10.4 WORKS AND CORPORATE SERVICES COMMITTEE MINUTES - 19 AUGUST 2014

10.4.1 NATSALES ADVERTISING LITTER BINS - REQUEST FOR NEW AGREEMENT

File Ref:

SUB/373

Attachments:

Agreement Natsales Australia Pty Ltd Advertising

Litter Bins

Report to Council August 2011 Natsales

Agreement

Cottesloe Litter Bin Locations

Responsible Officer:

Carl Askew

Chief Executive Officer

Author:

Darrell Monteiro

Principal Environmental Health Officer

Proposed Meeting Date:

19 August 2014

Author Disclosure of Interest: Nil

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SUMMARY

The advertising litter bins along the beach and other areas in Cottesloe are emptied by the Town's contractor and maintained by Natsales Australia Pty Ltd (Natsales) in keeping with a current 3-year agreement. The agreement expires on 14 September 2014 with no opportunity for an extension. Records indicate that there are currently 37 advertising bins in total and 18 are on Marine Parade. Please see the attached map with all litter bins in Cottesloe.

Clause 28 of the current agreement provides that the Town may enter into a new 5 + 5 year agreement if the Town is satisfied with the service provided and the design of the bin enclosures. Given the uncertainty in relation to local government reform, Council's approval is sought to enter into a new 1 + 1 year agreement.

BACKGROUND

Natsales has maintained an ongoing agreement with the Town since 2001. The Town provides the inner 240L bins and organises the frequency that the bins are emptied by the current waste contractor. Natsales provides the advertising bin shells and maintains them. Three of the four panels are used for advertising and one is available to the Town to promote litter reduction messages and campaigns. Attached is a copy of the current agreement.

The matter was last reported to Council in August 2011 when the previous 10-year term was due to expire. At the time, there was concern from management that the advertising bins were not aesthetically pleasing. Accordingly, the report looked into the option of replacing the advertising bins with alternative bin enclosures. The attached report from 2011 sets out the details, including the decision of Council.

STRATEGIC IMPLICATIONS

- Maintenance of street furniture installed to prevent litter.
- Endorsement of advertising panels for local businesses.

POLICY IMPLICATIONS

The type of bin surrounds provided by Natsales are similar to those recommended in the Streetscape Policy and Manual that was adopted in 1999.

FINANCIAL IMPLICATIONS

Renewal of the Agreement - Nil.

Non-renewal of the Agreement -

Will cost the Town an initial set-up cost (allowing for inflation since 2011) of between \$10,000 and \$130,000 depending on the option chosen for bin surrounds. There is no budget provision for decommissioning and replacement of Natsales bins in the 2014-15 financial year. However, Council has funds of \$349,114 within its Infrastructure Reserve, which could be used for this purpose. In addition, there will be a further opportunity to consider additional funding as part of the mid-year budget review.

STAFFING IMPLICATIONS

Nil

CONSULTATION

Nil

STAFF COMMENT

The agreement in its current form is seen as mutually beneficial. Natsales has been quick to respond to requests and make improvements. The Principal Environmental Health Officer has not received any complaints or negative feedback about the advertising bin shells since the last report.

A new agreement with a 5 + 5 year term has been requested by Natsales as per a clause in the current agreement. However, given the uncertainty in relation to local government reform, a 1-year agreement with the option to extend for another year has been recommended.

VOTING

Simple Majority

COMMITTEE DISCUSSION

Committee discussed the report at length and expressed a preference for less clutter and more uniformity amongst the litter bins in Cottesloe. Committee acknowledged that time is required for staff to rationalise the number of litter bins and research possible designs. As a result, Committee reached the conclusion that the Town should continue the agreement with Natsales for one year only, enabling staff to plan for alternative arrangements.

OFFICER RECOMMENDATION

Moved Cr Rowell, seconded Cr Jeanes

THAT Council:

- 1. Endorse the Town of Cottesloe entering into an amended Memorandum of Agreement with Natsales Australia Pty Ltd with a reduced term of 1 year + 1 year.
- 2. Authorise the CEO to sign the amended Memorandum of Agreement on behalf of Council.

