



Maintenance Services Contract Roads Corridor

Mornington Peninsula Shire Council
Community Asset Maintenance Services

Contract No: 2635

Mornington Peninsula Shire Council

and

Fulton Hogan Industries Pty Ltd

15 December 2023

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Maintenance Services Contract — Roads Corridor

Contract No. 2635

Date **15 December 2023**

Parties **Mornington Peninsula Shire Council**
ABN 53 159 890 143 of 90 Besgrove Street Rosebud VIC 3939
(Shire)

Fulton Hogan Industries Pty Ltd
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572 Swan Street, Richmond VIC 3121
(Contractor)

Recitals

A. The Shire has prepared the Community Asset Maintenance Services (**CAMS**) Contracts as part of a broader refresh of its maintenance services delivery model.

B. The Contractor is one of several CAMS Contractors and in particular is responsible for the delivery of the Roads Corridor package.

C. The Contractor will work collaboratively with the Shire and the other CAMS Contractors to deliver the Services so as to maximise the achievement of the Strategic Priorities and in accordance with the terms of this agreement.

D. The parties enter into this agreement to record the terms of their agreement.

The parties agree, in consideration of, among other things, the mutual promises contained in this agreement as follows:

General Conditions of Contract

Part A Contract Overview

1. Engagement and Co-operation

- 1.1 The Shire engages the Contractor to carry out the Services on and subject to the terms of this Contract.
- 1.2 The parties agree to co-operate at all times to give effect to the Contract.

2. Contract Term

2.1 Initial Contract Term

The Contract commences on the Commencement Date and continues until six years after the Commencement Date (**Initial Contract Term**), unless extended in accordance with clause 2.2 or terminated earlier.

2.2 Options to Extend the Contract Term

- (a) The Contract Term may be extended by a period of three years (**First Extended Contract Term**) by the Shire providing written notice to the Contractor at any time prior to the end of the Initial Contract Term.
- (b) The Contract Term may again be extended by a period of three years (**Second Extended Contract Term**) by the Shire providing written notice to the Contractor at any time prior to the end of the First Extended Contract Term.
- (c) The parties acknowledge and agree that the Shire may, in its discretion, choose to exercise any of its options to extend the Contract Term following the In-Term Reviews set out in clause 48 considering relevant factors which may include:
 - (i) the extent to which the Contractor has achieved the Strategic Priorities in performing the Services;
 - (ii) the Contractor's achievement of the KPIs over the course of the Contract Term;
 - (iii) any proposal from the Contractor for continuous improvement so as to better achieve the Strategic Priorities in any extended Contract Term; and
 - (iv) the Contractor's performance generally.

- (d) The Shire may exercise an option at any time, but will use reasonable endeavours to exercise it between 18 and 6 months prior to the end of the relevant term.

3. Strategic Priorities

- 3.1 The Shire wishes to provide a sustainable and user-focused road corridor maintenance service for the residents of and visitors to the Shire. With this aim in mind, the parties must subject to the terms of this Contract, exercise best endeavours in performing the Services so as to maximise the achievement of the objectives set out below (the **Strategic Priorities**).

For the avoidance of doubt nothing in this clause 3.1 shall place a greater obligation on the Contractor than is otherwise provided under this Contract.

Asset Longevity	To maintain the assets of the Shire to the specified standard and in a manner that enables the asset to reach its design life.
Value for Money	Lowest whole of life cost, optimised maintenance program and delivery of services to the required performance standards and quality
Customer Experience	Customers to experience a well-maintained built and natural environment and efficient, effective maintenance services and customer service. Good customer experience strengthens the Shire's relationship with the community and instils pride in the local area:
Safety & Risk	Safety first culture to ensure that a safe environment is provided to all workers and the public and with risks and responsibilities allocated to those best able to manage them.
Strategic Asset Management	Asset management decisions are informed by quality data and analysis that result in optimal whole of asset lifecycle costs and asset performance.
Adaptability & Agility	Adjustable maintenance arrangements that enable effective and timely response to unexpected, diverse, or changing needs.
Collaborative Relationships	Collaborative relationships with service delivery partners, other authorities, customers, and the broader community lead to enhanced outcomes in maintenance service delivery.

Transparency, Systems & Data	Asset Management Information and Customer Relationship Management Systems provide a single source of truth to enable objective contract management, optimal service delivery and strategic asset management.
Effective Management	Skilled, effective contract management results in optimal service outcomes.
Legislative Requirements	Ensure that the Shire's responsibilities and obligations as a local municipality are met.
Local Economy	Significant economic benefit generated within Mornington Peninsula and development opportunities provided for local individuals and businesses through the delivery of maintenance services.
Sustainability	The environmental footprint of maintenance services is minimised, driving emissions reductions, circular economy and increasing community resilience.
Social Procurement	Significant positive opportunities and outcomes are achieved for a number of disadvantaged or underrepresented individuals, businesses, and groups in the delivery of maintenance services.

- 3.2 The Shire may from time to time update the Strategic Priorities by written notice to the Contractor.

Part B Governance

4. Management Overview

4.1 Governance Overview

- (a) The parties wish to give contractual effect to the Strategic Priorities and establish a robust framework that allows the parties to co-operate in the management of the contract and promotes transparency and accountability of the CAMS Contractors as a whole.
- (b) **Contract Manager:** The Shire will appoint a Contract Manager who will be responsible for managing day to day operational matters, such as reviewing the Contractor's Progress Reports, attending Progress Meetings and performing any task allocated to that role in this Contract. The Contract Manager may be overseen by a **Senior Contract Manager** appointed by the Shire who may perform specific tasks at the Shire's discretion.



- (c) **Contract Manager's Representative:** The Contract Manager may from time to time appoint an individual or individuals to exercise delegated Contract Manager functions, provided that:
 - (i) delegation shall not prevent the Contract Manager from exercising any function; and
 - (ii) where this Contract vests a power or right in the Contract Manager, it is read to have vested the power or right in the Contract Manager's Representative.
- (d) The **Service Management Team** will comprise of the Senior Contract Manager and the Senior Contractor's Representative and any other senior personnel agreed by the parties. The Senior Management Team will meet as required and at least quarterly. The Senior Management Team's role includes oversight of the Contract as well as the specific tasks allocated to it in this Contract, which include:
 - (i) Annual Reviews under clause 48.2; and
 - (ii) In-term Reviews under clause 48.4.
- (e) Each party shall nominate a **Senior Executive Representative**. The roles of the Senior Executive Representatives are:
 - (i) to supervise the Service Management Team;
 - (ii) for the Service Management Team to report to them;
 - (iii) to attend and participate in In-term Reviews; and
 - (iv) to consider any performance issues that arise as part of the KPI Reviews.

4.2 Contract Manager

- (a) The Shire must ensure that at all times there is a Contract Manager. The initial Contract Manager is the person nominated in Item 1 of the Contract Details. The temporary or permanent appointment of a person to replace the Contract Manager must be notified by the Shire to the Contractor.
- (b) The Contract Manager is to be responsible for the day to day management of the Contract, including:
 - (i) receiving and reviewing the Contractor's reports at the Progress Meetings;
 - (ii) assessing Payment Claims against the Services delivered by the Contractor;
 - (iii) preparing financial reports for review by the Shire;

- (iv) making all decisions regarding Variations and Claims;
- (v) being the first point of contact for the Contractor to resolve any issues in the delivery of the Services;
- (vi) monitoring the Contractor's performance and enforcing the performance management regime set out in Part G;
- (vii) conducting the Annual Reviews and attending meetings as required by clause 48; and
- (viii) conducting the In-Term Reviews and attending meetings as required by clause 48.

4.3 Senior Contract Manager

- (a) The Shire must ensure that at all times there is a Senior Contract Manager. The initial Senior Contract Manager is the person nominated in Item 1 of the Contract Details. The temporary or permanent appointment of a person to replace the Senior Contract Manager must be notified by the Shire to the Contractor.
- (b) The Senior Contract Manager is to be responsible for those roles expressly assigned to them in the Contract, including attending Progress Meetings each quarter.
- (c) In addition to (b), the Shire may in its absolute discretion direct the Senior Contract Manager to perform a specific task allocated to the Contract Manager under 4.2(b) (for example, to make a decision concerning a high value Variation or Claim).

4.4 Contractor's Representative

- (a) The Contractor must ensure that there is at all times a Contractor's Representative. The initial Contractor's Representative is the person nominated in Item 2 of the Contract Details.
- (b) The Contractor's Representative is deemed to be authorised to receive all directions and other communications on behalf of the Contractor. Any direction or other communication given to the Contractor's Representative is deemed to have been given to the Contractor.
- (c) A matter within the knowledge of the Contractor's Representative is deemed to be within the knowledge of the Contractor.
- (d) The Contractor must ensure that the Contract Manager and the Shire at all times have up to date contact details for the Contractor's Representative and that the Contractor's Representative is available and able to be contacted by the Contract Manager during the hours specified in the Integrated Management Plan or as otherwise required by the Shire.

- (e) The Contractor's Representative may, with the Contract Manager's prior written approval, appoint others from time to time with authority to act in the capacity of the Contractor's Representative. A person may be appointed as the Contractor's Representative on a short-term basis (such as to cover leave taken by the permanent Contractor's Representative), for specific projects, for particular activities or for particular times of day.
- (f) The Contractor must not replace the Contractor's Representative without the prior written consent of the Contract Manager.
- (g) Persons appointed under clauses 4.4(a) or 4.4(e) must have the skills, qualifications and experience necessary for the position of the Contractor's Representative.

4.5 Senior Contractor's Representative

- (a) The Contractor must ensure that there is at all times a Senior Contractor's Representative. The initial Senior Contractor's Representative is the person nominated in Item 2 of the Contract Details.
- (b) The Contractor must not replace the Senior Contractor's Representative without the prior written consent of the Contract Manager.
- (c) Persons appointed as the Senior Contractor's Representatives must have the skills, qualifications and experience necessary for the position of the Senior Contractor's Representative and be in a position superior to the Contractor's Representative in the Contractor's organisational chart.
- (d) The Senior Contractor's Representative is to be responsible for those roles expressly assigned to them in the Contract, including attending Progress Meetings each quarter.
- (e) In addition to (d), the Shire may in its absolute discretion direct the Senior Contractor's Representative to perform a specific task allocated to the Contract Manager (for example, concerning a high value Variation or Claim).

5. Progress Meetings

5.1 Progress Meeting

- (a) The Contractor's Representative must meet for a monthly (or at such other times as the Contract Manager may require) Progress Meeting with the Contract Manager and any other persons whom the Contract Manager nominates.
- (b) The Shire may, at any time:
 - (i) appoint an individual to chair the Progress Meetings; and



- (ii) request that additional representatives of the Contractor (including Senior Representatives, if required by the Shire) must attend the next Progress Meeting.

5.2 Conduct at Progress Meeting

At each Progress Meeting, the Contractor's Representative must:

- (a) discuss the Progress Reports it has prepared under clause 6 since the previous Progress Meeting and such other matters as the Contract Manager may from time to time require;
- (b) promptly and fully respond to any questions which the Contract Manager asks in relation to any Progress Report;
- (c) make any recommendations to the Contract Manager it considers will further the achievement of the Strategic Priorities; and
- (d) attend to any other matter required by the Contract Manager, including ensuring the attendance of any persons requested by the Shire in accordance with clause 5.1(b)(ii).

5.3 Agenda, Action Register and Minutes

- (a) Before each Progress Meeting, the Contractor's Representative must prepare and issue an agenda for the meeting at least 2 Business Days in advance. The Contractor's Representative must add to the agenda any additional items reasonably requested by the Contract Manager.
- (b) Within 24 hours after each Progress Meeting, the Contractor's Representative must prepare and issue the Action Register and minutes of the meeting. The Contract Manager may mark up and return the Action Register and/or minutes to the Contractor's Representative as a record of the Progress Meeting.
- (c) For the purposes of this clause, the Contract Manager may at any time provide the Contractor with a template agenda, Action Register or minutes and, if the Contract Manager does so, the Contractor must prepare the agenda, Action Register and minutes of Progress Meetings in accordance with the template, as relevant. The Contractor shall otherwise prepare an agenda, Action Register and minutes in the forms required by the Contract Manager (if any) or otherwise in a form which is to the reasonable satisfaction of the Contract Manager.
- (d) Without limiting (a) to (c), the Contractor must provide all reasonable secretarial support for the Progress Meetings.

5.4 Costs of attendance

- (a) Each party must bear its own costs of and incidental to attendances at the Progress Meetings.

- (b) In addition to representatives of the Contractor requested by the Shire in accordance with clause 5.1(b)(ii), either party may, with the approval of the Contract Manager (which must not be unreasonably withheld), introduce third persons to a particular Progress Meeting. The cost of attendance by any third parties will be borne by the party which sought their attendance, unless otherwise agreed by both parties.

5.5 Quarterly Progress Meetings and expert assistance

- (a) At least once a quarter, the Progress Meeting must be attended by the Senior Contract Manager and Senior Contractor's Representative.
- (b) Without limiting the foregoing, the Shire may direct that the Senior Contractor's Representative attend any Progress Meeting.
- (c) The parties may agree to the appointment of expert third parties to assist the Contract Manager and Senior Contractor's Representative in their roles. The reasonable costs of any such expert third party shall be borne equally by the parties unless otherwise agreed.

6. Contractor's Progress Report

6.1 At least 5 Business Days prior to each Progress Meeting under clause 5, the Contractor must provide the Contract Manager with a Progress Report containing (at a minimum):

- (a) particulars of all Works performed in that month with a breakdown of all amounts claimed including:
 - (i) details of the Services undertaken in accordance with the Annual Program;
 - (ii) details of any Services that were not undertaken in accordance with the Annual Program and the corresponding adjustment to Lump Sum Payments pursuant to clause 40.2;
 - (iii) Work undertaken under Provisional Quantity Items, including measured quantities and value claimed against any Provisional Quantity Item and the remaining Provisional Quantity Allowance for each such item;
 - (iv) Work undertaken under each Provisional Sum Item, including the value claimed against each Provisional Sum Item and the remaining unexpended Provisional Sum Allowance for that item;
 - (v) Work performed as Ordered Works;
 - (vi) Work performed as Minor Works;
 - (vii) Work performed pursuant to Variations; and
 - (viii) with Reporting Units as specified for each Activity in Annexure 4;

- (b) measure of the Contractor's performance against each KPI, including proposed rectification plan for any failure against a KPI and any abatement amount to be applied to the Monthly Service Payment as required under Annexure 7;
 - (c) register of cost savings and continuous improvement initiatives;
 - (d) a summary of any Variations not covered in the above and associated adjustment to the Monthly Service Payment;
 - (e) a summary of any Asset Inventory Changes and associated adjustment to the Monthly Service Payment;
 - (f) written claims for and notices given under clause 55 in respect of delays and Excusing Events;
 - (g) notice of potential and declared DRFA Events;
 - (h) particulars of any risks (including reputational risks) which, in the Contractor's opinion, significantly impact or have the potential to significantly impact the delivery of the Services and achievement of the Strategic Priorities;
 - (i) confirmation of compliance with OH&S and Environmental Laws and codes of practices, guidelines and Laws relevant to the Services;
 - (j) particulars of all safety and environment matters arising out of or in connection with Part E and any other reasonable information and evidence requested by the Shire in relation to safety and environment matters, including any OH&S audits of its subcontractors and associated data;
 - (k) monthly reporting obligations as set out in the Integrated Management Plan;
 - (l) additional matters to be reported on as specified for each Activity in Annexure 4; and
 - (m) any other matters required by the Contract Manager.
- 6.2 The Contract Manager may prescribe the required format of the Progress Report for the Contractor to use.
- 6.3 The Shire may review and comment and request changes to Progress Report, including where the quality of Services did not achieve the standard required in this Contract.
- 6.4 In addition to the foregoing, the Contractor must promptly report in writing to the Contract Manager on any aspect of the Services when directed to do so by the Contract Manager (acting reasonably).

7. Not used

Part C Performance of the Services

8. Overview of the Services

The Services comprise maintenance of the Assets in accordance with the requirements of the Contract, including:

- (a) performing the Maintenance Services as required to maintain the Assets to the required inspection and maintenance frequencies, standards and Intervention Levels;
- (b) undertaking all activities required to plan and deliver the Pavement Resurfacing Program and the Rehabilitation and Resurfacing Collaborative Works Program;
- (c) recording all Asset Data, Asset Maintenance Data and Maintenance Schedules within the Shire's Asset Management Information System in accordance with the requirements of Annexure 6;
- (d) maintaining and updating the Asset Inventory within the Asset Management Information System as and when New Assets are added or removed from the Services in accordance with the requirements of Annexure 6;
- (e) complying with, and performing the Services in accordance with, the General Requirements in Annexure 3, the Activity Specifications in Annexure 4 (as applicable) and the Pavement Performance regime in Annexure 5 (as applicable).
- (f) providing customer service in accordance with the Shire's customer services requirements and the Customer Service Plan;
- (g) complying with the Integrated Management Plan and the reporting, meeting and review requirements of the contract;
- (h) carrying out any Ordered Work; and
- (i) carrying out any Minor Work.

9. Maintenance Services

9.1 Contractor's obligations

The Contractor must ensure that Maintenance Services are properly planned throughout each Contract Year to ensure the Assets are regularly inspected and maintained to best practice industry standards including with respect to road safety and

pedestrian usage, and in accordance with the inspection and maintenance frequencies, standards, requirements and Response Times specified within this Contract.

The Parties acknowledge that this clause 9.1 does not require the Contractor to comply with best industry standards where:

- a) the Council has been made aware of the applicable best industry standard but has expressly directed the Contractor to perform the Maintenance Services to a lesser standard; or
- b) to the extent that a particular requirement, frequency or standard is otherwise specified in this Contract.

9.2 Payment for Maintenance Services

- (a) The Shire will pay for the Maintenance Services:
 - (i) for Work included under the Lump Sum Item as defined in the relevant Activity Specification and as specified in Annexure 2, the Lump Sum;
 - (ii) for Work included under Provisional Quantity items, using the relevant Provisional Quantity Rates set out in Annexure 2 based on actual quantities of completed Work and Services, up to the relevant Provisional Quantity Allowance (as adjusted by the Shire in accordance with this Contract); and
 - (iii) for Work included under Provisional Sum Items, as per the approved quote up to the Provisional Sum Allowance set out in Annexure 2 (as adjusted by the Shire in accordance with this Contract).
- (b) The Maintenance Services required to perform the Contractor's obligations under this Contract are to be paid under (and are deemed to be included in) the Lump Sum Items, Provisional Quantity Items and Provisional Sum Items set out in Annexure 2 unless they are expressly excluded in the Activity Specifications in Annexure 4.
- (c) The Shire may in its absolute discretion direct the Contractor to perform any Services excluded in the Activity Specifications in Annexure 4 as Ordered Works.

9.3 Inspections

- (a) The Contractor is required to inspect Assets (**Inspections**) as required to achieve the specified inspection frequencies and required standards and Intervention Levels, whenever requested by the Shire, or in response to reports, complaints, notifications or other representations made to the Contractor (either directly or via the Shire's nominated customer enquiry system) or inspections by work crews or in response to particular events that are likely to have caused Maintenance Requirements to arise in the Asset.

- (b) The Contractor's obligations during Inspections include undertaking any Make-safe Work required to prevent or mitigate the risk of loss or damage to property or injury or death to persons.
- (c) Where an Inspection identifies a Maintenance Requirement that is:
 - (i) included in a Lump Sum Item or a Provisional Quantity Item within the limits of the relevant Provisional Quantity Allowance, the Contractor must perform those Services promptly and does not need to provide the Shire with prior notice;
 - (ii) included in a Provisional Sum Item, and is within the limits of the relevant Provisional Sum Allowance, clause 9.4 shall apply and the Contractor must submit a Quotation for Provisional Sum Item Work under that clause; or
 - (iii) not included in a Lump Sum Item or is outside the limits of a Provisional Sum Allowance or Provisional Quantity Allowance clause 9.5 shall apply and the Contractor must submit a Notice of Ordered Work under that clause.
- (d) Notwithstanding the foregoing, where an Inspection identifies a Maintenance Requirement that requires Minor Works only, the Contractor may perform those Minor Works under clause 11.

9.4 Provisional Sum Works

- (a) Where clause 9.3(c)(ii) applies:
 - (i) the Contractor must provide a Quotation for Provisional Sum Item Work.
 - (ii) The Quotation for Provisional Sum Item Work must:
 - (A) set out the particulars of the Maintenance Requirement; and
 - (B) provide reasonable evidence that the Maintenance Requirement is required; and
 - (C) include the Contractor's quotation for performing the relevant Services.
- (b) The Shire may:
 - (i) after receiving the Contractor's Quotation for Provisional Sum Item Work, issue a direction accepting the Quotation for Provisional Sum Item Work (**Provisional Sum Work Order**) and the Contractor must carry out the relevant Provisional Sum Item Work; or
 - (ii) decide not to proceed with any part of such Provisional Sum Item Work; or

- (iii) carry out any part of such Provisional Sum Item Work itself or by engaging third parties, including by taking any proposed Work to a competitive tender at its absolute discretion.
- (c) Provisional Sum Work Orders will be issued by the Contract Manager via the work order system within the Asset Management Information System.
- (d) At any time, the Shire may direct the Contractor to provide its Quotation for Provisional Sum Item Work on an Open Book Basis.
- (e) For frequently required Provisional Sum Item Works, including work carried out under the Rehabilitation and Resurfacing Collaborative Works Program, the Shire may require the Contractor to demonstrate value for money in the delivery of the Provisional Sum Item Works, including by reference to rates in recently awarded (over the previous two years) tenders or verification by an independent quantity surveyor.

