



**MORNINGTON
PENINSULA**
Shire

COMMITTED TO A
SUSTAINABLE
PENINSULA



Safer Local Roads

Contract No 1218

with

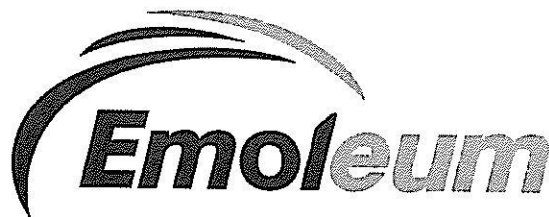


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Agreement

Safer Local Roads
Contract No.1218



**MORNINGTON
PENINSULA**
Shire

**COMMITTED TO A
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Safer Local Roads

contract no. 1218

This agreement is made on 30 June 2006 between the following parties:

1. **Mornington Peninsula Shire Council** (ABN 53 159 890 143) of Besgrove Street, Rosebud Victoria ('Shire'), and
2. **Emoleum** (ABN 14 374 315 641), being a partnership between Emoleum Roads Group Pty Ltd (ACN 099 733 445) and Emoleum Road Services Pty Ltd (ACN 006 673 481) of 140 Watts Road, Mornington, Victoria ('Contractor').

Background

- A. On 1 April 2003, the parties entered into a contract for the routine and minor specific maintenance of roads within the Mornington Peninsula Shire. This contract is known to the parties by the name 'Sustainable Infrastructure Maintenance Contract' ("Prior Contract").
- B. On 11 April 2005, the Shire invited the Contractor to tender for a contract for services relating to the maintenance and management of the Network including sealed pavements, shoulders, drainage, footpath kerb and channel rehabilitation, carparks and other assets and miscellaneous rehabilitation and upgrading of certain roads ("New Services").
- C. The Contractor submitted a tender on 17 June 2005 offering, as an alternative tender, to integrate the services under the Prior Contract with the New Services. The Shire accepted the Contractor's alternative tender, subject to conclusion of the detailed terms of the Contract as set out in this document.

Operative provisions

Part 1 – 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.

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2 Contract Term

The Contract commences on 1 July 2006 and continues until 30 June 2021, unless extended in accordance with part 20 (Contract extensions) or terminated earlier in accordance with part 16 (Default and termination).

3 Definitions

Definitions applicable to this Contract are set out in Annexure 1 (Definitions).

4 Objectives

4.1 The Shire wishes to provide a sustainable and resident-focused local road management service for the residents of Mornington Peninsula Shire.

4.2 With this aim in mind, the Contract has the following objectives:

- .1 **Integration between Shire and Contractor:** Create an integrated framework for the delivery of services so as to ensure that the Services remain responsive to the community, are adaptable to change, continue to provide value for money and utilise the resources, skills, experience and knowledge of both parties.
- .2 **Cost:** Minimise whole-of-life costs of the Assets and provide outstanding value for money in the services provided under the Contract.
- .3 **Environment:** Reflect genuine sensitivity to the environment and a best practice approach to environmental management.
- .4 **Community:** Reflect a genuine commitment to consultation with and responsiveness to the community and its concerns.
- .5 **Safety:** Reflect a genuine commitment to maintaining a safe work culture and a best practice approach to health and safety management for both on site personnel, the public in general and the residents of the Shire.
- .6 **Quality:** Ensure all works are fit for their intended use and integrate smoothly into the Network. Ensure all standards of materials and workmanship reflect appropriate Shire and industry standards.
- .7 **Quality relationship:** Facilitate an open and understanding quality relationship between the Shire and the Contractor.
- .8 **Innovation:** Promote ongoing innovation (including technically, environmentally and financially) consistent with the other objectives of this Contract.
- .9 **Local employment and training:** Maximise local employment and continuing skills development.

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- .10 **Risk sharing:** Promote collective ownership of all risks associated with the delivery of the Services and an equitable sharing of risks and rewards.
- .11 **No blame culture:** Encourage a no blame culture and promote open, straight and honest communication between the parties at all levels.
- .12 **Focus on outcomes:** Encourage a primary focus on delivering outcomes (results) for the residents of Mornington Peninsula Shire, consistent with these SLR Objectives and the provisions of the Contract.

5 Warranties

- 5.1 Each party warrants that it has the legal capacity, and is fully authorised, to enter into the Contract.
- 5.2 The Contractor warrants that:
 - .1 it is not at the date of the Contract subject to any litigation or conflict of interest or in contravention of any Law that could impact adversely on the Shire or the Services, and
 - .2 in entering into the Contract it has not relied upon any information provided to it by the Shire, other than information included in the Contract.

Part 2 – Management of the Contract

6 Management Overview

- 6.1 The parties wish to give contractual effect to the SLR Objectives and provide a flexible framework in which both parties co-operate in the management of the Contract.
- 6.2 The co-operative management of the Contract is formalised at 3 levels:
 - .1 Senior Representatives of the parties – provide a senior level overview, make input into strategic decisions, review recommendations of the Service Management Team, attempt to resolve Issues referred to them and make determinations on behalf of the parties.
 - .2 Service Management Team (SMT), a formal team structure comprising management level representatives of each of the parties - makes recommendations in relation to the management of the Contract and undertakes some traditional Superintendent-type activities as identified in the Contract.

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- .3 Operations Team, a flexible consultative team structure with a core team comprising operations personnel of each of the parties – works to facilitate co-operation in relation to operational matters and day to day interfaces.

7 Management principles and values

- 7.1 The members of the Service Management Team and the Operations Team and the Senior Representatives commit to the following principles and shared values in the exercise of their functions under the Contract:
- .1 A primary focus on satisfying the SLR Objectives and delivering the outcomes required by the SLR Objectives, consistently with the terms of the Contract and the Road Management Plan
 - .2 A peer relationship where all members have an equal say
 - .3 Collective responsibility for the exercise of their functions, for decisions made in the exercise of those functions and for the consequences of those decisions, including an equitable sharing between the parties of any consequent risk and reward
 - .4 All decisions made on a 'Best for Program' basis
 - .5 Encouragement of innovative thinking with a commitment to achieve outstanding results
 - .6 Clear responsibilities within a no-blame culture
 - .7 Open, straight and honest communication
 - .8 Unconditional support to working together co-operatively and to the SLR Objectives
 - .9 All transactions are fully open-book.
- 7.2 Members of the Service Management Team and the Operations Team and Senior Representatives must seek at all times to give effect to the Contract and carry out their functions in a manner consistent with the principles and values set out in clause 7.1.

8 Senior Representatives

- 8.1 Each party must appoint a senior person to represent it in all matters concerning the Contract. The Shire may appoint the Superintendent as its Senior Representative.
- 8.2 Senior Representatives are appointed by notice from the appointing party to the other party. Changes in the identity or contact details of a Senior Representative must be notified promptly. The initial Senior Representatives of the parties are listed in item 1 of schedule 1 (Contract Details).

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- 8.3 Senior Representatives have the following responsibilities:
- .1 Consider and approve or reject recommendations made by the Service Management Team.
 - .2 Make decisions on behalf of the Service Management Team when an Issue is referred to the Senior Representatives in accordance with clause 9.18 or any other provision of the Contract.
- 8.4 Senior Representatives jointly have the power to exercise any function of the Service Management Team, where the Service Management Team has not done so.
- 8.5 When exercising the responsibilities set out in clause 8.3 or the powers set out in clause 8.4, the Senior Representatives must use their best endeavours to act jointly and unanimously. If the Senior Representatives are unable to reach agreement on any Issue within 10 Business Days (or such longer period as the Senior Representatives agree):
- .1 the Issue will be determined by the Contractor in the circumstances provided by clause A3-4 (Annual Reseal Program) (in which event, the Shire may dispute the determination in accordance with the Dispute Resolution Process but, pending resolution of the dispute, the Annual Reseal Program will be as determined by the Contractor, subject only to Variations), and
 - .2 except as provided by 8.5.1, the Issue will be determined by the Superintendent (in which event, the Contractor may dispute the determination in accordance with the Dispute Resolution Process but must, pending resolution of the dispute, comply with the Superintendent's determination).

9 Service Management Team

- 9.1 The role of the Service Management Team is to:
- .1 review and make recommendations to the Senior Representatives in respect of the Annual Reseal Program and any programs required to be developed as part of the Routine Maintenance Services,
 - .2 review and make recommendations to the Senior Representatives in respect of changes to the Accelerated Works Program,
 - .3 conduct the Annual Review,
 - .4 assess and make recommendations to the Senior Representatives in respect of initiatives proposed by either party,
 - .5 review the Performance Standards at the request of either party to ensure that they continue to meet the SLR Objectives and remain 'Best for Program',

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- .6 make recommendations to the Senior Representatives for any changes to the Contract and to the Superintendent for Variations or Minor Works with the objective of ensuring that the Contract continues to be consistent with the SLR Objectives and remains Best for Program,
 - .7 attend community workshops or information sessions conducted by the Contractor (not more than one a year),
 - .8 attend a six monthly co-ordination meeting with the SIMS Contractors,
 - .9 attend tours organised by the Contractor with councillors (not more than one a year),
 - .10 attend an annual quality relationship management workshop with the Shire and the SIMS Contractors,
 - .11 exercise functions conferred by the Contract Documents, and
 - .12 undertake any other roles required and jointly agreed by the parties from time to time.
- 9.2 The Service Management Team must have at least 4 and not more than 6 members at any point in time.
- 9.3 At least 2, but not more than 3, of the members must be appointed by the Contractor. At least 2, but not more than 3 members must be appointed by the Shire.
- 9.4 Appointment of members is by notice from the appointing party to the other party. Changes in the identity of an appointee are to be notified in the same manner. A replacement representative must have relevant skills, qualifications and experience for the position.
- 9.4A The initial members of the Service Management Team are set out in item 1A of schedule 1 (Contract Details).
- 9.5 If a member cannot be present at any meeting, the member may send a proxy. A proxy must be sufficiently skilled and briefed to make a meaningful contribution to the meeting.
- 9.6 The Service Management Team must nominate a chairperson from its members. The chairperson is responsible for convening meetings at the times required by the Contract and for chairing the meetings. The Service Management Team may change the identity of its chairperson as often as it wishes, or it may provide for a rotation in the position.
- 9.7 Decisions of the Service Management Team must be by unanimous consensus of all members in attendance at the meeting.
- 9.8 The Service Management Team may call upon any member of the Operations Team to report to the Service Management Team or to provide

assistance to the Service Management Team in relation to any of its functions.

- 9.9 Where the Service Management Team is considering a matter that relates to a Stakeholder Specialisation, the Service Management Team must call upon and take account of advice provided by the Stakeholder Specialist.
- 9.10 A quorum of members at any meeting is 2 appointees from the Shire and 2 appointees from the Contractor. No decision may be made without a quorum being in attendance. A member is regarded as being in attendance at a meeting where he or she attends by telephone or teleconference (or using any other technology which enables members to conduct a meeting without being physically present in the same room).
- 9.11 The Service Management Team must exercise all its functions honestly, fairly and reasonably, applying the principles and values set out in clause 7 (Management principles and values).
- 9.12 In carrying out its functions, the Service Management Team may obtain expert assistance (in addition to input from the Operations Team and Stakeholder Specialists). The cost of any expert assistance is the joint and equal responsibility of the parties, unless the Service Management Team determines otherwise.
- 9.13 Meetings of the Service Management Team must be held at intervals not exceeding 3 months or within 10 Business Days of any member requesting a meeting.
- 9.14 Secretarial support to the Service Management Team will be provided by the Contractor.
- 9.15 The Contractor must produce minutes which record in writing all resolutions of the Service Management Team. The minutes will be accepted as a true record of proceedings once certified as correct by one Service Management Team member appointed by the Contractor and one Service Management Team member appointed by the Shire.
- 9.16 Where the Contract authorises or requires the Service Management Team to make recommendations, those recommendations are not binding on the parties, unless and until they are approved unanimously and confirmed in writing by the Senior Representatives (or otherwise determined in accordance with clause 8.4).
- 9.17 Where the Contract authorises or requires the Service Management Team to make a determination of any sort (however described and including to grant or refuse approval), those determinations are binding on the parties.
- 9.18 Any member of the Service Management Team may refer any Issue to the Senior Representatives for determination if the member in good faith considers that the Service Management Team will be unable to reach a consensus on the Issue in a time and manner appropriate having regard to the nature of the Issue.

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- 9.19 Each party bears its own costs relating to the Service Management Team with the exception of accommodation for the meeting (if required) and administrative support which will be provided at the Contractor's cost.

10 Operations Team

- 10.1 The Operations Team is a flexibly structured team designed to promote discussion and liaison between the parties at appropriate times during the progress of the Services.
- 10.2 The Operations Team comprises:
- .1 a core team comprising the Contractor Operations Team, and the Shire Operations Team ('Core Members'), and
 - .2 discretionary members invited in accordance with clause 10.4 on to join the Operations Team on a limited duration basis.
- 10.3 The Operations Team must nominate a chairperson from its Core Members. The chairperson is responsible for convening meetings at the times required by the Contract and for chairing the meetings. The Operations Team may change the identity of its chairperson as often as it wishes, or may provide for a rotation in the position.
- 10.4 Appointment of discretionary members of the Operations Team is by written invitation from the chairperson of the Operations Team to the nominated member. The appointment of a discretionary member and the length of the appointment must be agreed unanimously by the Core Members.
- 10.5 The role of the Operations Team is to:
- .1 promote communication at an operational level across both parties' organisations,
 - .2 co-ordinate programs so that interdependent activities are completed in a timely manner,
 - .3 ensure stakeholder interests are taken into account in the day to day operations of the Contract,
 - .4 identify Issues early, so that they can be resolved with minimal risk and cost to the parties,
 - .5 attempt to resolve Issues and develop solutions at the earliest possible stage,
 - .6 investigate any matter referred by the Service Management Team,
 - .7 report to the Service Management Team on any matter requested by the Service Management Team or on any matter which the Operations Team considers should be raised with the Service Management Team, and

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- .8 undertake any other roles required and agreed by the parties or the Service Management Team from time to time.
- 10.6 All members of the Operations Team (as then constituted) are entitled to attend Operations Team meetings occurring during the period of their membership. The Contract Manager must ensure that each member of the Operations Team (as it is then constituted) is notified of the subject matter and timetable for each meeting at least 2 Business Days in advance of the intended meeting time (or such shorter period as is agreed by the then members).
- 10.7 Where the Operations Team is considering a matter that relates to a Stakeholder Specialisation, the Operations Team must consult with the appropriate Stakeholder Specialist.
- 10.8 Without limiting any express provision of this clause, the Operations Team is a consultative forum only and its determinations are not binding on the parties.
- 10.9 Recommendations and reports to be produced to the Service Management Team must reflect a consensus of views of all Core Members.
- 10.9A Where a recommendation or report relates to a Stakeholder Specialisation, the recommendation or report must either:
- .1 Reflect the views of the applicable Stakeholder Specialist or Specialists; or
 - .2 identify any areas of difference (and reasons for the difference) between the final recommendation or report and the views of the applicable Stakeholder Specialist or Specialists.
- 10.10 A member is regarded as being in attendance at a meeting where he or she attends by telephone or teleconference (or using any other technology which enables members to conduct a meeting without being physically present in the same room).
- 10.11 The Operations Team must exercise all its functions honestly, fairly and reasonably, applying the values and principles set out in clause 7 (Management principles and values).
- 10.12 Meetings of the Operations Team must be held at intervals not exceeding 3 months or within 10 Business Days of any member requesting a meeting.
- 10.13 The Operations Team (or any member of the Operations Team) may refer any Issue to the Service Management Team at any time if the Operations Team (or the member, as the case may be) considers that the Issue is something that should be brought to the attention of, or dealt with by, the Service Management Team.
- 10.14 Each party bears its own costs with respect to the Operations Team.

