

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 AUSTRALIA (PTY)
LTD**

A.C.N 081 446 746

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 in accordance with photographs, specifications and samples previously exhibited to and approved (as per attached photo and specifications) by the Local Government within the boundaries of the municipality.
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. 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.
4. The LITTER BINS have been supplied and erected at specific sites. The Town is in possession of a list of these locations. The LITTER BINS are positioned erected and securely fixed by the Contractor at these pre-determined sites as agreed upon by the parties and are maintained by the Contractor in good order and repair.
5. The Contractor specifically undertakes that in any event of any of the units 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.
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 when requested to do so by the Local Government.
7. The Contractor agrees that it will at all times keep the LITTER BINS and any advertisements in good order and condition and that it will replace from time to time any advertisements that, through wear and disfigurement or from any other cause, have become unsightly and objectionable. Any Litter Bins that require repair or replacement will be undertaken within 2 business days of notification.
8. Notwithstanding the fact that the Chief Executive Officer shall have furnished his approval and consent to the publication of any advertisement which may later prove to be the subject of objection or litigation, 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 any advertisement matter appearing on the afore-said LITTER BINS and further undertakes to remove any advertisement that might be the subject of reasonable objection by any other person or body of person.

9. The Contractor undertakes that it will at all times during the currency of this Agreement or renewal period, is covered by an adequate public liability insurance policy in order to cover any possible liability of the Contractor in respect of any action which may be brought against it or the Local Government by any third Party or any member of the public arising out of the installation and/or advertising on the LITTER BINS including all legal costs flowing from such action. The Contractor agrees that it will pay all premiums in respect of the above insurance policy regularly and on due date so as to keep such policy in full force and effect at all times. The Contractor further agrees that it will submit from time to time, all receipts providing the due payment by the Contractor of the aforesaid premiums to the Local Government for its perusal and inspection.

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. 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.

12. The Contractor hereby specifically undertakes that when exercising its advertising rights on the LITTER BINS as above set out, it will in all cases give preference to local advertisers.

13. In the event of the Contractor failing to carry out any one or more of its obligations and continuing so to fail notwithstanding receipt of 14 (fourteen) days notice in writing to remedy such failure, then the Local Government shall have the right by certified mail 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 expressly waives any right to claim under common law for any damages or loss it may sustain by virtue of such termination.

14. This agreement shall be binding upon the executors, administrators, assigns, successors and heirs (as the case may be) of each of the parties hereto.

15. 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.

16. 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.

17.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.

18.No party shall be bound by any express or implied term, representation, warranty, undertaking, promise or the like not recorded herein.

19.The provisions of this agreement and all warranties given to any party hereto and each party giving same shall survive completion.

20.This agreement maybe executed in any number of counterparts and all such counterparts taken together shall be deemed to constitute one and the same instrument.

21.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.

22.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.

23.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.

24.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.

25.This agreement shall be deemed to come into operation on the:

15 September 2011

and shall, subject to the condition of this agreement, endure for a period of 3 (three) years commencing on the:

15 September 2011

and terminating on the:

14 September 2014

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.

27.2 Notices shall be deemed to have been received:

27.2.1 if personally served, at the time of service

27.2.2 if mailed, on the third day after mailing; and

27.2.3 if sent by facsimile, on the day the same are dispatched;

27.2.4 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.

27.3 The parties hereto choose domicilium citandi et executandi as follows:

THE LOCAL GOVERNMENT:

Facsimile: (08) 9285 5001

109 Broome Street, Cottesloe WA 6011

THE CONTRACTOR:

Facsimile: (08) 93417955

P O Box 39

Melville W.A 6956

28. The Contractor agrees to meet with the CEO of The Town of Cottesloe no later than six (6) months prior to the 14 September 2014 to discuss the current policy regarding the design of the Natsales Litter Bin Housings. If The Town of Cottesloe is happy with the current design a standard five year (5) plus five year option (5) contract will be renewed. If The Town of Cottesloe requires a modification of the design of the Litter Bin Housings The Contractor has agreed to enter into discussions to participate in the redesign of the Litter Bin Housings.

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.