9.5 Notice of Ordered Works

- (a) Where clause 9.3(c)(iii) applies:
 - (i) upon identifying the relevant Maintenance Requirement, the Contractor must provide a **Notice of Ordered Works** via the work order system within the Asset Management Information System.
 - (ii) The **Notice of Ordered Works** must:
 - (A) set out the particulars of the Maintenance Requirement; and
 - (B) provide reasonable evidence that the Maintenance Requirement is required.
- (b) Upon receipt of a Notice of Ordered Works, the Shire may, in its absolute discretion, issue a Request for Quotation under clause 10.2 via the work order system within the Asset Management Information System.
- (c) For urgent Services with Response Times less than 30 Days or that are otherwise time critical, the Contractor must submit the Notice of Ordered Works and provide any required quotations or other submissions, including for the purpose of Work Orders, as quickly as reasonably practicable.
- (d) The Contractor cannot proceed with any Services included in a Notice of Ordered Works unless and until it receives a Work Order from the Shire to do so. The Shire has an absolute discretion whether to accept a Quotation for Ordered Works and may instead engage others to perform the relevant Services.
- (e) Compliance with clause 9.5 is a condition precedent to the Contractor's entitlement to submit a Claim for the relevant Services.

9.6 Response Times

- (a) The Contractor must perform the Services in accordance with the Response Times specified in Annexure 4 or as otherwise directed by the Shire or Contract Manager, and in any event promptly and so as to remove (or at the very least minimise) any risk to the safety and health of persons who may be impacted by the relevant Services.
- (b) Where the Contractor fails to perform an obligation by the relevant Response Time, the Shire may, without giving prior notice or further opportunity for the Contractor to perform the obligation, perform the obligation itself (including by engaging third parties) and recover the cost of doing so from the Contractor.
- (c) Where the Shire's approval under a Provisional Sum Work Order or Work Order is required for Services to which Response Times apply, the Shire will take into account any unreasonable delay by the Shire in providing the required approval (including issue of a Work Order or Provisional Sum Work Order) when assessing a failure by the Contractor to comply with the relevant Response Time.

9.7 Make-safe Work

Where urgent Services are required to prevent or mitigate the risk of loss or damage to property or injury or death to persons, the Contractor must promptly perform the required Make-safe Work at no additional charge.

10. Ordered Work

10.1 Ordered Work

- (a) If the Shire requires the Contractor to perform any Ordered Work, the Contract Manager may issue a Work Order setting out the scope of the Ordered Works, any timing requirements and the basis upon which it is to be paid. The Work Order may include the Shire's acceptance of any quotation from the Contractor.
- (b) If a Work Order is issued by the Contract Manager, the Contractor is required to carry out Ordered Work promptly and diligently and as and when required by, and within the time specified in Work Orders issued in accordance with the Contract.
- (c) Payment for Ordered Work will be determined on the basis specified in the applicable Work Order.
- (d) The Shire makes no representation regarding the quantity of Ordered Work that will be requested under the Contract and may, instead of engaging the Contractor, carry out such Work itself or by engaging third parties including by taking any proposed Ordered Work to a competitive tender at its absolute discretion.

- (e) The Contractor is required to provide regular updates to the Contract Manager (as required by the Contract Manager) as to the progress of Ordered Work and must promptly provide written notice to the Contract Manager of any delays to the Ordered Work.
- (f) The Contractor is not permitted to perform any Ordered Work or receive payment for any Ordered Work unless it is set out in a Work Order provided by the Shire.
- (g) The Shire is not obliged to seek a quotation from the Contractor or accept any quotation for any Ordered Work.

10.2 Request for Quotation for Ordered Work

- (a) The Shire may request the Contractor to submit a quotation for Ordered Work via the work order system within the Asset Management Information System) (**Request for Quotation**).
- (b) The Request for Quotation may include any or all of the following details:
 - (i) the timing for the Contractor's quotation;
 - (ii) a Shire brief, including the scope of Work and specification;
 - (iii) the basis on which the Work is to be priced, using the rates in Annexure 2 where applicable;
 - (iv) a draft program setting out the Shire's timing requirements for the Work;
 - (v) without limiting the Contractor's obligations under the Contract, any additional issues or requirements that are special or of significance;
 - (vi) any services, facilities or products to be provided by the Shire;
 - (vii) any additional terms and conditions beyond the requirements in the work order system within the Asset Management Information System that will apply to the Work Order; and
 - (viii) the Shire's nominated representative for the Work Order.

10.3 Contractor's Quotation

- (a) Within the time frame required in the Shire's Request for Quotation, or if no time is specified in the Request for Quotation, within 5 Business Days (or such longer period agreed by the parties) of receiving a Request for Quotation in accordance with clause 10.2, the Contractor must give a written quotation to the Shire via the work order system within the Asset Management Information System. The Contractor's quotation may include the relevant percentage margin for profit and overheads specified in Annexure 2, but cannot include a margin on any rates and prices within the Contract that already include profit or overhead.

- (b) The Contractor's quotation must include (as applicable):
 - (i) the proposed price for the Ordered Work on the basis set out in the Shire's Request for Quotation, and using the rates in Annexure 2 where applicable;
 - (ii) any proposed subcontractors for the Ordered Work;
 - (iii) any other pertinent information requested by the Shire or otherwise; and
 - (iv) the period that the quotation remains valid for (which shall not be less than three months unless the parties agree otherwise).
- (c) If the Contractor requests any reasonable revisions to the documents supplied in the Shire's Request for Quotation so as to further the Strategic Principles, that request must be made before submitting its quotation. The Shire will consider those requests, and may in its absolute discretion direct the Contract Manager to re-issue the Request for Quotation to reflect those requests.
- (d) At any time, the Shire may direct the Contractor to provide its quotation on an Open Book Basis

10.4 Issue of Work Order

- (a) The Shire may:
 - (i) after receiving the Contractor's quotation in accordance with clause 10.3, before the end of the period of validity stated on the quotation (or three months if no period is stated), issue a Work Order accepting the quotation to carry out the Ordered Work via the work order system within the Asset Management Information System; or
 - (ii) if a quotation has not been requested or provided or if a quotation is not accepted, issue a Work Order directing the Contractor to carry out Ordered Work and the amount payable for the Work Order will be valued by the Contract Manager by applying the following methods of valuation:
 - (A) any prior written agreement between the parties;
 - (B) any relevant rates or prices contained in the Contract Documents (including the rates in Annexure 2 where applicable); or
 - (C) reasonable rates or prices including the relevant percentage margin for the Contractor's profit and overheads specified in Annexure 2; or
 - (iii) at any time prior to issuing a Work Order:
 - (A) decide not to proceed with any part of such Work; or



- (B) carry out any part of such Work itself or by engaging third parties, including by taking any proposed Work to a competitive tender at its absolute discretion.
- (b) Work Orders must be issued by the Contract Manager via the work order system within the Asset Management Information System and will confirm:
 - (i) where a quotation has been requested, the Shire's acceptance of the quotation or basis on which it is not accepted;
 - (ii) the price for the Ordered Work and the basis on which it has been calculated;
 - (iii) the Shire's and the Contractor's representatives for the Ordered Work and their contact details;
 - (iv) the program for the Ordered Work, including the commencement time and any dates for Completion;
 - (v) Defects Liability Periods;
 - (vi) quality, environmental and traffic control requirements;
 - (vii) acceptance of proposed subcontractors; and
 - (viii) any additional terms and conditions.
- (c) For the avoidance of doubt, notwithstanding that the Shire does not request or accept the Contractor's quotation for the Ordered Work, if the Shire issues a Work Order, the Contractor must perform the Ordered Work in accordance with the Work Order and may dispute the price of the Ordered Work under Part M.

11. Minor Work

- 11.1 Subject to this clause and to the subsequent issue of a Work Order, it is the intention of the parties that the Contractor will undertake all Minor Works that are consistent in nature and type with the Services and that are consistent with the Contractor's skills, expertise, resources and availability at the time the Minor Works are required.
- 11.2 Minor Works are any Works that are not covered under either Lump Sum Items, Provisional Quantity Items or Provisional Sum Items and that have a maximum value of \$1,000.00 (as varied by the Contract Manager or the Shire in writing from time to time, including with respect to particular Services) and may be undertaken prior to the issue of a Work Order subject to the requirements of this clause 11.
- 11.3 Notwithstanding clause 10, Minor Works may be undertaken by the Contractor without a Work Order, but strictly only where:
 - (a) they can be undertaken immediately during the inspection by the Contractor which revealed that they were required;

- (b) doing them immediately will result in a cost saving to the Shire compared to the Contractor returning later to perform them; and
- (c) the Contractor has taken reasonable steps to seek approval of the Contract Manager to undertake the Minor Work, which may be verbal.

11.4 As soon as practical, the Contractor's Representative shall provide written notification of Minor Works undertaken, including a substantiation of the amount claimed and compliance with the requirements of this Clause 11. At any time, the Shire may request that this substantiation be on an Open Book Basis.

12. Annual Program

12.1 Annual Program

- (a) No less than 3 months prior to the commencement of the Services for the first Contract Year and thereafter no less than 3 months before the end of each Contract Year, the Contractor must submit to the Shire a proposed Annual Program for the following Contract Year.
- (b) Each proposed Annual Program submitted by the Contractor under this clause must include:
 - (i) the Maintenance Services to be carried out by the Contractor in the Contract Year to which the proposed Annual Program relates;
 - (ii) the annual Pavement Resurfacing Program, which, for the first two contract years, must be substantially consistent with the Pavement Resurfacing Program lodged by the Contractor in its Proposal for the Services (subject to any updates made prior to the Award Date with the approval of the Shire);
 - (iii) the annual Rehabilitation and Resurfacing Collaborative Works Program, developed in collaboration with the Shire;
 - (iv) the planned frequencies, sequencing and timing with which each Activity in the Annual Program will be carried out, and which must be in accordance with the frequencies set out in Annexure 4 for each Asset;
 - (v) the percentage that each Activity in the Annual Program contributes to the Lump Sum Payment for the relevant month;
 - (vi) the proposed cash-flow for that year for the Pavement Resurfacing Program and Rehabilitation and Resurfacing Collaborative Works Program, including the relevant Services that are proposed to be performed in each month and the corresponding monthly payment for those Services in each month; and
 - (vii) any other reasonable requirements notified by the Shire for the Maintenance Services in accordance with the Contract.



12.2 Contract Manager to Respond to Proposed Annual Program

- (a) Within 14 Days of receiving a proposed Annual Program from the Contractor under clause 12.1, the Contract Manager must give a written notice to the Contractor which either:
 - (i) accepts the proposed Annual Program or a relevant part of it; or
 - (ii) requests amendments to the proposed Annual Program in relation to:
 - (A) the time periods in which different aspects of the Maintenance Services will be carried out; or
 - (B) the percentage amounts that an activity contributes to the Lump Sum Payment for the relevant month; or
 - (C) any other requirements for the Maintenance Services, if the requirements in the proposed Annual Program are not in accordance with the Contract.
- (b) Any review of, comment upon, or any failure to review or comment upon, a program by the Contract Manager will not relieve the Contractor from or limit or alter the Contractor's obligations under the Contract.

12.3 Agreed Annual Program

- (a) If the Shire gives notice under clause 12.2(a)(i) or the parties otherwise agree to an Annual Program for the relevant Contract Year, the proposed or amended Annual Program agreed to by the parties will be the 'Annual Program' for the relevant Contract Year.
- (b) If the Shire gives notice under clauses 12.2(a)(ii) that it requests changes to the proposed Annual Program:
 - (i) the Contractor must resubmit the proposed Annual Program within 7 Days and the process in clause 12.1 shall repeat until the Shire gives notice under clause 12.2(a)(i) accepting the Annual Program; and
 - (ii) parties must use their best endeavours and act and negotiate in good faith and having regard to the Strategic Priorities to agree to an Annual Program prior to the commencement of the relevant Contract Year.
- (c) If the parties are unable to agree to an Annual Program for the relevant Contract Year:
 - (i) the Contractor must provide the Maintenance Services in the proposed Annual Program which are not subject to dispute, in accordance with the Contract and the directions of the Shire;
 - (ii) the Shire may at its absolute discretion:



- (A) direct the Contractor to provide any Maintenance Services in the proposed Annual Program which are subject to dispute on the basis that the price payable for those Maintenance Services is to be determined under clause 49 on an Open Book Basis, and the Contractor must provide those Maintenance Services in accordance with the Contract and the directions of the Shire;
- (B) engage a third party to provide the Maintenance Services which are subject to dispute; and
 - (1) the Contractor will have no claim against the Shire for those Maintenance Services;
 - (2) if the amount paid by the Shire to the third party for the Maintenance Services is more than the amount that would have been payable to the Contractor for the Maintenance Services under the Contract, the Contractor will be liable as a debt due and payable to the Shire for the difference; and
 - (3) the matters in dispute will be resolved in accordance with clause 72.
- (d) Nothing in this clause 12, or anything contained in any Annual Program (including a proposed Annual Program):
 - (i) relieves the Contractor from or limits or alters the Contractor's obligations under the Contract;
 - (ii) evidences or constitutes a direction by the Contract Manager to vary the Services; or
 - (iii) entitles or evidences a claim of the Contractor to be paid for services not provided or beyond the scope of the Services.
- (e) The Contractor must progressively update the Annual Program and Asset Management Information System to reflect any Variation or Asset inventory Change.
- (f) The Contractor must progressively update the Asset Management Information System to reflect current Annual Program (including updating for any amendments to the Annual Program promptly and if at all possible within 1 Business Day of that update).
- (g) Once an Annual Program has been agreed, the Contractor cannot change that Annual Program without the Shire's prior written approval.

13. Assets

13.1 Overview of the Assets

The Assets for which the Contractor is required to provide the Services as at the Commencement Date are all:

- (a) public roads owned or managed by the Shire;
- (b) ancillary assets which are the responsibility of the Shire; and
- (c) shared paths, cycle paths, WSUD assets, sculptures, equestrian trails, carparks, stormwater pumps, easement drains, silt traps, retarding basins, off-road footpaths, boat ramps, jetties and seawalls belonging to the Shire; and
- (d) any Assets referred to in the Asset Inventory,

as detailed in the Asset Inventory.

13.2 Not Used

13.3 Asset Inventory Conclusive

For the purposes of the Contract, the Asset Inventory is conclusive evidence of the extent and content of the Assets at any point in time (unless it can be established at that time that the Contractor has not been maintaining the Asset Inventory properly in accordance with the requirements of the Contract).

13.4 Access to Assets

- (a) Subject to this clause and it being within its power to do so, the Shire grants the Contractor access to the Assets for the purposes of carrying out the Services in accordance with the Contract.
- (b) The Contractor acknowledges that:
 - (i) some of the Assets form part of a public road network;
 - (ii) the Contractor may not have unrestricted occupation of or access to all of the Assets;
 - (iii) the Shire or Other Contractors may be working on the Assets at the same time as the Contractor;
 - (iv) others, including Authorities or their contractors may be working on the Assets at the same time as the Contractor;
 - (v) the Contractor must carry out the Services in such a way as to ensure that traffic delays and pedestrian inconvenience are kept to a minimum

and may at certain times be prohibited by the Shire from closing or occupying any part of a road or public open space;

- (vi) the Contractor must carry out the Services in such a way as to ensure that any inconvenience to the users of the Asset are kept to a minimum and may at certain times be prohibited by the Shire from denying access to the Asset;
- (vii) the Contractor must comply with the directions of the Contract Manager and relevant Authorities with respect to the management of traffic; and
- (viii) the Contractor shall have no claim against the Shire or the Contract Manager with respect to any restricted access to an Asset or the acts or omissions of any Other Contractor or Authority with respect to an Asset, except as expressly provided otherwise in the Contract.

14. Customer Service

- (a) The Contractor is the primary point of contact for customers in relation to matters concerning the management of the Assets during the Contract Term, except where otherwise provided or required by the Shire.
- (b) The Contractor must undertake all functions necessary to process and close out customer requests in accordance with the Customer Service Plan and the requirements of the Contract.
- (c) The Contractor must develop and implement a system of consultation with stakeholders in accordance with the Contract with particular emphasis on consultation and notification relating to major works and residents with special needs.
- (d) The Contractor's staff must:
 - (i) present in a friendly, honest, courteous and efficient manner to members of the public, the Shire and any other people they encounter in the performance of the Services;
 - (ii) not commit the Shire to any liability or obligation or compromise the position of the Shire at any time; and
 - (iii) be suitably trained in relation to the requirements of this clause.
- (e) The Contractor must take all reasonable steps to allow the Shire to conduct a customer satisfaction survey at least every 6 months during the Contract Term, or at any more or less regular frequency directed by the Contract Manager, and shall work with the Shire to address any Issues with the Services identified by those surveys.

15. Co-ordination Obligations

15.1 In carrying out the Services, the Contractor must:

- (a) work co-operatively with the Shire, occupiers, Committees of Management, Other Contractors, Authorities and contractors of Authorities;
- (b) liaise with the Shire, occupiers, Committees of Management, Other Contractors (including in particular the Tree Management CAMS Contractor), Authorities and contractors of Authorities as to their anticipated programs of work on the Assets and co-ordinate its activities as far as possible with those other programs;
- (c) not interfere with, delay or damage any other work of the Shire, Other Contractors, Authorities or contractors of Authorities; and
- (d) promptly report to the Shire and refer to any other relevant CAMS Contractor any matters which the Contractor reasonably considers should be brought to the attention of the Shire or any other CAMS Contractor for achieving the Strategic Priorities, including, without limitation, maintenance issues such as:
 - (i) disrepair;
 - (ii) materials, plant, property, equipment, surfaces and Services requiring cleaning; and
 - (iii) vandalism.

15.2 In the event of a scheduling conflict between contractors, the Contract Manager shall make a determination, and such determination shall be final.

16. Impact of Access Delays or Restrictions

Without limiting clause 13, if a delay takes place in giving the Contractor access to an Asset at any time or place or any direction is issued by the Contract Manager restricting or revoking access to any Asset to particular days and/or times (including a prohibition of temporary closure under clause 13.4(b)(v)), such delay, restriction or revocation of access is an Excusing Event (but only to the extent that the Contractor has complied with its obligations under the Contract with respect to the Excusing Event, including its coordination obligations under clause 15, and the Contractor could not reasonably have planned for it and taken steps to mitigate the effects of the Excusing Event) and is not a breach of the Contract.

Part D Contractor's obligations

17. Management of the Contract

17.1 Contractor's Responsibility

The Contractor must undertake all duties and responsibilities for the proper management of the Services and its obligations under the Contract including:

- (a) appointing sufficient and competent personnel to manage the Contract;
- (b) measuring its own performance in accordance with the evaluation criteria in the Integrated Management Plan and including details in the Contractor's Progress Report prepared in accordance with clause 6;
- (c) ensuring that the Contractor's Progress Report is prepared in accordance with the requirements of the Contract, including specifying all required details and providing the report on time;
- (d) dealing in a timely manner with all matters that contribute to the effective running of the Contract; and
- (e) dealing with the Shire in a professional manner and in accordance with the Strategic Priorities.

17.2 Systems Interfaces

- (a) All of the Contractor's IT and management systems used, including asset management, customer request management system and reporting systems used in performing the Services must be able to interface with those of the Shire, as notified by the Contract Manager from time to time, and must follow the principles of transparency and auditability. The Contractor must provide the Shire with access to any of its IT and management systems as the Shire reasonably requires.
- (b) The Contractor must not, without the consent of the Contract Manager, change any IT or management system which would reduce the inter-operability of the system with the Shire's systems in relation to matters such as software compatibility, data protection, data integrity, virus protection and website compatibility. Any change by the Shire to its IT or to a management system that affects the inter-operability of the Contractor's system with the Shire's system will be treated as a Variation.
- (c) The Contractor must ensure its IT and management systems comply with, and interface with the Shire's asset management system in accordance with, Annexure 6.

18. Integrated Management Plan

18.1 The Integrated Management Plan

- (a) The Contractor must establish, implement, and maintain a plan (the **"Integrated Management Plan"**) designed specifically to ensure compliance with the Contract and to minimise risks and liabilities associated with performance of the Services.
- (b) The Integrated Management Plan does not limit any obligations of the Contractor under the Contract, notwithstanding any review or approval by the Contract Manager or the Shire.

18.2 Contractor to Prepare and Comply with the Integrated Management Plan

- (a) The Contractor must, in performing its obligations under the Contract, comply with and otherwise implement the Integrated Management Plan.
- (b) At least 3 months prior to the commencement of the Services, the Contractor must provide the Shire with the Integrated Management Plan, which must be consistent with the requirements of the Contract and any draft Management Plans lodged by the Contractor as part of its Proposal, as may be amended with the agreement of the Shire, and attached at Annexure 13.
- (c) At least one month prior to the commencement of each Contract Year, the Contractor must, as applicable, submit:
 - (i) an updated Integrated Management Plan; and/ or
 - (ii) an annual deliverable plan that sets out how any annual deliverables of any specific Management Plans will be implemented, and performance against such measured, in the Contract Year.
- (d) The Contractor must report on compliance with the Integrated Management Plans including progress against the deliverables of any specific Management Plans as part of each monthly Progress Report and the Annual Review.
- (e) During each Annual Review, and whenever requested by the Contract Manager (acting reasonably), the Contractor must work collaboratively with the Shire to update and amend the Integrated Management Plan as necessary:
 - (i) to ensure it is sufficient to ensure compliance with the Contractor's obligations under the Contract; and
 - (ii) to maximise achievement of the Strategic Priorities.
- (f) Any updated or amended Integrated Management Plan must be to the satisfaction of and approved in writing by the Contract Manager.

- (g) The Contractor will not be entitled to any additional payment or other relief under the Contract for updating or amending any Management Plan under this clause 18.
- (h) The Integrated Management Plan shall include, but is not limited to, the following plans (each a **"Management Plan"**):
 - (i) **"Quality and Risk Management Plan"**;
 - (ii) **"Environmental Management Plan"**;
 - (iii) **"OH&S Plan"**;
 - (iv) **"PCI Implementation Plan"**;
 - (v) **"Traffic Management Plan"**;
 - (vi) The Management Plans lodged by the Contractor as part of its Proposal and attached at Annexure 13, including:
 - (A) **"Customer Service Plan"**;
 - (B) **"Local Participation Plan"**;
 - (C) **"Sustainability Plan"**;
 - (D) **"Social Procurement Plan"**; and
 - (E) **"Transition In Plan"**.
- (i) The Integrated Management Plan shall include works methodologies for each Activity.