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11 Superintendent

- 11.1 The Shire must ensure that at all times there is a Superintendent. The initial Superintendent is the person nominated in item 4 of schedule 1 (Contract Details). The temporary or permanent appointment of a person to replace the initial Superintendent must be notified by the Shire to the Contractor.
- 11.2 The Superintendent must exercise the powers, functions and duties of the Superintendent reasonably, honestly and fairly.
- 11.3 The Superintendent must:
- .1 carry out the functions required by the Contract,
 - .2 implement determinations made by the Service Management Team in all cases where the Service Management Team is the Determining Authority, and
 - .3 implement determinations made by the Senior Representatives in all cases where the Senior Representatives are the Determining Authority.
- 11.4 The Superintendent may from time to time appoint individuals to exercise any of the functions of the Superintendent but not more than one Superintendent's representative may be delegated the same function at the same time.
- 11.5 The Superintendent must immediately notify the Contractor of:
- .1 the appointment of a Superintendent's representative under this clause and of the functions delegated to that Superintendent's representative, and
 - .2 the termination of the appointment of a Superintendent's representative.
- 11.6 The appointment of a Superintendent's representative does not prevent the Superintendent from exercising any function.
- 11.7 A Superintendent's representative must have appropriate skills, qualifications and experience required for that position.
- 11.8 Matters within the knowledge of the Superintendent or a Superintendent's representative are deemed to be within the knowledge of the Shire.

12 Contract Manager

- 12.1 The Contractor must ensure that there is at all times a Contract Manager. The initial Contract Manager is the person nominated in item 5 of schedule 1 (Contract Details).

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- 12.2 The Contract Manager is responsible for the day to day performance of the Services and the supervision of all persons employed or engaged by the Contractor in carrying out the Services.
- 12.3 The Contract Manager has authority to receive directions and other communications on behalf of the Contractor. Any direction or other communication given to the Contract Manager is deemed to have been given to the Contractor.
- 12.4 A matter within the knowledge of the Contract Manager is deemed to be within the knowledge of the Contractor.
- 12.5 The Contractor must ensure that the Superintendent and the Shire at all times have up to date contact details for the Contract Manager and that the Contract Manager is available and able to be contacted by the Superintendent during the hours specified in the Integrated Management Plan.
- 12.6 The Contract Manager may by notice to the Superintendent appoint others from time to time with authority to act in the capacity of Contract Manager. These may be short-term appointments (such as to cover leave taken by the Contract Manager) or may be appointed for specific projects or as the nominated contact person for particular activities or for particular times of day.
- 12.7 The Contractor must notify the Shire immediately of any change in the identity or contact details of the Contract Manager.
- 12.8 Persons appointed under clauses 12.6 or 12.7 must have skills, qualifications and experience for the position of Contract Manager.
- 12.9 In addition to any other requirement of the Contract, the Contract Manager must:
- .1 represent the Contractor on the Service Management Team,
 - .2 arrange secretarial support for the Service Management Team, and
 - .3 implement determinations made by the Service Management Team (where the Service Management Team is the Determining Authority), implement determinations of the Senior Representatives (where the Senior Representatives are the Determining Authority) and implement determinations of the Superintendent (where the Superintendent is the Determining Authority).

13 Change of nominated personnel

- 13.1 Whenever an individual is named in the Contract, the agreement of both parties is required to the appointment of a person to replace the named individual. The parties must act reasonably and have regard to each other's legitimate concerns in relation to any appointment of this type.

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13.2 This clause does not limit the requirements of any other clause.

Part 3 – Access to the road network

14 Access to Assets

14.1 Subject to this clause and to the powers of any Authority, the Shire grants the Contractor access to the Assets for the purposes of carrying out the Services in accordance with the Contract.

14.2 The Contractor acknowledges that:

- .1 the Road Assets are part of a public road network,
- .2 the Contractor may not have unrestricted occupation of or access to all of the Assets,
- .3 the Shire or Other Contractors may be working on the Assets at the same time as the Contractor,
- .4 Authorities or their contractors may be working on the Assets at the same time as the Contractor,
- .5 the Contractor must carry out the Services in such a way as to ensure that traffic delays are kept to a minimum and may at certain times be prohibited by the Shire from closing any part of a Road, and
- .6 the Contractor must comply with the directions of the Superintendent and relevant Authorities with respect to the management of traffic.

15 Co-ordination obligations

15.1 In carrying out the Services, the Contractor must:

- .1 work co-operatively with the Shire and its contractors and with other Authorities and their contractors,
- .2 liaise with Other Contractors and Authorities as to their anticipated programs of work on the Assets and co-ordinate its activities as far as possible with those other programs, and
- .3 not interfere with, delay or damage any other work of the Shire or other Authorities or their respective contractors.

15.2 The Superintendent must notify the Contractor if the Shire or any Other Contractor is to carry out works on or affecting any of the Assets and must advise the Contractor of the name and contact details of the person superintending the works (if they are being undertaken by the Shire) or of the name and contact details of the Other Contractor. This notification

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must be provided in a reasonable and timely manner in advance of the works commencing.

16 Impact of access delays or restrictions

Without limiting clause 15 (Co-ordination obligations), if a delay takes place in giving the Contractor access to the Assets at any time or place or any direction is issued by the Superintendent restricting or revoking access to any Asset to particular days and/or times (including a prohibition of temporary closure under clause 14.2.5), such delay, restriction or revocation of access is an Excusing Event (to the extent that the Contractor could not reasonably have planned for it and taken steps to mitigate its effects) but is not a breach of contract.

Part 4 – Contractor's obligations

17 Quality

- 17.1 The Contractor must carry out the Services diligently and conscientiously, to a high standard of skill and care and using good workmanship and materials.
- 17.2 The Contractor must ensure that the performance of all Services is supervised at all times by a competent representative.
- 17.3 Everything the Contractor makes, designs 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.
- 17.4 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.
- 17.5 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.

18 Time

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

18A Care of Services

18A.1 The Contractor is solely responsible for loss or damage to:

- .1 any work in progress as part of the Services and the site of that work, and

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- .2 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.

- 18A.2 The Contractor's liability under this clause is reduced to the extent that an Excepted Risk contributes to the loss or damage.
- 18A.3 If there is any inconsistency between this clause and clause A8-6 (Care of Project Works) in relation to any Ordered Work to which that clause applies, clause A8-6 prevails.
- 18A.4 Nothing in this clause limits the Contractor's obligations to perform the Services.

19 Site risks

19.1 General risk allocation

Except where the Contract (including this clause 19) expressly provides otherwise, the Contractor is responsible at its own cost and risk for carrying out the Core Services irrespective of conditions prevailing at the site of those Services at the time they are required to be carried out.

19.2 AWP site investigations

The Contractor must undertake site investigations prior to and as part of the Design & Investigation Services for each Accelerated Works Project and must use its best endeavours to satisfy itself of the prevailing conditions and to ensure that the design and scope of the Accelerated Works Project takes account of the conditions on the site.

19.3 Solutions for AWP site problems

If the Contractor has complied with the requirements of clause 19.2 (AWP site investigations) and, notwithstanding having done so, encounters on the site of any Accelerated Works Project a physical condition that it did not anticipate and which affects the cost of carrying out the Accelerated Works Project, the Contractor may approach the Service Management Team with a view to finding a solution that compensates the Contractor but without materially reducing the overall scope of the Accelerated Works Program.

The solution determined by the Service Management Team may include:

- .1 requesting a Variation to overcome the effects of the condition;
- .2 reducing the scope of the Accelerated Works Project affected by the condition;
- .3 removing or reducing the scope of another Accelerated Works Project; or

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- .4 substituting a project in the Accelerated Works Program.

19.4 AWP site conditions at Contractor risk

If the Contractor has not complied with the requirements of clause 19.2 (AWP site investigations) with respect to any Accelerated Works Project, the risk and cost of site conditions discovered at the site of that Accelerated Works Project is to the Contractor's sole account and the Contractor must continue to carry out and complete the Accelerated Works Project (including undertaking any necessary design revision to accommodate the unanticipated site conditions).

19.5 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.

20 People

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

- 20.2 Without limiting clause 20.1, the Contractor must employ (directly or indirectly):

- .1 a qualified engineer with specialist skills in road asset management to represent it as its Asset Management Specialist for the purposes of the Contract;
- .2 a person or persons with expertise in the use and operation of AMIS to assist the Contractor in performing its obligations with respect to AMIS, and
- .3 a person or persons with qualifications and expertise in the use and operation of Deighton Software to assist the Contractor to perform its obligations with respect to Deighton Software.

- 20.3 The Contractor must ensure that none of its Agents is affected by drugs or alcohol while engaged in the performance of the Services or any related activities.

- 20.4 The Contractor must ensure that its Agents:

- .1 conduct themselves towards Councillors of the Shire, the Shire's staff and members of the public in a civil and inoffensive manner, and
- .2 carry out their duties at all times with as little inconvenience and disturbance to others as possible.

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- 20.5 The Superintendent may, by notice to the Contractor, direct that any Agent of the Contractor not be employed or engaged or continue to be employed or engaged in the performance of the Services or any related activities.
- 20.6 The Contractor must ensure that its Agents:
- .1 are attired in any manner specified in the Contract Documents, and
 - .2 are readily identifiable by means of a logo, name badge, ID card or other suitable means approved by the Service Management Team.

21 Subcontractors

- 21.1 The Contractor may subcontract the performance of the Services or any part of the Services to any suitably qualified, competent and financially stable subcontractor as it considers appropriate subject to:
- .1 compliance with its obligation to engage the MPSC Design Team under clause A3-25 (Design & construction of Accelerated Works Projects); and
 - .2 satisfying Performance Standard 7 (Sustainability) by including local residents and businesses as its Agents.
- 21.2 The Contractor must ensure that its arrangements with subcontractors are appropriate to ensure compliance with the Contract and must, at the request of the Service Management Team, provide evidence of its compliance with this requirement.
- 21.3 Notwithstanding this clause 21 or any approval or acknowledgement by the Shire or the Service Management Team, the Contractor:
- .1 remains liable at all times for the performance of the Contract; and
 - .2 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.

22 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 without any entitlement to claim money, time or other relief arising out of industrial action by the Contractor's employees or the employees of its Agents.

23 Reporting

The Contractor must report in writing to the Service Management Team on any aspect of the Services when requested to do so.

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24 Media

- 24.1 Except where authorised by the Superintendent under clause 24.2, the Contractor:
- .1 must not either itself or through its Agents make any statement to the media on behalf of the Shire or in relation to the performance of the Services without the prior written consent of the Superintendent,
 - .2 must refer all enquiries from the media relating to the performance of the Services to the Superintendent, and
 - .3 must notify the Superintendent immediately of any event arising in the course of performing the Services which may receive media attention.
- 24.2 The Superintendent may require the Contractor to prepare media releases and provide follow up interviews within the parameters recommended by the Service Management Team.

25 Conflicts of interest

- 25.1 The Contractor must immediately make a full disclosure in writing to the Superintendent of the existence, nature and extent of any actual or potential conflict of interest that the Contractor, or any of its Agents, become aware of between the Contractor's obligations under this Contract and the interests of:
- .1 the Contractor or its Agents,
 - .2 a company or business in which the Contractor or its Agents are involved, whether as an officer, shareholder, employee or otherwise, or
 - .3 any other person with whom, or entity with which, the Contractor or its Agents have a financial or business association, whether directly or indirectly.
- 25.2 The Superintendent (after consultation with the Service Management Team) must determine the course of action that is appropriate to overcome the conflict of interest and ensure it does not affect the performance of the Contract.

26 Use of the Shire trade marks

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

27 Confidentiality

- 27.1 The Contractor must keep the Confidential Information confidential.

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- 27.2 The Contractor must not use or reproduce the Confidential Information in any manner unless specifically authorised to do so by the Superintendent or required to do so by Law.
- 27.3 The Contractor must immediately return all Confidential Information in its possession, when requested in writing to do so by the Superintendent. If the Confidential Information is of a nature that cannot be returned, the Contractor must immediately delete, erase or otherwise destroy it.

28 Intellectual property

- 28.1 Subject to this clause 28, property and intellectual property rights in the Contract Material will vest in the Shire.
- 28.2 The Contractor is authorised to use the Contract Material during the Contract Term but only for the purposes of the Contract. Any other use requires the prior written consent of the Superintendent.
- 28.3 Nothing in this Contract affects or in any way alters the Contractor's ownership of or rights to any pre-existing intellectual property.
- 28.4 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 the Shire against any loss or damage suffered or incurred by the Shire as a result of any such infringement.

29 Compliance with Law and award obligations

- 29.1 The Contractor must comply, and must ensure that its Agents comply, with all Laws applicable to the Services and the Contract.
- 29.2 Without limiting its obligations under clause 29.1, the Contractor must comply, and must ensure that its Agents comply with Laws, and agreements endorsed by Laws, regulating employer and employee relations.
- 29.3 If a Qualifying Change in Law increases the costs of performing the Services, the Shire will compensate the Contractor for the increased costs (determined on an open book basis). If a Variation to any Service is required as a result of a Qualifying Change in Law, the Variation will be made and valued in accordance with part 7 (Variations).
- 29.4 If either party considers at any time that there is a conflict between any Law and an obligation imposed by the Contract, that party must notify the Service Management Team. The Service Management Team must then endeavour to determine an agreed interpretation that is consistent with the Law or must recommend a change to the Contract to be implemented by deed of variation. If the Service Management Team is unable to reach a consensus interpretation or other resolution within 5 Business Days of first meeting to discuss the issue, the issue must be referred to the Senior Representatives for determination in accordance with clause 8 (Senior Representatives).

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30 Approvals

30.1 The Contractor must:

- .1 obtain and maintain all licences, permits, consents or other approvals necessary for the performance of the Services;
- .2 give all notices necessary to comply with the requirements of any Law or any relevant Authority; and
- .3 at its own cost but subject to clause 29.3, pay any fees or charges necessary to comply with the requirements of any Law or any relevant Authority.

30.2 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 and, in particular, any approvals of the Services.

31 Personal Information

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

- .1 only use the Personal Information for the purposes of fulfilling its obligations under the Contract, and
- .2 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, and
- .3 take all reasonable measures to ensure that the Personal Information is protected against loss and unauthorised access, use, modification or disclosure.

31.2 The Contractor is bound by the Information Privacy Principles (as defined in the Information Privacy Act 2000 (Vic)) and any applicable code of practice with respect to any act done, or practice engaged in, by the Contractor for the purposes of this Contract in the same way and to the same extent as the Shire would have been bound by them in respect of that act or practice had it been directly done or engaged in by the Shire.

31.3 The Contractor's obligations under this clause 31 (Personal Information) are in addition to any obligations imposed by Law with respect to the protection of Personal Information.

31.4 The Contractor indemnifies the Shire in respect of any loss, liability or expense suffered or incurred by the Shire 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 its Agents, or any disclosure by the Contractor or any of its Agents in breach of an obligation imposed by Law concerning the protection of Personal Information.

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Part 5 – Protecting people & property

32 Protecting people

- 32.1 The Contractor must, and must ensure that its subcontractors, at all times identify and take all necessary precautions for the health and safety of all persons, including the Contractor's Agents, staff of the Shire and members of the public, who may be affected by the performance of the Services.
- 32.2 The Contractor must provide the following information to the Service Management Team monthly:
- .1 the number of "lost time" injuries suffered by the Contractor's employees or subcontractors,
 - .2 the number of working days lost due to injury,
 - .3 the status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments, and
 - .4 the status of IMP audits undertaken by the Contractor in so far as they relate to OH&S.
- 32.3 The Contractor must, when requested by the Superintendent, provide reports on OH&S inspections, audits or assessments undertaken during the Contract Term.
- 32.4 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 Superintendent.
- 32.5 If the Superintendent forms the opinion at any time during the Contract Term that the Contractor has committed or is likely to commit a Safety Breach, the Superintendent may direct the Contractor to do one or more of the following:
- .1 Promptly rectify the Safety Breach to the Superintendent's satisfaction
 - .2 Suspend performance of the Contract until such time as the Superintendent is satisfied that the Safety Breach is rectified.