AMENDMENT

Moved Mayor Dawkins, seconded Cr Jeanes

- 1. That the words "+ 1" be removed from point one.
- 2. That a point 3 be added that reads "Request administration to undertake a review of the number, locality and cost of replacing the current bins with appropriate and aesthetically pleasing bins."

Carried 5/0

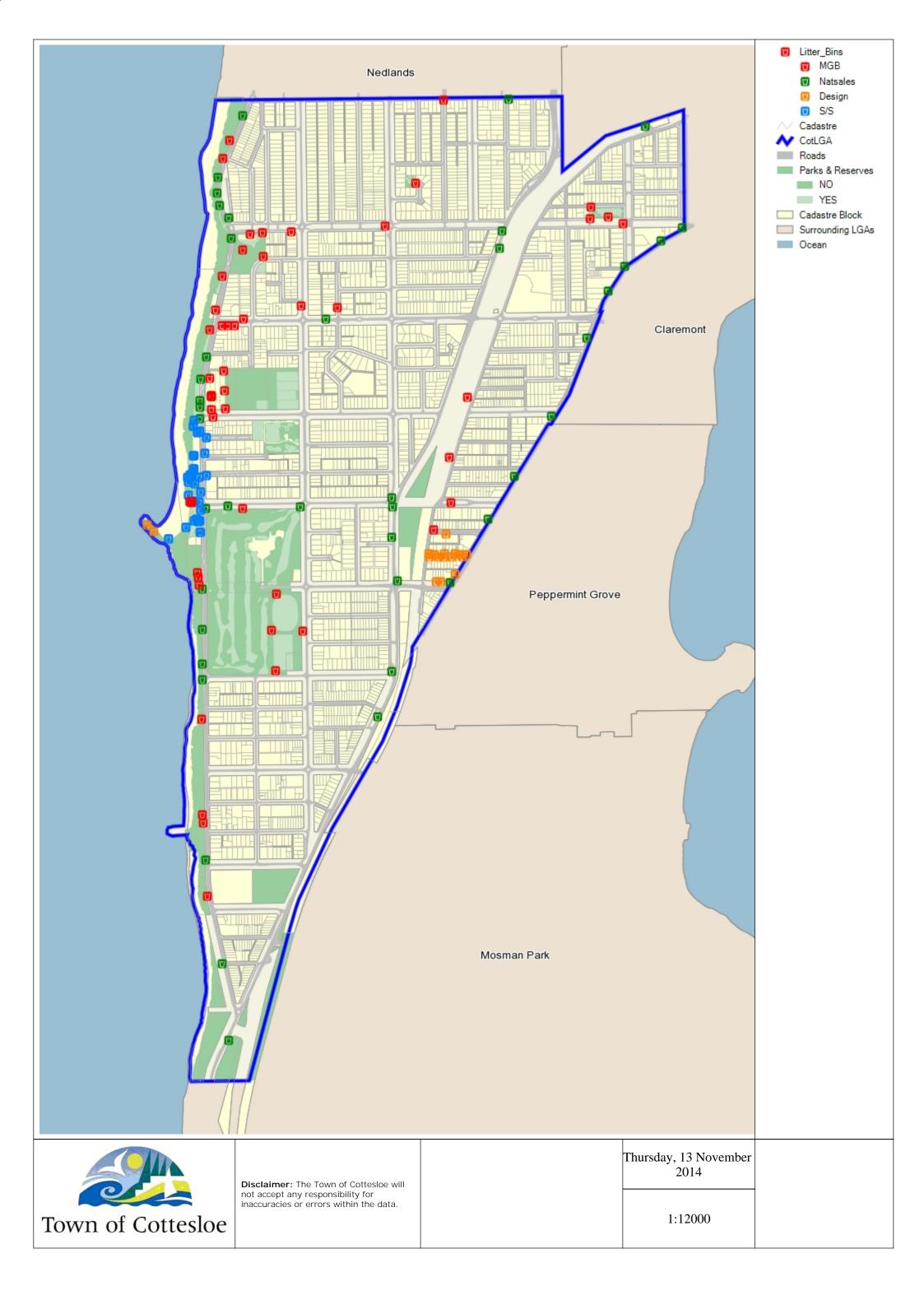
COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, seconded Cr Angers

THAT Council:

- 1. Endorse the Town of Cottesloe entering into an amended Memorandum of Agreement with Natsales Australia Pty Ltd with a reduced term of 1 year.
- 2. Authorise the CEO to sign the amended Memorandum of Agreement on behalf of Council.
- 3. Request administration to undertake a review of the number, locality and cost of replacing the current bins with appropriate and aesthetically pleasing bins.