19. Quality

- 19.1 The Contractor must carry out the Services diligently and conscientiously, using good workmanship and materials and with the high standard of skill and care informed by best industry practice as nominated by the Shire in the Road Management Plan and the inspection and maintenance frequencies, standards, requirements and response times specified within this Contract.
- 19.2 The Contractor must ensure that the performance of all of the Services is supervised at all times by a competent representative.
- 19.3 Everything the Contractor makes or supplies under the Contract must comply with the Contract and must, subject to the specific requirements of the Contract, be reasonably suitable for its intended purposes.
- 19.4 The Contractor must ensure that the Shire obtains the benefit of any warranty available from a manufacturer or supplier of any material used in carrying out the Services. For this purpose, the Contractor must ensure that:

- (a) wherever possible, each warranty is obtained in the name of the Shire; or
 - (b) where it is not possible to obtain a warranty in the name of the Shire, the benefit of the warranty is assigned to the Shire, in writing.
- 19.5 For the purposes of clause 19.4(b), the Contractor must:
- (a) obtain any necessary consent, in writing, to an assignment of the benefit of a warranty from the relevant manufacturer or supplier and provide a copy of the consent to the Shire; and
 - (b) give written notice to the relevant manufacturer or supplier of the assignment of the benefit of the warranty and provide a copy of such notice to the Shire.
- 19.6 The Contractor must make sure that the Shire has access at all reasonable times to places where the Services are being carried out or where materials or components for use in the Services are being produced.

20. Audits

- 20.1 The Shire or any other Authority may, from time to time, conduct audits on either a programmed or ad hoc basis to assess the Contractor's performance and compliance with the Contract. The Contractor must produce all documentation required for an audit, assist the Shire in the conduct of the audit and participate in the audit where required. The Contractor must respond to audit reports or queries from the Shire and provide requested information within the required timeframes.
- 20.2 The scope of audits include, but are not limited to:
- (a) an assessment of the Contractor's Work, Work methods, Worksites including depot and office facilities and plant and equipment;
 - (b) quality, safety and environmental management audits, or audit of any element, of the Integrated Management Plan;
 - (c) audits of the Services performed by the Contractor, including assessing the Services in relation to the Contractor's adherence to instructions, appropriateness of methods applied, timing, efficiency, effectiveness and achievement of the relevant outcomes or Activity specified in the Activity Specifications and/or Work Orders; and
 - (d) safety audits, which will encompass all activities with a particular focus on activities that have been identified as high risk including activities requiring licences, chemical management, traffic management, working at height, confined spaces and hazardous manual handling.
- 20.3 The Shire may initiate an audit and surveillance of the work of subcontractors at its absolute discretion. The Contractor must ensure that its subcontractors co-operate with the conduct of the audit or surveillance and provide all relevant information and documentation.

- 20.4 The Shire may from time to time engage an independent external auditor for the purpose of examining whether the performance standards are being met and the Contract objectives are being achieved.
- 20.5 The Shire may, at any time during normal business office hours and after giving 5 Business Days' notice, attend the premises of the Contractor to inspect the Contractor's financial and accounting records associated with the Services.
- 20.6 Nothing within the General Requirements or Activity Specifications prevents the Shire from conducting any audits it considers necessary from time to time to satisfy itself that all requirements of the Contract are being met.

21. Time

The Contractor must carry out the Services in a timely and expeditious manner and comply with all Contractual Time Requirements.

22. Care of Services

- 22.1 The Contractor is solely responsible for loss or damage to:
- (a) any Work in progress as part of the Services and the site of that Work; and
 - (b) plant, materials, equipment and other things necessary for carrying out the Services (including things provided by the Shire for the purposes of the Services but not including anything provided by the Shire under a lease or other separate agreement),
- for the duration of the Contract Term or any longer period during which the Contractor is providing the Services.
- 22.2 The Contractor's liability under this clause 22 is reduced to the extent that an Excepted Risk contributes to the loss or damage.
- 22.3 Nothing in this clause limits the Contractor's obligations to perform the Services.

23. Site Risks

23.1 General Risk Allocation

Except where the Contract (including this clause 23) expressly provides otherwise, the Contractor is responsible at its own cost and risk for carrying out the Services irrespective of conditions prevailing at any site at which the Services are to be carried out (including, without limitation, weather conditions and any impact of such weather conditions, site conditions, latent conditions and any acts or omissions of third parties) at the time at which the Services are required to be carried out.

23.2 Utilities and Underground Services

Regardless of the nature of the Services being provided, it is the Contractor's responsibility to ascertain the presence and location of any underground Utilities before undertaking any Work that may disturb or affect those Utilities. Despite any other provision of the Contract or any Work Order Document, the performance of the Services is at the Contractor's risk and cost notwithstanding the presence of Utilities.

23.3 Condition of Assets and Adequacy of Information

The Contractor acknowledges and agrees that:

- (a) it enters into this Contract based on its own investigations and determinations as to the Condition of the Assets and the completeness, accuracy or adequacy of the Asset Data and other information made available by the Shire;
- (b) it accepts, and may not bring any claim in respect of, the Condition of the Assets as at the Commencement Date irrespective of whether or not:
 - (i) any Defect in the Assets or Maintenance Requirement was evident from inspection of the Assets or from the Asset Data and other information made available to the Contractor by the Shire, or
 - (ii) the Condition of the Assets is different to the Condition specified in the Asset Data or other information made available by the Shire; and
- (c) the Shire makes no warranty or representation about the completeness, accuracy or adequacy of the Asset Data or other information made available by the Shire.

24. People

24.1 Operations Unit, Key Personnel and Resources

- (a) The Contractor must establish an operations unit incorporating the positions, personnel and the proportion of time the Contractor's employees are allocated to the Services set out in the organisation chart in Annexure 10.
- (b) Changes to the organisation structure, personnel and time allocation to the Services, including time allocation of Contractor's Plant shown in Annexure 10 require the approval of the Contract Manager.

24.2 Skills

The Contractor must engage sufficient people with adequate skills and training to perform its obligations under the Contract.

24.3 Uniform

The Contractor must ensure that its Agents comply with the Shire's Uniform Policy whenever performing the Services.

24.4 Behaviour

- (a) The Contractor must ensure that none of its Agents are affected by drugs or alcohol while engaged in the performance of the Services or any related activities.
- (b) The Contractor must ensure that its Agents:
 - (i) conduct themselves in a courteous and professional manner towards all others, including towards Councillors of the Shire, the Shire's Agents, Other Contractors and their Agents, all levels of government and members of the public; and
 - (ii) carry out their duties at all times with as little inconvenience and disturbance to others as possible.
- (c) The Contract Manager may, by notice to the Contractor, direct that any Agent of the Contractor not be engaged or continue to be engaged in the performance of the Services or any related activities. The Contractor must immediately comply with any such direction.
- (d) The Contractor must ensure that its Agents:
 - (i) are attired in any manner specified in the Contract Documents; and
 - (ii) are readily identifiable by means of a Shire logo (which must be used in conjunction with the Contractor's logo with the Contract Manager's prior written approval), name badge, ID card or other suitable means approved by the Contract Manager.

24.5 Training

- (a) The Contractor must ensure that its Agents are appropriately qualified and provide the Contractor proof of any required pre-qualification prior to carrying out the Services.
- (b) The Contractor must provide the Contract Manager with proof of training and qualifications as required by the Contract Manager prior to a member of staff or other Agents being engaged to perform the Services.

24.6 Working with Children and Police Checks

- (a) The Contractor must ensure that its Agents have any "Working With Children Check" as required by the *Working With Children Act 2005* (Vic) (or similar requirement under similar legislation from time to time) to perform the relevant Services.

- (b) The Contractor must perform police checks on all of its Agents prior to them commencing any Services, and provide results to the Shire upon request and, in any event, if a police check shows any record for an individual before that individual performs any Services.

25. Subcontractors

25.1 Subcontracting generally

- (a) The Contractor may only subcontract the performance of the Services or any part of the Services other than as set out within Annexure 10 with the prior written consent of the Contract Manager unless exempted by the Contract Manager in writing from the need to obtain such consent.
- (b) The Contract Manager must not unreasonably withhold such consent if the Contractor has established that a proposed subcontractor is suitably qualified, competent, and financially stable and that subcontracting of the Works will not materially impact the performance of the Services.
- (c) The Contractor must ensure that its arrangements with subcontractors are appropriate to ensure compliance with the Contract and must, at the request of the Contract Manager, provide evidence of its compliance with this requirement.
- (d) Notwithstanding this clause 25 or any approval or acknowledgement by the Shire or the Contract Manager, the Contractor:
 - (i) remains liable at all times for the performance of the Contract, notwithstanding any subcontracting of any part of the performance of the Services; and
 - (ii) is liable for all acts and omissions of its Agents in the performance or non-performance of the Contract as if they were acts or omissions of the Contractor.

26. Industrial Relations

The Contractor is responsible for the management of relations with its own workforce and for ensuring the effective management of relations between its Agents and their employees. The Contractor is solely responsible for carrying out the Services and shall have no entitlement to claim money, extensions of time or other relief arising out of industrial action by the Contractor's employees or the employees of its Agents except to the extent that it falls within paragraph(g) of the definition of Force Majeure and clause 7.3 applies.

27. Media and Public Statements

- 27.1 Except where authorised by the Contract Manager under clause 27.2, the Contractor:
- (a) must not either itself or through its Agents make any statement to the media or any other public statement on behalf of the Shire or in relation to the performance of the Services, or anything connected with the performance of the Services, without the prior written consent of the Contract Manager;
 - (b) must refer all enquiries from the media relating to the performance of the Services, or anything connected with the performance of the Services, to the Contract Manager; and
 - (c) must notify the Contract Manager immediately of any event arising in the course of performing the Services which may receive media attention.
- 27.2 The Contract Manager may require the Contractor to prepare media releases and provide follow up interviews within any parameters determined by the Contract Manager.

28. Conflicts of Interest

- 28.1 Unless otherwise documented in a Conflict of Interest Management Plan approved by the Shire, the Contractor warrants that it is unaware at the date of this Contract of any Conflict of Interest existing or likely to arise during the performance of its obligations under this Contract.
- 28.2 The Contractor must:
- (a) not enter into any contract or Arrangement, or do any other thing, which may give rise to a Conflict of Interest with respect to its obligations under this Contract; and
 - (b) use its best endeavours to ensure that no Relevant Party enters into any contract or arrangement, or does any other thing,

which may give rise to a Conflict of Interest with respect to the Contractor's obligations under this Contract.

28.3 The Contractor must:

- (a) immediately make a full disclosure in writing to the Shire of the existence, nature and extent of any actual or potential Conflict of Interest with respect to the Contractor's obligations under this Contract; and
- (b) comply with any directions of the Contract Manager with respect to any such actual or potential Conflict of Interest, including, without limitation, a direction to terminate any contract, arrangement or relationship which has given rise to the actual or potential Conflict of Interest.

29. Use of the Shire's Trademarks

The Contractor must not use a registered or unregistered trademark of the Shire without the Contract Manager's prior written consent or as authorised by the Contract.

30. Confidentiality

- 30.1 The Contractor must keep all Confidential Information confidential.
- 30.2 The Contractor must not use or reproduce the Confidential Information in any manner unless specifically authorised to do so by the Contract Manager or required to do so by Law.
- 30.3 The Contractor must immediately return all Confidential Information in its possession, when requested in writing to do so by the Contract Manager. If the Confidential Information is of a nature that cannot be returned, the Contractor must immediately delete, erase or otherwise destroy it.
- 30.4 The Contractor must not disclose the Confidential Information to any third party, including any subcontractor or employee of a sub- contractor to the Contractor, without the prior written consent of the Contract Manager, which may be given to such terms as the Contract Manager considers appropriate, including a condition that any person to whom Confidential Information is proposed to be disclosed execute a deed of confidentiality, in a form approved by the Contract Manager, in favour of the Shire.
- 30.5 The Freedom of Information Act 1982 (Vic) (**FOI Act**) gives members of the public rights of access to official documents of the Shire. The FOI Act extends, as far as possible, rights to access information (generally documents) in the possession of the Shire, limited only by considerations for the protection of the public interest and of the private and business affairs of persons in respect of whom information is collected and held by the Shire.
- 30.6 The Contractor acknowledges the obligations of the Shire under the FOI Act and will:
 - (a) not make a claim against the Shire in relation to any act or thing done by the Shire in relation to the FOI Act – including releasing any information pertaining to this Contract; and

- (b) will provide any and all reasonable assistance to the Shire so as to enable it to fully comply with its obligations under the FOI Act.

30.7 The Contractor acknowledges that Shire requirements and policies will require certain identifying details of the Contract to be made available to the public via the internet.

31. Intellectual Property

- 31.1 Subject to this clause 31.1, all property and Intellectual Property rights in the Contract Material are deemed to be owned by or vest (on the creation of any Contract Material) in the Shire.
- 31.2 The Contractor is authorised to use the Contract Material during the Contract Term but only for the purposes of the Contract. Any other use may only be made with the prior written consent of the Contract Manager.
- 31.3 Nothing in this Contract affects or in any way alters the Contractor's ownership of or rights to any pre-existing Intellectual Property.
- 31.4 The Contractor, in performing the Services, must use its best endeavours not to infringe the Intellectual Property rights of any third party and must indemnify, keep indemnified and hold harmless the Shire against any loss, damage and costs suffered or incurred by the Shire as a result of any such infringement.
- 31.5 The Contractor's use of the Shire's logo may only be used with the Shire's prior written approval, including use in conjunction with the Contractor's own logo when worn by the Contractor's Agents under clause 24.4(d)(ii).

32. Compliance with Law and Award Obligations

- 32.1 The Contractor must comply, and must ensure that its Agents comply, with all Laws applicable to the Services and the Contract.
- 32.2 Without limiting its obligations under clause 32.1, the Contractor must comply, and must ensure that its Agents comply with Laws, and agreements endorsed by Laws, regulating employer and employee relations.
- 32.3 Subject to clause 52, the Contractor is responsible for, and must indemnify the Shire against, any statutory fines and penalties incurred due to the Contractor's failure to provide the Services in accordance with this clause 32 or otherwise in accordance with the Contract.
- 32.4 If a Qualifying Change in Law requires a Variation in order for the Contractor to comply with the Qualifying Change in Law:
 - (a) the Contractor must give notice pursuant to clause 49.4 within 6 months of the relevant Qualifying Change in Law coming into effect;

- (b) subject to the Contractor's compliance with clause 32.4(a), the Shire or Contract Manager will direct a Variation in accordance with Part H.

33. Approvals

33.1 The Contractor must:

- (a) obtain and maintain all licences, permits, consents or other approvals necessary for the performance of the Services;
- (b) give all notices necessary to comply with the requirements of any Law or any relevant Authority; and
- (c) at its own cost, pay any fees or charges necessary to comply with the requirements of any Law or any relevant Authority.

33.2 The Contractor must give the Shire, upon request, copies of documents issued to the Contractor by any relevant Authority or to any relevant Authority by the Contractor, in respect of the Services, including copies of any licences, permits, consents or approvals necessary for the performance of the Services and receipts for any fees or charges paid by the Contractor.

34. Personal Information

34.1 If the Contractor collects, holds or obtains Personal Information under or in connection with the Contract, the Contractor must:

- (a) only use the Personal Information for the purposes of fulfilling its obligations under the Contract; and
- (b) at the time of collecting the Personal Information, obtain all consents and authorisations necessary for the use of the Personal Information in relation to the performance of the Services;
- (c) take all reasonable measures to ensure that the Personal Information is protected against loss and unauthorised access, use, modification or disclosure; and
- (d) at all times comply, and ensure that its Agents comply, with the *Privacy Act 1988* (Cth), the *Information Privacy Act 2000* (Vic) and all other Laws in force at any time throughout the Contract Term relating to the privacy of Personal Information.

34.2 The Contractor's obligations under this clause 34 are in addition to any obligations imposed by Law with respect to the protection of Personal Information.

34.3 The Contractor must indemnify, keep indemnified and hold harmless the Shire and the Shire's Agents in respect of any loss, liability or expense suffered or incurred by the Shire and the Shire's Agents arising out of or in connection with a breach of the obligations of the Contractor under this clause, or any misuse of Personal Information

by the Contractor or any of the Contractor's Agents, or any disclosure by the Contractor or any of the Contractor's Agents in breach of an obligation imposed by Law concerning the protection of Personal Information.

Part E Protecting People & Property

35. Protecting People

- 35.1 The Contractor must ensure that it and its subcontractors, at all times identify and take all necessary precautions for the health and safety of all persons, including the Contractor's Agents, the Shire's Agents and members of the public, who may be affected by the performance of the Services.
- 35.2 The Contractor must:
- (a) plan, manage, design and carry out the Services with the objective of minimising the number of accidents and casualties;
 - (b) provide a safe working environment for all its employees and implement safe working procedures; and
 - (c) must take account of health and safety risks in all aspects of the performance of the Services including in relation to design and disposal, as applicable.
- 35.3 The Contractor must provide the following information as part of the monthly Progress Report:
- (a) the total recordable injury frequency rates' (TRIFR) suffered by the Contractor's employees or subcontractors' employees or other Agents engaged in performing the Services;
 - (b) the number of working days lost due to injury;
 - (c) the status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments; and
 - (d) the status of any audits undertaken by the Contractor in so far as they relate to OH&S.
- 35.4 The Contractor must, when requested by the Contract Manager, provide reports on OH&S inspections, audits or assessments undertaken during the Contract Term.
- 35.5 If the Contractor is required by any Law to give any notice of an incident occurring during the performance of its obligations under the Contract, the Contractor must, at the same time, or as soon thereafter as is possible in the circumstances, give a copy of the notice to the Contract Manager.
- 35.6 Without limiting clause 35.5, the Contractor shall, as soon as reasonably practicable, notify the Contract Manager of any serious incident or near miss event, the details of

such incident and the actions being taken. The Contractor shall provide a copy of the incident report and investigation upon request by the Contract Manager.

35.7 If the Contract Manager forms the opinion at any time during the Contract Term that the Contractor has committed or is likely to commit a Safety Breach, the Contract Manager may direct the Contractor to do one or more of the following:

- (a) promptly Rectify the Safety Breach to the Contract Manager's satisfaction; and
- (b) suspend performance of all or part of the Services until such time as the Contract Manager is satisfied that the Safety Breach is rectified.

35.8 If the Contractor's performance of the Services has been suspended under clause 35.6, the Shire may:

- (a) itself, or by employing or engaging any other person, perform the Services or such part of the Services as the Shire considers it desirable to perform; and
- (b) do any other thing which the Shire, in its absolute discretion, considers necessary in the circumstances to ensure continuity of essential services to the Shire and to ensure the health and safety of any person.

Any cost to the Shire doing anything under this clause 35.8 (including any amount paid to a third party), as determined by the Contract Manager, shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire, be deducted from any payment to the Contractor under this Contract or otherwise.

36. Protecting Property & Environment

36.1 The Contractor must ensure that the Contractor and the Contractor's Agents:

- (a) do not cause any loss or damage to property or the Environment while carrying out the Contractor's obligations under or in relation to the Contract; and
- (b) comply with any applicable Environment codes of practices, guidelines and Laws in performing the Services, including noise guidelines specified by the Environmental Protection Authority (Vic).

36.2 The Contractor must take good care of anything provided to it by the Shire for the purposes of the Contract.

36.3 Waste and surplus material arising from the Contractor's performance of the Services must be lawfully disposed of, or re-used, at the Contractor's cost including as directed by the Contractor Manager.

36.4 If the Contractor discovers anything of possible archaeological, environmental or cultural significance in the course of carrying out its obligations under the Contract, the Contractor must:

- (a) promptly notify the Contract Manager, and any other Authority that either the Contractor or the Shire may be required to notify in accordance with the relevant Laws in accordance with those Laws; and
 - (b) not take any action that could disturb or destroy the thing found and must notify the Contract Manager as soon as practicable.
- 36.5 The Contractor must promptly make good any damage done by it or its Agents to any property of the Shire or any other person, or the Environment, in the course of performing, or purporting to perform, the Services. Damage or disturbance to an Asset must be reinstated as quickly as possible and in such a manner that minimises interruption to the use of the Services and Assets.
- 36.6 If the Contractor fails to make good any damage to property or the Environment in accordance with clause 36.5:
- (a) the Shire may make good damage or pay compensation to the owner of the property; and
 - (b) any cost incurred by the Shire in doing anything under clause 36.6(a), as determined by the Contract Manager, shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire be deducted from any payment to the Contractor under this Contract or otherwise.
- 36.7 Before the Shire takes action under clause 36.6, the Contract Manager must notify the Contractor of the proposed action and give the Contractor a final opportunity to remedy the damage itself within a period of 5 Business Days (or such longer period as is reasonable in the circumstances).
- 36.8 Clause 36.7 does not apply in circumstances where the Contract Manager considers that urgent action is required to prevent further damage to property or the Environment or injury to any person.

37. Avoiding Nuisance and Inconvenience

- (a) The Contractor must minimise inconvenience and avoid causing nuisance to anyone who may be affected by the performance of the Services.
- (b) Without limiting the foregoing, this includes being considerate of days of significance (e.g. Anzac Day) and adjusting Service to ensure events of significance (e.g. memorial services and moments of silence) are not impacted by the Services.

38. No Claim Regarding Other Contractors

Where the activities of an Other Contractor cause loss or damage to any Asset or otherwise affect the performance of the Services, the Contractor is not entitled to make any claim unless one or more of the following apply:

- (a) the loss or damage or effect on performance is material and the Contractor can show that the loss, damage or other affect was caused by the Other Contractor's negligence or breach of its contract with the Shire, and was not contributed to in any way by the Contractor, and
- (b) the Shire is indemnified by the Other Contractor against the relevant loss, damage or effect on performance.