DATED AT O'CONNOR THIS FIRST DAY of SEPTEMBER 2011

Signed by the contractor Natsales Australia Pty Ltd



Managing Director

Anthony Marwick.....

Name of Managing Director
(Print)

AS WITNESSES

1. H. Blomera

DATED AT COTTESLOE THIS FIFTH DAY of SEPTEMBER 2011

Was hereunto affixed in the presence of



Chief Executive Officer

Carl Askew

Name of Chief Executive Officer
(Print)

AS WITNESSES

1. Almanico

Natsales Litter Bin

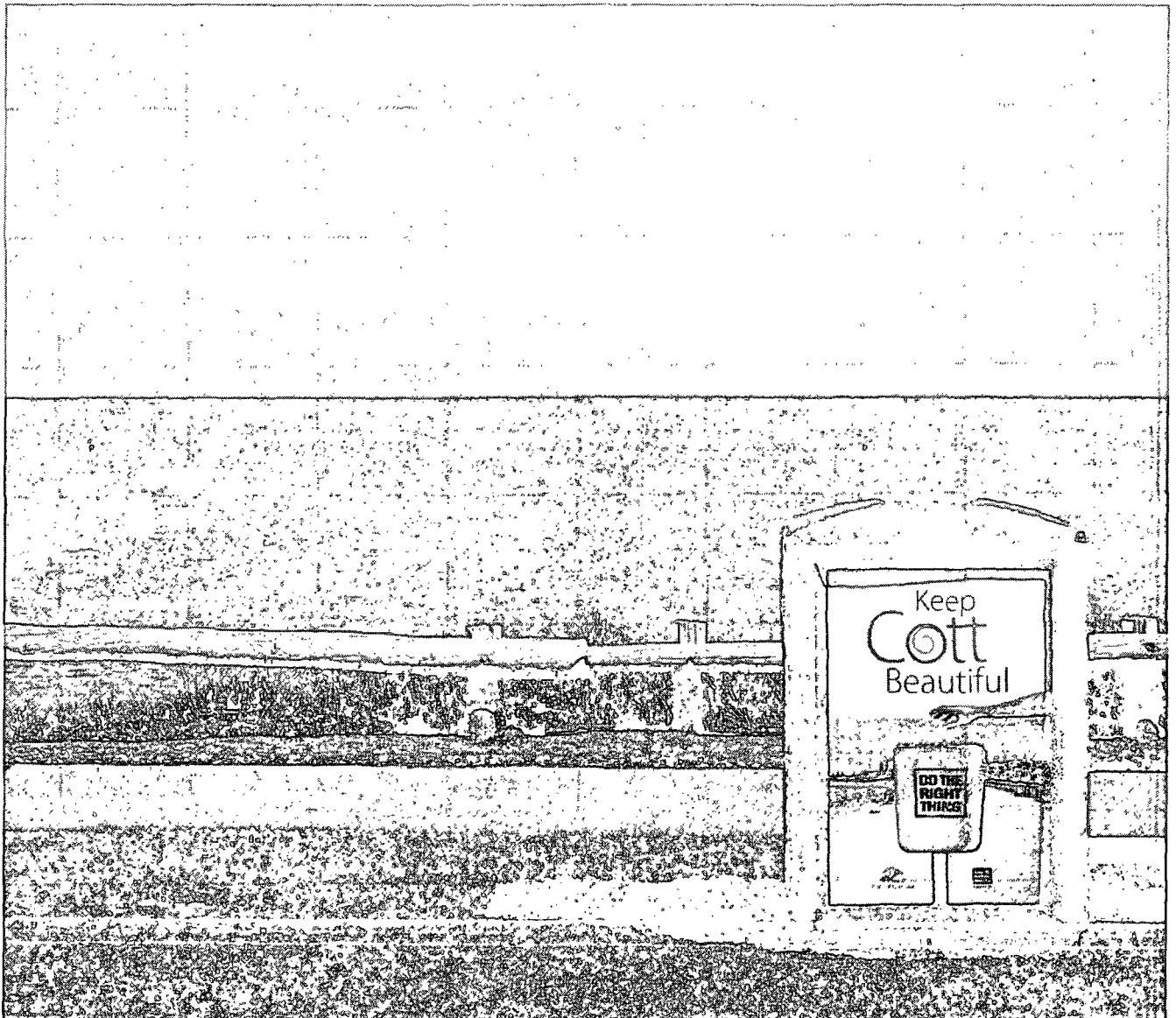
Overall Dimensions

700mm x 700mm x 1050mm

Poster Dimensions

750mm x 500mm

Material: Moulded Polyethylene



**11.2.2 LITTER BIN MEMORANDUM OF AGREEMENT - NATSALES AUSTRALIA
PTY LTD – REQUEST FOR RENEWAL**

File No: SUB/323
Attachments: [Attachment 1 Memorandum of Agreement](#)
[Attachment 2 Letter from Natsales requesting
renewal of agreement](#)
[Attachment 3 Natsales bin locations](#)
Responsible Officer: Andrew Jackson
Manager Development Services
Author: Darrell Monteiro
Principal Environmental Health Officer
Proposed Meeting Date: 16 August 2011
Author Disclosure of Interest Nil

SUMMARY

The Memorandum of Agreement (Attachment 1) between the Town of Cottesloe and Natsales Australia Pty Ltd for the supply of bins with advertising is due for renewal by 13 September 2011.

Natsales Australia Pty Ltd (Natsales) has fulfilled all requirements under the current agreement at no cost to the Town.

The terms and conditions of the proposed new Memorandum of Agreement are unchanged and the service would continue to be offered to the Town on a no cost, no maintenance basis.

If Council decides not to renew the agreement, there will be a cost to the Town (estimated at \$111,925) to replace the litter bins and enclosures currently provided by Natsales along with associated maintenance costs.

BACKGROUND

In October 2001, following a Council resolution at the September 2001 meeting, a Memorandum of Agreement was entered into with Natsales Australia Pty Ltd for a term of five years. As per the terms of the agreement (Natsales fulfilling its obligations under the agreement and upon request by Natsales), the agreement was extended in 2006 for a further four (4) years and eleven (11) months. The current agreement will conclude on 14 September 2011.

The Agreement -

- Is a legal document.
 - Requires Natsales to install and maintain litter bins and advertising shells, as nominated by the Town for upgrade.
 - Permits Natsales to profit from advertising by local businesses on three sides of the bin shell with one side provided for advertising of the Town's initiatives or messages.