Carried 8/0





MEMORANDUM OF AGREEMENT

Made and entered into by and between Town of Cottesloe

(Hereinafter referred to as THE LOCAL GOVERNMENT)

herein represented by Carl Askew

In his capacity as

Chief Executive Officer

of the said Municipality

AND

NATSALES ADVERTISING (PTY) LTD

A.C.N 156 451 151

PO Box 39, Melville WA 6956

(Hereinafter referred to as THE CONTRACTOR)

herein represented by

ANTHONY MARWICK

In his capacity as MANAGING DIRECTOR

NOW THEREFORE: It is agreed between the parties as follows:

- 1. The Local Government hereby agrees to permit the Contractor at no cost to the Local Government to supply, deliver, erect and maintain the LITTER BINS on the Agreed Sites within the boundaries of the municipality on the terms and conditions set out in this Agreement.
- 2. The quantity of the LITTER BINS (currently numbering around 40) and their location within the said Municipal area shall continue to be determined by mutual agreement between the parties hereto from time to time. In giving effect to the foregoing, the parties undertake to act in a reasonable manner, having due regard to their respective rights and interests herein.
- 3. (1) Subject to subclauses (2) (4) inclusive, the Local Government hereby grants to the Contractor, the sole and exclusive rights to erect and advertise on LITTER BINS during the currency of this agreement or any renewal period hereof.
 - (2) The Local Government only authorises the Contractor to erect and display advertisements and signs which comply with State and Federal legislation, local laws and any codes of conduct established by the advertising industry and which exhibit high quality graphic design and finish.
 - (3) Without limiting the generality of the foregoing the Contractor must:
 - (a) not display any advertisement which in the opinion of the Local Government is political, religious or pornographic in nature or likely to be considered offensive;
 - (b) not display any advertisement depicting smoking or a tobacco product;
 - (c) not display any advertisement which resembles any traffic sign or has the appearance of giving any instruction or other direction to traffic, or which constitutes a traffic hazard;
 - (d) not display any signs or advertisement which the Local Government considers, in its reasonable opinion, to be immoral or offensive;
 - (e) not display any political advertisement; and
 - (f) comply with the Alcohol Advertising Pre-vetting System (AAPS) developed by the Outdoor Advertising Association of Australia, or any other similar document or regime nominated by the Local Government and will display the relevant AAPS approval on all advertisement for alcohol.
 - (4) In the event that any advertising on a LITTER BIN does not meet the restrictions set out in subclause (3) above, then the Local Government may:
 - (a) require the Contractor, at its cost, to remove the advertisement within seven days written notice; and
 - (b) if the Contractor fails to remove the advertisement within the required time, the Local Government may remove and dispose of the advertisement at the Contractor's expense and the Contractor indemnifies the Local Government against any claim or loss or damage arising therefrom.