Part F Price & Payment

39. Monthly Service Payment

39.1 Calculation of Monthly Service Payment

- (a) Subject to compliance with clause 39.1(d) below, the Contractor will be paid a monthly payment for Services provided under this Contract for each month from the Commencement Date to the last day of the Contract Term (**Monthly Service Payment**).
- (b) The payment is calculated each month in accordance with the following formula

Irrelevant & Sensitive

where:

Irrelevant & Sensitive

- (c) In addition to the Monthly Service Payment, the Contractor will be paid for Ordered Work (**Ordered Work Payments**) performed on a case by case basis in accordance with the amount specified in each Work Order issued pursuant to clause 10.4.
- (d) The Contractor must, as a condition precedent to any entitlement or right to submit a Payment Claim or to payment of any part of the Price:
 - (i) include in the Progress Report issued with respect to each Payment Claim:
 - (A) details of the value of the Services done;

- (B) adequately describe the Services to which the Payment Claim relates in a form acceptable to the Contract Manager; and
- (C) any other information reasonably requested by the Contract Manager;
- (ii) have submitted all Annual Programs (and each Annual Program must have been approved by the Shire) in accordance with clause 12;
- (iii) have submitted the Integrated Management Plan (and the Integrated Management Plan must have been approved by the Shire) in accordance with clause 18;
- (iv) have provided to the Contract Manager sufficient evidence that all relevant licences, permits, consents or other approvals have been obtained and maintained in accordance with clause 33; and
- (v) have provided to the Contract Manager sufficient evidence that all of the Contractor's staff or other Agents are appropriately qualified and of required pre-qualifications in accordance with clause 24.5.
- (vi) have received written approval of the Contract Manager to the proposed indexation adjustment for the relevant Contract Year in accordance with clause 43.1.

40. Valuation of Payment Claims

40.1 Valuation in accordance with this clause

The value of each component of the Monthly Service Payment, must be determined in accordance with this clause 40.

40.2 Lump Sum Payment

- (a) The Lump Sum Payment for any relevant month comprises the Monthly Lump Sum amount specified in Annexure 2.
- (b) The basis on which the Lump Sum Payment is calculated is set out in Annexure 2.
- (c) Notwithstanding anything in this clause 40, the Contractor has no entitlement to be paid, and the Lump Sum Payment will be adjusted, for any Services which have been scheduled within the Annual Program but not performed by the Contractor in that month.
- (d) Any adjustment to the Lump Sum Payment under this clause 40 must be calculated to reflect the percentage of the relevant Services which are only partially complete or have not been completed to the required quality, as

determined by the Contract Manager and the amount specified in the Annual Program for those Services.

40.3 Provisional Quantity Payment

- (a) The Provisional Quantity Payment comprises amounts the Contractor is entitled to be paid for performing the Services that are stated to be Provisional Quantity Items in Annexure 2.
- (b) The amount of the Provisional Quantity Payment must be calculated in accordance with the Provisional Quantity Rates provided at Annexure 2 and the actual quantity of those Services performed in that month.
- (c) The parties acknowledge and agree that the Provisional Quantity Allowances in Annexure 2 are estimates only and may or may not be expended in any contract year. The Contractor is not entitled to make any claim for an adjustment in rates if the actual quantities are different to those set out in the Provisional Quantity Allowances.
- (d) If the relevant Provisional Quantity Allowance is reached for a Provisional Quantity, the Shire may in its absolute discretion vary the Contract to increase the relevant Provisional Quantity Allowance by written notice to the Contractor. Otherwise, clause 9.5 shall apply.

40.4 Provisional Sum Payment

- (a) The Provisional Sum Payment comprises amounts the Contractor is entitled to be paid for performing the Services that are stated to be Provisional Sum Items in Annexure 2.
- (b) The amount of the Provisional Sum Payment must be per the relevant Provisional Sum Work Order for performing those Services.
- (c) The parties acknowledge and agree that the Provisional Sum Allowances in Annexure 2 are provisional allowances only and may or may not be expended in any contract year.
- (d) If the relevant Provisional Sum Allowance is reached for a Provisional Sum Item, and at any other time, the Shire may in its absolute discretion vary the Contract to increase the relevant Provisional Sum Allowance by written notice to the Contractor. Otherwise, if the relevant Provisional Sum Allowance is reached clause 9.5 shall apply.

40.5 Ordered Work Payment

The Ordered Work Payment is the total amount payable to the Contractor for Ordered Work performed in accordance with Work Orders issued under clause 10.

40.6 KPI Abatement

Any KPI Abatement is calculated in accordance with Annexure 7 and does not limit and is without prejudice to any other right or remedy of the Shire under the Contract.

40.7 Payment not evidence of acceptance

Payments do not constitute evidence of the Shire's acceptance of any of the Services carried out by the Contractor or an admission that any of the Services have been carried out in accordance with the Contract (including, as applicable, any Work Order Documents). If the Contract Manager determines that an amount has been overpaid, the Shire may recover such overpaid amount as a debt immediately due and payable by the Contractor.

40.8 Set off

Without limiting any other right of set-off which the Shire may have under the Contract or at Law, the Shire may deduct by way of set off from any payment due to the Contractor an amount equivalent to any sum then due and payable to the Shire or the amount of any bona fide claim to money it may then have against the Contractor with respect to the Contract or any other contract.

40.9 Interest

Any late payment of amounts that are properly due and payable by either party to the other under the Contract (including a previously disputed amount) will incur simple interest at the Default Rate from the day after the date on which the payment was due to (and including) the date of payment.

41. Payment Claims

41.1 Each Payment Claim must set out the:

- (a) Lump Sum Payments;
- (b) Provisional Quantity Payments;
- (c) Provisional Sum Payments;
- (d) Ordered Work Payments;
- (e) KPI Abatement,

included in the Payment Claim.

41.2 The Contract Manager may prescribe the required format of Payment Claim for the Contractor to use.

- 41.3 The Contractor must, at the same time as providing its Progress Report in accordance with clause 6, provide the Contract Manager with a Payment Claim for the Price for that month and ensure that the Progress Report contains all information and evidence reasonably required to prove that the Contractor actually performed the Services which are the subject of the Payment Claim.
- 41.4 The Contract Manager must assess the Payment Claim and certify the net amount due to the Contractor from the Shire or the Shire from the Contractor, as the case may be, within 10 Business Days of receiving a complete and accurate Payment Claim and Progress Report complying with the requirements of the Contract. The Contract Manager will notify the Contractor as soon as reasonably practicable on becoming aware of a potential delay to certification of the Payment Claim including where the Payment Claim or Progress Report do not contain the required information to reasonably substantiate an amount claimed.
- 41.5 The Contract Manager's certification must take into account any amounts payable by the Contractor to the Shire or which the Shire is entitled to deduct from payments to the Contractor, whether under this Contract or otherwise.
- 41.6 No failure by the Contract Manager to take into account any amount payable by the Contractor to the Shire or which the Shire is entitled to deduct from any payment to the Contractor shall constitute a waiver or release with respect to that amount and such amount may be taken into account in the certification of any subsequent Payment Claim or, at the option of the Shire, must be paid by the Contractor to the Shire within 10 Business Days of the Contractor's receipt of a tax invoice for the amount from the Shire.
- 41.7 The party to which payment is to be made in accordance with the Contract Manager's certification must provide a tax invoice for the amount certified as payable to the other party.
- 41.8 The Contract Manager may issue a payment certificate at any time even if the Contractor has not lodged a Payment Claim.
- 41.9 Subject to receipt of a valid tax invoice issued by a party in accordance with clauses 41.7 and 45 the party that is due to make a payment must pay the amount payable under the Contract within 30 calendar days of the Contract Manager's payment certificate (or 30 Business Days from the Payment Claim if no payment certificate has been issued within the time stipulated above).
- 41.10 The Contractor's Payment Claim under clause 41.1 and the Contract Manager's assessment under clause 41.2 (if it does not agree with the Contractor's claim) must be accompanied by work papers clearly setting out the derivation of all figures.

42. Payment of Employees and Subcontractors

- 42.1 The Contractor must at any time as a condition precedent to making a Payment Claim certify to the Contract Manager that it has:
- (a) paid all wages and allowances then owing to its employees in respect of the Contract,

- (b) paid all amounts then due and payable to its subcontractors in respect of the Contract, and
 - (c) made any payments that it is then required to make in respect of the Contractor's Plant.
- 42.2 The Contract Manager may require that certification by the Contractor under clause 42.1 is confirmed by a statutory declaration from a director of the Contractor.
- 42.3 If the Contractor does not provide when requested the certification under clause 42.1 or the statutory declaration under clause 42.2, the Shire may:
- (a) deduct such amounts as appear to be due to the Contractor's employees or subcontractors or to any third party with an interest in any of the Contractor's Plant from any payments to the Contractor under this Contract; and
 - (b) withhold those amounts until it has been provided with evidence to the satisfaction of the Contract Manager that all wages and allowances due to the Contractor's employees or amounts due to the Contractor's subcontractors or such third parties have been paid. The Contract Manager must give notice to the Contractor of the withholding of any moneys by the Shire under this clause. If no such evidence is provided to the Contract Manager within seven Days of the Contract Manager giving notice to the Contractor that it is withholding payment, the Shire may pay to the Contractor's employees any wages and allowances, or to the subcontractors and such third parties any amounts, which appear to be unpaid, to the extent of the moneys which have been withheld from payments to the Contractor.

Nothing in this clause in any way obliges the Shire to make any payment to any of the Contractor's employees or subcontractors or any other parties. Any payments that are made by the Shire under this clause are deemed to have been made on behalf of the Contractor and the amount of the payments may be deducted by the Shire from any amounts due to the Contractor under this Contract.

43. Indexation

43.1 Annual Indexation

Each rate or price included in Annexure 2, must be indexed once annually with effect from the Adjustment Date in accordance with the formula set out in this clause.

Within one week of each Adjustment Date, the Contractor must submit for approval of the Contract Manager a summary of the proposed indexation adjustment and how each amount has been indexed, which approval will not be unreasonably withheld or delayed.

43.2 Indexation Formula

Where a rate, price or other amount must be Indexed under the Contract, the Adjustment is to be made in accordance with the following formula:

Irrelevant & Sensitive

Where:

Irrelevant & Sensitive

- (a) if the rate, price or amount is specified in the Contract and the Adjustment is being made on the first Adjustment Date, the rate, price or amount specified in the Contract;
- (b) if the rate, price or amount is specified in the Contract and the Adjustment is being made on the second or a later Adjustment Date, the rate, price or amount as adjusted at the most recent Adjustment Date; or
- (c) if the rate, price or amount is not specified in the Contract and has been determined since the Commencement Date:
 - (i) if the rate, price or amount has not yet been adjusted, the rate, price or amount so determined; or.
 - (ii) if the rate, price or amount has already been adjusted, the rate, price or amount as adjusted at the most recent Adjustment Date.

A = the Applicable Index as at the June quarter of the calendar year in which the Adjustment Date falls; and

B = the Applicable Index as at the June quarter of the calendar year preceding the year in which the Adjustment Date falls, or for the first Adjustment Date as at the June quarter of 2024.

43.3 Applicable Indices

The Applicable Indices are set out in Annexure 2. Where an Applicable Index is reset by the Australian Bureau of Statistics during the Contract Term, the formula set out in clause 43.2 must take account of the resetting formula supplied by the Australian Bureau of Statistics.

43.4 Replacement Indices

All Applicable Indices are as published by the Australian Bureau of Statistics, except that, if the Australian Bureau of Statistics:

- (a) ceases to maintain any of the Applicable Indices; or
- (b) substantially alters the method of calculation of an Applicable Index,

the Contract Manager may nominate another index to be used instead for the purposes of Adjustments under clause 43.2. The Contract Manager must select an index which,

in the reasonable opinion of the Contract Manager, is the index that provides as close an approximation as possible to the original index.

44. Services performed on an Open Book Basis

44.1 Open Book Basis

- (a) Where required by the Shire:
 - (i) the Contractor must provide all information referred to in, or required to be provided in accordance with, this Contract on an Open Book Basis in accordance with this clause to enable the Contract Manager to assess the Contractor's entitlements under the Contract;
 - (ii) the Contractor must provide, and procure that its subcontractors provide, a breakdown of the calculation of all preliminaries, overheads, labour, equipment, materials, subcontract, finance and others costs and margins in a clear and transparent manner; and
 - (iii) the Contractor must allow, and must procure that its subcontractors allow, the Contract Manager and the Shire to review and undertake audits of its documents and records to verify compliance with this clause.
- (b) The Contractor must include a clause substantially the same as this clause in any subcontract which relates to any Services that are to be performed on an Open Book Basis.
- (c) Compliance with this clause is a condition precedent to any claim for payment by the Contractor.

44.2 General Records

- (a) The Contractor shall make and keep, and shall ensure all subcontractors make and keep, the documents and records (in whatever medium they exist) referred to in this clause 44.2.
- (b) The documents and records are:
 - (i) all design calculations;
 - (ii) tender estimates and calculations;
 - (iii) records as to progress of the Works and diary records of daily tasks;
 - (iv) results of the examination and testing of any work or materials;
 - (v) quality assurance records and reports;
 - (vi) records of all costs and invoices;

- (vii) results of any internal audits; and
- (viii) all consultants' reports and opinions.
- (c) Subject to a party's right to claim legal professional privilege in respect of any document or record which is the subject of this clause 44.2, the Shire and the Contract Manager shall have the right to inspect and to copy at any time any such document or record.
- (d) The records referred to in this clause 44.2 shall be kept for a minimum of 7 years after the expiry of the Contract Term.

45. GST

- 45.1 Prices and rates in this Contract are exclusive of GST, unless otherwise expressly stated.
- 45.2 Without limiting any other right to payment, a party making a taxable supply to the other party under or with respect to this Contract is entitled to charge the other party for the amount of any GST payable by the first party with respect to the taxable supply.
- 45.3 The party making any taxable supply under or with respect to this Contract must provide the other party with a valid tax invoice at the time of claiming payment.
- 45.4 Terms used in this clause 45 (GST) have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Part G Performance Management and KPIs

46. Performance Management Regime

- 46.1 The Contractor's compliance with the requirements of the Contract will be monitored via audit and field inspections conducted by Shire representatives in order to identify areas that require rectification or breaches permitting the Shire to suspend payment or terminate the Contract by notice under clause 76.
- 46.2 The Contractor's performance in delivering the Pavement Resurfacing Program and the Rehabilitation and Resurfacing Collaborative Works Program will be further monitored and managed via Pavement Performance Reviews as set out in clause 48A.
- 46.3 The Contractor's performance in delivering the Services will be further monitored and measured via the KPI Regime set out in Annexure 7, with performance management procedures and KPI Abatement applied in case of poor performance against specified KPIs.

47. KPI Review

- 47.1 As part of each In-Term Review, the parties will meet and work collaboratively to review, and if necessary, seek to agree to amend the KPI Regime set out in Annexure 7 having regard to the Strategic Priorities.
- 47.2 If the parties cannot agree to any amendment, the Contract Manager may issue a direction to amend the KPI Regime in this Part G acting reasonably and having regard to the Strategic Priorities.
- 47.3 The Contractor may dispute any direction issued by the Contract Manager under this clause 47 using the process in clause 72, but must comply with that direction pending resolution of the dispute.

48A Pavement Performance Review

48A.1 PCI and Pavement Performance Review

- (a) At least 3 months prior to the end of every second year of the Initial Contract Term, at the end of the second year of the First Extended Contract Term and at other times at the Shire's discretion, the Shire will review the Contractor's performance against the Required PCI and undertake a Pavement Performance Review using the methodology set out in Annexure 5.
- (b) The parties may by mutual consent agree to amend the timing of the Pavement Performance Reviews in writing at the time of the Shire exercising its right to an Extended Contract Term under clause 2.2.
- (c) The Contractor is required to perform the Services so as to ensure that the PCI meets the Required PCI at all times, including in accordance with the Measured PCI determined at a Pavement Performance Review.

48A.2 Cure of PCI Default Events

- (a) If a PCI Default Event is identified at any Pavement Performance Review, the Contractor must, within 30 Days after being provided with the relevant Condition Assessment Report, propose a PCI Cure Plan for each PCI Default Event which must include, at a minimum:
 - (i) the Contractor's detailed proposal as to how it will bring the relevant Assets back to the Required PCI as soon as practicable and, in any event, within 12 months; and
 - (ii) a valuation of the Work required to carry out the PCI Cure Plan (excluding the value of Work within the scope of the Services).
- (b) Without limiting (a), if a PCI Default Event is included in the final Payment Performance Review of the Contract Term, the PCI Cure Plan submitted under paragraph (a) must provide for achieving the Required PCI as soon as

practicable and, in any event, within 12 months and the Contractor acknowledges and agrees that the PCI Cure Plan may be performed by an Other Contractor and that any resulting costs incurred by the Shire shall be a debt due from the Contractor.

- (c) Within 10 Business Days of receiving a proposed PCI Cure Plan from the Contractor in accordance with paragraph (a), the Contract Manager must give the Contractor a written notice that it:
 - (i) accepts the PCI Cure Plan, and provide a date by which the Contractor must commence implementing the PCI Cure Plan; or
 - (ii) does not accept the PCI Cure Plan, and provide a date by which the Contractor must provide a revised proposal incorporating the Contract Manager's comments for further consideration by the Contract Manager in accordance with this clause 48A.2(c).
- (d) Within 10 Business Days after the Contract Manager accepts a PCI Cure Plan in accordance with clause 48A.2(c)(i), the Contractor must provide to the Shire a bank guarantee for the value of the Works set out in the PCI Cure Plan in a form approved by the Shire and which otherwise complies with the requirements for Performance Security in clause 67.
- (e) The Contractor must carry out any PCI Cure Plan at its own cost.
- (f) Any review of, comment upon, or any failure to review or comment upon, a PCI Cure Plan by the Shire or the Contract Manager will not relieve the Contractor from or limits or alter the Contractor's obligations under the Contract.

48A.3 Achieving the Required PCI

- (a) For the purposes of this clause 48A.3, the Contractor is taken to have achieved the Required PCI for any PCI Road Category:
 - (i) in the case of a PCI Default Event where the Measured PCI is not more than 5% below the Required PCI, on issue by the Contract Manager of a certificate of Completion of the Works required by the PCI Cure Plan; and
 - (ii) in the case of a PCI Default Event where the Measured PCI is more than 5% below the Required PCI, when compliance with the Required PCI is demonstrated by a Pavement Performance Review (which shall be undertaken after 12 months by the Shire at the Contractor's cost) for the affected PCI Road Category.
- (b) If the Contractor has achieved the Required PCI for a PCI Road Category at any time following implementation of a PCI Cure Plan prepared for that purpose, the Shire must return to the Contractor the bank guarantee (if any) then held by the Shire with respect to that PCI Road Category within 15 Business Days.

48A.4 Failure to Cure a PCI Default Event

- (a) If the Contractor fails to:
 - (i) provide a PCI Cure Plan that is accepted by the Contract Manager within 40 Business Days after being provided with the relevant Pavement Performance Review; and / or
 - (ii) provide a bank guarantee in accordance with clause 48A.2(d),
 the Shire may in its absolute discretion:
 - (iii) suspend payment or terminate the Contract by notice under clause 76, without the need for a Termination Show Cause Notice; or
 - (iv) develop and implement its own PCI Cure Plan for the relevant Assets, including undertaking a further Pavement Performance Review to assess the PCI upon completion of the PCI Cure Plan, and recover the cost of doing so from the Contractor as a debt due.
- (b) If the Contractor has implemented a PCI Cure Plan with respect to a particular PCI Road Category but does not achieve the Required PCI for that PCI Road Category in the next Pavement Performance Review, the Shire may require the Contractor to submit a further PCI Cure Plan in accordance with clause 48A.2.
- (c) If, despite the Contractor's compliance with this clause 48A and all relevant PCI Cure Plans, the Contractor has not achieved the Required PCI for a particular PCI Road Category in 3 consecutive Pavement Performance Reviews or, in any event, by the end of the Contract Term, the Shire may do either or both of the following (and without limiting its rights under clause 67.9):
 - (i) after giving the Contractor 24 hours' notice, have recourse to the Performance Security under clause 67 and / or the bank guarantee provided under clause 48A.2(d) to recover:
 - (A) the amount it reasonably estimates to be required in order to bring the PCI Road Category up to the Required PCI within a 12 month period; and
 - (B) any other losses, damages, costs and expenses for which the Contractor is liable as a consequence of the PCI Default Event (in the first instance, the Shire may take the whole value of the bank guarantee if it wishes to do so, but it must account to the Contractor for its expenditure and any other amounts retained by it from the fund and must return the balance, if any, to the Contractor at the end of the 12 month period);
 - (ii) terminate the Contract by notice under clause 76, without the need for a Termination Show Cause Notice.

48. Contract Reviews

48.1 Reviews Generally

- (a) The Service Management Team will undertake formal reviews of the Contractor's performance of its obligations under the Contract in accordance with:
 - (i) for every year of the Contract Term, the Annual Review procedure set out in clause 48.2; and
 - (ii) at the completion of the fourth year of the Contract Term, following completion of the Annual Review and Pavement Performance Review, the In-Term Review procedure set out in clause 48.4.
- (b) The parties agree and acknowledge that the Shire may be assisted by any such Shire employees or representatives that it sees fit in conducting any Annual Review or In-Term Review.
- (c) The Contractor must cooperate fully with the Shire in conducting any Annual Review or In-Term Review and ensure that it makes available to the Shire all relevant information and data required for the purposes of conducting the review.
- (d) Nothing done in relation to any Annual Review or In-Term Review including, without limitation, any conclusion reach by the Shire shall be construed as confirming that the Contractor has complied with its obligations under the Contract or of waiving, or in any other way altering, any rights or obligations of the parties under the Contract.