- 32.6 If the Contractor's performance of the Services has been suspended under clause 32.5, the Shire may:
- .1 itself, or by employing or engaging any other person, perform the Services or such part of the Services as the Shire considers desirable,
 - .2 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, and
 - .3 recover the costs of doing so as a debt due from the Contractor.
- 32.7 Costs recoverable by the Shire under clause 32.6.3 include losses and expenses directly incurred by the Shire as a result of the Contractor's Safety Breach and any consequent action taken by the Shire in accordance with this clause. The amount of losses and expenses so incurred will be certified by the Superintendent.

33 Protecting property & Environment

- 33.1 The Contractor must avoid loss or damage to property and the Environment while carrying out its obligations under or in relation to the Contract.
- 33.2 The Contractor must take good care of any thing provided to it by the Shire for the purposes of the Contract.
- 33.3 Waste and surplus material arising from the Contractor's performance of the Services are, as between the parties, the property of the Contractor and the Contractor is responsible for their lawful disposal or re-use.
- 33.4 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 not take any action that could disturb or destroy the thing found and must comply with clause A3-29.7 (Heritage and archaeological values).
- 33.5 The Contractor must promptly make good any damage done by it or its Agents to any property of the Shire or any other person in the course of performing the Services (not including damage which is a necessary incident of the Services or damage or disturbance to an Asset). Damage or disturbance to an Asset must be reinstated in accordance with clause A3-26.8 (Disturbance of Assets).
- 33.6 If the Contractor fails to make good any damage to property in accordance with clause 33.5, the Shire may:
- .1 effect the necessary repairs or pay compensation to the owner of the property; and
 - .2 recover the cost from the Contractor as a debt due and payable.

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- 33.7 Before the Shire takes action under clause 33.6, the Superintendent 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).
- 33.8 Clause 33.7 does not apply in circumstances where the Superintendent considers that urgent action is required to prevent further damage to property or injury to any person.

34 Avoiding nuisance and inconvenience

The Contractor must minimise inconvenience and avoid causing nuisance to anyone who may be affected by the performance of the Services.

35 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:

- 35.1 The loss or damage or effect on performance is material and the Contractor can show that the loss, damage or other effect was caused by the Other Contractor's negligence or non-performance, and was not contributed to in any way by the Contractor.
- 35.2 The Shire is indemnified by the Other Contractor against the relevant loss, damage or effect on performance.

Part 6 - Annual Review

36 Annual Review

36.1 Formal review

The Service Management Team will undertake a formal review of the Contractor's performance and the Contract once annually in accordance with this clause 36 (Annual Review).

36.2 Review period

Each Annual Review will consider the Contractor's performance against the Performance Standards (other than Required PCI) over the course of the preceding Contract Year (1 July to 30 June).

Each Annual Review in a Pavement Performance Review Year will also consider the Contractor's performance against the Required PCI since the preceding Pavement Performance Review Year.

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36.3 Categories of performance assessment

The Service Management Team will review the Contractor's performance during the review period in 3 stages:

- .1 assessment based the Annual Review Scorecard (assessed in accordance with clause 36.4 (Annual Review Scorecard));
- .2 stakeholder review (if required by the Shire in any year) (undertaken in accordance with clause 36.5 (Stakeholder review)); and
- .3 measurement against the Performance Standards (assessed in accordance with clause 36.6 (Performance against the Performance Standards)).

36.4 Annual Review Scorecard

By 30 April in each Contract Year, each party must submit to the Service Management Team its assessment of its own and the other party's performance against the Annual Review Scorecard.

If a party fails to provide its assessment to the Service Management Team by 30 April of a Contract Year, that party's scores for that Contract Year are deemed to be the same as the scores given by the other party.

If both parties fail to provide their assessment to the Service Management Team by 30 April of a Contract Year, the Superintendent will determine the scores unless otherwise agreed.

36.5 Stakeholder review

If required by the Shire, an integral part of the Annual Review will be a review conducted by independent stakeholders nominated and paid by the Shire. The purpose of a stakeholder review is to provide an independent assessment of the Contractor's performance against the Performance Standards and/or of the Contract generally.

Nominated stakeholders must not include competitors of the Contractor (or Agents or associates of competitors) in the market of providing services similar to the Services. The Contractor must cooperate fully with any nominated stakeholder and, subject to any Law, provide them with access to all relevant data and Worksites. Stakeholder reviewers are free to determine their own review methodology consistent with the requirements of the Contract.

The Shire must ensure that any stakeholder review is complete by 30 April, so as to ensure that the results of the stakeholder review are available for consideration by the Service Management Team for its assessment.

For the purposes of this clause, a stakeholder is a person who lives in the Mornington Peninsula Shire or any other person who has an interest in the services delivered by the Shire with respect to the Assets. The Service

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Management Team will establish and maintain a list of not less than 3 potential stakeholders from which the Shire may select.

36.6 Measurement against the Performance Standards

Performance against the Performance Standards will be determined by the Service Management Team having regard to the process and evidence and relevant factors set out in schedule 3 (Performance Standards Review) including, as applicable, the outcomes of the Annual Review Scorecard and any stakeholder review.

The parties must cooperate fully with the Service Management Team and ensure that they have access to all relevant information and data required by them. Audit reports and similar material requested by the Service Management Team or required by the Contract must be provided to the Service Management Team by 30 April (with the exception of the Pavement Performance Review Report, which must be submitted by 31 May).

36.7 Other review items

In addition to assessing the Contractor's performance, the Service Management Team must use the Annual Review as an opportunity to consider the following items and make recommendations to the parties, if appropriate:

- .1 Reconciliation of Asset Inventory Changes (if necessary)
- .2 Application and redemption of Service Points
- .3 Level of insurance cover
- .4 Impact of any changes to the Road Hierarchy (whether required by Law or by the Shire) and any changes to the Road Management Plan
- .5 Operation of the SMT and the Operations Team
- .6 Impact on the Contract of technological or other changes during the Contract Year or anticipated in the future (including changes in Law or changes to Reference Documents)
- .7 The appropriateness of the Applicable Indices and the proportions applied in determining rise and fall
- .8 Any other matters required by the Contract
- .9 Any other matters which the Service Management Team considers it appropriate to review
- .10 Any changes to the Contract that may be necessary or desirable as a consequence of any of the above

36.8 Timing

The Service Management Team must complete the Annual Review and provide a written report on the completed Annual Review to the Superintendent by 30 June.

The Superintendent must review and consider the Service Management Team's written report and provide a final report including conclusions and recommendations to the Shire by 15 July of the subsequent Contract Year. The Superintendent's report will include his assessment of the Contractor's Service Points Status following the Annual Review.

If the Service Management Team has not completed its Annual Review by 30 June in any Contract Year, the Superintendent may prepare his final report based on his own assessment and without input from the Service Management Team. In doing so, the Superintendent must consult with the Contract Manager.

Part 7 – Variations

37 Variations**37.1 Permitted methods of Variation**

The Services may be Varied by any of the following means::

- .1 a direction of the Superintendent under clause 37.2 (Superintendent's power of direction);
- .2 the Asset Inventory Change process set out in clause 38 (Asset Inventory Changes); or
- .3 in accordance with clause 82 (Changes to the Contract).

Without limiting the foregoing, Ordered Work may be Varied in accordance with Annexure 8 (Ordered Work Conditions).

No Variation vitiates or invalidates the Contract.

37.2 Superintendent's power of direction

The Superintendent may at any time, after consulting with the Service Management Team and by written direction identified as a "Variation Direction":

- .1 change the extent of any Services,
- .2 change the character, quality, mode or frequency of performance of any Services,
- .3 require the Contractor to carry out additional work of a character similar to the Services,

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- .4 remove any Asset not automatically removed as part of the Asset Inventory Change process,
- .5 change a Performance Standard or any Contractual Time Requirement,
- .6 change an Accelerated Works Project or the Accelerated Works Program, or
- .7 implement a determination of the Service Management Team or the Senior Representatives.

37.3 No variation without authorisation

The Contractor must not vary the Services except in accordance with clause 37.1 (Variations). (This requirement does not limit the Contractor's ability to innovate in the manner in which it carries out the Services, provided it continues to meet the minimum requirements of the Contract).

37.4 No limit on Ordered Work

Nothing in this clause limits the provisions of the Contract relating to the ordering of Minor Works and Non-MSC Services.

38 Asset Inventory Changes

38.1 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):

- .1 upon completion of the New Asset, in the case of New Assets constructed by the Contractor; and
- .2 upon Asset Handover, in all other cases.

38.2 Asset Inventory updates

Upon completion or Asset Handover (as the case may be), the Contractor must enter details of the New Asset in, and remove from the Asset Inventory (or otherwise identify as superseded) any Assets superseded by the New Asset.

38.3 Asset Handover Notification

To initiate Asset Handover, the Superintendent must issue a written notice to the Contractor advising of the New Asset ("Asset Handover Notice").

The Asset Handover Notice must:

- .1 describe the Asset to be handed over, its location and details of the person who constructed it;

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- .2 include 'as constructed' drawings, subdivision bills of quantities and any relevant information the Shire has in relation to the New Asset; and
- .3 use formats compatible with the data schema (the nature and structure of the data) in AMIS and the Asset Inventory.

38.4 Asset Handover

The following process is initiated by the issue of an Asset Handover Notice:

- .1 Within 10 Business Days of receipt of the Asset Handover Notice the Contractor must notify the Superintendent in writing of its acceptance or rejection of the New Asset.
- .2 The Contractor may only reject a New Asset if the New Asset is not of an Acceptable Standard.
- .3 If the Contractor does not notify the Superintendent of its acceptance or rejection within 10 Business Days of receipt of the Asset Handover Notice, the Contractor is deemed to have accepted the new Asset.
- .4 If the Contractor accepts (or is deemed to have accepted) the New Asset, Asset Handover occurs on the 11th Business Day after the date of the Asset Handover Notice.
- .5 If the Contractor rejects the New Asset, the Superintendent 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.
- .6 If, on the joint inspection, the Superintendent determines that the New Asset is not of an Acceptable Standard, the Superintendent must issue a notice to this effect within 5 Business Days of the joint inspection and the Shire must (unless otherwise agreed and on conditions agreed) 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.
- .7 If, on the joint inspection, the Superintendent determines that the New Asset is of an Acceptable Standard, the Superintendent must, within 2 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.
- .8 After Completion of any work required to bring the New Asset up to an Acceptable Standard in accordance with clause 38.4.6, the Superintendent must issue a further Asset Handover Notice to the Contractor with respect to that New Asset and the process set out above re-applies.

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- .9 Acceptance of a New Asset in accordance with this clause 38.4 (Asset Handover) does not preclude the Contractor from making a bona fide claim with respect to any Condition of the New Asset that was not evident from inspection or from the documentation provided to the Contractor at the time of Asset Handover. Notwithstanding the foregoing, the Contractor is not entitled at any time to make a claim with respect to the Condition (latent or otherwise) of any New Asset which was constructed by the Contractor or any Agent of the Contractor.

38.5 Measurement of Asset Inventory adjustments

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

38.6 Replacement maintenance not an Asset Inventory Change

It is not an Asset Inventory Change if an Asset is removed and replaced by the Contractor as a normal part of the maintenance for that type of Asset.

However, if a Qualifying Change in Law requires the replacement Asset to be of a higher standard than the Asset it is replacing, a Variation will be issued in accordance with clauses 29.3 and 37.2 (Superintendent's power of direction). The value of the Variation will be the difference between:

- .1 the cost of supplying and installing an item of equivalent standard to the original Asset; and
- .2 the cost of supplying and installing an item of the higher standard.

39 Valuation and timing of Variations

The Superintendent must determine the value and other impacts of Variations and make any appropriate adjustments in accordance with this clause. The Superintendent's determination must be notified to the parties promptly in writing and must include all relevant information required by this clause and clause 40 (Characterisation of Variations).

39.1 Valuation of Variations generally

Except as provided by clause 39.2 (Valuation of Asset Inventory Changes), the value of each Variation must be determined as follows:

- .1 wherever possible, by agreement between the parties;
- .2 if the parties are unable to agree, by reference to any applicable rates or prices contained in the Contract, and
- .3 if there are no applicable rates or prices in the Contract, by a reasonable valuation made by the Superintendent.

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39.2 Valuation of Asset Inventory Changes

The value of Asset Inventory Changes must be determined in accordance with the Rates for Asset Inventory Change, unless otherwise required by clause 39.4 (Valuation for New Assets below Acceptable Standard) or agreed by the parties. If an Asset Inventory Change for which there is no Rate for Asset Inventory Change occurs, the valuation of the Asset Inventory Change will be determined in accordance with clause 39.1 (Valuation of Variations generally).

39.3 Indexation of Non-Continuing Variations

The value of Non-Continuing Variations with a duration in excess of one year will be Indexed, unless otherwise agreed. The Superintendent must identify and include the Applicable Index (or Indices) in his determination of value.

39.4 Valuation for New Assets below Acceptable Standard

If the Contractor has agreed with the Shire under clause 38.4.6 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 Superintendent. 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.

39.5 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 39.2 (Valuation of Asset Inventory Changes). If the Contractor successfully disputes the Mandatory Asset Handover Notice, the Contractor will be entitled to 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 Asset Handover.

39.6 Role of Service Management Team

The Superintendent must consult with the Service Management Team regarding any valuation or other determination under this clause 39 (Valuation and timing of Variations).

40 Characterisation of Variations**40.1 Continuing, Non-Continuing and Funded Variations**

The Superintendent's notification of the value of any Variation must state whether the Variation is a Continuing Variation or a Non-Continuing Variation and, if it is a Non-Continuing Variation, whether it is also a Funded Variation.

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In the case of Continuing Variations, the notification must also state the Annual Value of the Variation and details of the Component Price or Prices to which it attaches.

If a Variation contains both continuing and non-continuing elements, each element may be treated as a separate Variation for the purposes of this clause.

Asset Inventory Changes will usually be Continuing Variations, but need not be.

The Superintendent has no power to determine that a Variation is a Funded Variation without the prior written agreement of the Contractor and the Shire. If the Shire wishes to consider a Funded Variation at any time, the Superintendent must issue the Contractor with a written request to quote a Funded Variation.

40.2 Continuing Variations - definition

Continuing Variations are Variations which

- .1 change the Services for the full duration of the remaining Contract Term; and
- .2 can be incorporated into the MSC without increasing the Cumulative Cash Flow Differential.

40.3 Payment for Continuing Variations

Continuing Variations are incorporated into the MSC in accordance with clause A2-3.2 (steps 1 and 2) and until their incorporation must be claimed under clause 47.2 and paid for separately from the MSC.

The amount due each month for a Continuing Variation that has not then been incorporated into the MSC is 1/12 of the Annual Value.

40.4 Annualisation and attribution to Component Prices

To enable incorporation into the MSC, the Annual Value of each Continuing Variation must be:

- .1 identified; and
- .2 apportioned between the Component Prices to which the Continuing Variation relates.

Where the nature of the Continuing Variation so requires, a new Component Price may be added to the MSC Calculation Schedule as at the next Adjustment Date.

40.5 Non-Continuing Variations - definition

Non-Continuing Variations are:

- .1 Variations that have a duration less than the remaining Contract Term such as one-off projects, Variations to individual annual

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programs and Variations made to deal with short-term events or circumstances; and

- .2 any other Variations that are not Continuing Variations.