- 4. The LITTER BINS have been or will be supplied and erected at the **Agreed Sites**. The LITTER BINS shall be positioned erected and securely fixed by the Contractor at the Agreed Sites and shall be maintained by the Contractor in good order and repair.
- 5. The Contractor specifically undertakes that in any event of any of the LITTER BINS requiring replacement at any time during the currency of this agreement or any renewal period, it will at its own cost replace such LITTER BINS. Any Litter Bins that require replacement will be undertaken within 2 business days of notification by the Local Government
- 6. It is specifically agreed that the Local Government shall at all times have the right to require the Contractor to remove any display panels, advertisement or any photograph or picture or any other matter or drawing which the Local Government deems, at its discretion, to be unsuitable. The Contractor hereby agrees that it will forthwith remove or alter, to the satisfaction of the Local Government any of the display panels or offending material from the LITTER BINS within 2 business days of notification by the Local Government.
- 7. (1) Subject to subclause (2), the Contractor agrees that it will to the satisfaction of the Local Government:
 - (a) at all times keep and maintain the LITTER BINS and any advertisements in good order and condition, including but not limited to the removal of Offensive Graffiti; and
 - (b) replace from time to time any advertisements that, through wear and disfigurement or from any other cause, have become unsightly and objectionable,
 - and shall undertake such maintenance, repair or replacement within 7 business days of notification by the Local Government.
 - (2) Where the Local Government notifies the Contractor of any Urgent Repair required to a LITTER BINS, the Urgent Repair shall be undertaken within 24 hours of notification.
 - (3) For the purposes of subclause (2), "Urgent Repair" means any repair required in the reasonable opinion of the Local Government to be undertaken urgently for reasons of public safety, health or amenity and designated as urgent by the Local Government.
 - (4) The Local Government may direct the Contractor to remove or relocate a LITTER BIN in circumstances where removal or relocation of the LITTER BIN is required:
 - (a) for reasons of public safety, including to prevent or rectify a traffic hazard; or
 - (b) to enable any works to be undertaken on Local Government property where the LITTER BIN is situated.

- 8. (1) The Contractor hereby indemnifies the Local Government from all and any claims of whatsoever nature (including any legal costs that the Local Government may incur) arising from or in connection with:
 - (a) any advertisement matter appearing on the LITTER BINS; and
 - (b) the installation, supply, use, maintenance, repair or replacement of the LITTER BINS within the boundaries of the municipality;
 - (c) any breach or non-performance by the Contractor of any terms and conditions to be observed and performed by the Contractor under the Agreement; and
 - (d) without limiting the generality of paragraphs (a), (b) or (c), any act or omission on the part of the Contractor that leads, directly or indirectly, to the Local Government incurring any liability to a third party on the grounds of public liability for negligence or contributory negligence.
 - (2) The Contractor further agrees that:
 - (a) its liability shall not be abrogated, prejudiced or affected by:
 - (i) the granting of time, credit or any indulgence or concession by the Local Government to the Contractor:
 - (ii) any compromise, release, abandonment, waiver, variation, relinquishment or renewal of any contractual rights, duties, guarantees or indemnities on the part of the Contractor; or
 - (iii) any omission or neglect or by any other dealing, matter or thing,
 - which, but for this subclause, could or might operate to abrogate, prejudice or affect the indemnity in this clause; or
 - (b) the indemnity in this clause is to continue to be binding on the Contractor despite:
 - (i) the death, bankruptcy, insolvency or liquidation (as the case may be) of the Contractor;
 - (ii) any change or alteration in the constitution of the Local Government or the Contractor; and
 - (iii) the happening of any matter or thing which under the law relating to sureties would but for this provision have the effect of releasing the Contractor from the indemnity, or of discharging the indemnity.
 - (3) For the purposes of subclause (1), the provisions of Part 1F of the Civil Liability Act 2002 are excluded.

- 9. (1) The Contractor shall take out a valid and enforceable public liability insurance policy with a reputable insurer in Australia, which:
 - (a) notes the interest of the Local Government;
 - (b) provides coverage of at least \$15 million for each occurrence;
 - (c) includes a clause waiving the insurer's rights of subrogation against all insured persons;
 - (d) requires the insurer to notify the Local Government of any cancellation or non-renewal of the policy; and
 - (e) will cover the Contractor's liability to indemnify the Local Government in accordance with this Agreement.
 - (2) The Contractor shall take out a valid and enforceable product liability insurance policy with a reputable insurer in Australia, which:
 - (a) notes the interest of the Local Government;
 - (b) provides coverage of at least \$3 million for each occurrence;
 - (c) includes a clause waiving the insurer's rights of subrogation against all insured persons;
 - (d) requires the insurer to notify the Local Government of any cancellation or non-renewal of the policy; and
 - (e) will cover the Contractor's liability to indemnify the Local Government in accordance with this Agreement.
 - (3) The Contractor shall take up a valid and enforceable worker's compensation insurance policy which complies with the provisions of *Worker's Compensation and Injury Management Act 1981* in respect of all its employees supplying the LITTER BINS under this Agreement.
 - (4) The Contractor shall maintain the insurance policies referred to in this clause throughout the Term.
 - (5) The Contractor agrees to be responsible for any excess payable under an insurance policy taken out under this clause.
 - (6) The Local Government may terminate or suspend the operation of this Agreement if any insurance required by this clause lapses, ceases, is suspended or, in the opinion of the Local Government, is prejudiced before or at any time during the Term.
 - (7) The Local Government may, at any time during the Term, request to be shown evidence that an insurance policy referred to in this clause is currently in effect and within 48 hours of that request the Contractor shall produce for inspection by the Local Government a certificate of currency of the policy and, if requested, a copy of the policy.