-

Renewal

The Town has received correspondence from Natsales (Attachment 2) requesting renewal of the current arrangement by entering into a new 5 year Memorandum of Agreement with the same set of terms and conditions. Renewal of the Agreement would mean no changes to current mode of operation and no costs to the Town.

History

- Prior to September 2001, the Town had been issued with a work order from Worksafe as the public bins, 70L white drums, in use at the time due to the manual handling involved in clearing the bins.
- The proposal from Natsales was considered the best option at the time and cost savings of \$79,200 were estimated. The savings comprised of the costs of new bins, new shells and the installation.
- The Town received ten (10) written complaints shortly after the start of the contract. This was followed up by an article in the Post. The underlying concern was the visual pollution caused by the advertising.
- No complaints were found for the remainder of the term of the agreement.
- During the past 10 years, Natsales has continued to provide a professional service, with any damage to the bins being dealt with promptly and at no cost to the Town.
- There are currently 37 Natsales advertising bins located along Marine Parade, Forest Street, Curtin Avenue and Stirling Highway (See attachment 3 for a satellite photo with locations of all Natsales bins [in green]).
- The Town determines on the location and number of bins as part of the Agreement.
- All bins are in use and some are collected daily during the summer months.
- No new Natsales bins have been requested since October 2010.
- Local businesses have had the opportunity to advertise.

In considering this matter there are a number of options available to Council:

Option 1 - Not to renew the agreement

There is an underlying concern that the advertising shells are a cause of visual pollution, such is the trend with bus shelters, park benches and so on.

All Natsales bins are currently in use and should Council decide not to renew the Agreement, all 37 Natsales provided bins and advertising shells would need to be replaced as per the bin replacement options in Table 1.

If enclosures are required for the bins, there is a substantial cost which has not been budgeted for in the 2011-12 financial year. Further, with the contract concluding on 14 September 2011, there would be very little time to process quotes and install (depending on the type of bin enclosure chosen).