40.6 Payment for Non-Continuing Variations

Non-Continuing Variations are claimed under clause 47.2 and paid for separately from the MSC. Unless clause 41 (Funded Variations) applies, Non-Continuing Variations are paid for by monthly progress payments.

40.7 Work Order Conditions and Non-Continuing Variations

The Superintendent may specify in any notification issued under clause 40.1 (Continuing, Non-Continuing and Funded Variations) for a Non-Continuing Variation which is in the nature of Project Works (as defined in the Work Order Conditions) that the Non-Continuing Variation is to be governed by the Work Order Conditions in the same manner as if the Non-Continuing Variation were Ordered Work.

41 Funded Variations

41.1 Funded Variations - Definition

Funded Variations are Non-Continuing Variations which are financed by a deferred payment stream.

41.2 Payment

Funded Variations are claimed under clause 47.2 and paid for separately from the MSC.

41.3 Terms applicable to Funded Variations

Unless otherwise agreed in writing, the following terms apply to any Funded Variation:

- .1 The value of the Funded Variation excluding any cost of funding ('Variation Value') will be determined in accordance with clause 39.1 (Valuation of Variations generally).
- .2 The duration of the funding (period for repayment of the Variation Value) will be agreed by the parties and need not match the remainder of the Contract Term.
- .3 The cost of funding for a Funded Variation is:
 - (a) Establishment fee - a percentage (determined in accordance with clause 41.3.4) of the Variation Value.
 - (b) Unused line fee - a percentage (determined in accordance with clause 41.3.4) applied to any undrawn portion of the Variation Value until the total Variation Value has been drawn down by way of unused line fee (draw down occurs progressively as the Variation Value is expended by the Contractor in performing the Variation; the amount drawn

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down is determined monthly by reference to the value of work then completed); and

- (c) Working capital fee - the applicable Working Capital Percentage.
- .4 The percentages to be applied for the purpose of clause 41.3.3(a) and (b) are to be determined at the time of the Variation by reference to the best of 3 quotes obtained by the Contractor from reputable banks for a loan (including a bill facility) of an equivalent term and value to a borrower of equivalent credit rating as the Shire (or, if the Contractor considers it is not practical to obtain such quotes, then by reference to applicable market rates pertaining at the time).
- .5 The monthly amount payable in respect of a Funded Variation is determined by following the same procedure as applies in determining the MSC. (For this purpose, the Variation Value is treated as a Component Price and is to be allocated to the Contract Year or Years in which it is incurred).
- .6 The Contractor is not entitled to submit any payment claim with respect to a Funded Variation until work on the Funded Variation commences.

Part 8 - Excusing Events

42 Impact on time

- 42.1 If and to the extent that an Excusing Event prevents the Contractor from carrying out any Service (other than Ordered Work) in accordance with an applicable Contractual Time Requirement, the Contractor is excused from performance of the affected Service for the duration of the Excusing Event. The Contractor must recommence performance of the affected Service as soon as practical after the Excusing Event ceases.
- 42.2 Notwithstanding clause 42.1 but subject to any other express provision of the Contract, the Contractor is not required to carry out any Service beyond the end of the Contract Term.
- 42.3 The parties acknowledge that timely identification of disruptive or delaying events is beneficial to both parties and consistent with the SLR Objectives. Both parties agree to keep the Service Management Team informed of things that may delay or disrupt the progress of any of the Services.

43 Directions to suspend Services

- 43.1 The Superintendent may direct the Contractor to suspend the whole or part of the Services for any reason for a period nominated by the Superintendent.
- 43.2 If the Superintendent directs a suspension because of a default or negligent or wrongful act or omission by the Contractor or any of its Agents:
- .1 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, and
 - .2 subject to clause 43.4, if the suspended Services are services covered by the Monthly Service Charge, the Shire is entitled to reduce the Contractor's Monthly Service Charge payments for the period of the suspension by an amount which the Service Management Team reasonably determines to be the amount attributable to the period of the suspension, and
 - .3 subject to clause 43.4, if the suspended Services are Non-Continuing Variations or Ordered Work, the Shire is not required to pay the Contractor for the Non-Continuing Variation or 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
 - .4 the Shire may recover from the Contractor any costs it reasonably and necessarily incurs as a result of the suspension.
- 43.3 In the case of any other suspension, if the period of the suspension is likely to exceed 1 week, the Superintendent may direct that the suspension be valued as a Variation.
- 43.4 The Shire must continue at all times to pay the Back Payment Amounts and all associated fees and charges, and in this respect, the Special Arrangements will apply during any period of suspension or reduction of payment under clause 43.2.

44 Costs of delays

- 44.1 Subject to any other provision of the Contract and to this clause 44, the Contractor may claim compensation for the direct cost impacts of any delay to the Services (other than Ordered Work) caused solely by a direction or a breach of contract or negligent or wrongful act or omission on the part of the Shire or an Agent of the Shire. The Contractor must endeavour to keep any such cost impacts to a minimum.
- 44.2 The Contractor is not entitled to claim or receive any compensation under clause 44.1 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

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be necessary or desirable due to an act, omission, default or unauthorised conduct by the Contractor or any of its Agents.

- 44.3 To be eligible to claim compensation under clause 44.1, the Contractor must be able to demonstrate to the reasonable satisfaction of the Superintendent that the cost impacts claimed were incurred as a direct and sole result of the direction or breach of contract or other 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 minimise the impact of any delay.
- 44.4 Clause 44.1 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.

45 Relaxation of requirements

- 45.1 If an Excusing Event occurs and the Contractor's ability to achieve any Performance Standard is affected as a result, the Contractor is entitled to relief from strict compliance with the Performance Standard.
- 45.2 Unless otherwise agreed, the extent of such relief is a temporary waiver of the obligation to achieve the affected Performance Standard for a duration determined by the Service Management Team 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 9 – Price & payment

46 Price

- 46.1 The Price is as follows:
- .1 for the Core Services (including Design & Investigation Services for AWP Job 14 but otherwise excluding the Design & Investigation Services) - the Monthly Service Charge;
 - .2 for the Design & Investigation Services (other than those required with respect to AWP Job 14) – the fee determined in accordance with the Design & Investigation Fee Schedule based on the value of each Accelerated Works Project to which the Design & Investigation Services relate and any additional fee payable under the Design & Investigation Fee Schedule;
 - .3 for any Ordered Work - the price determined in the Work Order for that Ordered Work;

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- .4 for Variations not incorporated or not yet incorporated into any of the above – the price (or value) determined in accordance with part 7 (Variations); and
 - .5 any other amounts payable for the Services as determined in accordance with the Contract.
- 46.2 The Price is payable by monthly amounts determined in accordance with this part and summarised in clause A2-1 (Payments due).
- 46.3 The Price includes all fees, charges and costs incurred by the Contractor in performing the Services (including profit, overheads, attendance and supervision), except as expressly stated otherwise in this Contract.

47 Payments by the Shire

- 47.1 The Shire will pay the Monthly Service Charge by the last Wednesday of each month by direct electronic funds transfer to the Contractor's nominated account.
- 47.2 The Contractor must, not later than 10 Business Days following the end of each month, provide the Superintendent with a payment claim for the MSC and for any other amounts due for Services provided during the ended month.
- 47.3 The Superintendent must assess the Contractor's payment claim within 10 Business Days of receiving it and certify the net amount due to the Contractor.
- 47.4 The Superintendent may issue a payment certificate at any time even if the Contractor has not lodged a payment claim.
- 47.5 Within 5 Business Days of the date of the Superintendent's certificate, but subject to clauses 48.11 (Set-off), 49 (Payment of employees and subcontractors) and 60 (Performance Security), the Shire must pay the amount certified due.
- 47.6 The Contractor's payment claim under clause 47.2 and the Superintendent's assessment under clause 47.3 (if it does not agree with the Contractor's claim) must be accompanied by work papers clearly setting out the derivation of all figures.

47A Payments by the Contractor

Any money payable by the Contractor to the Shire under this Contract must be paid within 30 Business Days of the date of the Superintendent's certificate under clause 47 showing that the amount is payable.

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48 Valuation of payment claims

48.1 Valuation in accordance with this clause

Without limiting any provision of part 7 (Variations), the amount due to the Contractor on its monthly payment claims will be valued by the Superintendent in accordance with this clause 48 (Valuation of payment claims).

48.2 Monthly Service Charge

For Services to which the MSC applies, the amount due to the Contractor is the MSC.

48.3 Other lump sums

For Services to which a lump sum price (other than the MSC) applies, the amount due to the Contractor is the entire lump sum (if the lump sum is an amount per month) or an amount calculated by the Superintendent on a percentage complete or other appropriate basis to be the value of the work done during the month (in any other case). This calculation may be made on a pro-rata basis or by reference to a schedule of prices or by any other means the Superintendent considers appropriate.

48.4 Schedule of Rates

For Services covered by the Schedule of Rates, the amount due to the Contractor is determined according to the following formula:

$$P = \{\text{Sum of } (Q \times CR)\} \times S$$

where:

- P = the payment due to the Contractor,
- Q = the quantity of the Services provided,
- CR = the applicable rate for the Service at the time the Service is provided,
- S = the Job Size factor determined as follows:

S = 1.35 where the total Job Size is more than **CIC** but does not exceed **CIC** (excluding GST)

S = 1.15 where the total Job Size is more than **CIC** but does not exceed **CIC** (excluding GST)

S = 1.00 where the total Job Size is more than **CIC** but does not exceed **CIC** (excluding GST)

S = 0.925 where the total Job Size is more than **CIC** but does not exceed **CIC** (excluding GST)

S = 0.875 where the total project value exceeds **CIC** (excluding GST).

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48.5 Daywork Rates

For Services to which the Daywork Rates apply, the amount due to the Contractor is determined in accordance with the Schedule of Daywork Rates.

48.6 Daywork, without applicable Daywork Rates

For Services carried out as Daywork where the Daywork Rates are not applicable, the amount due to the Contractor is determined on the following basis:

- .1 basic wages and allowances: - the amount of wages and allowances paid or payable by the Contractor at rates appropriate for the personnel and duties involved as established by the Contractor to the satisfaction of the Superintendent and all associated provisions for sick, annual and long-service leave; payroll tax; workers compensation and superannuation.
- .2 plant hire: - the amount of hire charges in respect of plant approved by the Superintendent for use on the work in accordance with hiring rates and conditions agreed between the parties' Representatives or, in the absence of any agreement, in accordance with rates and conditions determined by the Superintendent.
- .3 materials: - the actual cost to the Contractor at the site of the work of all materials supplied and required for the work.
- .4 subcontractors and service providers: - the amounts paid for services, subcontracts and professional fees; and
- .5 a percentage charge to cover overheads, administrative costs, site supervision, establishment costs, attendance and profit of the following amounts:
 - (a) for Daywork carried out by the Contractor itself – 27% of the total of the amount set out in clauses 48.6.1 to 48.6.3 inclusive; and
 - (b) For Daywork carried out by a subcontractor – 13% of the total of the amounts calculated under clause 48.6.4.

48.7 Alternative provisions

Where valuation provisions different from the above apply (by agreement or otherwise as determined in accordance with the Contract), the Superintendent is to apply those provisions to determine the value of the payment claim.

48.8 Payment valuation to include deductions

If the Shire intends to withhold or deduct money under any provision of the Contract (including under any Work Order Documents) or is required to do so by Law, the Superintendent should also include the amount to be

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withheld in the valuation of the claim (but failure to do so does not preclude the Shire from withholding or deducting that amount).

48.9 Payment valuation to include Service Point Value adjustments

If Service Point Values have been awarded against the Contractor or redeemed by the Contractor in accordance with clause 68 (Application of Service Points) at any time, the Superintendent should also take into account the applicable Service Point Value in valuing the claim (but failure to do so does not preclude the Shire from making the adjustment).

48.10 Payment not evidence of acceptance

Payments do not constitute evidence of the Shire's acceptance of any Service carried out by the Contractor or an admission that any Service has been carried out in accordance with the Contract (including, as applicable, any Work Order Documents).

48.11 Set off

Without limiting any other right of set-off 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 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.

48.12 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.

49 Payment of employees and subcontractors

49.1 The Contractor must, at the request of the Superintendent at any time (not more than once monthly), certify to the Superintendent that it has:

- .1 paid all wages and allowances then owing to its employees in respect of the Contract,
- .2 paid all amounts then due and payable to its subcontractors in respect of the Contract, and
- .3 made any payments that it is then required to make in respect of the Contractor's Plant.

49.2 The Superintendent may require that certification by the Contractor under clause 49.1 is confirmed by a statutory declaration.

49.3 If the Contractor does not provide when requested the certification under clause 49.1 or the statutory declaration under clause 49.2, the Shire may:

- .1 deduct such amounts as appear to be due to the Contractor's employees or subcontractors or to any third party with an interest

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in any of the Contractor's Plant from any payments to the Contractor under this Contract, and

- .2 withhold those amounts until it has been provided with evidence to the satisfaction of the Superintendent 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 Superintendent 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 Superintendent within 7 days of the Superintendent 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.

50 GST

- 50.1 Prices and rates in this Contract are exclusive of GST, unless otherwise expressly stated.
- 50.2 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.
- 50.3 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.
- 50.4 Terms used in this clause 50 (GST) have the meanings given to them by the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Part 10 - Insurances and indemnity

51 Insurances to be held

Before commencing any work under the Contract, the Contractor must insure and pay all premiums for:

- .1 workers compensation insurance in accordance with clause 52 (Workers compensation insurance),

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- .2 a public liability policy of insurance in accordance with clause 53 (Public liability insurance),
- .3 Professional indemnity insurance in accordance with clause 54 (Professional indemnity insurance), and
- .4 Motor vehicle comprehensive or third party property damage insurance in accordance with clause 55 (Motor vehicle insurance).

52 Workers compensation insurance

52.1 The Contractor's workers compensation insurance must:

- .1 cover the Contractor for workers compensation and related liabilities in accordance with the requirements of any applicable Law,
- .2 be for an amount not less than the minimum required by Law, and
- .3 be maintained at all times during the Contract Term and until the issue of the last Certificate of Contract Completion.

52.2 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:

- .1 deems any Agent of the Contractor to be an employee or worker of the Shire or of an Agent of the Shire, or
- .2 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.

52.3 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.

53 Public liability insurance

The Contractor's public liability policy of insurance must:

- .1 cover the liability of the Contractor and its Agents to third parties,
- .2 be for an amount per occurrence of at least \$ I & S or the amount determined in accordance with clause 56 (Annual review of insurance levels), whichever is the greater, and
- .3 be maintained at all times during the Contract Term and until the issue of the last Certificate of Contract Completion.

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54 Professional indemnity insurance

The Contractor's professional indemnity insurance must:

- .1 cover the Contractor for errors in design, inspection, documentation, supervision and other professional duties of, or assessments made by, the Contractor in the course of performing the Contract,
- .2 be for an amount per occurrence of at least 1 CIC or the amount determined in accordance with clause 56 (Annual review of insurance levels), whichever is the greater, and
- .3 be maintained for at least 3 years after the date of issue of the last Certificate of Contract Completion.

55 Motor vehicle insurance

The Contractor's motor vehicle comprehensive or third party property damage insurance must:

- .1 cover the Contractor and others for damage caused to property by any registered or unregistered plant, equipment or motor vehicles owned or used by the Contractor or subcontractors directly in connection with performance of the Contract,
- .2 be for an amount per occurrence of not less than CIC or the amount determined in accordance with clause 56 (Annual review of insurance levels), whichever is the greater, and
- .3 be maintained at all times during the Contract Term and until the issue of the last Certificate of Contract Completion.

56 Annual review of insurance levels

The levels of insurance required by the Contract will be reviewed and determined by the Service Management Team 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.