48.2 Annual Review

- (a) Each Annual Review will be undertaken within 30 Business Days of the end of each Contract Year and will consider the Contractor's performance over the course of the preceding Contract Year.
- (b) As part of the Annual Review, the Shire will review the following aspects of the Contractor's performance:
 - (i) the Contractor's performance against the KPIs and potential improvements that could be made for the following Contract Year;
 - (ii) the Contractor's implementation of the Integrated Management Plan and amendments to the annual deliverable plans for the following Contract Year;
 - (iii) any OH&S incidents (including near misses) and the Contractor's response that occurred during the Contract Year;

- (iv) the Contractor's compliance with and the effectiveness of the Annual Program, including any amendments to the Annual Program for the following Contract Year proposed in accordance with clause 9.1;
 - (v) any proposal from the Contractor for continuous improvement so as to better achieve the Strategic Priorities;
 - (vi) any Pavement Performance Review and associated PCI Default Events and Cure Plans;
 - (vii) continuous improvement initiatives, including proposals made in accordance with clause 49.3, so as to better achieve the Strategic Priorities and for the Shire to discuss any changes to the Strategic Priorities; and
 - (viii) any other aspects the Shire considers relevant.
- (c) The Contractor must prepare a written report within 14 Days of completing the Annual Review setting out the outcome of each Annual Review. The Shire will comment on the written report within 14 Days and the Contractor must incorporate those comments in the final version of the report within a further 14 Days.
- (d) As part of the In-Term Review the Shire will consider whether the Contractor has achieved the outcomes in the Annual Review report.

48.3 Not Used

48.4 In-Term Review

- (a) In-term Year Reviews will be conducted at the end of the fourth year of the Initial Contract Term, and in the second year of the First Extended Contract Term (if the first term extension is utilised).
- (b) Each In-Term Review will consider the Contractor's performance over the course of the relevant Contract Term.
- (c) As part of the In-Term Review, the Service Management Team will:
 - (i) conduct a high level review of the Contractor's performance across the relevant Contract Term including as reflected through each Annual Review over that period;
 - (ii) undertake a KPI Review in accordance with the procedure set out in clause 47;
 - (iii) complete the Lump Sum Items and Provisional Quantity Items and Provisional Sum Items review in accordance with clause 48.5;
 - (iv) confirm and formalise any amendments to the scope of the Services by updating the Services as set out in Annexure 4;

- (v) consider any continuous improvement initiatives arising out of the Annual Reviews;
- (vi) consider the other review items set out in clause 48.7; and
- (vii) consider whether to extend the Contract Term in accordance with clause 2.2.

48.5 Lump Sum and Provisional Quantity and Provisional Sum Review

- (a) As part of the Annual Review, In-Term Review and whenever otherwise directed by the Shire, the parties will consider the extent to which the Services are to be priced as Lump Sum Items, Provisional Sum Items or Provisional Quantity Items having regard to the Strategic Priorities.
- (b) The Shire may specify in a direction under this clause 48.5 the particular Services which are proposed to be Lump Sum Items, Provisional Sum Items or Provisional Quantity Items; and
- (c) If the Shire issues a notice under this clause 48.5, the Contractor must prepare and submit a Lump Sum Item, Provisional Sum Item or Provisional Quantity Item offer for those Services (as applicable) (**Offer**) on an Open Book Basis to the Shire by no later than the date specified in the notice.
- (d) The Offer submitted under this clause 48.5 must include:
 - (i) detailed particulars of the relevant Services; and
 - (ii) a breakdown of the basis on which the proposed Lump Sum Item, Provisional Sum Item or Provisional Quantity Item (as applicable) was calculated;
- (e) The Shire will consider the Offer submitted under clause 48.5 and will notify the Contractor whether the Shire (in its absolute discretion):
 - (i) accepts the Offer;
 - (ii) rejects the Offer; or
 - (iii) rejects the Offer and request the Contractor to re-submit the Offer on different terms (with details) in which case the process in clause 48.5 shall re-apply.
- (f) If the Shire accepts the Offer, the Contract and Services shall be varied as set out in the Offer.

48.6 Innovation Fund and Innovation Offers

- (a) As part of each Annual Review, the Contractor may propose Variations (**Innovation Offer**) that may be paid for by the Shire out of the Innovation Fund



or other means (e.g. any savings that may have been identified by one of the parties having regard to the Strategic Priorities).

- (b) An Innovation Offer must set out in detail and on an Open Book Basis:
 - (i) the scope of the proposed Variation;
 - (ii) the proposed pricing of the proposed Variation (including whether it is to be a Lump Sum Item, Provisional Sum Item or Provisional Quantity Item Service); and
 - (iii) how the Contractor considers that the Innovation Offer will achieve the Strategic Priorities, or is otherwise in the best interest of the Shire and stakeholders.
- (c) The Shire may consider any Innovation Offer submitted under this clause 48.6 and, if so, may notify the Contractor whether the Shire (in its absolute discretion):
 - (i) accepts the Innovation Offer;
 - (ii) rejects the Innovation Offer; or
 - (iii) rejects the Innovation Offer and request the Contractor to re-submit the Innovation Offer on different terms (with details) in which case the process in this clause 48.6 shall re-apply.
- (d) If the Shire accepts the Innovation Offer, the Contract and Services shall be varied as set out in the Innovation Offer.
- (e) The Contractor acknowledges that the Shire is under no obligation to set up any Innovation Fund, to spend any amount of an Innovation Fund or accept any Innovation Offer.

48.7 Other Review Items

In addition to assessing the Contractor's performance, the Service Management Team may use the In-Term Review as an opportunity to consider the following items and make recommendations to the parties:

- (a) reconciliation of Asset Inventory Changes (if necessary);
- (b) amendments to the performance management regime in accordance with clause 47;
- (c) level of insurance cover;
- (d) impact of any changes to the Assets (whether required by Law or by the Shire);
- (e) any required changes to the Integrated Management Plan or Management Plans;

- (f) impact on the Contract of technological or other changes that have occurred or are anticipated to occur in the future (including changes in Law or changes to Reference Documents);
- (g) a summary of all audits conducted by the Shire's Auditing Officer and the Contractors response to any non-conformances issued;
- (h) any other matters required by the Contract;
- (i) any other matters which the Service Management Team considers it appropriate to review; and
- (j) any changes to the Contract that may be necessary or desirable as a consequence of any of the above.

48.8 In-Term Review Report

The Contractor must provide the Contract Manager with a written report within 28 Days of completing the In-Term Review setting out the conclusions and outcomes reached by the In-Term Review.

Part H Variations and Asset Changes

49. Variations

49.1 Direction of Variations

At any time during the Contract Term, the Contract Manager may direct the Contractor to:

- (a) alter the extent of the Services;
- (b) alter the sequence of performance of the Services and amend the Annual Program accordingly;
- (c) alter the character, quality or mode of performance of the Services, including altering whether particular Services are Maintenance Service or Ordered Works; or
- (d) carry out any work of a character similar to the Services,

(Variation).

49.2 Valuation of Variations

- (a) The value, if any, of any Variation must be added to or subtracted from the Price with the Contract Manager to determine corresponding adjustments to the relevant

components of the Price, including for adjustments to the Monthly Service Payment and one-off payments

- (b) The value of each Variation must be determined by the Contract Manager by applying the following methods of valuation (in descending order of priority) on an Open Book Basis:
 - (i) any prior written agreement between the parties;
 - (ii) any relevant rates or prices contained in the Contract Documents (including the rates in Annexure 2 where applicable); or
 - (iii) reasonable rates or prices including the relevant percentage margin for the Contractor's profit and overheads specified in Annexure 2.
- (c) If the Shire directs a Variation that removes Services, then the Shire may have those removed Services performed by another Contractor in its absolute discretion.
- (d) The Contractor acknowledges and agrees that there is no limit on the Shire's ability to remove Services through Variations. For the avoidance of doubt no Variation to remove Services can constitute a breach or repudiation of the Contract.
- (e) The value of each Variation will exclude margin for profit and overhead on any rates and prices in the Contract that already include profit or overhead.

49.3 Continuous Improvement to Achieve Strategic Priorities

The Contractor is encouraged at any time, including at a Progress Meeting or as part of the Annual Review, Strategic Annual Review or In-Term Review, to suggest to the Contract Manager Variations to the Services that it reasonably considers would further the achievement of the Strategic Priorities, including:

- (a) removing from the scope of the Services any activities that do not accord with the Strategic Priorities;
- (b) suggesting new activities to be added to the scope of the Services that will better achieve the Strategic Priorities; and
- (c) amending the frequency with which different aspects of the Services are performed to better achieve the Strategic Priorities, including any activities that could be done to reduce the amount of unplanned Services that are likely to be needed.

Any suggestion made by the Contractor does not constitute a Variation unless directed by the Contract Manager in accordance with clause 49.1.

49.4 Notification of Variations

- (a) If the Contractor considers that it is entitled to a Variation the Contractor must as soon as practicable and in any event before performing any relevant Services and within 20 Business Days of the underlying fact or event giving rise to the Variation provide the Contract Manager with a notice:
 - (i) setting out the particulars of the alleged Variation; and
 - (ii) providing reasonable evidence that the Variation is required.
- (b) Upon receipt of the Contractor's notice under clause 49.4(a), the Shire may, in its absolute discretion, issue a Request for Quotation under clause 10.2 or require the Contractor to provide further information in respect of the proposed Variation.
- (c) Compliance with this clause 49.4 is a condition precedent to the Contractor's entitlement to submit a Claim for the relevant Variation.

50. Asset Inventory Changes

50.1 Annexure 6

In addition to this clause 50, Annexure 6 sets out the requirements in relation to Asset Inventory Changes.

50.2 Incorporation of New Assets

Each New Asset automatically becomes part of the Assets (and any Asset superseded by it is automatically removed from the Assets):

- (a) upon Completion of the New Asset, in the case of New Assets constructed by the Contractor; and
- (b) upon Asset Handover, in all other cases.

50.3 Asset Inventory Updates

Upon Completion or Asset Handover (as the case may be) the parties must update the Asset Inventory within the Asset Management System as follows.

- (a) For Assets completed by the Contractor under this Contract, the Contractor must enter details of the New Asset, and remove (or otherwise identify as superseded) any Assets superseded by the New Asset within a reasonable time and in any event within 1 Business Day if at all practicable.
- (b) For other assets completed by the Shire, the Shire must enter details of the New Asset in, and remove (or otherwise identify as superseded), any Assets



superseded by the New Asset including in the Asset Management System within a reasonable time.

50.4 Asset Handover Notification

- (a) To initiate Asset Handover, the Shire will issue a written notice to the Contractor advising of the New Asset ('**Asset Handover Notice**'). The Shire may initiate the Asset Handover in their sole and absolute discretion.
- (b) The Asset Handover Notice must:
 - (i) describe the Asset to be handed over, its location, date for ending defects liability and details of the person who constructed it;
 - (ii) include any information relevant to the performance of the Services in relation to the New Asset which the Shire has in relation to the New Asset, including, where applicable, 'as constructed' drawings, bills of quantities and operational manuals;
 - (iii) use formats compatible with the data scheme (the nature and structure of the data) in the Asset Inventory; and
 - (iv) include a schedule of Assets added or removed with relevant asset identifications numbers.

50.5 Asset Handover

The process set out below is initiated by the issue of an Asset Handover Notice.

- (a) Within 10 Business Days of receipt of an Asset Handover Notice, the Contractor must notify the Contract Manager in writing of its acceptance or rejection of the New Asset.
- (b) The Contractor may only reject a New Asset if the New Asset is not of an Acceptable Standard. Notwithstanding the first sentence of this clause 50.5(b), the Contractor cannot reject any New Asset which has been constructed, supplied or installed by the Contractor or an Agent of the Contractor.
- (c) If the Contractor does not notify the Contract Manager of its acceptance or rejection of a New Asset within 10 Business Days of receipt of the Asset Handover Notice, the Contractor is deemed to have accepted the New Asset.
- (d) If the Contractor accepts (or is deemed to have accepted) a New Asset, Asset Handover occurs on the 11th Business Day after the date of the Asset Handover Notice.
- (e) If the Contractor rejects the New Asset, the Contract Manager must inspect the proposed New Asset jointly with the Contractor within 20 Business Days (or such longer period as the parties agree) of the date of the Asset Handover Notice.

- (f) If, on the joint inspection, the Contract Manager determines that the New Asset is not of an Acceptable Standard, the Contract Manager must issue a notice to this effect within 5 Business Days of the joint inspection and (unless otherwise agreed) the Shire must, if it wishes to have the proposed New Asset treated as a New Asset, ensure that all Work necessary to bring the New Asset up to an Acceptable Standard is done (at no cost to the Contractor) before Asset Handover occurs.
- (g) If, on the joint inspection, the Contract Manager determines that the New Asset is of an Acceptable Standard, the Contract Manager must, within 5 Business Days of the date of the joint inspection, issue a notice to this effect and direct that Asset Handover occurred on the 11th Business Day after the date of the Asset Handover Notice ('**Mandatory Asset Handover Notice**'). The Contractor may dispute a Mandatory Asset Handover Notice in accordance with the Dispute Resolution Process.
- (h) After Completion of any Work required to bring a New Asset up to an Acceptable Standard in accordance with clause 50.5(f), the Contract Manager must issue a further Asset Handover Notice to the Contractor with respect to that New Asset and the process set out above shall apply to that further Asset Handover Notice.
- (i) Subject to clause 50.5(j), if the Contractor has accepted (or is deemed to have accepted) a New Asset in accordance with this clause 50.5, the Contractor must not subsequently make any claim with respect to the Condition of the New Asset irrespective of whether or not any Defect in the New Asset was evident from inspection or from the documentation provided to the Contractor in the Asset Handover Notice for the New Asset. The Contractor releases the Shire from any liability with respect to any Defect in a New Asset which was accepted, or deemed to have been accepted, by the Contractor in accordance with clause 50.5.
- (j) Notwithstanding any other provision of this Contract, the Contractor's obligations in respect of the New Assets, shall be limited to maintenance activities and the Contractor shall not be held liable for any defects, or any claim in relation to defects, to the extent that they arise by reason of design or construction undertaken by parties other than the Contractor.

50.6 Measurement of Asset Inventory Adjustments

Asset Inventory Changes must be measured periodically (at intervals not more frequently than monthly) and a claim for adjustment included in the Contractor's next monthly claim.

50.7 Replacement Maintenance not an Asset Inventory Change

- (a) An Asset Inventory Change will not occur if an Asset is removed and replaced by the Contractor as a normal part of the maintenance for that type of Asset.
- (b) However, if a Qualifying Change in Law requires a replacement Asset to be of a higher standard than an Asset which it is replacing, a Variation will be issued in

accordance with clauses 32.4 and 49.1. The value of the Variation will be the difference between:

- (i) the cost of supplying and installing an item of equivalent standard to the original Asset; and
 - (ii) the cost of supplying and installing an item of the higher standard,
- and will include a reasonable margin for profit.

50.8 Found Assets

- (a) If the Contractor discovers or becomes aware of a Found Asset it must promptly notify the Contract Manager and update the Asset Inventory with details of the Found Asset including any further details required by the Contract Manager.
- (b) The Shire may at its sole and absolute discretion initiate Asset Handover with respect to Found Assets.

50.9 Other assets

- (a) Notwithstanding anything to the contrary, the Shire is not required to pay for, and has no liability to the Contractor in respect of, maintenance by the Contractor of assets which are not Assets for the purposes of the Contract.

51. Valuation and Timing of Variations and Asset Changes

51.1 Valuation of Asset Inventory Changes

The value of Asset Inventory Changes must be determined in accordance with the Rates for Asset Inventory Change in Annexure 2.

51.2 Valuation for New Assets Below Acceptable Standard

If the Contractor has agreed with the Shire under clause 49 to provide the Services with respect to a New Asset even though the New Asset is not constructed to an Acceptable Standard, the value of the Asset Inventory Change must be determined by agreement between the parties or, if the parties cannot agree, by a reasonable valuation made by the Contract Manager. In this event, the Asset Handover is deemed to occur on the 26th day after the date of the Asset Handover Notice or the date on which the valuation of the Asset Inventory Change is determined, whichever is the later.

51.3 Valuation Following Mandatory Asset Handover Notice

If the Contractor has issued a Mandatory Asset Handover Notice with respect to any New Asset, the value of the Asset Inventory Change will be determined in accordance with clause 51.1. If the Contractor successfully disputes the Mandatory Asset Handover Notice, the Contractor will be entitled to (as its sole remedy):

- (a) an additional amount determined by the Dispute Resolution Process as the value of Work that should have been done with respect to the New Asset to bring it up to the Acceptable Standard before the Asset Handover, provided that the Contractor has performed such Work; and
- (b) any additional costs incurred in performing the Services for the relevant Asset as a result of it not being to the Acceptable Standard.

Part I Time for Performance and Excusing Events

52. Impact on Time

- 52.1 The parties acknowledge that timely identification of disruptive or delaying events is beneficial to both parties and consistent with the Strategic Priorities. Both parties agree to keep the Shire informed of things that may delay or disrupt the progress of any of the Services.
- 52.2 If by reason of an Excusing Event, the Contractor is prevented from carrying out any element of the Services, the Contractor must, as soon as it becomes aware of the Excusing Event, give to the Shire prompt notice of the Excusing Event together with full particulars of all relevant matters including:
 - (a) details of the Excusing Event;
 - (b) details of the Services affected;
 - (c) details of the action that the Contractor has taken to remedy the situation and details of the action that the Contractor proposes to take to remedy the situation; and
 - (d) an estimate of the time during which the Contractor will be unable to perform the relevant element of the Services.
- 52.3 If and to the extent that an Excusing Event prevents the Contractor from carrying out any element of the Services (other than Ordered Work) in accordance with an applicable Contractual Time Requirement, the Contractor is excused from performance of the affected element of the Services for the duration of the Excusing Event. The Contractor must recommence performance of the affected element of the Services as soon as practicable after the Excusing Event ceases.
- 52.4 Notwithstanding clause 52.3, but subject to any other express provision of the Contract, the Contractor is not required to carry out any element of the Services beyond the end of the Contract Term.

53. Directions to Suspend Services

- 53.1 The Contract Manager may direct the Contractor to suspend the whole or part of the performance of the Services for any reason for a period nominated by the Contract Manager.
- 53.2 If the Contract Manager directs a suspension because of a default, or negligent or wrongful act or omission, by the Contractor or any of the Contractor's Agents:
- (a) the Contractor is not entitled to make a claim against the Shire for losses or damages the Contractor may incur or sustain in connection with the suspension;
 - (b) the Shire is entitled to reduce the Contractor's Monthly Service Payment for the period of the suspension by an amount which the Contract Manager reasonably determines to be the amount attributable to the period of the suspension;
 - (c) if the Services which have been suspended are Ordered Work, the Shire is not required to pay the Contractor for the Ordered Work during the period of suspension (apart from amounts due for Work performed in accordance with the Contract prior to the commencement of the period of suspension); and
 - (d) any costs and losses which the Shire incurs as a result of the suspension, as determined by the Contract Manager, shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire, be deducted from any payment to the Contractor under this Contract or otherwise.
- 53.3 In the case of a suspension for any reason not referred to in clause 53.2, if the period of the suspension is likely to exceed one week, the Contract Manager may direct that the suspension be valued as a Variation.

54. Costs of Delays

- 54.1 Subject to any other provision of the Contract and to this clause 54, the Contractor may claim compensation for the direct cost impacts of any delay to the Services (other than Ordered Work) caused solely by a breach of contract or negligent act or omission on the part of the Shire or an Agent of the Shire. The Contractor must use its best endeavours to prevent and minimise any such cost impacts.
- 54.2 The Contractor is not entitled to claim or receive any compensation under clause 54.1 if and to the extent that the delay arose out of or as a result of a direction or other action considered by the Shire or the Shire's Agent to be necessary or desirable due to an act, omission, default or unauthorised conduct by the Contractor or any of the Contractor's Agents.
- 54.3 To be eligible to claim compensation under clause 54.1, the Contractor must be able to demonstrate to the reasonable satisfaction of the Contract Manager that the cost impacts claimed were incurred as a direct and sole result of the breach of contract or negligent action by the Shire or an Agent of the Shire and were not due in any respect to a failure

by the Contractor to comply with the Contract or to manage its affairs so as to prevent or minimise the impact of any delay.

- 54.4 Clause 54.1 is the Contractor's sole and entire entitlement to compensation for the cost impacts of any delay to the Services (other than Ordered Work) arising out of or a result of an Excusing Event.

55. Relaxation of Requirements

- 55.1 If an Excusing Event occurs and the Contractor's ability to achieve any KPIs is affected as a result, the Contractor is entitled to relief from strict compliance with the KPIs.
- 55.2 Unless otherwise agreed, the extent of such relief is a temporary waiver of the obligation to achieve the affected KPIs for a duration determined by the Contract Manager having regard to the magnitude of the Excusing Event and its detrimental impact on the ability of the Contractor to carry out its obligations under the Contract. The Contractor's obligations recommence as soon as the waiver period ends.

Part J Insurances and Indemnity

56. Insurances to be Held

- 56.1 The Contractor must effect and maintain the following insurances:
- (a) workers compensation insurance in accordance with clause 58;
 - (b) a public liability policy of insurance in accordance with clause 59;
 - (c) professional indemnity insurance in accordance with clause 60;
 - (d) motor vehicle comprehensive insurance in accordance with clause 61;
 - (e) cyber security insurance upon reasonable commercial terms as approved by the Shire in the amount of \$3 million; and
 - (f) plant and equipment insurance for the full replacement value of the plant and equipment used for the Services.
- 56.2 Before commencing any Work under the Contract and at any time upon the Shire's request, the Contractor must provide certificates of currency as evidence to the Contract Manager that the Contractor has effected the required insurances and paid all premiums for such insurances
- 56.3 If the Contract Manager forms the opinion that any certificate of currency is deficient in detail, eg does not disclose exclusions, the Contract Manager may require that additional evidence of insurance be provided by the Contractor.