Local businesses that have been using the bins for advertising would find that they have lost their advertising space without much prior warning.

Choosing not to renew the agreement is therefore not considered the most preferable option.

Table 1: Options for replacement of Natsales bins with estimated costs

Option	Cost of 120L bins	Cost of bin surrounds	Cost of installation	Cost of steel stand	Total cost of option
Replace only the litter bins	\$2,590	\$0	\$1,850	\$3,700	\$8,140
Replace with similar style bin surround.	\$2,590	\$37,000	\$1,850	\$0	\$41,440
Replace with stainless steel bin surrounds	\$2,590	\$94,350	\$14,985	\$0	\$111,925

Note:

Assumptions of unit costs are based on current prices or previous contracts.

Annual cost of maintenance of bins and surrounds is estimated at \$1,000 per annum.

Option 2 – Renewing the Agreement

If the agreement is signed as is, it would lock the Town in for another five (5) years with the option to extend for another four (4) years and eleven (11) months.

Assuming that there is still an underlying concern about the visual pollution caused by the advertising, renewing the Agreement is not considered a preferred option.

Option 3 – Signing an amended agreement with a 12 month term

If the agreement were to be signed for an amended term of 12 months with no provision for further extensions (assuming Natsales were to agree), it would provide the Town sufficient time to budget for bin enclosures and also to get quotes and prepare for the installation of the bins and enclosures.

This would also provide Natsales with sufficient time to inform its clients of the impending conclusion of the amended agreement.

Taking all matters into consideration, endorsement of an amended agreement with a reduced term of no more than 12 months is considered a preferred option.

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 of between \$8,140 and \$111,925 depending on the option chosen for bin surrounds. There is no budget provision for decommissioning and replacement of Natsales bins in the 2011-12 financial year. However, Council has funds of \$68,562 within its Waste Management 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.

STAFF COMMENT

The Town's current arrangement with Natsales has been effective due to prompt service, cost savings and a reduced workload due to reduced maintenance.

Choosing not to renew the agreement would mean that the Town would have to replace the existing Natsales bins and enclosures. The full costs are estimated at \$111,925, which can be funded by using funds in the Waste Management Reserve and potential surplus funds from the budget review. However, the replacement of bin enclosures would be rushed and businesses that are currently advertising would not have been given much prior warning of the unavailability of advertising spaces.

If the Agreement was renewed in its current form, advertising would be permitted on the bins (potentially) for another ten (10) years.

It is therefore recommended that Council endorse the Town entering into an amended agreement with a reduced term of no more than 12 months and provision be made for their replacement, including enclosures, during the next 12 months.

VOTING

Simple Majority

OFFICER RECOMMENDATION

Moved Cr Strzina, seconded Cr Carmichael

THAT Council:

1. Endorse that the Town of Cottesloe enter into an amended Memorandum of Agreement with Natsales Australia Pty Ltd with a reduced term of 12 months.
2. Authorise the CEO to sign the amended Memorandum of Agreement on behalf of Council.

COMMITTEE DISCUSSION:

Councillor Strzina commented that a reduced term of 12 months could potentially be a *commercial nuisance* for Natsales and suggested that the term be amended to 3 years to allow time for Council to review budgets and potential bin styles to improve the aesthetics of the district. General comments by members were that they were not aware of any major concerns with the bins but did want an opportunity to consider future plans for the Town with respect to bins and other public furniture and therefore agreed to amend the officer recommendation and extend the term. Committee requested that the CEO and staff liaise with Mr Marwick in relation to the Committee recommendation.

AMENDMENT

Moved Cr Strzina, seconded Cr Rowell

Amend point (1) of the recommendation by replacing the words “12 months” with “3 years”.

Carried 6/0

COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Boland, seconded Cr Rowell

THAT Council:

- 1. Endorse that the Town of Cottesloe enter into an amended Memorandum of Agreement with Natsales Australia Pty Ltd with a reduced term of 3 years.**
- 2. Authorise the CEO to sign the amended Memorandum of Agreement on behalf of Council.**

Carried 10/0



Litter Bins Legend

-  Natsales
-  Sulo
-  Design
-  Stainless Steel