56A Risk of premium increases

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 56) is to be borne by the Contractor (on the understanding that this risk will be adequately addressed by Indexation in accordance with the Contract).

57 Policy requirements

- 57.1 All insurance policies required by the Contract must be with insurers and on terms approved by the Shire, which approval must not be unreasonably withheld.

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- 57.2 The insurances under the Contract must together cover the liability of the Shire to third parties to the extent indemnified by the Contractor under clause 59 (Indemnity).
- 57.3 The insurances required by clauses 53 (Public liability insurance), and 55 (Motor vehicle insurance) must:
- .1 note the interests of the Shire and all subcontractors, and
 - .2 include a cross liability clause in which the insurer agrees to waive all rights of subrogation.

58 Evidence of insurance

The Contractor must provide the Superintendent with evidence of the currency of the insurances required by the Contract at the commencement of the Contract, at each Annual Review and at any other time within 15 Business Days of the Superintendent's written request.

59 Indemnity

- 59.1 The Contractor indemnifies the Shire and its Agents from and against all actions, claims, losses, damages, penalties or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) arising out of or in connection with any breach of contract by the Contractor or any negligent or wrongful act or omission of the Contractor or any of its Agents in the performance or purported performance of its obligations under this Contract.
- 59.2 The liability of the Contractor under this clause is reduced proportionately by the extent to which the action, claim, loss, damage, penalty or cost arose out of or in connection with a breach of contract by the Shire or a negligent or wrongful act or omission of the Shire or any of its Agents.

Part 11 - Security

60 Performance security

- 60.1 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 60.6.
- 60.2 The Performance Security must be a bank guarantee for an amount of **CIC** (Indexed) and must be in a form, and from a bank with offices in Australia, approved by the Shire (acting reasonably).
- 60.3 The initial Performance Security in the amount of **CIC** must be delivered to the Superintendent immediately upon execution of this Contract, and as a precondition to payment.

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- 60.4 In each subsequent Contract Year, the Contractor must deliver a replacement Performance Security in the amount of C-C (Indexed). Replacement Performance Securities must be delivered to the Superintendent by 30 September in each Contract Year. If a replacement Performance Security is required and is not submitted by 30 September in any Contract Year, the Shire may withhold payment to the Contractor until such time as the replacement Performance Security is provided.
- 60.5 The Shire must release any superseded Performance Security within 5 days of receiving the replacement Performance Security.
- 60.6 The Shire must return the Performance Security (or the balance thereof remaining after the exercise of a right of recourse) to the Contractor as follows:
- .1 CIC at the conclusion of the Contract Term; and
 - .2 the remaining CIC on the last to occur of (1) expiry of the last Defects Liability Period under the Contract and (2) 13 months after the conclusion of the Contract Term.
- 60.7 If the Shire exercises a right of recourse to the Performance Security, the Contractor must, if requested by the Shire at any time prior to the expiration period referred to in clause 60.6, 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.
- 60.8 The Shire is entitled to have recourse to the Performance Security at any time after giving 24 hours notice to the Contractor:
- .1 to recover any moneys owing from the Contractor to the Shire under the Contract or otherwise; or
 - .2 if the Contractor has failed to comply with any of its obligations arising out of the Contract for which Service Points cannot be awarded; or
 - .3 if the following requirements are satisfied:
 - (a) the Pavement Performance Review undertaken in Contract Year 14 (or in any Final PPR Year during an Extended Contract Term) indicates that the Contractor has not achieved the Required PCI;
 - (b) the Contractor does not achieve the Required PCI by 30 June 2021 (or, during an Extended Contract Term, by the date set out in the applicable Cure Plan); and
 - (c) the PCI Cure Fund then held by the Shire is not adequate in the reasonable opinion of the Superintendent to compensate the Shire for the failure to achieve the Required PCI.

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Part 12 – Completion obligations

61 Defects Liability Periods

61.1 The Contractor warrants that:

- .1 the Routine Maintenance Services carried out within the last 3 months of the Contract Term will be free from defects in workmanship and materials for 3 months from the date they are completed,
- .2 each Annual Reseal Service carried out within the last 12 months of the Contract Term will be free from defects in workmanship and materials for 12 months from its completion,
- .3 each Accelerated Works Project will be free from defects in workmanship and materials for 12 months from its Completion,
- .4 each Non-MSD Service (other than one requiring temporary repairs) will be free from defects in workmanship and materials for 12 months from its Date of Completion, and
- .5 each Minor Works will be free from defects in workmanship and materials for 12 months from its Date of Completion or such lesser period as is nominated in the Work Order Documents.

61.2 If a defect in workmanship or materials becomes apparent during a Defects Liability Period, the Contractor must attend and rectify the defect at its own cost at a time approved by the Superintendent. Upon completion of the rectification work, a further Defects Liability Period of equal length to the original Defects Liability Period applies with respect to the rectification work.

61.3 This clause does not in any way limit the Contractor's obligations to provide the Services during the Contract Term

62 Transfer to new contractor

62.1 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.

62.2 Without limiting clause 62.1, the Contractor may be required to:

- .1 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

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- .2 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 require provided that, if the Contractor objects to performing other such transitional services, the Service Management Team shall determine whether, and the extent to which, the Contractor shall undertake such services, the time within which the same shall be undertaken and the amount (if any) the Shire shall pay to the Contractor in respect thereof.

63 Completion of obligations

On expiry of the Contract, the Contractor must:

- .1 leave the Assets in the Condition required by the Contract,
- .2 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,
- .3 demonstrate to the Shire that it has met all of its obligations, and
- .4 deliver to the Shire all records of the Contractor relating to the Services or the Assets reasonably required by the Superintendent.

64 Continuing obligations

64.1 Continuing obligations generally

Any provision of the Contract which is expressed to survive the termination of the Contract or which, although not expressed, needs to survive the termination of the Contract to protect the presumed intentions of the parties as evidenced by the Contract, continues until the first to occur of:

- .1 full compliance with the relevant obligation, or
- .2 7 years from the date of termination of the Contract.

64.2 Continuing obligation to pay Back Payment Amounts

The obligation to pay the Back Payment Amounts (and any associated fees and charges) continues (but is not accelerated) after termination of the Contract until they are paid in full. During this period, the Special Arrangements apply.

64.3 Special Arrangements for Back Payment Amounts

After termination (or during any other time when Special Arrangements are expressed to apply), the Back Payment Amounts are to be paid by monthly instalments with the daily Working Capital Percentage applied to the daily balance of the outstanding Back Payment Amounts on the basis of a 365 day year.

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64.4 Special Arrangements for Unused Line Fees

The following special arrangements apply with respect to any Unused Line Fee which would, but for the termination or other eventuality giving rise to the Special Arrangements, still be payable under the Contract as at the date of termination or other applicable time:

- .1 On termination under clauses 67.7, 75 (Termination for convenience) or 76 (Termination by the Contractor), the Shire must compensate the Contractor for any break or other costs or losses incurred by the Contractor as a result of reducing its financial commitment by an amount equal to any undrawn portion.
- .2 At any other time when Special Arrangements are expressed to apply, the Shire must continue to pay the Contractor each month for the duration of the Special Arrangements an amount calculated by applying the rate of 0.75% per annum to any undrawn portion.

For the purposes of this clause, 'undrawn portion' has the following meaning:

- (a) the undrawn portion of the Maximum Agreed Exposure at any date is the difference between the Cumulative Cash Flow Differential (moneys owing to Contractor) and the Maximum Agreed Exposure as at that date, assuming the Maximum Agreed Exposure has never been reached prior to that date; and
- (b) the undrawn portion of the Variation Value at any date is the portion which has not been expended in carrying out the Variation as at that date (so, if the Variation is Complete, there will be no undrawn portion).

64.5 Adjustment at end of any Special Arrangements

Where Special Arrangements have come into place as a consequence of a suspension or Force Majeure Event or other temporary eventuality, the Superintendent must make any necessary adjustment to the MSC to ensure that there is no double counting at any time.

65 Certification of Contract Completion

- 65.1 At least 6 months prior to the end of the Initial Contract Term and each Extended Contract Term, the Superintendent must review the Contractor's performance in respect of its obligations under the Contract and advise the Contractor of any outstanding Services required to be undertaken before the end of the Initial Contract Term (or the Extended Contract Term, as the case may be) in order to complete the Contract.
- 65.2 If, at the end of the Initial Contract Term or the Extended Contract Term (as the case may be), the Contractor has not met one or more of its obligations under the Contract, the Superintendent must advise the Contractor of its non-performance and (in consultation with the Service Management Team) set a timeframe within which the matters must be remedied. The Contractor must remedy the non performance within the

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required timeframe and provide documentation demonstrating satisfactory completion. If the remedial work is physical, the Superintendent will inspect it and certify completion.

- 65.3 The Superintendent will certify that the Contract is complete at the end of the Initial Contract Term and at the end of each Extended Contract Term only if the Superintendent is reasonably satisfied that the Contractor has met all of its obligations under the Contract to that time including, where applicable, compliance with clause 61 (Defects Liability Periods).
- 65.4 A Certificate of Contract Completion, once issued, evidences the Contractor's satisfactory performance and completion of the Contract to the end of the Initial Contract Term or to the end of an Extended Contract Term (as the case may be), except to the extent that the Certificate may be affected by fraud, mathematical error, dishonesty, fraudulent concealment or a latent defect.

Part 13 - Dispute resolution

66 Disputes

- 66.1 It is the intention of the parties that issues will be resolved at the level of the Service Management Team or by reference to the Senior Representatives under clause 9.18 before they become disputes or differences.
- 66.2 Notwithstanding clause 66.1, if a dispute (including a difference) arises between the Shire and the Contractor, either during the Contract Term or after its termination, 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.
- 66.3 Such notice must:
- .1 indicate that it is a notice under this clause, and
 - .2 give sufficient details of the dispute as to enable the party receiving the notice to ascertain the nature of the dispute alleged.
- 66.4 Within 5 Business Days of the date of receipt of any notice of dispute under this clause by the party on whom it is served ("Receipt Date"), the parties must each appoint a senior executive (not being a Senior Representative or the Superintendent 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.
- 66.5 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 give notice

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referring the dispute or difference to arbitration. The arbitrator must be agreed between the parties within 10 Business Days from the date of the receipt of the notice referring the dispute to arbitration by the Contractor or the Shire, as the case may be, or, failing agreement, must be nominated by the President for the time being of the Institute of Arbitrators and Mediators.

- 66.6 Clause 66.5 does not in any way require the Shire or the Contractor to refer to arbitration any dispute or difference or in any way act as a bar to the bringing of legal proceedings by the Shire or the Contractor, except that no dispute or difference may be the subject of legal proceedings, except for legal proceedings concerning the conduct of the arbitration itself or a question of law, from the time it is referred to arbitration under clause 66.5 to the end of any subsequent arbitration.
- 66.7 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.
- 66.8 Except where inconsistent with this Contract, an arbitration under this clause must be conducted in accordance with the *Commercial Arbitration Act 1984*.

Part 14 – Force Majeure

67 Force Majeure and its effects

- 67.1 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:
- .1 details of the Force Majeure Event,
 - .2 details of the obligations affected,
 - .3 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,
 - .4 an estimate of the time during which the party will be unable to carry out its obligations due to the Force Majeure Event,
 - .5 an estimate of the costs that the party will incur to remedy the situation and the proposed funding arrangements, and

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- .6 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.
- 67.2 Upon the notice under clause 67.1 having been given, the party giving the notice must provide the other party with all further relevant information pertaining to the Force Majeure Event.
- 67.3 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.
- 67.4 The party that has issued a notice of a Force Majeure Event under this clause 67 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.
- 67.5 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 a Non-Continuing Variation.
- 67.6 Subject to clause 67.7, 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.
- 67.7 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 3 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 1 month of the end of the 3 month period, either party may terminate this Contract immediately by notice.
- 67.8 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.

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- 67.9 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 but must continue at all times to pay the Back Payment Amounts (and all associated fees and charges), and in this regard, the Special Arrangements apply. An appropriate adjustment to the MSC must be determined by the Superintendent, acting reasonably, provided that, where all of the resources of the Contractor that would otherwise be available for the performance of the Services are employed in responding to the Force Majeure Event, the Contractor is entitled to payment of the full MSC.

Part 15 –Performance Standards defaults

68 Application of Service Points

68.1 SMT may recommend application of Service Points at any time

The Service Management Team may make a recommendation to the Superintendent for the application of Service Points at any time if the Contractor:

- .1 has failed to achieve a Performance Standard (other than as a consequence of an Excusing Event); and
- .2 has been given an opportunity to Rectify the failure or to show cause under clause 68.9 (Service Point show cause) and has not done so to the Service Management Team's satisfaction.

The Service Management Team recommendation must include:

- .3 the number of Service Points to be applied (determined in accordance with clause 68.2); and
- .4 whether a deduction is also to be made of the associated Service Point Values (determined in accordance with clause 68.3.1).

68.2 Number of Service Points

The Service Management Team must take account of all relevant factors in determining the number of Service Points to be awarded in respect of any failure to achieve a Performance Standard.

Relevant factors include, without limitation, the following:

- .1 the level of severity and impact of the Contractor's failure to achieve the Performance Standard (including, as relevant, whether there is any material impact on the Assets or whether public safety has been put in jeopardy);
- .2 whether the failure to achieve the Performance Standard results from a single event or represents an ongoing and persistent course of conduct;

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- .3 whether factors beyond the Contractor's control have impacted on the ability of the Contractor to achieve the Performance Standard; and
- .4 any element of double jeopardy (where one single event has caused a failure against more than one Performance Standard or a failure against a Performance Standard in more than one respect).

The maximum Service Points that can be awarded in respect of any single occurrence of failure to achieve a Performance Standard is set out in schedule 4 (Service Points).

68.3 Applying Service Point Values

Service Point Values should only be applied where:

- (a) there are significant actual or potential financial or community consequences arising from the failure; or
- (b) the Contractor's failure indicates a disregard for its contractual obligations (for example, where the failure to achieve the Performance Standards arises from a number of defaults and failures or repeated defaults and failures); or
- (c) the failure has resulted in a material windfall or financial or other benefit for the Contractor; or
- (d) the Shire has suffered or incurred a material loss as a result of the failure.

68.4 Impact of Service Point application

In the event of the Contractor being awarded a total of 100 or more Service Points in any 3 month period, the Shire may issue the Contractor with a Termination Show Cause Notice.

In the event of the Contractor accumulating a total of 250 points in any Contract Year, the Shire may give notice of termination of the Contract in accordance with clause 72 (Powers on Contractor default) without the need for a Termination Show Cause Notice.

While a Cure Plan is in place under clause 69 (Cure of PCI Default Events) for any PCI Default Event, Service Points awarded with respect to the same PCI Default Event must not be counted for the purposes of this clause 68.4.

68.5 SMT may recommend redemptions at Annual Review

The Service Management Team may make a recommendation to the Superintendent for the redemption of any Service Points and Service Point Values as part of any Annual Review report:

- .1 (in the case of a Service Point Value only) where the failure for which the Service Point Value was applied has been Rectified without material loss to the Shire or unfair gain to the Contractor; or

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- .2 (in the case of both Service Points and Service Point Values) where the Annual Review determines that the Contractor has achieved the Performance Standard for which the Service Points or Service Point Values had previously been deducted; or
- .3 (in the case of both Service Points and Service Point Values) where, for any other reason, the Service Management Team considers it reasonable to redeem some or all of the Service Points or Service Point Values.

The Superintendent must not unreasonably withhold his concurrence to a recommendation under this clause.

68.6 Superintendent's powers

Subject to clause 68.7 and without limiting any other provision of the Contract, the Superintendent has power to:

- .1 approve the redemption of Service Points or Service Point Values following any Annual Review ; and
- .2 after consultation with the Service Management Team, apply Service Points and any associated Service Point Values at any time if the circumstances set out in clause 68.1.1 and 68.1.2 have been satisfied,

without the need for a recommendation by the Service Management Team.