57. Works Subject to Insurance

- 57.1 The Contractor must immediately notify the Contract Manager of any Services required under the Contract that are, or are likely to be, the subject of, or otherwise relevant to, an insurance claim under an insurance policy held by the Shire.

58. Workers Compensation Insurance

- 58.1 The Contractor's workers compensation insurance must:
- (a) cover the Contractor for workers compensation and related liabilities in accordance with the requirements of any applicable Law;
 - (b) be for an amount not less than the minimum required by Law; and
 - (c) be maintained at all times during the Contract Term and until the completion of all of the Contractor's obligations under the Contract.
- 58.2 The Contractor indemnifies the Shire and its Agents against any liabilities, costs, penalties or additional premiums they may incur arising, whether directly or indirectly, from any provision of a Law relating to workers compensation which:
- (a) deems any Agent of the Contractor to be an employee or worker of the Shire or of an Agent of the Shire; or
 - (b) otherwise makes the Shire or any of its Agents in any way responsible for, or liable to pay any monies to or in respect of, such persons, except for liabilities arising directly from the negligence of the Shire or any of its Agents.
- 58.3 The Contractor must also ensure that every subcontractor is insured for workers compensation and related liability in accordance with the requirements of all applicable Laws at all times when that subcontractor is undertaking Work or Services connected with the Contract.

59. Public Liability Insurance

The Contractor must, at all times during the Contract Term and until the completion of all of the Contractor's obligations under the Contract, be the holder of a current public liability policy of insurance. The public liability policy of insurance must:

- (a) cover the liability of the Contractor and its Agents to the Shire; and
- (b) be for an amount per occurrence of \$30 million or the amount determined in accordance with clause 63, whichever is the greater.

60. Professional Indemnity Insurance

- 60.1 The Contractor must, at all times during the Contract Term and for 7 years after the Completion of all of the Contractor's obligations under the Contract, be the holder of current professional indemnity insurance. The professional indemnity policy of insurance must:
- (a) cover the Contractor for errors in inspection, documentation, supervision, other professional duties of, or assessments made by, the Contractor in the course of performing the Contract and any other activities forming part of the Services which are capable of being covered under such a policy; and
 - (b) be for an amount per occurrence and in the aggregate of \$10 million or the amount determined in accordance with clause 63, whichever is the greater.
- 60.2 The Contractor must also ensure that every subcontractor to the Contractor complies with clause 60.1 as if it were the Contractor if such subcontractor is to perform any activities that are reasonably capable of being covered under professional indemnity insurance and the amount of insurance cover shall be such amount as considered reasonable having regard to the volume and value of the subcontract works being provided.

61. Motor Vehicle Insurance

- 61.1 The Contractor must, at all times during the Contract Term and until the completion of all of the Contractor's obligations under the Contract, be the holder of a current comprehensive motor vehicle insurance policy. The comprehensive motor vehicle policy of insurance must:
- (a) cover the Contractor and others for damage caused to property by any registered motor vehicles owned or used by the Contractor directly in connection with performance of the Contract; and
 - (b) be for an amount per occurrence of \$25 million or the amount determined in accordance with clause 63 (**Review of insurance levels**), whichever is the greater.
- 61.2 The Contractor must also ensure that every subcontractor to the Contractor complies with clause 61.1 as if it were the Contractor if such subcontractor is to perform any activities that are reasonably capable of being covered under comprehensive motor insurance and the amount of insurance cover shall be such amount as considered reasonable having regard to the volume and value of the subcontract works being provided.

62. Not used

63. Review of Insurance Levels

- 63.1 The levels of insurance required by the Contract will be reviewed and determined by the Contract Manager every three years as part of the Annual Review. Any additional cost incurred by the Contractor as a result of a determination under this clause will be valued as a Variation.
- 63.2 The risk of any premium increases that occur during the Contract Term (except to the extent that they result from an increase in the level of cover determined in accordance with clause 63.1) is to be borne by the Contractor (on the understanding that this risk will be adequately addressed by Indexation in accordance with the Contract).

64. Policy Requirements

- 64.1 All the insurance policies required by clauses 58 to 62 must be effected with insurers authorised to carry on non-life insurance business in Australia under the *Insurance Act 1973* (Cth).
- 64.2 The public liability policy of insurance required by clause 59, must:
- (a) cover the Shire as an additional insured party in respect of liabilities arising out of the Contractor's performance of the Services; and
 - (b) include a cross liability clause in which the insurer agrees to waive all rights of subrogation, except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act in which circumstances insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an insured.
- 64.3 In this clause 64, '**Vitiating Act**' means circumstances of fraud, misrepresentation, nondisclosure or breach of any warranty or condition of a policy of insurance.

65. Evidence of Insurance

The Contractor must provide the Contract Manager with certificates of currency as evidence, to the satisfaction of the Contract Manager, of the currency of the insurances required by the Contract:

- (a) at least 7 Days prior to the Commencement Date;
- (b) at each anniversary of the Commencement Date;
- (c) at any other time within 5 Business Days of a written direction by the Contract Manager.

66. Indemnity & Liability

- 66.1 Without limiting the Shire's rights under this Contract or at Law, the Contractor must indemnify, keep indemnified and hold harmless the Shire and the Shire's Agents from and against all actions, claims, losses, damages, penalties or costs (including, without limitation, all indirect and consequential losses, damages and costs arising from, related to, or connected with property damage or personal injuries on a full indemnity basis) caused or contributed to by any breach of any Law by the Contractor or an Agent of the Contractor or any negligent or wrongful act or omission of the Contractor or an Agent of the Contractor in the performance or purported performance of the obligations of the Contractor under this Contract.
- 66.2 The liability of the Contractor under clause 66.1 is reduced proportionately by the extent to which any action, claim, loss, damage, penalty or cost was caused directly by a breach of the Contract or a negligent act or omission by the Shire or any of the Shire's Agents.
- 66.3 The parties acknowledge that the standard of performance required by clauses 9.1 and 19.1 will be applied when assessing whether or not the Contractor or its Agent is in breach of the Contract or whether any negligent or wrongful act or omission by the Contractor or its Agent has occurred.
- 66.4 Subject to clause 66.5, but notwithstanding any other provision of the Contract, the Contractor's aggregate liability to the Shire, for all claims in a Contract Year, whether in contract, tort (including negligence), Law or otherwise arising out of or related to this Contract is limited to \$20 million.
- 66.5 Clause 66.4 does not limit or restrict in any way the Contractor's liability in respect of:
- (a) liability that cannot be limited or excluded at Law;
 - (b) fraud, wilful misconduct, wilful breach (with reckless indifference to the harmful consequences resulting from the wilful breach) or criminal conduct by the Contractor or any of its personnel;
 - (c) liability of the Contractor to the extent the Contractor is paid or indemnified, or is entitled to be paid or indemnified, for the liability by an insurer under an insurance policy required by the Contract;
 - (d) liability of the Contractor to the extent the Contractor would have been entitled to be paid or indemnified for the liability by an insurer under an insurance policy required by this Contract, but for a failure by the Contractor to effect and maintain the insurance policy as required by this Contract;
 - (e) liability to the extent that the Contractor is indemnified or paid by any third party for that liability;
 - (f) liability for personal injury or death or loss or damage to property;
 - (g) liability for infringement of any Intellectual Property right;

- (h) liability for wrongful disclosure of Confidential Information or breach of the *Privacy Act 1988* (Cth) or *Information Privacy Act 2000* (Vic); or
 - (i) the Contractor's abandonment of all or a substantial part of its obligations under the Contract.
- 66.6 In clause 66.5(c), the reference to a liability for which the Contractor is "entitled to be paid or indemnified" by an insurer means a liability for which the Contractor is or would be entitled to be paid or indemnified under the relevant insurance policy if:
- (a) clause 66.4 had not existed;
 - (b) the Contractor had complied with the terms of the policy;
 - (c) the Contractor had submitted a claim where there was a legitimate entitlement to claim under the policy;
 - (d) the Contractor had taken reasonable steps to pursue such a claim once it had been submitted; and
 - (e) the insurer had remained solvent.
- 66.7 In clause 66.5(d), the reference to a liability for which the Contractor would have been "entitled to be paid or indemnified" by an insurer means a liability for which the Contractor would have been entitled to be paid or indemnified under the relevant insurance policy if:
- (a) the Contractor had effected and maintained the insurance policy as required by this Contract; and
 - (b) the circumstances contemplated by clauses 66.6(a) to 66.6(e) had applied with respect to that policy.
- 66.8 This clause shall survive the expiry of the Contract Term or earlier termination of the Contract.

Part K Security

67. Performance Security

- 67.1 The Contractor must ensure that the Shire holds a Performance Security in accordance with this clause at all times during the Contract Term and for the further period until the Performance Security is required to be returned in full under clause 67.7.
- 67.2 The Performance Security must be a perpetual, irrevocable and unconditional bank guarantee for an amount of 10% of the expected annual Contract value (Indexed) as estimated by the Contract Manager (acting reasonably) and must be in a form, and from a bank, approved by the Shire.



- 67.3 The initial Performance Security must be delivered to the Contract Manager immediately upon execution of this Contract, and as a precondition to any Payment Claim by the Contractor and to the making of any payment by the Shire to the Contractor.
- 67.4 In each third subsequent Contract Year, the Contractor must deliver a replacement Performance Security in the amount of 10% of the expected annual Contract value (Indexed) as estimated by the Contract Manager (acting reasonably). A replacement Performance Security must be delivered to the Contract Manager by 30 September in relevant Contract Year. If a replacement Performance Security is required and is not submitted by 30 September in any relevant Contract Year, the Contractor may not issue a Payment Claim and the Shire may withhold payment to the Contractor until such time as the replacement Performance Security is provided. A replacement Performance Security must be provided by the Contractor for the final year of the Contract Term, which must be in the form of two bank guarantees, each of which must be for half of the Performance Security (Indexed).
- 67.5 Subject to 67.6, the Shire must release any superseded Performance Security within 15 Business Days of receiving the replacement Performance Security.
- 67.6 The Shire is not obliged to release any superseded Performance Security if there is an outstanding PCI Default Event that has not been cured. For the avoidance of doubt, the Contractor is still obliged to provide the replacement Performance Security even if the Shire is not obliged to release any superseded Performance Security under this clause.
- 67.7 The Shire must return the Performance Security (or the balance thereof, if any, remaining after the exercise of a right of recourse) to the Contractor as follows:
- (a) one of the two bank guarantees for the last year of the Contract Term at the conclusion of the Contract Term; and
 - (b) the other bank guarantee for the last year of the Contract Term on the last to occur of:
 - (i) expiry of the last Defects Liability Period under the Contract; and
 - (ii) the date 13 months after the conclusion of the Contract Term.
- 67.8 If the Shire exercises a right of recourse to the Performance Security, the Contractor must, if directed by the Shire at any time prior to the last to occur of the events referred to in clause 67.7, provide a supplementary bank guarantee payable to the Shire to top up the Performance Security to the amount the Shire would then have been holding if it had not exercised its right of recourse.
- 67.9 The Shire is entitled to have recourse to the Performance Security at any time:
- (a) where it is entitled to do so under the terms of the Contract;
 - (b) to recover any moneys owing from the Contractor to the Shire under the Contract or otherwise; or
 - (c) if the Contractor has failed to comply with any of its obligations arising out of the Contract.

Part L Completion obligations

68. Defective Work

68.1 It is agreed that:

- (a) for the Maintenance Services carried there will be a 12 month Defects Liability Period from the date on which they are completed (unless the parties agree in writing to a different Defects Liability Period); and
- (b) for each Minor Works there will be a Defects Liability Period for 12 months from its Date of Completion (unless the parties agree in writing to a different Defects Liability Period)

68.2 If the Contractor becomes aware of a Defect, the Contractor must promptly Rectify the Defect at its own cost and, in any event, within the time directed by the Contract Manager, which the Contract Manager will specify, acting reasonably, having regard to the nature and urgency of the Work required.

68.3 Upon completion of the rectification Work, a further Defects Liability Period of equal length to the original Defects Liability Period shall apply with respect to the rectification Work from the date of completion of the rectification Work, as certified by the Contract Manager.

68.4 If the Contractor fails to Rectify the Defect promptly or within the timeframe directed by the Contract Manager, the Shire may Rectify the Defect itself (including by engaging third parties) and any cost incurred by the Shire in doing so shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire, be deducted from any payment to the Contractor under this Contract or otherwise.

68.5 This clause shall survive the expiry of the Contract Term or earlier termination of the Contract. This clause does not in any way limit the Contractor's obligations to provide the Services during the Contract Term.

69. Transfer in From Previous Contractor and Transfer Out To New Contractor

69.1 Transition In

The Contractor must co-operate with the Shire and do all things reasonably required to assist the orderly transfer of the Services from the Other Contractor previously engaged by the Shire for the Services, including as set out in the Transition In Plan.

69.2 Transition Out

- (a) The Contractor must co-operate with the Shire and do all things reasonably required to assist the orderly transfer of the Services to another contractor in

anticipation of and following the end of the Contract Term or the earlier termination of the Contract.

- (b) Without limiting clause 69.1, the Contractor must:
 - (i) provide the Contract Manager with a detailed plan of things reasonably required to assist the orderly transfer of the Services to an Other Contractor to be engaged by the Shire for the Services for approval no later than 6 months before the end of the Contract Term;
 - (ii) update and demonstrate the accuracy of all databases and inventories, including the asset management database and the maintenance achievement records relating to all physical works carried out by the Contractor in the last Contract Year of the Contract Term; and
 - (iii) complete all unfinished works, co-operate with the Shire in relation to the transition to a new contractor and provide for other transitional services as the Shire may reasonably determine.
- (c) The Contractor shall not be entitled to any additional payment with respect to the performance of its obligations under this clause 69.

70. Completion of Obligations

- 70.1 On expiry of the Contract Term or earlier termination of the Contract, the Contractor must:
- (a) subject to the terms of any lease or licence then in place between the parties, vacate any property of the Shire that has been made available to the Contractor for the purposes of providing the Services;
 - (b) demonstrate to the Shire on expiry of the Contract Term that it has met all of its obligations under the Contract or on earlier termination of the Contract all of its obligations up to the point of termination; and
 - (c) deliver to the Shire all relevant records of the Contractor relating to the Services or the Assets along with all keys, passes, passwords and other items and information required to access the areas required for performing the Services.
- 70.2 The Contractor shall not be entitled to any additional payment with respect to the performance of its obligations under this clause 70.

71. Continuing Obligations

Any provision of the Contract which is expressed to survive the termination of the Contract or the expiry of the Contract Term or which, although not so expressed, needs to survive the termination of the Contract or the expiry of the Contract Term to protect

the presumed intentions of the parties as evidenced by the Contract, continues until the first to occur of:

- (a) full compliance with the relevant obligation; or
- (b) 7 years from the date of termination of the Contract or the expiry of the Contract Term.

Part M Dispute Resolution

72. Disputes

- 72.1 It is the intention of the parties that, wherever possible, Issues will be resolved at the level of the Contract Manager or by reference to the Senior Representatives before they become disputes or differences.
- 72.2 Notwithstanding clause 72.1, if a dispute (including a difference) arises between the Shire and the Contractor, either during the Contract Term or after the termination of the Contract or expiry of the Contract Term, as to any matter or thing connected with or arising under this Contract, either party may give to the other party a notice of the dispute.
- 72.3 Such notice must:
 - (a) indicate that it is a notice under this clause, and
 - (b) give sufficient details of the dispute as to enable the party receiving the notice to ascertain the nature of the dispute alleged.
- 72.4 Within 5 Business Days of the date of receipt of any notice of dispute under this clause by the party on which it is served (**Receipt Date**), the parties must each appoint a senior executive (not being a Senior Representative or the Contract Manager or any other person ordinarily involved in the management of the Contract) with authority to resolve the dispute. Within 10 Business Days of the Receipt Date, the appointed executives of the parties must meet and must attempt in good faith to resolve the dispute.
- 72.5 If the appointed executives are unable to resolve the dispute within 20 Business Days of the Receipt Date (or within such longer period as the senior executives agree is appropriate), either party may litigate the dispute.
- 72.6 The parties may use any form of dispute resolution mechanism on which they agree to resolve any dispute, including arbitration, mediation and expert determination. Nothing in this clause 72.6 is intended, however, to prevent a party initiating litigation with respect to a dispute, provided that the party has followed the process set out in clauses 72.2, 72.3, 72.4 and 72.5.

- 72.7 If reasonably possible, performance of obligations under the Contract must continue during arbitration or legal proceedings, and no payment due or payable by the Shire that is not in dispute must be withheld on account of the arbitration or legal proceedings, unless so authorised by the Contractor or by the Contract, provided that nothing in this clause 72 is intended to prevent a party terminating the Contract in accordance with an entitlement under the Contract or in response to a repudiation of the Contract by the other party.

Part N Force Majeure

73. Force Majeure and its Effects

- 73.1 If by reason of a Force Majeure Event occurring either party is wholly or partially unable to carry out its obligations under the Contract (other than any obligations to pay any money), that party must, as soon as it becomes aware of the Force Majeure Event, give to the other party prompt notice of the Force Majeure Event together with full particulars of all relevant matters including:

- (a) details of the Force Majeure Event;
- (b) details of the obligations affected;
- (c) details of the action that the party has taken to remedy the situation and details of the action that the party proposes to take to remedy the situation; and
- (d) an estimate of the time during which the party will be unable to carry out its obligations due to the Force Majeure Event;
 - (i) an estimate of the costs that the party will incur to remedy the situation and the proposed funding arrangements; and
 - (ii) details of all insurance moneys which the party will be able to rely upon in making good damage caused by the Force Majeure Event,

and the parties must promptly meet and endeavour to identify an alternate viable means of providing those Services which are affected by the Force Majeure Event as described in the notice given under this clause.

- 73.2 Upon the notice under clause 73.1 having been given, the party giving the notice must provide the other party with all further relevant information pertaining to the Force Majeure Event.
- 73.3 The obligations of the parties will be suspended but only to the extent that and for so long as the obligations are genuinely adversely affected by the Force Majeure Event.
- 73.4 The party that has issued a notice of a Force Majeure Event under this clause 73 will not be deemed to be in default under this Contract for any failure or delay in the

observance or performance of any obligations under this Contract (other than the terms of this clause) which are genuinely adversely affected by the Force Majeure Event.

- 73.5 The party that has issued a notice of a Force Majeure Event must use its best endeavours to mitigate and remedy the effects of the Force Majeure Event promptly including making reasonable expenditures of funds. Nothing in this clause requires the Contractor to expend funds and undertake work on the Assets or other property of the Shire, over and above expenditure and work that falls within the ordinary scope and volume of the paid Services, unless it is directed to do so as Ordered Work.
- 73.6 Subject to clause 73.7, the suspension of the obligations of the parties due to a Force Majeure Event ends when the party that has issued the notice of the Force Majeure Event is able to recommence fulfilment of its obligations pursuant to this Contract at which time that party must issue a notice to that effect to the other and recommence the performance of the obligations the subject of the original notice. Upon recommencement of the performance of the obligations, a party must not invoke the provisions of this clause in regard to the same Force Majeure Event or any event consequent upon or related to the event which gave rise to the giving of the notice of the Force Majeure Event.
- 73.7 If a party is rendered wholly or partially unable to carry out its major obligations under this Contract by a Force Majeure Event for a period of more than three consecutive months, the parties shall meet in an endeavour to identify any alternate viable means to provide the suspended Services and failing an alternate means being agreed within one month of the end of the three month period, either party may terminate this Contract immediately by notice.
- 73.8 Nothing in this clause requires the Contractor to claim under this clause if it considers that an appropriate remedy is available under the provisions of the Contract relating to Excusing Events.
- 73.9 The Shire is not required to pay the Contractor for any Service that is not provided during and as a consequence of a Force Majeure Event.

Part O Default and Termination

74. Right to Do and Charge

Without limiting any other right or remedy of the Shire, if the Contractor does not carry out an obligation under the Contract within the time required by the Contract, the Shire may, after giving the Contractor notice of the default and a reasonable opportunity (having regard to the nature and urgency of the requirement) to Rectify it, perform the obligation itself (including by engaging third parties) and recover the cost of doing so from the Contractor.

75. Termination Show Cause Notice

- 75.1 The Shire may give notice to the Contractor requiring it to show cause why the powers contained in clause 76 (Powers on Contractor default) should not be exercised where the Contractor:
- (a) defaults in the performance or observance of any obligation under the Contract; or
 - (b) refuses or neglects to carry out or give effect to any written order, instruction, direction or determination given or made by the Shire or the Contract Manager pursuant to the Contract.
- 75.2 A Termination Show Cause Notice must:
- (a) not be unreasonably given,
 - (b) indicate that it is a notice under this clause, and
 - (c) specify the grounds upon which it is based.

76. Powers on Contractor Default

- 76.1 If:
- (a) the Contractor fails to show cause, within 7 Business Days after receipt of a Termination Show Cause Notice, in the opinion of the Contract Manager, by failing to provide reasonable assurance that the default or other grounds of notice will be rectified in a prompt and timely fashion and the obligations of the Contract satisfactorily complied with in accordance with its terms; or
 - (b) a clause of the Contract entitles the Shire to do so without the need for a Termination Show Cause Notice,
- the Shire, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:
- (c) suspend payment under the Contract; or
 - (d) terminate the Contract by notice to the Contractor.
- 76.2 The suspension of payment under this clause by the Shire, will not in any way affect the continuing obligations of the Contractor under the Contract. Suspension of payment may be continued until the default has been rectified to the Contract Manager's satisfaction.
- 76.3 Without limiting any other right or remedy of the Shire, if the Senior Contract Manager considers, acting reasonably, that the Contractor has failed to diligently pursue a reasonable remedy of the default, or fails to remedy the default within a reasonable time, the Shire may carry out the actions set out in clause 76.1(c) and/or 76.1(d).