- (8) If, in the reasonable opinion of the Local Government, the insurance of the Contractor referred to in this clause is not adequate, the Local Government may require the Contractor to obtain and maintain further insurance, and the Contractor shall comply with the requirement.
- (9) The Local Government may terminate or suspend the operation of the Agreement if:
 - (a) the insurance of the Contractor, as required by this clause, is not adequate to the reasonable satisfaction of the Local Government; or
 - (b) that insurance lapses, ceases, is suspended or, in the opinion of the Local Government, is prejudiced before or at any time during the Term.
- 10. The Contractor hereby accepts full responsibility for replacement of LITTER BINS damaged by vandals or in any motor accident or any other cause whatever, provided that should the Contractor fail to replace such damaged units after reasonable notice has been given to so do it, the damaged units may be removed by the Local Government and disposed of them at the cost of the Contractor. Any action taken by the Local Government in terms of this clause shall be deemed to be without prejudice to any other legal rights the Local Government may have under this agreement.
- 11. (1) The LITTER BINS shall be supplied in accordance with appropriate and current standards of the Standards Association of Australia for street furniture of this nature, and if there are no standards of that type then the LITTER BINS shall be:
 - (a) made of the most suitable material and be constructed or manufactured in accordance with reasonable standards of construction;
 - (b) reasonably fit for the purpose for which they are required; and
 - (c) fully capable of the intended use for which they are to be put,

to the satisfaction of the Local Government.

- (2) The Contractor shall ensure that the LITTER BINS are supplied only by persons:
 - (a) who are suitably skilled and experienced in their respective professions, trades and callings;
 - (b) who hold all necessary licences, permits and authorities required by law; and
 - (c) whose standards of workmanship are entirely suitable,

for the supply of the LITTER BINS under the requirements of this Agreement.

- (3) The Contractor warrants that all the LITTER BINS supplied under this Agreement are of merchantable quality and are fit for the stated purpose.
- (4) Without detracting from any other provision of this Agreement, the parties acknowledge and agree that any bin installed as at the date of execution of this Agreement is deemed (in the absence of evidence to the contrary) to satisfy subclause (1) and have been installed in accordance with subclause (2).