68.7 Factors to be considered by Superintendent

The Superintendent must apply the same factors and principles in making any determination under clause 68.6 (Superintendent's powers) with respect to the application and redemption of Service Points and Service Point Values as the Service Management Team is required to apply in clauses 68.2 (Number of Service Points), 68.3 (Applying Service Point Values) and 69.5 (Redemptions)

68.8 Determination of failure to achieve a Performance Standard

The Contractor's failure to achieve a Performance Standard must be determined having regard to the process and evidence and relevant factors set out in schedule 3 (Performance Standards Review).

68.9 Service Point Show Cause

If at any time the Service Management Team is concerned that the Contractor has failed to achieve a Performance Standard, the Service Management Team must:

- .1 notify the Contractor in writing of:
 - (a) the Performance Standard which the Contractor is alleged to have failed to achieve;

- (b) the respect (or respects) in which it is alleged that the Contractor has failed to achieve the Performance Standard; and
 - (c) the action which the Service Management Team considers appropriate to Rectify the failure;
- .2 allow the Contractor 10 Business Days to Rectify the failure, prepare a plan for the Rectification of the failure or otherwise show cause in writing why the Service Points or Service Point Values should not be applied; and
 - .3 consider in good faith the matters submitted by the Contractor under paragraph 2 above.

68.10 SMT includes others exercising SMT powers

For the avoidance of doubt:

- .1 a reference in this clause 68 (Application of Service Points) to the Service Management Team includes a reference to the Senior Representatives or the Superintendent exercising powers conferred by clauses 8.3, 8.4 and 8.5;
- .2 if the Superintendent is making a determination under this clause 68 (Application of Service Points) by virtue of clause 8.5.2, he must first comply with clause 68.9 (Service Point Show Cause).

68.11 Service Points for PCI Default Events

Notwithstanding any other provision of the Contract:

- .1 Service Points must not be awarded for a Level 1 PCI Default Event.
- .2 Service Points must be awarded for a Level 2 PCI Default Event.

69 Cure of PCI Default Events

- 69.1 If a PCI Default Event is identified at any Pavement Performance Review, the following provisions apply in addition to the application of any Service Points under clause 68 (Application of Service Points).
- 69.2 The Contractor must, for each PCI Road Category affected by the PCI Default Event, propose a Cure Plan to be carried out at its own cost to bring the Assets back to the Required PCI and must submit the draft Cure Plan to the Service Management Team within 10 Business Days of submission of the Pavement Performance Review Report to the Shire (or, at the latest, by 15 June in the Pavement Performance Review Year).
- 69.3 The Service Management Team must review and approve the Cure Plan, if necessary after making modifications, and submit it to the Superintendent with a recommendation for adoption.

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- 69.4 The Cure Plan must specify, to the Superintendent's reasonable satisfaction:
- .1 the Contractor's plan to achieve the Required PCI before the next Pavement Performance Review Year; and
 - .2 a valuation of the work involved in undertaking the Cure Plan (being the value of the work required over and above the Core Services) ("Cure Plan Value"), which valuation must, in any Final PPR Year when the value of the work involved in undertaking all Cure Plans then required is aggregated, not be less than **CIC** **CIC** (Indexed).

69.5 The Superintendent must advise the Contractor within 10 Business Days whether the Cure Plan is accepted or rejected.

69.6 If the Cure Plan is accepted, the Contractor must, within a further 10 Business Days:

- .1 lodge with the Shire a PCI Cure Fund in an amount equal to the Cure Plan Value; and
- .2 commence implementation of the Cure Plan.

The PCI Cure Fund must be a bank guarantee in a form, and from a bank with offices in Australia, approved by the Shire (acting reasonably).

69.7 If the Cure Plan is rejected, the Contractor must make any revisions required by the Superintendent and resubmit it within 10 Business Days of the Superintendent's notice of rejection.

69.8 Notwithstanding any review, comment, acceptance or approval by the Superintendent or the Service Management Team, the entire responsibility for the Cure Plan and for its efficacy remains at all times with the Contractor.

69.9 If the Contractor fails to:

- .1 provide a compliant Cure Plan; or
- .2 lodge a PCI Cure Fund in accordance with clause 69.6,

the Shire may:

- .3 suspend payment or terminate the Contract by notice under clause 72 (Powers on Contractor default), without the need for a Termination Show Cause Notice; or
- .4 if the failure relates to a PCI Default Event identified in the Final PPR Year, develop its own Cure Plan for the affected PCI Road Category; implement the Cure Plan within the timeframe it considers appropriate; undertake its own Pavement Performance Review and recover the cost of doing all these things from the Contractor as a debt due.

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- 69.10 If the Contractor has implemented a Cure Plan with respect to a particular PCI Road Category but has not achieved the Required PCI for that PCI Road Category by the next Pavement Performance Review, the Shire may require the Contractor to submit a further Cure Plan and PCI Cure Fund in accordance with this clause 69 (Cure of PCI Default Events).
- 69.11 If, despite provision of a Cure Plan and compliance with this clause, the Contractor has not achieved the Required PCI for a particular PCI Road Category in 3 consecutive Pavement Performance Review Years, the Shire may do either or both of the following (and without limiting its rights under clause 60.8):
- .1 after giving the Contractor 24 hours notice, have recourse to the PCI Cure Fund held for that PCI Road Category 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 PCI Cure Fund 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);
 - .2 terminate the Contract by notice under clause 72 (Powers on Contractor default), without the need for a Termination Show Cause Notice.
- 69.12 If the Contractor has achieved the Required PCI for a PCI Road Category at any time following implementation of a Cure Plan prepared for that purpose, the Shire must return to the Contractor the PCI Cure Fund (if any) then held by the Shire with respect to that PCI Road Category (including any further PCI Cure Fund submitted with respect to that PCI Road Category under clause 69.10).
- 69.12A For the purposes of this clause 69, the Contractor is taken to have achieved the Required PCI for any PCI Road Category:
- .1 in the case of a Level 1 PCI Default Event, on the first to occur of:
 - (a) issue by the Superintendent of a certificate of Completion of the works required by the Cure Plan; or
 - (b) a Pavement Performance Review Report for the affected PCI Road Category showing that the Required PCI for that PCI Road Category has been achieved; and
 - .2 in the case of a Level 2 PCI Default Event, when this is demonstrated by a Pavement Performance Review Report for the affected PCI Road Category.

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- 69.13 If the Pavement Performance Review in any Final PPR Year shows that the Contractor has not achieved the Required PCI for any PCI Road Category at that time, the Cure Plan submitted under clause 69.2 must provide for achieving the Required PCI by 30 June 2021 (or within 12 months, in the case of an Extended Contract Term) and the Contractor must, at its own cost, carry out all data collection and prepare a Pavement Performance Review Report by 30 June 2021 (or within 12 months, in the case of an Extended Contract Term) showing that the Required PCI has been achieved.

Part 16 – Default and termination

70 Right to do and charge

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 and recover the cost of doing so from the Contractor.

71 Termination show cause notice

- 71.1 Subject to clause 71.2, the Shire may give notice to the Contractor requiring it to show cause why the powers contained in clause 72 (Powers on Contractor default) should not be exercised where the Contractor:

- .1 defaults in the performance or observance of any obligation under the Contract; or
- .2 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 Superintendent or the Service Management Team pursuant to the Contract.

- 71.2 Where a default, refusal or neglect of the kind referred to in clause 71.1 also constitutes failure to achieve a Performance Standard, the default, refusal or neglect is to be dealt with in accordance with:

- .1 clause 68 (Application of Service Points); and
- .2 in the case of a PCI Default Event, clause 69 (Cure of PCI Default Events).

- 71.3 A Termination Show Cause Notice must:

- .1 not be unreasonably given,
- .2 indicate that it is a notice under this clause, and
- .3 specify the grounds upon which it is based.

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72 Powers on Contractor default

72.1 If:

.1 the Contractor fails to show cause, within 15 Business Days after receipt of a Termination Show Cause Notice, which in the opinion of the Shire offers reasonable assurance that the default or other grounds of notice will be Rectified in a prompt and timely fashion and the Contract satisfactorily completed in accordance with its terms, or

.2 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:

.3 suspend payment under the Contract (other than payment of the Back Payment Amounts – payment of these is to be ongoing, and the Special Arrangements apply), or

.4 terminate the Contract by notice to the Contractor.

72.2 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 Superintendent's satisfaction.

72.3 The Shire is not entitled to give a notice under this clause with respect to a failure to achieve Performance Standards unless the circumstances set out in clause 68.4 (Impact of Service Point application) are satisfied.

73 Termination for Contractor insolvency

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

.1 being a partnership:

(a) is dissolved;

(b) any of the things identified in clause 74.1.2 happens to any of the partners;

(c) any of the partners makes an assignment for the benefit of its creditors;

(d) any of the partners becomes bound by a scheme of arrangement;

(e) any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or

(f) any of the partners has a mortgagee or other creditor take possession of any of its assets, or

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- .2 being a company:
- (a) 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,
 - (b) an administrator is appointed, or steps are taken for the appointment of an administrator, under any relevant Law in respect of it,
 - (c) 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,
 - (d) has a mortgagee or other creditor take possession of any of its assets, or
 - (e) 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.

74 Payments on termination for default or insolvency

74.1 If the Contract is terminated by the Shire under clause 72 (Powers on Contractor default) or 73 (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:

- .1 any amount the Shire is entitled to recover from the Contractor under the Contract, and
- .2 the amount of any damages suffered or incurred by the Shire as a consequence of any default by the Contractor or as a consequence of the exercise by the Shire of its power of termination.

74.2 The amount payable under this clause is to be determined by the Superintendent and notified to the parties. The determination must be accompanied by details of the underlying calculations and the reasons for the determination.

74.3 If the amount payable under this clause as determined by the Superintendent is a positive amount, it must be paid by the Shire to the Contractor within 10 Business Days of receipt of notice of the Superintendent's determination.

74.4 If the amount payable under this clause as determined by the Superintendent is a negative amount, it must be paid by the Contractor to the Shire within 10 Business Days of receipt of notice of the Superintendent's determination.

74.5 Nothing in this clause affects clause 64 (Continuing obligations).

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75 Termination for convenience

75.1 The Shire may terminate the Contract at any time on 3 months' notice for any reason.

75.2 If the Contract is terminated by the Shire under this clause, the Shire must pay the Contractor:

- .1 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,
- .2 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 and possession in those items or materials passes to the Shire upon payment,
- .3 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,
- .4 an amount to reimburse the Contractor for all demobilisation costs reasonably and necessarily incurred by the Contractor as a consequence of the early termination,
- .5 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,
- .6 loss of profit at :
 - (a) the rate of CIC of the outstanding value of the Flat Base Annual Service Charges for the balance of the Contract Term remaining at the date of termination ("Remaining Term") inflated at CIC per annum for the Remaining Term, and discounted back to a present value using the Bank Bill Rate; and
 - (b) the rate of CIC per annum of the outstanding value of any terminated Work Order or Non-Continuing Variation (except that if the terminated Work Order or Non-Continuing Variation would have had a term in excess of one year, then the loss of profit is to be calculated at the rate of CIC per annum of the outstanding value of the Work Order or Non-Continuing Variation remaining at the date of termination ("Remaining Term") inflated at CIC per annum for the Remaining Term,

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and discounted back to a present value using the Bank Bill Rate).,

- 75.3 The Contractor has a duty to do what it reasonably can to ensure that the costs recoverable from the Shire under clause 75.2 are minimised. The Contractor must consult with the Shire prior to incurring costs under clause 75.2.4 (demobilisation) and clause 75.2.5 (redundancy and employee costs).
- 75.4 Without limiting anything in clause 75.2, amounts recoverable by the Contractor under clause 75.2 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.
- 75.5 The amount payable under this clause is to be determined by the Superintendent 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 Superintendent's determination must be accompanied by details of the underlying calculations and the reasons for the determination.
- 75.6 If the amount payable under this clause as determined by the Superintendent is a positive amount, it must be paid by the Shire to the Contractor within 10 Business Days of receipt of notice of the Superintendent's determination.
- 75.7 If the amount payable under this clause as determined by the Superintendent is a negative amount, it must be paid by the Contractor to the Shire within 10 Business Days of receipt of notice of the Superintendent's determination.
- 75.8 Nothing in this clause affects clause 64 (Continuing obligations).

76 Termination by the Contractor

- 76.1 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 Services under this clause does not prevent the Contractor later terminating the Contract, including during the period that the performance of the Services is suspended.
- 76.2 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 Superintendent must make a

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determination in accordance with clause 75 (Termination for convenience) and payment must be made in accordance with that clause.

Part 17 - General

77 Notices

- 77.1 A notice required or permitted to be given by one party to another under this Contract must be legible and in writing and must be addressed to the recipient party at the address given in Schedule 1 (Contract Details) or at any other contact address more recently provided.
- 77.2 A notice given to a party in accordance with this clause must be treated as having been duly given and received:
- .1 if handed to the party's representative, immediately,
 - .2 if delivered to a party's address, on the day of delivery,
 - .3 if sent by pre-paid mail, on the third day after posting, or
 - .4 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission, or
 - .5 if sent by email, at the time of receipt as recorded by the recipient's computer system.
- 77.3 If the time or fact of receipt of any notice may have consequences under the Contract or at Law, the party sending the notice is responsible to ensure that the notice is in fact received by the other party. Action required by this clause may include courier delivery receipt, follow-up phone call or automatically generated email receipt.
- 77.4 SMS or instant messaging may not be used for giving notices required by the Contract. Any such communications must be confirmed by way of a notice given as above.

78 Relationship between the parties

- 78.1 There is no partnership, or intention to create a partnership, between the parties and no fiduciary duties.
- 78.2 If the Contractor consists of two or more parties:
- .1 this Contract binds each of them severally and jointly; and
 - .2 a representation, warranty or undertaking made by the Contractor is made by each of them.

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78.3 The Contractor must not:

- .1 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
- .2 hold out its Agents, or allow its Agents to hold themselves out, as being employees or agents of the Shire.

79 Legal operation

- 79.1 The Contract does not fetter or restrict the powers or discretions of the Shire in the exercise of its statutory functions.
- 79.2 The rights and remedies of a party under the Contract are not waived by any conduct unless an intention to waive rights and remedies is expressed in writing.
- 79.3 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.
- 79.4 This Contract may be amended only by a written instrument duly executed by the parties.
- 79.5 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.

80 Entire agreement

- 80.1 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.
- 80.2 The Prior Contract is terminated on and from the Commencement Date.

81 No assignment

- 81.1 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.
- 81.2 Consent to assignment or novation may be given subject to conditions the Shire considers appropriate. All reasonable internal and external costs of

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the Shire (including reasonable legal and other consultants' costs) in considering and documenting any assignment or novation requested by the Contractor are to the Contractor's account.

- 81.3 A change in control of either or both of the parties comprising the Contractor (where "control" has the meaning given in s50AA of the Corporations Act 2001 (Cth)) is deemed to be an assignment for the purposes of this clause.

82 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.

83 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.

Part 18 - Interpretation

84 Document change management

- 84.1 So as to identify and keep track of changes to the Contract Documents, the Superintendent will, within 10 Business Days of the date of execution of the Contract:

- .1 compile 2 complete sets of the Contract and provide one of those sets to the Contractor, and
- .2 establish and thereafter maintain up to date at all times a Contract Document register containing:
 - (a) the then current version number and date of each Contract Document,
 - (b) 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
 - (c) a copy of all superseded Contract Documents.

- 84.2 Not used

- 84.3 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

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be tested from time to time and updated where appropriate to ensure ongoing accessibility and integrity of the records.