77. Termination for Contractor Insolvency

77.1 The Shire may terminate the Contract immediately if the Contractor:

- (a) being a partnership:
 - (i) is dissolved;
 - (ii) any of the things identified in clause 77.1(b) happens to any of the partners which is a company;
 - (iii) any of the partners becomes bankrupt, or files or is served with a petition in bankruptcy;
 - (iv) any of the partners is served with a bankruptcy notice;
 - (v) any of the partners makes an assignment for the benefit of his, her or its creditors;
 - (vi) any of the partners becomes bound as a debtor by any scheme of arrangement;
 - (vii) any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or
 - (viii) any of the partners has a mortgagee or other creditor take possession of any of his, her or its assets, or
- (b) being a company:
 - (i) takes, or has taken or instituted against it, any action or proceeding, whether voluntary or compulsory, having as its object the winding-up of the company;
 - (ii) an administrator is appointed, or steps are taken for the appointment of an administrator, under any relevant Law in respect of it;
 - (iii) enters into a composition or other arrangement with its creditors, other than a voluntary winding-up by members for the purpose of reconstruction or amalgamation;
 - (iv) has a mortgagee or other creditor take possession of any of its assets; or
 - (v) a receiver or receiver and manager is appointed, or steps are taken for the appointment of a receiver or receiver and manager, in respect of it.

78. Payments on Termination for Default or Insolvency

78.1 If the Contract is terminated by the Shire under clause 76 (Powers on Contractor default) or clause 77 (Termination for Contractor insolvency), the Shire must pay the

Contractor the Price due in respect of any part of the Services which have been properly performed and not paid for at the date of termination less the sum of:

- (a) any amount the Shire is entitled to recover from the Contractor under the Contract; and
- (b) the amount of any damages or losses suffered or incurred by the Shire as a consequence of, or in connection with, any default by the Contractor or as a consequence of the exercise by the Shire of its power of termination (including, without limitation, the cost of making good any defaults in the Contractor's performance of the Services, any amount by which the cost to the Shire of completing the Services which should have been performed in the remainder of the Contract Term exceeds the amount which would otherwise have been payable to the Contractor, the cost to the Shire of providing emergency and temporary services, and losses, and all legal costs on a full indemnity basis).

- 78.2 The amount payable under this clause 78 is to be determined by the Contract Manager and notified to the parties. The determination must be accompanied by details of the underlying calculations and the reasons for the determination.
- 78.3 If the amount payable under this clause as determined by the Contract Manager is a positive amount, it must be paid by the Shire to the Contractor within 10 Business Days of receipt of notice of the Contract Manager's determination.
- 78.4 If the amount payable under this clause as determined by the Contract Manager is a negative amount, it must be paid by the Contractor to the Shire within 10 Business Days of receipt of notice of the Contract Manager's determination.
- 78.5 Nothing in this clause affects clause 71 (Continuing obligations).

79. Termination for Convenience

- 79.1 The Shire may terminate the Contract at any time on three months' notice for any reason.
- 79.2 If the Contract is terminated by the Shire under this clause, the Shire must pay the Contractor:
- (a) the Price due in respect of any part of the Services which have been properly performed and not paid for at the date of termination less the sum of (a) any amount the Shire is entitled to recover from the Contractor under the Contract and (b) the amount of any damages suffered or incurred by the Shire as a consequence of any default by the Contractor;
 - (b) an amount to reimburse the Contractor for all materials and other items purchased by the Contractor for the Services (apart from items or materials already paid for as part of the Price), provided that good title to and possession of those items or materials passes to the Shire upon payment;

- (c) an amount to reimburse the Contractor for all costs and liabilities incurred by the Contractor in and for the future performance of the Contract (apart from items already paid for as part of the Price), provided that wherever possible and required by the Shire the benefit of the costs or liability incurred is transferred to the Shire upon payment;
- (d) an amount to reimburse the Contractor for all demobilisation costs reasonably and necessarily incurred by the Contractor as a consequence of the early termination; and
- (e) an amount to reimburse the Contractor for all redundancy and employee relocation costs reasonably and necessarily incurred by the Contractor as a consequence of the early termination,

but without any allowance for loss of profit suffered by the Contractor.

- 79.3 The Contractor has a duty to do what it reasonably can to ensure that the costs recoverable from the Shire under clause 79.2 are minimised. The Contractor must consult with the Shire prior to incurring costs under clause 79.2(d) and clause 79.2(e).
- 79.4 Without limiting anything in clause 79.2, amounts recoverable by the Contractor under clause 79.2 include costs incurred by an Agent of the Contractor where it is reasonable for the Agent to seek reimbursement of those costs from the Contractor.
- 79.5 The amount payable under this clause is to be determined by the Contract Manager and notified to the parties within 10 Business Days after receipt of a Payment Claim from the Contractor (which Payment Claim must not, unless otherwise agreed, be submitted until after the actual date of termination of the Contract). The Contract Manager's determination must be accompanied by details of the underlying calculations and the reasons for the determination.
- 79.6 If the amount payable under this clause as determined by the Contract Manager is a positive amount, it must be paid by the Shire to the Contractor within 10 Business Days of receipt of notice of the Contract Manager's determination.
- 79.7 If the amount payable under this clause as determined by the Contract Manager is a negative amount, it must be paid by the Contractor to the Shire within 10 Business Days of receipt of notice of the Contract Manager's determination.
- 79.8 Nothing in this clause affects clause 71.

80. Termination by the Contractor

- 80.1 If the Shire has failed to pay to the Contractor any amount due under the Contract (other than an amount which is the subject of a dispute or difference under the Contract or any legal proceedings commenced in respect of the Contract), within 10 Business Days after it becomes payable in accordance with the Contract, the Contractor may give notice to the Shire stating that notice of termination under this Contract may be served if payment is not made within a further 10 Business Days. If the Shire fails to make payment within 10 Business Days of receipt of such notice, the Contractor may, by

further notice to the Shire, either suspend the performance of the Services or terminate the Contract. Any suspension of the performance of the Services under this clause does not prevent the Contractor later terminating the Contract, including during any period that the performance of the Services is suspended.

- 80.2 Upon termination of the Contract by the Contractor under this clause, without prejudice to the accrued rights or remedies of either party or the other liabilities of the parties, the Contract Manager must make a determination in accordance with clause 79 (Termination for convenience) and payment must be made in accordance with that clause.

Part P General

81. Warranties

- 81.1 Each party warrants that it has the legal capacity, and is fully authorised, to enter into the Contract.
- 81.2 The Contractor warrants that:
- (a) it is not at the date of the Contract subject to any litigation in contravention of any Law that could impact adversely on the Shire or the Contractor's ability to perform the Services;
 - (b) it is not subject to any Conflict of Interest; and
 - (c) in entering into the Contract it has not relied on any information provided to it by the Shire, other than information included in the Contract.

82. Definitions and References

In this Contract, terms defined in Annexure 1 have the meanings indicated therein, unless that meaning is inconsistent with the context in which the term is used.

83. Notices

- 83.1 A notice required or permitted to be given by a party, body or person to another party, body or person under this Contract must be legible and in writing and must be addressed to the recipient party at the email or mailing address given in the Contract Details.
- 83.2 A notice given to a party, body or person in accordance with this clause 83 must be treated as having been duly given and received:
- (a) if handed to the Party's Representative, immediately;

- (b) if delivered to a party's address, on the Day of delivery;
- (c) if sent by pre-paid mail, on the third Day after posting; or
- (d) if transmitted by email to a party's email address, on the day of transmission.

83.3 Notwithstanding the foregoing:

- (a) the parties may agree on a document control system to use for service of notices; and
- (b) notices issued under clauses 75 to 80 must be served personally.

84. Relationship Between the Parties

84.1 There is no partnership, or intention to create a partnership, between the parties and no fiduciary duties.

84.2 If the Contractor consists of two or more parties:

- (a) this Contract binds the parties comprising the Contractor severally and jointly; and
- (b) a representation, warranty or undertaking made by one of the parties comprising the Contractor is made by each and all of them.

84.3 The Contractor must not:

- (a) hold itself out as being an agent of the Shire or being in any other way entitled to make any contract on behalf of the Shire or to bind the Shire to the performance, variation, release or discharge of any obligation, or
- (b) hold out its Agents, or allow its Agents to hold themselves out, as being employees or agents of the Shire.

85. Legal Operation

85.1 The Contract does not fetter or restrict the powers or discretions of the Shire in the exercise of its statutory functions.

85.2 The rights and remedies of a party under the Contract are not waived by any representation, statement or conduct unless a notice of an express intention to waive rights and remedies is given to the other party in writing.

85.3 If a provision of the Contract is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable. If it is not possible to read down

a provision as required in this clause, the offending part of the provision is severable without affecting the validity or enforceability of the remainder of the Contract.

- 85.4 This Contract may be amended only by a written instrument duly executed by the parties.
- 85.5 For the avoidance of doubt, the parties agree that, notwithstanding the date of execution of the Contract, the Services provided to the Shire by the Contractor on and from the Commencement Date are governed by the Contract.

86. Entire Agreement

The Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which the Services are to be performed by the Contractor. All previous negotiations and understandings between the parties on this subject matter cease to have effect from the Commencement Date.

87. No Assignment

- 87.1 The Contractor must not assign any of its rights, or novate any of its rights or obligations, under the Contract, except with the prior written consent of the Shire.
- 87.2 Consent to assignment or novation may be given subject to any conditions which the Shire considers appropriate. All reasonable internal and external costs of the Shire (including reasonable legal and other consultants' costs) in considering and documenting any assignment or novation requested by the Contractor must be met by the Contractor.
- 87.3 For the purposes of this clause 87, an assignment of the Contractor's rights under this Contract includes any change in the beneficial ownership of the share capital of the Contractor, if it is a company, which alters the effective control of the Contractor.

88. Changes to the Contract

All changes to the Contract (other than changes authorised and made in accordance with an express provision of the Contract) must be agreed in writing by the parties.

89. Governing Law and Jurisdiction

This document is governed by Victorian law and the parties submit to the non-exclusive jurisdiction of the courts of Victoria.

90. Proportionate Liability Legislation

To the maximum extent permitted by Law the parties agree that the operation of the Proportionate Liability Legislation is excluded in relation to all and any rights, obligations and liabilities under the Contract whether such rights obligations or liabilities are sought to be enforced as a breach of contract or claim in tort (including negligence), in equity, under statute or otherwise at Law.

Part Q Interpretation

91. Document Change Management

- 91.1 So as to identify and keep track of changes to the Contract Documents, the Contract Manager will, within 10 Business Days of the date of execution of the Contract:
- (a) compile 2 complete sets of the Contract and provide one of those sets to the Contractor; and
 - (b) establish and thereafter maintain up to date at all times a Contract Document register containing:
 - (i) the then current version number and date of each Contract Document;
 - (ii) a summary of all agreed changes made to the Contract Documents including the date on which each version or revision became effective (for example the date of any applicable Variation direction); and
 - (iii) a copy of all superseded Contract Documents.
- 91.2 Each party must ensure that procedures are in place and enforced to ensure that the persons administering the Contract or performing any Services have at all times access to the Current version of the Contract and that outdated versions are withdrawn from use. Where documents are kept in electronic format, a back-up must be kept and the media must be tested from time to time and updated where appropriate to ensure ongoing accessibility and integrity of the records.
- 91.3 If there is a discrepancy between a version of a Contract Document and any other version, the Current version held by the Contract Manager in the Contract Document register prevails (subject to proven error, negligence or fraud).
- 91.4 For the purposes of any dispute, claim or action under or concerning the Contract, the Contract Document register held by the Contract Manager will be conclusive as to the terms of the Contract applicable at the 'point in time' relevant to the dispute (subject to proven error, negligence or fraud).
- 91.5 The Contractor is entitled to have access to a hard copy and to a write-protected soft copy of the Contract Document register at any time upon the giving of reasonable notice.

92. Interpretation

- 92.1 The following rules apply in the interpretation of this Contract, except where the context or words used indicate otherwise:
- (a) headings are for convenience only and do not affect interpretation;
 - (b) words expressed in the singular include the plural and vice versa;
 - (c) a reference to a gender includes a reference to each other gender;
 - (d) where a term is assigned a particular meaning, other grammatical forms of that term have corresponding meanings;
 - (e) a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;
 - (f) a reference to any Law is a reference to any Law amending, consolidating or replacing the named Law;
 - (g) a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act;
 - (h) a reference to any thing (including the Contract, a clause or provision of the Contract, the Services or the Assets) includes the whole or any part of that thing;
 - (i) a reference to a schedule, annexure or a clause in a Contract Document means a reference to a schedule or annexure to, or a clause of, that Contract Document;
 - (j) 'including' is not a word of limitation;
 - (k) a reference to a party in a document includes that party and its successors, permitted assigns, receivers, receivers and managers, liquidators, administrators and legal personal representatives;
 - (l) a reference to a Contract Document is a reference to the Current version of that document, unless otherwise stated (and subject to proven error, negligence or fraud); and
 - (m) a reference to any document (other than a Contract Document) is a reference to that document as updated or changed from time to time.
- 92.2 The Contract must not be interpreted to the disadvantage of one party on the basis that that party prepared or put forward any document comprising part of the Contract.
- 92.3 Terms used in the Contract and defined in Law, such as 'tax invoice', 'adjustment note' and 'taxable supply' have the meanings given to them by Law, where this is consistent with the context.
- 92.4 If there is any discrepancy or inconsistency between the Contract Documents, the Contract Manager must make a determination as to the proper interpretation of the Contract and

the parties must give effect to such interpretation. No such determination of the Contract Manager shall be construed as giving rise to a Variation.

- 92.5 In this Contract, a reference to '\$' or 'dollars' is a reference to Australian dollars.
- 92.6 Where an act or thing is to be done on or by a particular day and that day is not a Business Day, the act or thing (in the case of a payment of money) must be done on or by the preceding Business Day and (in any other case) on or by the next Business Day.
- 92.7 In this Contract, where references are made to an obligation of the Contract Manager, Senior Contract Manager, Contractor's Representative, Senior Contractor's Representative or Service Management Team:
- (a) the Shire must ensure that the Contract Manager and Senior Contract Manager obligations are complied with;
 - (b) the Contractor must ensure that the Contractor's Representative and Senior Contractor's Representative obligations are complied with; and
 - (c) both parties must ensure that they do everything required on their part to ensure that the Service Management Team obligations are complied with, provided that, where the Service Management Team is required to agree or determine a matter and fails to do so within a reasonable time, the Shire will determine the matter acting reasonably.

93. Indexation of Amounts

Where the Contract refers to an amount of money as being 'Indexed', that amount will be indexed for movement in the Applicable Index as at each Adjustment Date in accordance with clause 43.

94. Reference Documents

- 94.1 Where documents are referred to in the Contract, the Contractor must make itself aware of the requirements of such documents. The Shire will not consider any claim resulting from the Contractor failing to become acquainted with the various documents included or referred to in the Contract.
- 94.2 Changes to any Reference Documents to the version that existed as at the Commencement Date are to be recorded and version control is maintained in accordance with clause 91.

95. Counterparts

This Contract may be executed in any number of counterparts.

96. Annexures

The parties acknowledge and agree that some Annexures refer to a USB, which contains the annexure referred to in the relevant Annexure, and the parties acknowledge as having received a copy of the USB at the time of execution of this Contract.

Contract Details

Item	Details																		
Item 1	<p>The initial Contract Manager is: Tony Medina</p> <p>The initial Senior Contract Manager is: Tom Haines-Sutherland</p>																		
Item 2	<p>The initial Contractor's Representative is: John Richardson</p> <p>The initial Senior Contractor's Representative is: Brendan Jolly</p>																		
Item 3	<p>Relevant addresses for service of notices are as follows:</p> <table><tr><td>Shire</td><td>Mail:</td><td>90 Besgrove Street, Rosebud, Victoria 3939 (attn: Chief Executive Officer)</td></tr><tr><td></td><td>Email:</td><td>CEO@mornpen.vic.gov.au</td></tr><tr><td>Contract Manager</td><td>Mail:</td><td>90 Besgrove Street, Rosebud, Victoria 3939 (attn: Tony Medina)</td></tr><tr><td></td><td>Email:</td><td>Tony.Medina@mornpen.vic.gov.au</td></tr><tr><td>Contractor's Representative</td><td>Mail:</td><td>Level 1, Building 7 Botanicca Corporate Park, 572 Swan Street, Richmond 3121 (attn: John Richardson)</td></tr><tr><td></td><td>Email:</td><td>John.Richardson@fultonhogan.com.au</td></tr></table>	Shire	Mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn: Chief Executive Officer)		Email:	CEO@mornpen.vic.gov.au	Contract Manager	Mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn: Tony Medina)		Email:	Tony.Medina@mornpen.vic.gov.au	Contractor's Representative	Mail:	Level 1, Building 7 Botanicca Corporate Park, 572 Swan Street, Richmond 3121 (attn: John Richardson)		Email:	John.Richardson@fultonhogan.com.au
Shire	Mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn: Chief Executive Officer)																	
	Email:	CEO@mornpen.vic.gov.au																	
Contract Manager	Mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn: Tony Medina)																	
	Email:	Tony.Medina@mornpen.vic.gov.au																	
Contractor's Representative	Mail:	Level 1, Building 7 Botanicca Corporate Park, 572 Swan Street, Richmond 3121 (attn: John Richardson)																	
	Email:	John.Richardson@fultonhogan.com.au																	



Signing page

Executed as an agreement

Executed for and on behalf of **Mornington Peninsula Shire Council** by its representative in the presence of:

I/S

Signature of witness

Alison Munro

Full name of witness (print)

I/S

Address of witness (print)

I/S

Signature of representative

John Baker

Full name of representative (print)

Executed by Fulton Hogan Industries Pty Ltd ACN 54 000 538 689 by its duly authorised Attorneys under Power of Attorney dated 5 December 2023 / FHAustGrp001 who confirm that they have no notice of revocation of power:

I/S

Signature of Attorney

Peter Curl

Name of Attorney

I/S

Signature of Attorney

Brendan Jolly

Name of Attorney

Annexure 1 Definitions

Acceptable Standard means, in relation to a New Asset:

- (a) with a certified design life of not less than 20 years in the case of a road pavement and not less than 100 years in the case of a bridge or major culvert and constructed in accordance with standards and specifications approved by the Contract Manager; and
- (b) where the New Asset includes a PCI Assessable Pavement, the PCI Assessable Pavement is at a standard no less than the Required PCI for its PCI Road Category.

Action Register means the document used interactively by the Contractor and Shire to keep record of key actions arising from Progress Meetings.

Activity means an activity defined by an Activity Specification.

Activity Specification means an activity specification included in Schedule 2 of Annexure 4 (Activity Specifications). Each Activity Specification is identified by the heading 'Activity Specification'.

Adjustment means an adjustment to an amount under the Contract in accordance with clause 43.

Adjustment Date means:

- (a) 1 July 2025; and
- (b) 1 July in each Contract Year thereafter.

Agent means, in respect of a party, an officer, employee, contractor, consultant, invitee or agent of that party (but never includes the other party). In the case of the Shire, Agent includes a Councillor.

Annual Program means the annual program developed in accordance with clause 12 from time to time.

Annual Review means the annual review to be undertaken in accordance with clause 48.

Applicable Index means, with respect to a rate or price in the Contract, the index applicable to that rate or price, as set out in schedule A2-6 (Applicable Indices).

Asset Data means the Asset data contained in the Asset Inventory from time to time and all other data relating to the Assets.

Asset Handover means the handover of responsibility for provision of the Services with

respect to the New Assets, as set out in clause 50.5.

Asset Handover Notice	means a notice issued in accordance with clause 50.4.
Asset Inventory	means the list of Assets specified in Annexure 9 as varied from time to time by the Shire.
Asset Inventory Change	means a change to the Asset Inventory made in accordance with clause 50.
Asset Maintenance Data	has the meaning given in Annexure 6.
Asset Management Information System	has the meaning given in Annexure 6.
Assets	means, at any time, the assets as defined in clause 13 at that time.
Authority	means a Utility Authority and any governmental or statutory body with powers, duties or functions with respect to anything relevant to the performance of the Services acting in its statutory capacity.
Award Date	means the date on which this Contract has been completed and signed by the Shire and the Contractor.
Business Day	means a day that is not: <ul style="list-style-type: none"> (a) a Saturday or Sunday; or (b) a day that is wholly or partly observed as a public holiday throughout Victoria.
CAMS (Community Assets Maintenance Services)	means the services required to be performed for the maintenance of the Shire's overall assets, including those under the CAMS Contracts, and those performed in house by the Shire.
CAMS Contractors	means, collectively, the contractors engaged by the Shire under the CAMS Contracts and CAMS Contractor means any one of them.
CAMS Contracts	means, collectively, the contracts between the Shire and each CAMS Contractor to perform the relevant package of the Community Asset Maintenance Services (including this Contract), and CAMS Contract means any one of them.
Commencement Date	means 1 July 2024.
Committees of Management	means a group of locally elected or appointed citizens, a municipal council, statutory body or a trustee appointed pursuant to the provisions of the <i>Crown Land (Reserves) Act 1978</i> or <i>The Local Government Act 1989</i> .