- 12. It is agreed that the LITTER BINS supplied by the Contractor as above, shall at all times be and remain the sole property of the Contractor. Unless otherwise agreed by the parties, upon expiration of the Term, the Contractor shall remove the LITTER BINS and make good any damage caused by such removal.
- 13. The Contractor hereby specifically undertakes that when exercising its advertising rights on the LITTER BINS as set out above, it will in all cases give preference to local advertisers.
- 14. (1) In the event of the Contractor failing to carry out any one or more of its obligations and continuing so to fail not withstanding receipt of 14 (fourteen) days notice in writing to remedy such failure, then the Local Government shall have the right upon service of written notice addressed to the Contractor, to terminate this agreement forthwith without the payment of any compensation or damages of any nature whatsoever to the Contractor. The Contractor hereby expressively waives any right to claim under common law for any damages or loss it may sustain by virtue of such termination.
 - (2) The Local Government may additionally by notice in writing given to the Contractor, without prejudice to any other powers, rights, authorities or remedies against the Contractor under the Agreement or otherwise, terminate the Agreement, but without releasing the Contractor from liability for any previous breach or failure to observe or perform any term or condition of the Agreement, where:
 - (a) the Contractor goes into liquidation whether compulsory or voluntary, or a receiver or manager is appointed;
 - (b) the Contractor calls a meeting of the Contractor's creditors or makes any composition or arrangement with or assignment for the benefit of its creditors, or suffers any execution under any legal process be issued or be levied on or against any of the LITTER BINS or its other chattels;
 - (c) the Local Government ceases to be a local government for the purposes of the *Local Government Act 1995*;
 - (d) the Contractor knowingly maintains or gives the Local Government information under the Agreement that is false;
 - a director of the Contractor (**Offender**) commits a criminal offence the subject of a final conviction which has not been overturned or stayed pending an appeal and the Offender is sentenced to imprisonment of at least 1 year or the criminal offence involves serious dishonesty or moral turpitude in connection with the dealings by the Offender.
- 15. This agreement shall be binding upon the executors, administrators, assigns, successors and heirs (as the case may be) of each of the parties hereto.
- 16. This agreement constitutes the sole record and supersedes any other agreement that might have hitherto existed between the parties in relation to its subject matter.
- 17. No addition to, variation or amendment of this agreement shall be of any force or effect unless in writing signed by or on behalf of each of the parties.

- 18. No indulgence which any of the parties may grant to the other of them shall constitute a waiver of any of the rights of any party who shall not thereby have been precluded from any rights against any other party which may have arisen in the past or which may arise in the future.
- 19. No party shall be bound by any express or implied term, representation, warranty, undertaking, promise or the like not recorded herein.
- 20. The provisions of this agreement and all warranties given to any party hereto and each party giving same shall survive completion.
- 21. This agreement may be executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.
- 22. The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.
- 23. The parties to this agreement covenant with each other that they will sign, execute and do all such further documents, acts, matters and things as may be required or necessary for more properly giving effect to the provisions of this agreement.
- 24. Each of the terms and conditions of this agreement shall be deemed to be separate and severable from the other of them and if any one or more thereof are determined to be invalid or unenforceable by any court of competent jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the agreement which shall remain in full force and effect as if such terms and conditions had not been made a part thereof
- 25. This agreement shall be governed by, constructed and take effect in accordance with the laws of Western Australia and the parties irrevocably submit to the non exclusive jurisdiction of the Courts of Western Australia.
- 26. The term agreement of this Agreement shall be five (5) years commencing on [Enter Date] 2015 and expiring on [Enter Date] 2020 (**Term**).
- 27. (1) Any notice required to be given or made by or pursuant to this agreement, shall be made or given in writing or by facsimile at the addresses stipulated in this agreement.
 - (2) Notices shall be deemed to have been received:
 - (a) if personally served, at the time of service
 - (b) if mailed, on the third day after mailing; and
 - (c) if sent by facsimile, on the day the same are dispatched;
 - (d) if either party may change their address or facsimile number by giving notice to that effect to the other party pursuant to the earlier provisions hereof provided that such new address, or facsimile is in the State of Western Australia.

(3) Any notice for the purposes of this Agreement shall be served on the parties at the following addresses:

THE LOCAL GOVERNMENT:

Facsimile: (08) 9285 5001

109 Broome Street, Cottesloe WA 6011

THE CONTRACTOR: Facsimile: (08) 93417955 PO Box 39 Melville W.A 6956

- (4) Any notice, direction or other communication which shall or may be given in connection with the Agreement:
 - (a) shall be in writing in order to be valid;
 - (b) is sufficient if executed by the party giving the notice or on its behalf by any director, secretary, duly authorised officer or solicitor of that party.
- 28. The Contractor, providing it has fulfilled its obligations under this agreement to the satisfaction of the Local Government and the Local Government otherwise consents to extension of this agreement; shall have the option to renew this agreement, subject to the Contractor giving the Local Government at least three (3) months notice of its intention to exercise this option of renewal.
- 29. The Contractor agrees to supply the Local Government one (1) panel of advertising space on each of the four (4) sided LITTER BINS installed, for the Local Government's own promotion and advertising purposes. All artwork and printing costs associated with this panel shall be borne by the Local Government. This advertising space will be supplied by the Contractor at NO COST to the Local Government. The advertising panel supplied shall face away from the road.
- 30. Protection of People and Property

In so far as compliance with the Agreement permits, the Contractor shall, at all times when supplying and maintaining the LITTER BINS:

- (1) take measures necessary to protect people and property;
- (2) avoid unnecessary interference with the passage of people and vehicles; and
- (3) prevent nuisance and unreasonable noise and disturbance.