- 84.4 If there is a discrepancy between a version of a Contract Document and any other version, the Current version held by the Superintendent in the Contract Document register prevails (subject to proven error, negligence or fraud).
- 84.5 For the purposes of any dispute, claim or action under or concerning the Contract, the Contract Document register held by the Superintendent 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).
- 84.6 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.

85 Interpretation

- 85.1 The following rules apply in the interpretation of this Contract, except where the context or words used indicate otherwise:
- .1 headings and underlinings are for convenience only and do not affect interpretation,
 - .2 words expressed in the singular include the plural and vice versa,
 - .3 a reference to a gender includes a reference to each other gender,
 - .4 where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning,
 - .5 a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa,
 - .6 a reference to any Law is a reference to any Law amending, consolidating or replacing the named Law,
 - .7 a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act,
 - .8 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,
 - .9 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,
 - .10 'including' is not a word of limitation,
 - .11 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,

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- .12 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
 - .13 a reference to any document (other than a Contract Document) is a reference to that document as updated or changed from time to time.
- 85.2 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.
- 85.3 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.
- 85.4 If there is any discrepancy or inconsistency between the Contract Documents, the Service Management Team must make a determination as to the proper interpretation of the Contract and if necessary must recommend that the Superintendent direct a Variation.
- 85.5 In this Contract, a reference to "\$" or "dollars" is a reference to Australian dollars.
- 85.6 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.

86 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 A2-4 (Indexation adjustment)

87 Reference Documents

- 87.1 Where documents are referred to in the Contract, the Contractor must make itself aware of the requirements of the respective 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.
- 87.2 As at the Commencement Date, the Current version of a Reference Document is the version identified in the CD-ROMs forming part of schedule 5 (Reference Documents), unless and until a Variation is issued identifying a change or update to that version. Changes or updates are recorded and version control is maintained in accordance with clause 84 (Document change management). If a Reference Document is not included on the CD-Roms forming part of schedule 5 (Reference Documents), the Current version of that document is the version that was current as at 1 April 2005.

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88 Counterparts

This Contract may be executed in any number of counterparts.

Part 19 – Contract extensions

89 Contract extensions

- 89.1 Subject to the requirements of any Law, the Shire may, following each satisfactory Annual Review from and including the Annual Review at the end of Contract Year 6, award the Contractor an option to extend the duration of the Contract in each case by one year (each such awarded option being an "Extension Option").
- 89.2 Except as provided in clause 89.4, all Extension Options must be exercised together.
- 89.3 If an Extension Option is exercised in accordance with this clause 89, the Contract will continue during any Extended Contract Term *mutatis mutandis* on the same terms as applied as during the Initial Contract Term except that:
- .1 the provisions of the Contract relating to Required PCI will not apply, unless agreed as part of an Asset Management Services Refresh;
 - .2 during any period when the Required PCI does not apply, clause 8.5.1 will also not apply;
 - .3 the Component Price for Condition Monitoring that applied during PPR Year 14 (as Indexed) will apply during any Pavement Performance Year in the Extended Contract Term, unless otherwise agreed as part of an Asset Management Services Refresh; and
 - .4 the Unused Line Fee reapplies, with the Maximum Agreed Exposure re-set at the figure which is the highest Cumulative Cash Flow Differential applying during the Extended Contract Term as shown on an MSC Calculation Schedule prepared for the purpose of the Extended Contract Term.

All other Component Prices and rates continue as at the prices applicable in Contract Year 15 but Indexed in accordance with the Contract.

- 89.4 The Contractor must give notice of its intention to exercise the Extension Options by 5pm on 31 December 2020 (or, during any Extended Contract Term, by 5pm on 31 December in the last Contract Year of the Extended Contract Term). If an Extension Option is awarded after 31 December 2020 (or other applicable 31 December), that Extension Option is carried over to the Extended Contract Term as an unexercised Extension Option, unless the parties agree otherwise.

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- 89.5 The notice of intention to exercise the Extension Options must be accompanied by a binding fully priced and detailed offer for an Asset Management Services Refresh. The Contractor's offer must include:
- .1 the program of works required to achieve the Required PCI during the Extended Contract Term;
 - .2 any material assumptions on which the program is based;
 - .3 any matters reasonably requested by the Shire's Asset Management Specialist or by the Service Management Team;
 - .4 any changes to the Component Prices for Annual Reseal Services and Condition Monitoring to apply during the Extended Contract Term (if the Asset Management Services Refresh is adopted by the Shire); and
 - .5 a spreadsheet showing the total MSC payable during the Extended Contract Term using the applicable Component Prices and based on spreading the cost of the Annual Reseal Services evenly across the Extended Contract Term (where the Working Capital Percentage and rate of Unused Line Fee remain the same as they were during the Initial Contract Term); and
 - .6 any other matters material to the offer.
- 89.6 The Contractor's offer for an Asset Management Services Refresh remains open for acceptance until 5pm on 31 March 2021 (or, during any Extended Contract Term, until 5pm on 31 March in the last Contract Year of the Extended Contract Term). Acceptance must be confirmed in writing.
- 89.7 Extension Options remain open for exercise until 5pm on 30 April 2021 (or, during any Extended Contract Term, until 5pm on 30 April in the last Contract Year of the Extended Contract Term). Extension Options must be exercised by notice in writing. For the avoidance of doubt, the Contractor is not obliged to exercise an Extension Option just because it has issued a notice of intention to do so under clause 89.4.
- 89.8 If the Contractor exercises any Extension Option in accordance with this clause 89, the terms applying during the Extended Term (consistent with this clause and any agreement reached by the parties for an Asset Management Services Refresh) will be recorded in a deed of variation and extension prepared by the Shire. The parties must their best endeavours to agree and sign the deed before 20 June 2021 (or, during any Extended Contract Term, before 20 June of the last Contract Year of the Extended Contract Term).
- 89.9 For the avoidance of doubt, during any Extended Contract Term:
- .1 clause 89.1 continues;
 - .2 Contract Years continue at all times to be numbered consecutively so that the first year of the first Extended Contract Term will be

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"Contract Year 16" and the Shire will be entitled to award further options from the 1st year of any Extended Contract Term; and

.3 Pavement Performance Review Years (if applicable) are as follows, unless otherwise agreed:

- (a) if the option-period is equal to or less than 3 years, the last (or only) year is the Pavement Performance Review Year; and
 - (b) if the option period is more than 3 years, every 3rd year and the last year are Pavement Performance Review Years.
-

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Schedule 1 - Contract Details

Item	Details
Item 1	The initial Senior Representatives are: For the Shire – Bruce Douglas, Director Sustainable Infrastructure For the Contractor – Sergio Cinerari, Chief Operating Officer, Southern Central
Item 1A	The initial members of the Service Management Team are: Shire representatives • CIC Manager Infrastructure Maintenance • CIC Manager Infrastructure Strategy • CIC Road Maintenance Coordinator Contractor representatives • CIC Contract Manager • General Manager - Maintenance / Civil - Southern Region • One other, to participate as and when required by the Contractor.
Item 2	The initial members of the Contractor Operations Team are: • CIC Contract Manager • CIC – Community Liaison Officer • CIC - Team Leader Routine Maintenance
Item 3	The initial members of the Shire Operations Team are: • CIC Road Maintenance Coordinator • CIC Senior Engineer • CIC Project Manager – Team Leader
Item 4	The initial Superintendent is: CIC
Item 5	The initial Contract Manager is: CIC
Item 6	Relevant addresses for service of notices are as follows: Shire By mail: 90 Besgrove Street, Rosebud, Victoria 3939 (attn: General Manager) By fax: 03 5950 1268

Schedule 1
Contract Details

Item	Details		
Item 6 (contd)	Superintendent	By mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn Director Sustainable Infrastructure)
		By fax:	03 5950 1268
	Service Management Team	All notices to the Service Management Team must be addressed to the Service Management Team c/- the Contract Manager and must be sent to the Contract Manager's address	
	Contract Manager	By mail:	PO Box 3081 Mornington 3931
		By hand:	140 Watts Rd, Mornington Victoria, 3931 (attn: Mr Drew Morrison)
		By fax:	03 5975 7988
	Shire's Senior Representative	By mail:	90 Besgrove Street, Rosebud, Victoria 3939 (attn Director Sustainable Infrastructure)
		By fax:	03 5950 1268
	Contractor's Senior Representative	By mail:	Locked Bag 1014 Port Melbourne Vic 3207 (Attn: Chief Operating Officer, Southern Central)
		By hand:	Level 2, 650 Lorimer St Port Melbourne, Vic 3207 (Attn: Chief Operating Officer, Southern Central)
		By fax:	03 8645 0850
	Contractor:	By mail:	Level 11, 468 St Kilda Road, Melbourne Victoria 3004 (attn: Chief Executive Officer)
		By fax:	03 9864 0851

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Schedule 2
Annual Review Scorecard

Schedule 2 - Annual Review Scorecard

Date: Annual Review Scorecard

SAFER LOCAL ROADS		Scoring of Contractor 0-4			Scoring of Shire 0-4		
ITEM	CRITERIA	Shire Score	Contractor Score	AVERAGE SCORE	Shire Score	Contractor Score	AVERAGE SCORE
1.0	DELIVERY OF WORKS, SERVICES & PROGRAMS						
1.1	Contractors (and subcontractors where appropriate) skills in inspections, reporting, recording & service delivery						
1.2	Staff development / training						
1.3	Level of local employment						
1.4	Plant resources, age, condition, badging (including subcontractors)						
1.5	Meeting of agreed actions within timeframes						
1.6	Inspection, recording and reporting on Asset condition / safety						
1.7	Maintaining of Asset Inventory						
1.8	Quality of monthly meetings (agendas & minutes), reports, including monthly report to Council						
1.9	Timely delivery of Services outside MSC, including reports						
1.10	Development, implementation and operation of programs						
1.11	Management and supervision of Contract						
1.12	Accelerated Works Program						
	Sub-total						

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Schedule 2 Annual Review Scorecard

SUPERLOCAL ROADS		Scoring of Acquisition - A			Scoring of Shire - A		
ITEM	CRITERIA	Shire Score	Contractor Score	AVERAGE SCORE	Shire Score	Contractor Score	AVERAGE SCORE
2.0	PERFORMANCE / QUALITY OF WORKS						
2.1	Auxiliary works for reseals, repairs to bituminous surface, crack sealing, emergency pavement repairs, local shape correction & pavement sweeping						
2.2	Annual Reseal Program						
2.3	Accelerated Works Projects						
2.3A	Ordered Work						
2.4	Grading unsealed roads, resheeting unsealed roads and dust suppression						
2.5	Pot hole repair and shoulder edge break repair						
2.6	Grading unsealed shoulders and resheeting unsealed shoulders						
2.7	Local scour repair, minor repair lined drains and clear open drains						
2.8	Pit / drainage structure repair						
2.9	Retarding basin maintenance & stormwater / drainage pumps						
2.10	Bridge & major culvert maintenance						
2.11	Footpath repairs, kerb & channel repairs & traffic island maintenance						
2.12	Boat ramp maintenance						
2.13	Operation of Emergency Management						
2.14	Operation of Call Out Services						
	Sub-total						
3.0	SAFETY						
3.1	Operation of quality management system (being part of the Integrated Management Plan)						
3.2	Operation of risk management system (being part of the						

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Schedule 2 Annual Review Scorecard

SATELLITE/LOCAL ROADS		Scoring of Contractor 0-4			Scoring of SHIRE 0-4		
ITEM	CRITERIA	Shire Score	Contractor Score	AVERAGE SCORE	Shire Score	Contractor Score	AVERAGE SCORE
3.3	Integrated Management Plan)						
3.3	Operation of asset maintenance plan						
3.4	Operation of OH&S system (being part of the Integrated Management Plan)						
3.5	Operation of Environmental Management System (being part of the Integrated Management Plan)						
	Sub-total						
4.0	COMMUNITY CARE						
4.1	Commitment to Peninsula Way – seeing the matter from the customer's point of view, connected with the community, community satisfaction & responsiveness to the community's diverse needs						
4.2	Timely service (to service requests, letters, emails)						
4.3	Community and internal education, awareness, information and opportunity for input						
4.4	Professionalism and skills of customer service staff, including training, quality of info in letters, service requests & emails						
4.5	Complaint(s) about service provided by staff member(s) (internal & external)						
4.6	Traineeship / work experience opportunities						
4.7	Commitment to employment of local contractors						
	Sub-total						
5.0	INNOVATION / ADDED VALUE						
5.1	Commitment level to innovation and added value, including responsiveness to changing needs						
5.2	Sustainable service enhancements provided						
5.3	Through investment, service enhancements provided						

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Annual Review Scorecard

Satisfactory Pass		Scoring of Contractor - 4			Scoring of Shire 0 - 4		
ITEM	CRITERIA	Shire Score	Contractor Score	AVERAGE SCORE	Shire Score	Contractor Score	AVERAGE SCORE
5.4	Evidence of continuous improvement (doing things smarter)						
5.5	Level of proactiveness						
	Sub-total						
6.0	QUALITY RELATIONSHIP MANAGEMENT						
6.1	Linkages / integration with Shire & other Contractors, including commitment to and success of quality relationship (seamless service)						
6.2	Level of resource sharing (human, materials and/or plant) in delivering service outcomes						
6.3	Health of quality relationship						
6.4	Level of team approach into positions and appointments						
6.5	Commitment to deal with issues in an environment of trust, co-operation, respect and openness						
	Sub-total						
	TOTAL						

0 – Unsatisfactory performance (non-conformances issued)
1 – Failing to achieve Contract requirements (written non-performances or corrective actions issues raised)
2 – Achieving Contract requirements in most areas (may have resulted in the need for action)
3 – Meeting Contract requirements (nil or minor issues raised)
4 – Exceeding Contract requirements

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Schedule 3
Performance Standards Review

Schedule 3 – Performance Standards Review

Measurement of achievement of Performance Standards

PS1 Performance Standard 1 (Accelerated Works Program)¹

PS1.1 Compliant design

Process/evidence: Identify each project designed during the period covered by the review.
Determine, with respect to each, the extent of design required and whether the design is compliant.

Relevant factors²: No. of designs.
Nature or extent of non-compliance (if any).
Shire approval of non-compliance.

PS1.2 Compliant construction

Process/evidence: Identify each project constructed during the review period.
Determine, with respect to each, whether the construction is compliant.

Relevant factors²: No. of projects constructed.
Nature or extent of non-compliance (if any).
Performance against Item 2.3 (Accelerated Works Projects and Ordered Work) of the most recent Annual Review Scorecard.

PS1.3 Progress is consistent with Accelerated Works Program

Process/evidence: Review actual delivery against Accelerated Works Program.

Relevant factors²: Any agreed changes to the AWP.
Impact of delay (if any) by MPSC Design Team.
Performance against Item 1.12 (Accelerated Works Program) of the most recent Annual Review Scorecard.

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PS1.4 Compliance with defects liability obligations for completed works

Process/evidence: Identify each completed project with an outstanding defects period.

With respect to each completed project:

- Identify any defects outstanding at Completion and whether they have been rectified.
- Identify any subsequent defect notices and whether they have been complied with.

Relevant factors²: Existence of bona fide dispute regarding the existence or cause of a defect.

PS2 Performance Standard 2 (Routine Maintenance Services)

PS2.1 Defects are Rectified within their applicable Response Times and in accordance with the Activity Specifications.

Process/evidence: Review AMIS records to determine number of Defects and the period taken to respond to them. Review non-conformance records and reports. Assess compliance with Response Times. Assess compliance with Rectification obligations.

Relevant factors²: No. of Defects.
Level of non-compliance, if any, having regard to volume of Defects and call-outs.
Performance against Item 2 (Performance/Quality of Works) of the most recent Annual Review Scorecard.