Completion	<p>means the stage in any Ordered Work, Shire Works or Works involved in creating a New Asset when:</p> <ul style="list-style-type: none"> (a) the Work is complete; (b) all tests required with respect to the Work prior to its handover to the Shire have been carried out and passed; and (c) all documents and other information which, in the opinion of the Contract Manager, are essential for the use, operation and maintenance of the Works have been supplied to the Shire.
Condition	means, in respect of an Asset, the physical and functional condition of that Asset.
Condition Assessment Report	means the report prepared by the Shire in accordance with clause 48A.1.
Confidential Information	<p>means all information and materials, in any form, not lawfully in the public domain, in the possession of or under the control of the Contractor or to which the Contractor gains access at any time including the period preceding the execution of this Contract:</p> <ul style="list-style-type: none"> (a) concerning the Shire, its business, systems, customers, ratepayers, residents, properties, assets and affairs, (b) concerning the terms and subject matter of this Contract, or (c) which the Shire nominates in writing to be confidential - but excluding information which is at any time: (d) in the public domain, other than by a breach by the Contractor of this Contract, or (e) known to the Contractor as a result of being provided by or acquired from a source having the right to disclose the information on a non-confidential basis to the Contractor.
Conflict of Interest	means any actual or perceived interest, circumstance, condition or thing which may adversely affect the Contractor's ability to perform the Services efficiently, effectively and in accordance with the highest standards of probity, integrity and honesty, including, without limitation, any interest of a Relevant Party.
Contract	<p>means:</p> <ul style="list-style-type: none"> (a) at the Commencement Date, this document, its schedules and its annexures (including any USB or other data storage device incorporated by reference or signed for identification), and (b) at any subsequent time, this document, its schedules and its annexures as modified in accordance with its terms and evidenced by the Contract Document register maintained by the Contract Manager in accordance with clause 83 (document change management), and <p>expressly includes any Work Order issued in accordance with the</p>

Contract.

Contract Details	means the Contract Details attached to this document.
Contract Documents	means, at any time, the documents comprising the Contract at that time including, without limitation, the Reference Documents and any Work Order Documents.
Contract Manager	means a person appointed to the role of Contract Manager from time to time in accordance with clause 4.2.
Contract Material	means all material in any form at all that is produced by or provided to the Contractor (including material provided by or to an Agent of the Contractor) as a requirement of the Contract.
Contract Term	means the Initial Contract Term and the First Extended Contract Term and Second Extended Contract Term as applicable.
Contract Year	means each period of 12 months of the Contract Term beginning on 1 July 2024.
Contractor	means the party identified as the Contractor in this document.
Contractor's Plant	means all or any of the vehicles, plant, implements, appliances and equipment used by the Contractor for carrying out its obligations under this Contract, whether or not owned by the Contractor, including as set out in Annexure 10.
Contractual Time Requirement	means a Response Time, a Date for Completion and any other time by which something is required to be done under the Contract, as extended in accordance with clause 43 (Impact on time) or in accordance with the conditions of any Work Order.
Customer Service Plan	has the meaning given to it by clause 18.
Day	means all calendar days apart from Christmas Day and Good Friday.
Default Rate	means, at any time, a rate equivalent to the interest rate payable on judgments of the Supreme Court of Victoria at that time.
Defect	means a defect, fault, error, omission in the workmanship, materials or services forming part of the Services or any other failure to provide the Services in accordance with the Contract.
Defects Liability Period	means, with respect to any Service, the defects liability period applicable to that Service as defined by clause 68.1.
Dispute Resolution Process	means the process for resolution of disputes as set out in clause 72 (Disputes) (not including the statement of intention in clause 72.1).
EMA Emergency	has the same meaning as 'emergency' under the <i>Emergency</i>

Management Act 1986 (Vic).

Emergency	means an EMA Emergency or any unplanned occurrence on or affecting the Assets or adjacent areas, which prejudices the safety of the public (including road users and those living adjacent to the Assets) or which affects the structural integrity of an Asset or any structure above or below an Asset.
Environment	means the natural and man-made environment.
EPA	means the Environment Protection Authority as constituted in accordance with the <i>Environmental Protection Act 1970</i> .
Excepted Risk	means any of the following: <ul style="list-style-type: none"> (a) a negligent act or omission of the Shire or any of its Agents; (b) a risk specifically excepted in the Contract; (c) war, invasion, act of foreign enemies, terrorist activities, hostilities, (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any Authority; and (d) ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel not caused by the Contractor or the Contractor's Agents.
Excusing Event	means an Excepted Risk, a breach of contract by the Shire or any other circumstance not within the Contractor's reasonable control to prevent.
First Extended Contract Term	has the meaning given in clause 2.2(a).
Force Majeure Event	is limited to the following specific events or circumstances: <ul style="list-style-type: none"> (a) earthquake; (b) fire, apart from fire caused by the Contractor's Services, explosion, including radioactive, chemical, biological or toxic release or explosion; (c) acts of the public enemy, terrorism, piracy, act of war, invasion, act of foreign enemies, hostilities (whether declared or not), blockades, civil war, rebellion, revolution, insurrection or military or usurped power, martial law or confiscation by order of any government or public authority; (d) natural catastrophes and disasters such as cyclone, landslide, typhoon, hurricane, tsunami, wildfire, mudslide or mudflow, explosion or volcanic activity; (e) flooding (and its effects), being the overflowing of water on any portion of the site where the Services are performed not

usually submerged which is caused by excessive rainfall;

Flooding will only constitute a Force Majeure Event if it causes inaccessibility of all or parts of the site where the Services are performed and even with the exercise of Good Design and Construction Practices there is no reasonable alternative access available to those parts of the Site to undertake the Works;

- (f) extreme weather which has never occurred previously at the site where the Services are performed (by reference to weather records kept in the preceding 25 years in respect of weather at the site where the Services are performed) (excluding circumstances of paragraph (e) of this definition);
- (g) State-wide industrial action;
- (h) sonic booms caused by aircraft travelling at sonic or supersonic speeds;
- (i) unexploded ordinance and munitions, except as may be attributable to the Contractor's use of munitions and explosives;
- (j) air pollution (including as a result of a bushfire) which is likely to adversely affect the health of the Contractor's personnel (including any subcontractor and any of a subcontractor's personnel, contractors, suppliers, employees, officers, agents or consultants) if they are required to perform the Services at the site where the Services are performed;

but excluding

- (k) epidemic, pandemic or government advice or order in relation to an epidemic or pandemic which materially and directly relates to and materially affects the performance of the Services, including recommending or mandating the isolation of the Contractor's personnel (including the Contractor's subcontractor's personnel) who are required for performance of the Services, or which has the effect of preventing such personnel from being present on the site where the Services are performed, or the shutdown of the site where the Services are performed, or which directly relates to and materially affects the transportation or manufacture of plant, materials and equipment required by the Contractor to perform the Services;

and only where those events or circumstances:

- (l) directly affect the site where the Services are performed or the Services;
- (m) are beyond the reasonable control of the affected party; and

where the affected party is the Contractor, are such that, even with the exercise of good design and construction practices, the Contractor would not reasonably be able to prevent or overcome the effect of that event on the performance of the Contractor's obligations under this

	Contract.
General Requirements	means the general requirements set out in Annexure 3.
In-Term Review	means the review by for the Service Management Team as set out in clause 48.3
Indexed	has the meaning given in clause 93 (Indexation of amounts).
Initial Contract Term	means the initial term of the Contract as described in clause 2.
Innovation Fund	means the fund (if any) that may be set up by the Shire to facilitate payment of any Variations following acceptance of any Innovation Offers submitted by CAMS Contractors - including by the Contractor under this Contract.
Innovation Offer	has the meaning given to it by clause 48.6.
Inspections	has the meaning given in clause 9.3.
Integrated Management Plan or IMP	has the meaning given in clause 18.
Intellectual Property	means copyrights, patents, trademarks, designs (registered or unregistered), trade secrets and know how.
Intervention Level	means, with respect to an Asset, the condition specified as an Intervention Level in the Activity Specifications.
Issue	means a question or other matter or issue for determination, a problem, a concern, a difference of opinion, a failure to agree or inability to reach consensus within the time required by the Contract or at all, a stalemate or any other matter or issue of any nature.
KPIs	means the Key Performance Indicators set out in Annexure 7.
KPI Abatement	has the meaning given to it in Annexure 7.
Law	means: <ul style="list-style-type: none"> (a) a statute, ordinance, code, rule, regulation, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial, administrative or regulatory decree, judgment or order including the terms and conditions of any licence, permit, consent, certificate, authority or approval issued under any of them; (b) obligations at common law and in equity; and (c) the requirements of competent Authorities.

Local Participation Plan	has the meaning given to it by clause 18.
Lump Sum Items	means the Pavement Resurfacing Services, and Maintenance Services which are to be performed on a lump sum basis as specified or set out in Annexure 2.
Lump Sum Payment	has the meaning given to it by clause 40.2.
Maintenance Requirement	means a Condition of the Assets and any other act or omission or thing requiring Rectification to comply with this Contract, including in accordance with Annexure 4, and including a Defect or an Intervention Level.
Maintenance Schedule	has the meaning given in Annexure 6.
Maintenance Services	means the Work and Services and includes maintaining the Assets to a standard that is within Intervention Levels as specified in more detail in Annexure 4 and this Contract.
Management Plan(s)	has the meaning given in clause 18;
Mandatory Asset Handover Notice	means a notice issued under clause 50.5.
Make-safe Work	means urgent work required to prevent or mitigate the risk of loss or damage to property or injury or death to persons.
Measured PCI	means the PCI measured at a Pavement Performance Review.
Minor Works	has the meaning in clause 11.2.
Monthly Service Payment (MSP)	has the meaning given in clause 39.
New Asset	<p>means, at any time, a building, an extension to an existing building, or other asset of the same type as the Assets:</p> <ul style="list-style-type: none"> (a) for which the Shire is or becomes responsible; and (b) which is not already part of the Assets at that time. <p>A New Asset may be:</p> <ul style="list-style-type: none"> (c) an asset constructed as a result of Shire Works; (d) an asset constructed by others within the Shire (for example, as part of a new development or subdivision), responsibility for which transfers to the Shire on completion; (e) an asset constructed by the Contractor as Ordered Work; and (f) an asset for which the Shire becomes responsible as a result of a change in Law or an agreement with the Roads



Corporation (VicRoads), a Utility Authority or Government Department.

Offer	has the meaning as given in clause 48.5(c).
OH&S	means occupational health and safety.
OH&S Plan	has the meaning given to it by clause 18.
Open Book Basis	means the provision of information by the Contractor to the Shire on a transparent basis in accordance with the requirements of clause 44.
Ordered Work	means Services ordered by a Work Order in accordance with clause 10.
Ordered Work Payment	has the meaning given to it by clause 39.1(c).
Other Contractors	means any other contractors engaged by the Shire to perform works or provide services to the Assets.
Party's Representative	means: <ul style="list-style-type: none"> (a) the Contract Manager in respect of the Shire; and (b) the Contractor's Representative in respect of the Contractor.
Pavement Condition Index (PCI)	means, for each PCI Road Category, the index for measurement of the Condition of the PCI Assessable Pavements in that PCI Road Category.
Pavement Performance Review	means the Shire's review of the Contractor's performance against the Required PCI in accordance with clause 48A.
Pavement Resurfacing Program	means the pavement resurfacing program developed and implemented to maintain the Required PCI in accordance with Annexure 5.
Pavement Resurfacing Services	means the services provided as part of Pavement Resurfacing Program.
Payment Claim	means a payment claim provided under clause 41.
PCI	is an abbreviation of Pavement Condition Index.
PCI Assessable Pavements	means pavements to be included in a Condition Assessment Report pursuant to Annexure 5.
PCI Cure Plan	means a plan provided by the Contractor and approved by the Contract Manager in accordance with clause 48A.

PCI Default Event	means a failure to achieve the Required PCI for any PCI Road Category as demonstrated by the Measured PCI being less than the Required PCI at any Pavement Performance Review.
PCI Implementation Plan	has the meaning given in clause 18.
PCI Road Category	has the meaning given in Annexure 5.
Performance Security	means a security in the form and amount required by clause 67 (Performance Security) and includes the initial Performance Security required under clause 67.3 and each replacement Performance Security required under clause 67.4.
Personal Information	means information or an opinion (including information or an opinion forming part of a database) whether true or not, and whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.
Price	means the Monthly Service Payment and any other amount payable to the Contractor under the Contract.
Progress Meeting	means a meeting between the Contract Manager and the Contractor's Representative convened in accordance with clause 5.
Progress Report	means a report prepared in accordance with clause 6.
Proportionate Liability Legislation	means Part IVAA of the <i>Wrongs Act 1958</i> (Vic).
Proposal	means the Proposal submitted by the Contractor in response to the Shire's Request for Proposal, RFP Number: CN2635.
Provisional Quantity Allowances	means the allowances specified in Annexure 2 for each of the Provisional Quantity Items.
Provisional Quantity Items	means the Services which are to be performed on a Provisional Quantity basis as specified or set out in Annexure 2.
Provisional Quantity Payment	means the amounts the Contractor is entitled to be paid for performing the Services that are stated to be Provisional Quantity Items.
Provisional Quantity Rates	means the rates for the Provisional Quantity Rates Items specified in Annexure 2.
Provisional Sum Allowances	means the allowances specified in Annexure 2 for each of the Provisional Sum Items.
Provisional Sum Items	means the Services which are to be performed as Provisional Sums as specified or set out in Annexure 2.

Provisional Sum Payment	has the meaning given to it by clause 40.4.
Provisional Sum Work Order	means the direction accepting a Contractor's Quotation for Provisional Sum Item Work under clause 9.4(b)(i).
Public Holiday	means a public holiday, within the meaning of the <i>Public Holidays Act 1993</i> , applying in the Shire.
Qualifying Change in Law	<p>means a change in Law or Standards (limited to Standards which have the force of Law) occurring after the date of the Contractor's Proposal other than:</p> <ul style="list-style-type: none"> (a) a change in income tax applying to the Contractor, or (b) a change that would have been anticipated by a reasonably competent contractor in the Contractor's position.
Quotation for Provisional Sum Item Work	means a quotation for Provisional Sum Item Work required under clause 9.4(a).
Quality and Risk Management Plan	forms part of the Integrated Management Plan and has the meaning given in clause 18.
Rates for Asset Inventory Change	means the rates so titled and included in schedule A2-5 contained in Annexure 2 (Rates for Asset Inventory Changes).
Receipt Date	has the meaning given to it by clause 72.4.
Rectify	<p>means all work required to ensure the Services and the Condition of the Assets comply with the requirements of the Contract including to fix, reinstate, attend or undertake other specified or appropriate activity having regard to the circumstances applying at the time, in order to respond to a Maintenance Requirement or other situation, as applicable, and includes, without limitation and as applicable, temporary repair, make safe, Initial Response (in the case of a Call Out Service) and compliance with Work Method Requirements (where the Maintenance Requirement is governed by an Activity Specification).</p>
Reference Document	means an Australian Standard referenced directly or indirectly in the Contract.
Rehabilitation and Resurfacing Collaborative Works Program	means the rehabilitation and resurfacing collaborative works program developed and implemented in accordance with Annexure 5.
Relevant Party	<p>means:</p> <ul style="list-style-type: none"> (a) the Contractor and the Contractor's Agents;



	<p>(b) an associate of the Contractor or the Contractor's Agents;</p> <p>(c) a company in which the Contractor or the Contractor's Agents are involved, whether as an officer, shareholder, employee or otherwise; or</p> <p>(d) any other person with whom the Contractor or the Contractor's Agents has or have a financial or business association, whether directly or indirectly.</p>
Reporting Unit	means the units of measure specified for each Activity contained in Annexure 4.
Representative	means a representative of a party appointed to the role of Representative in accordance with the Contract.
Request for Quotation	has the meaning given to it by clause 10.2(a).
Required PCI	means the Required PCI for each PCI Road Category (where applicable), calculated in accordance with Annexure 5.
Response Time	means the time within which a Maintenance Requirement must be Rectified in accordance with clause 9.6.
Review of insurance levels	has the meaning given to it by clause 61.1(b).
Road Management Plan	means the Shire's approved road management plan prepared in accordance with the <i>Road Management Act 2004</i> (Vic).
Safety Breach	means non-compliance with the OH&S Plan, any obligation of the Contract concerned with OH&S or any Law concerned with OH&S.
Second Extended Contract Term	has the meaning given in clause 2.2(b).
Senior Contract Manager	means the senior person appointed by the Shire in accordance with clause 4.3.
Senior Contractor's Representative	means the senior person appointed by the Contractor in accordance with clause 4.5.
Senior Representative	means in respect of a party, the senior person appointed in accordance with clause 4 to represent that party.
Service Management Team	means the Senior Contract Manager and the Senior Contractor's Representative and any other senior personnel agreed by the parties.
Services	means the work, services and obligations to be performed by the Contractor under this Contract as specified in Annexure 3, Annexure 4,

Annexure 5 and Annexure 6, any Ordered Work, any Variations not encompassed by the foregoing and any other work or services required by the Contract.

Shire	means Mornington Peninsula Shire Council, and may also be referred to as "Council"
Social Procurement Plan	has the meaning given to it by clause 18.
Specification	means all Contract Documents that specify the quality, method, timing or other requirements for performance of the Services, regardless of how those Contract Documents are described.
Standards	means Australian Standards or any other recognised industry standards.
Strategic Priorities	has the meaning given to it by clause 3.1 as updated by the Shire from time to time.
Sustainability Plan	has the meaning given to it by clause 18.
Termination Show Cause Notice	means a notice under clause 75 (Termination show cause).
Traffic Management Plan	has the meaning given to it by clause 18.
Transition In Plan	has the meaning given to it by clause 18.
Uniform Policy	means the uniform policy adopted by the Shire from time to time as notified to the Contractor.
Utilities	means assets owned or operated by Utility Authorities.
Utility Authority	means a provider of infrastructure for services such as gas, electricity, sewage, water and telecommunications, who may be affected by the performance of the Services.
Variation	has the meaning in clause 49.1.
Vitiating Act	has the meaning given to it by clause 64.3.
Waste	means material or energy that have no further use and are released to the environment as a means of disposal.
Work	shall have the same meaning as 'Service'.
Work Method Requirements	means, in respect of any Activity, the work method requirements listed in Annexure 4 (Activity Specifications) for that Activity.
Work Order	means, with respect to any Ordered Work, the Work Order issued for



that Ordered Work in accordance with clause 10.

Work Order Documents

means, with respect to any Work Order, the documents comprising that Work Order including:

- (a) the specifications, drawings and other instructions for the Ordered Work;
- (b) the agreed pricing provisions applying to the Ordered Work; and
- (c) all terms of the Contract that apply to Ordered Work.

Worksite

means, at any time, the place where the Services are being performed at that time.



Annexure 2 Price

Document attached:

1. CN2635 - Annexure 02 - Price



Annexure 3 General Requirements

Documents attached:

1. CN2635 - Annexure 03 - General Requirements
2. CN2635 - Annexure 03 - General Requirements - Attachment 1 - Customer Service Request Management Requirements



Annexure 4 Activity Specification

Document attached:

1. CN2635 - Annexure 04 - Activity Specification



Annexure 5 Pavement Performance and the Road Rehabilitation & Resurfacing Program

Document attached:

1. CN2635 - Annexure 05 - Pavement Performance and the RRRP



Annexure 6 Data Collection and Transfer

Documents attached:

1. CN2635 - Annexure 06 - Annexure 6 - Schedule
2. CN2635 - Annexure 06 - Data Collection and Transfer
3. CN2635 - Annexure 06 - Data Collection and Transfer - Attachment 1 - Schedule 10
(Section 10) - Strategic Asset Management Incl. PCI Plan - BAFO Update



Annexure 7 KPI Regime

Documents attached:

1. CN2635 - Annexure 07 - KPI Regime
2. CN2635 - Annexure 07 - KPI Regime - Attachment 1 - KPI Table



Annexure 8 Not Used

Annexure 9 Asset Data and Reports (Asset Register)

Documents attached:

1. CN2635 - Annexure 09 - Asset Data and Reports
2. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 01 - PCI Condition Data (2018 2021)
3. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 02 - Nominated VicRoads and Bike Paths Report - Street Sweeping and Weed Control
4. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 03 - Pavement Performance - Traffic Count Data
5. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 04 - PCI Condition Data 2005
6. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 05 - PCI Condition Data 2008
7. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 06 - PCI Condition Data 2011
8. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 07 - PCI Condition Data 2015
9. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 08 - 2021+(SURFACE+DEFECTS+--+PATCHING+)
10. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 09 - 2021+(IRI_LANE)
11. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 10 - 2021+(IRI_AVE)
12. CN2635 - Annexure 09 - Asset Data and Reports - Attachment 11 - PCI Works in 2021F 2022F 2023F



Annexure 10 Operations Unit, Key Personnel and Resources

Documents attached:

1. CN2635 - Annexure 10 - Operations Unit, Key Personnel and Resources



Annexure 11 Not used



Annexure 12 Not used

Annexure 13 Management Plans

Documents attached:

1. CN2635 - Annexure 13 - Management Plans
2. CN2635 - Annexure 13 - Management Plans - Attachment 01 - Management and Work Methodology_BAFO Resubmitted
3. CN2635 - Annexure 13 - Management Plans - Attachment 02 - Customer Service Plan_BAFO Resubmitted
4. CN2635 - Annexure 13 - Management Plans - Attachment 03 - Schedule 5 - Occupational Health and Safety
5. CN2635 - Annexure 13 - Management Plans - Attachment 04 - Schedule 6 - Environmental Management
6. CN2635 - Annexure 13 - Management Plans - Attachment 05 - Schedule 7 - Reporting, Compliance and Risk Management
7. CN2635 - Annexure 13 - Management Plans - Attachment 06 - Continuous Improvement
8. CN2635 - Annexure 13 - Management Plans - Attachment 07 - PCI Implementation Plan
9. CN2635 - Annexure 13 - Management Plans - Attachment 08 - 6yr Pave Program & 2 yr Rehab Program
10. CN2635 - Annexure 13 - Management Plans - Attachment 09 - Indicative Pricing of Pavement Treatments
11. CN2635 - Annexure 13 - Management Plans - Attachment 10 - New Road Rehabilitation and Resurfacing Program
12. CN2635 - Annexure 13 - Management Plans - Attachment 11 - Local Economy & Participation Plan
13. CN2635 - Annexure 13 - Management Plans - Attachment 12 - Sustainability Plan
14. CN2635 - Annexure 13 - Management Plans - Attachment 13 - Social Procurement Plan
15. CN2635 - Annexure 13 - Management Plans - Attachment 14 - Transition Plan