31. Assignment and Sub-Contracting

- (1) The Contractor shall not assign or sub-contract the supply of any of the LITTER BINS or any of its rights or obligations under this Agreement without the prior written consent of the Local Government, which may be granted subject to such conditions as the Local Government sees fit.
- (2) A change in the Contractor's directors, shareholders or unitholders which leads to a change in the ownership or control of the Contractor shall be deemed to be an assignment for the purposes of subclause (1).
- (3) Any consent by the Local Government to an assignment referred to in clause 30(1) shall:
 - (a) be subject to the assignee executing a deed of covenant undertaking to be bound by all duties and obligations imposed on the Contractor under the Agreement as if the assignee were named in lieu of the Contractor;
 - (b) not discharge the Contractor from any liability in respect of the performance of the duties and obligations under the Agreement as at the date of assignment; and
 - (c) shall extend only to the consent actually given, and shall not prevent the exercise of any of the rights under the Agreement with respect to any subsequent breach of this clause.
- (4) Except where the Agreement otherwise provides, the Contractor shall be liable to the Local Government for the acts, defaults and omissions of all subcontractors, and employees and agents of subcontractors, as if they were those of the Contractor. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Agreement.

32. Occupational Safety and Health

The Contractor shall ensure that its plant, equipment and personnel (including subcontractors or subsuppliers) comply with the Occupational Safety and Health Act 1984, the Occupational Safety and Health Regulations of 1996 and Work Health and Safety Act 2011 (Cth).

33. Dispute Resolution

- (1) If a dispute arises between the parties in connection with the Agreement, then a party must give notice of the dispute to the other party identifying the dispute and providing details of it.
- (2) If a dispute is not resolved between the parties within 14 days of a notice under clause 32(1) being given, the parties shall endeavour to settle the dispute by mediation to be conducted by a mediator independent of the parties, appointed by agreement of the parties within 35 days of a notice under clause 32(1) being given or, failing agreement, by a person appointed by the chair of LEADR or her or his nominee.
- (3) The mediation rules of the Law Society of WA shall apply to the mediation.
- (4) It is a condition precedent to the right of any party to arbitrate or litigate a dispute under the Agreement that it first has complied with the mediation process in accordance with this clause.
- (5) Each party may be represented by a qualified legal practitioner or other representative in any mediation proceedings.
- (6) The parties must continue to comply with their obligations under the Agreement despite any dispute being referred to mediation, unless agreed otherwise by the parties in writing.

34. Defined Terms In this document: "Agreed Sites" means the approved locations for the LITTER BINS as detailed in the document attached as **Annexure 2,** together with any other sites agreed by the parties from time to time; "LITTER BINS" means litter bins constructed and designed in accordance with the form depicted and specifications set out in **Annexure 1**, unless otherwise approved by the Local Government; "Offensive Graffiti" means graffiti that, in the reasonable opinion of the Local Government, is offensive; "Term" means the term of the agreement as described in clause 26. DATED AT Signed by the contractor Natsales Advertising Pty Ltd **Managing Director** Anthony Marwick. Name of Managing Director (Print) AS WITNESSES DATED THE COMMON SEAL of the TOWN OF **COTTESLOE** is affixed by authority of a resolution of the Council in the presence of:

CHIEF EXECUTIVE OFFICER

MAYOR

ANNEXURE 1 – LITTER BIN DESIGN

NATSALES LITTER BIN

Overall Dimensions

700mm x 700mm x 1050mm

Poster Dimensions

750mm x 500mm

Material: Moulded Polyethylene



ANNEXURE 2 – LITTER BIN AGREED SITES

