicant's business arising out of the exercise of Council's rights pursuant to this clause.

## **8. Information supplied by the Applicant**

8.1 The Applicant warrants that all information in its application for approval is true, complete and accurate to the best of its knowledge.

- 8.2 The Applicant must immediately notify the Council in writing of any error or omission in that information or any change to the information of which the Applicant becomes aware.
- 8.3 The Applicant must not provide any false or misleading information to the Council.

## **9. Indemnity**

- 9.1 The Applicant indemnifies the Council from and against any claims, losses or expense (including legal costs on a solicitor and client basis) which the Council pays, suffers, incurs or is liable for as a result of:
- (a) any unlawful, negligent, reckless or deliberately wrongful act or omission of the Applicant or its personnel or agents in connection with the discharge of liquid trade waste, including (without limitation) such acts or omissions which cause damage to property, personal injury or death; and
  - (b) a breach of this Agreement by the Applicant.
- 9.2 The Applicant's liability to indemnify the Council shall be reduced proportionally to the extent that any unlawful, negligent, reckless or deliberately wrongful act or omission of the Council caused or contributed to the liability or loss.

## **10. Insurance**

The Applicant must effect and maintain for the term of this Agreement a public risk policy of insurance in the minimum of the sum specified in the Annexure and must, upon request by the Council, produce evidence of such insurance to the Council.

## **11. Bond**

- 11.1 The Applicant must pay to the Council a bond in the sum specified in the Annexure.
- 11.2 The Council may at any time and without prior notice to the Applicant have recourse to the bond for the recovery of any sum due and owing by the Applicant to the Council.

11.3 Where the applicant fails to cease discharging trade waste as prescribed in clause 3.7, the Council may require the applicant to forfeit 50% of the bond.

11.4 The Council must return the bond to the Applicant, less any amount deducted by the Council under this clause, upon termination of this Agreement.

## **12. No Assignment**

The Applicant may not assign or otherwise transfer its rights and/or obligations under this Agreement.

## **13. Notices**

13.1 A notice under this Agreement must be:

- (a) in writing, directed to the representative of the other party as specified in the Annexure; and
- (b) forwarded to the address, facsimile number or the email address of that representative as specified in the Annexure or the address last notified by the intended recipient to the sender.

13.2 A notice under this Agreement will be deemed to be served:

- (a) in the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery.
- (b) in the case of delivery by post - within three business days of posting.
- (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient.
- (d) in the case of delivery by email, on receipt of confirmation by the recipient that the recipient has received the email.

13.3 Notwithstanding the preceding clause 13.2, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5 pm (local time in

that place) it will be deemed to have been duly given or made at 9 am (local time at that place) on the next business day in that place.

#### **14. Variation**

- 14.1 If the Applicant's Approval to discharge liquid trade waste from the Premises is varied, this Agreement shall be deemed to be varied in accordance with the variation made to that approval or to the fees, by operation of this clause
- 14.2 In addition to automatic variation under clause 14.1, this Agreement may be varied by written agreement of the parties, provided that a variation to this Agreement that is inconsistent with:
- (a) the Approval, including rights granted under, and conditions attached to, the Approval;
  - (b) any applicable legislation; or
  - (c) Council's Annual Management Plan in respect of applicable fees and charges,

shall have no force or effect.

#### **15. Severability**

If any part of this Agreement is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Agreement but without affecting the continued operation, so far as possible, of the remainder of this Agreement.

#### **16. Applicable Law**

- 16.1 This Agreement is governed by, and must be construed in accordance with, the laws in force in the State of New South Wales.
- 16.2 Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales and the courts of appeal there from.

**17. Rights Cumulative**

The rights and remedies provided under this Agreement are in addition to, and not exclusive of, any other rights or remedies provided by law.

**Executed as an agreement**

**Execution by the Council:**

THE COMMON SEAL OF ) (Corporate Seal)  
 ..... was affixed this )  
 .....day of ..... 20..... )  
 in the presence of: )  
 ..... ) .....  
 General Manager ) [signature of General Manager]  
 and )  
 ..... )  
 [print name of witness] ) .....  
 ..... )  
 [signature of witness]

**Executed by the Applicant (corporate entity):**

The COMMON SEAL of..... )  
 .....PTY LIMITED )  
 was affixed this .....day of )  
 .....200... in the )  
 presence of: )  
 ..... ) .....  
 [name of Director] ) [signature of Director]  
 ..... )  
 ..... ) .....  
 [signature of Director/Secretary]  
 )

[name of Director/Secretary]

**Executed by the Applicant (individual):**

Signed by: .....

[name of Applicant]

This.....day of.....200....

in the presence of:

.....

[print name of witness]

.....  
) [signature of Applicant]  
)  
)  
) .....  
) [signature of witness]  
)  
)

## ANNEXURE

### A. THE COUNCIL

1. FULL NAME OF COUNCIL \_\_\_\_\_

2. ABN: \_\_\_\_\_

3. ADDRESS \_\_\_\_\_

\_\_\_\_\_

4. TELEPHONE \_\_\_\_\_

5. EMERGENCY CONTACT \_\_\_\_\_

TELEPHONE \_\_\_\_\_

### B. THE APPLICANT

1. FULL NAME OF APPLICANT \_\_\_\_\_

2. ABN: \_\_\_\_\_

3. BUSINESS OR TRADING NAME \_\_\_\_\_

4. ADDRESS \_\_\_\_\_

\_\_\_\_\_

5. TELEPHONE \_\_\_\_\_

6. EMERGENCY CONTACT \_\_\_\_\_

TELEPHONE \_\_\_\_\_

**C. THE PREMISES**

- 1. LOT & DP NUMBER: Lot(s) \_\_\_\_\_ DP \_\_\_\_\_
- 2. LOCATION \_\_\_\_\_  
\_\_\_\_\_
- 3. DESCRIPTION \_\_\_\_\_
- 4. NATURE OF BUSINESS \_\_\_\_\_

**D. NOTICES**

Applicant's Representative:

Postal address:

Facsimile:

Email:

Council's Representative:

Postal address:

Facsimile:

Email address:

**E. PUBLIC LIABILITY INSURANCE**

Minimum cover: \$

**F. BOND**

\$