PS2.2 Compliance with clause A4-3 (Network maintenance obligations)

Process/evidence: Review AMIS records and non-conformance records and reports. Assess compliance.

Relevant factors²: Performance against Item 2 (Performance/Quality of Works) of the most recent Annual Review Scorecard.

PS3 Performance Standard 3 (Safety)

PS3.1 All Services are carried out in accordance with all applicable OH & S Laws and codes of practice.

Process/evidence: Identify any notices issued by WorkCover or complaints made to the Shire about safety issues.

Review Contractor safety statistics for the Contract.

Audit of IMP as regards the Contractor's safety management processes and procedures (if the Shire considers appropriate).

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Relevant factors²: Performance against Item 3 (Safety) of the most recent Annual Review Scorecard.
Nature and cause of any incidents occurring.

PS3.2 Attention to the identification and management of safety risks and hazards before and during the performance of the Services and upon the occurrence of any incident or near miss.

Process/evidence: Identify what processes the contractor has in place and whether these are complied with.
Audit IMP safety components (if Shire considers appropriate).

Relevant factors²: Performance against Item 3 (Safety) of the most recent Annual Review Scorecard.

PS3.3 Compliance with clause A3-27 (Safety)

Process/evidence: Identify what processes the contractor has in place and whether these are complied with.
Review Contractor safety statistics for the Contract (including internal and potential impact on others).
Audit of IMP as regards the Contractor's safety management processes and procedures (if the Shire considers appropriate)
Identify reports made by the Contractor concerning safety improvement works on the Network.
Review any relevant non-conformance and audit reports (for example, regarding management of signage and liaison with Utilities).

Relevant factors²: Performance against Item 3 (Safety) of the most recent Annual Review Scorecard.

PS3.4 Compliance with clause A3-28 (Traffic management)

Process/evidence: Review number of accidents, incidents and near misses (if any) at Worksites and consider causes.
Review any applicable non-conformance and audit reports.
Review training records of Contractor personnel

Relevant factors²: Performance against Item 3 (Safety) of the most recent Annual Review Scorecard.

PS3.5 Compliance with clause 32 (Protecting people)

Process/evidence: Review Contractor compliance with reporting obligations regarding injuries and other matters.

Relevant factors²: Performance against Item 3 (Safety) of the most recent Annual Review Scorecard.

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Performance Standards Review

PS3.6 No action is taken under the Contract with respect to a Safety Breach.

Process/evidence: Identify directions given under clause 32.5 (if any)

Relevant factors²: N/A

PS4 Performance Standard 4 (Contract Management)

PS4.1 Compliance with clause A3-11 (Integrated Management Plan)

Process/evidence: Identify that the Contractor has an Integrated Management Plan and that it complies with the requirements of the Contract.

Identify the steps (if any) taken by the Contractor to ensure the IMP remains effective.

Relevant factors²: N/A

PS4.2 Compliance with the Integrated Management Plan

Process/evidence: Identify conformance reports, audit reports and other relevant evidence of compliance with the processes set out in the IMP.

Relevant factors²: Performance against Item 1.1 (Contractor's skills in inspections, reporting, recording & service delivery) of the most recent Annual Review Scorecard.

Performance against Item 1.2 (Staff development/training) of the most recent Annual Review Scorecard.

Performance against Item 1.8 (Quality of monthly meetings, reports, including monthly report to Council) of the most recent Annual Review Scorecard.

Performance against Item 3 (Safety) of the most recent Annual Review Scorecard.

PS4.3 Compliance with clause A3-12 (Management of the Contract)

Process/evidence: Identify issues arising during the relevant year and how they have been handled.

Relevant factors²: Performance against Item 1.5 (Meeting of agreed actions within timeframes) of the most recent Annual Review Scorecard.

Performance against Item 1.8 (Quality of monthly meetings etc) of the most recent Annual Review Scorecard.

Performance against Item 1.11 (Management and supervision of Contract) of the most recent Annual Review Scorecard.

Performance against Item 6 (Quality relationship management) of the most recent Annual Review Scorecard.

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Performance Standards Review

- PS4.4 Issues arising in the management of the Contract are identified early and promptly referred to the Service Management Team**
- Process/evidence: Identify issues that could give rise to disputes and whether they have been referred promptly to the SMT.
- Relevant factors²: The existence of a bona fide dispute.
Performance against Item 6 (Quality relationship management) of the most recent Annual Review Scorecard.

- PS4.5 Compliance with the Contractor's obligations under clause 9 (Service Management Team)**
- Process/evidence: Identify number of meetings and whether agendas and minutes were prepared.
- Relevant factors²: Level of co-operation from Shire and inter-dependence of SMT operations.
Performance against Item 6 (Quality relationship management) of the most recent Annual Review Scorecard.

PS5 Performance Standard 5 (Interface with Shire and Customers)

- PS5.1 90% of calls are answered within 20 seconds and 100% are answered within 120 seconds**
- Process/evidence: Identify number of calls taken and time in which they were answered. Determine the applicable percentage.
If accurate records are not available, review applicable audit reports and customer complaints (if any).
- Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.
Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.
Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.
- PS5.2 The number of calls made by the caller held longer than 10 seconds does not exceed 3%**
- Process/evidence: Identify number of calls taken, in which the caller was put on hold. Identify the length of time the caller was on hold on each occasion. Determine the applicable percentage.
If accurate records are not available, review applicable audit reports and customer complaints (if any).

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Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.

Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.

Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period of review.

PS5.3 Calls are answered by the Contractor's staff in person between the hours of 7.00 am until 6.00 pm Monday to Friday (excluding public holidays).

Process/evidence: Review call registers, work records, audit reports and non-conformance reports.

Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.

Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.

Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.

PS5.4 Correspondence is acknowledged by card, letter or email (as appropriate) sent within 5 Business Days of receipt by the Shire (or, if the Shire delays more than 1 Business Day before passing it to the Contractor, within 5 Business Days of receipt by the Contractor).

Process/evidence: Review mail register (or other relevant record) to determine dates of correspondence in and dates out. Review audits and non-conformance reports, as applicable.

Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.

Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.

Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.

PS5.5 Advice of action is provided to customer within 10 further Business Days (by letter or phone). Notes of action/advice to be recorded on service request within 2 Business Days

Process/evidence: Review mail register (or other relevant record) to determine dates of correspondence in and dates out.

Review audits and non-conformance reports, as applicable.

Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.

Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.

Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.

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PS5.6 If the case is to take more than 10 Business Days to close the customer is advised of likely timeframe for a response.

Process/evidence: Review Contractor's template correspondence and randomly sample compliance.

Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.
Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.
Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.

PS5.7 Walk-ins are treated promptly and efficiently at the Contractor's depot and follow up action occurs using the same procedures and timelines as for correspondence set out above. All contacts are entered into the Merit System.

Process/evidence: Review Merit System records.
Review contractor record of walk-ins.
Review mail register (or other relevant record) to determine dates of correspondence out.
Review AMIS records to determine date of action.
Review audits and non-conformance reports, as applicable.

Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.
Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.
Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.

PS5.8 Where necessary or upon specific request from a customer, the Contractor takes reasonable steps to meet with the customer on-site within five (5) Business Days of lodgement of a complaint or request with the Shire (or, if the Shire delays more than 1 Business Day before passing it to the Contractor, within 5 Business Days of receipt by the Contractor)..

Process/evidence: Review contractor record of walk-ins and mail register (or other relevant record) to determine dates of request by customer.
Review AMIS records to determine date of action.
Review audits and non-conformance reports, as applicable.

Relevant factors²: Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.
Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.
Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.

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PS5.9 Compliance with clause A3-18 (Customer service and community liaison)

- Process/evidence:** Confirm Contractor has a system of consultation with stakeholders in place.
- Confirm customer satisfaction survey is being done at least every 6 months.
- Relevant factors²:** Performance against Item 4.2 (Timely service) of the most recent Annual Review Scorecard.
- Performance against Item 4.5 (Complaints about service) of the most recent Annual Review Scorecard.

PS6 Performance Standard 6 (Inspections)

PS6.1 Compliance with the inspection frequencies required under the Road Management Plan.

- Process/evidence:** Review audit and conformance records. Review AMIS records for inspection reports. Determine frequency.
- Relevant factors²:** Performance against Item 1.6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review Scorecard.

PS6.2 Compliance with clause A3-13 (Inspections)

- Process/evidence:** Confirm Contractor has a compliant program of inspections in place.
- Confirm Contractor has adjusted its program to suit conditions applicable at various times.
- Confirm training of inspection personnel.
- Review audit and non-conformance records.
- Relevant factors²:** Performance against Item 1.6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review Scorecard.

PS6.3 Compliance with clause A3-14 (Initiation of work)

- Process/evidence:** Review of AMIS records.
- Review of audit and non-conformance reports.
- Relevant factors²:** Performance against Item 1.9 (Timely delivery of Services outside the MSC, including reports) of the most recent Annual Review Scorecard.
- Performance against Item 1.10 (Development, implementation and operation of programs) of the most recent Annual Review Scorecard.

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- PS6.4 Compliance with clause A3-15 (Records of action taken)**
- Process/evidence: Compare inspection program against timing of entries in AMIS.
- Relevant factors²: Performance against Item 1.7 (Maintaining of Asset Inventory) of the most recent Annual Review Scorecard.
- PS6.5 Compliance with clause A3-16 (Provision of AMIS and other data)**
- Process/evidence: Confirm AMIS accessible.
Confirm PCI condition data available.
Confirm electronic access to outputs and other system constraint data from dTims, AMIS and other associated database programs relating to reseal and rehabilitation programs and PCI calculations
- Relevant factors²: N/A
- PS6.6 Compliance with clause A3-17 (Asset Inventory)**
- Process/evidence: Review notifications of New Assets provided by the Shire and confirm these have been included in Asset Inventory.
Audit of AMIS records (if appropriate).
- Relevant factors²: Performance against Item 1.6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review Scorecard.
Performance against Item 1.7 (Maintaining of Asset Inventory) of the most recent Annual Review Scorecard.
- PS6.7 Compliance with clause A3-38 (Asset and data management requirements)**
- Process/evidence: User survey to verify availability of access to AMIS
Audit of AMIS records (if appropriate) to ensure entry of data within required time frames and appropriate data fields.
Confirm training provided as required.
- Relevant factors²: If system not available at any time, reasons for this and in particular whether it was due to some default on the Contractor's part.
Performance against Item 1.6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review Scorecard.
Performance against Item 1.7 (Maintaining of Asset Inventory) of the most recent Annual Review Scorecard.
- PS6.8 Compliance with the program development obligations set out in Annexure 4 (Activity Specifications)**
- Process/evidence: Confirm annual programs prepared as required.

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Relevant factors²: Performance against Item 1.9 (Timely delivery of Services outside the MSC, including reports) of the most recent Annual Review Scorecard.

Performance against Item 1.10 (Development, implementation and operation of programs) of the most recent Annual Review Scorecard.

PS6.9 Identification of Defects in an effective and timely manner consistent with the Contract and programming and implementation of required Rectification so as to ensure compliance with Response Times.

Process/evidence: Confirm compliance with inspection program.

Confirm attendance as required on notification of Defects (ad hoc or triggered inspections).

Review AMIS records to determine Defects identified and actions taken in required timeframe.

Review non-conformance records and reports. Assess compliance with Response Times and appropriateness of Rectification.

Review relevant customer complaints (eg delay in responding to a call).

Relevant factors²: Level of non-compliance, if any, having regard to volume of Defects and call-outs

Performance against Item 1.5 (Meeting of agreed actions within timeframes) of the most recent Annual Review Scorecard.

Performance against Item 1.6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review Scorecard.

Performance against Item 1.10 (Development, implementation and operation of programs) of the most recent Annual Review Scorecard.

PS7 Performance Standard 7 (Sustainability)

PS7.1 Greater than ^{CIC} of all pavement materials removed during the Annual Reseal Program are recycled or re-used within the Network provided that this is consistent with achieving the Required PCI, having regard to the technology and methods reasonably available at that time³

Process/evidence: Review records of materials used in Annual Reseal Program (or recycled for other uses within the Network).

Relevant factors²: Technology and materials available.

Shire approval of other materials.

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Schedule 3 Performance Standards Review

PS7.2 Reduction of greenhouse gases generated in the performance of the Services by CIC per annum due to work method chosen⁴

Process/evidence: Identify sources of greenhouse gases and alternative work methods. Confirm Contractor has adopted alternative work methods wherever feasible.

Identify quantity of greenhouse gases generated in the performance of equivalent services at the Commencement Date and measure reduction from that benchmark.

Relevant factors²: Performance against Item 5.2 (Sustainable service enhancements provided) of the most recent Annual Review Scorecard.
Performance against Item 5.4 (Evidence of continuous improvement, doing things smarter) of the most recent Annual Review Scorecard.

PS7.3 Recorded Environmental incidents caused by the Contractor in the performance of the Services or as a consequence of its failure to perform the Services as and when required are less than two (2) per annum⁵

Process/evidence: Measure recorded Environmental incidents caused by the Contractor.

Relevant factors²: Performance against Item 3.5 (Operation of environmental management system) of the most recent Annual Review Scorecard.

PS7.4 The Contractor's Agents include local residents and businesses.

Process/evidence: Identify local residents and businesses among the Contractor's Agents (subject to protection of privacy where individuals are concerned)

Relevant factors²: Performance against Item 4.6 (Traineeship/work experience opportunities) of the most recent Annual Review Scorecard.
Performance against Item 4.7 (Commitment to employment of local contractors) of the most recent Annual Review Scorecard.

PS7.5 An approved program for a trainee to be employed by the Contractor in any one or more disciplines associated with this Contract has been implemented and is continuing.

Process/evidence: Confirm the program is in place and ongoing

Relevant factors²: N/A

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Schedule 3 Performance Standards Review

PS7.6 Compliance with clause A3-29 (Protection of Environment and Heritage).

- Process/evidence:** Identify any notices from EPA or other Authorities or any breaches of the contract provisions. Review action taken in response and in particular whether system and other improvements have been put in place to prevent any further occurrence.
- Identify examples of relevant behaviours to be rewarded and encouraged.
- Relevant factors²:** Proportionality of any failure having regard to volume of work done over the relevant period.
- Performance against Item 3.5 (Operation of Environmental Management System) of the most recent Annual Review Scorecard.

PS7.7 Compliance with clause A3-30 (Sustainability)

- Process/evidence:** Identify examples of behaviours that indicate that the Contractor is operating in accordance with the relevant principles or vice versa.
- Relevant factors²:** Shire leadership or otherwise on sustainability principles.
- Performance against Item 3.5 (Operation of Environmental Management System) of the most recent Annual Review Scorecard.
- Performance against item 4.0 (Community care) of the most recent Annual Review Scorecard.
- Performance against Item 5.2 (Sustainable service enhancements) of the most recent Annual Review Scorecard.
- Performance against Item 6.2 (Level of resource sharing) of the most recent Annual Review Scorecard.

PS8 Performance Standard 8 (Emergency Management)

PS8.1 Compliance with clause A3-20 (Emergency Management)

- Process/evidence:** Confirm the Contractor is maintaining the required level of Emergency resources (Shire personnel to inspect as required).
- Confirm training of relevant personnel.
- Contractor to provide evidence of relationships established with Victoria Police and Emergency services authorities.
- Review relevant correspondence from MERO, MERC, Police and Emergency Authorities and/or other available records to confirm resources were made available as required.
- Relevant factors²:** Performance against Item 2.13 (Operation of Emergency Management/call out services) of the most recent Annual Review Scorecard.

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Schedule 3 Performance Standards Review

PS8.2 Compliance with clause A3-21 (MERO Services)

Process/evidence: Confirm performance of relevant tasks.

Relevant factors²: Performance against Item 2.13 (Operation of emergency management/call out services) of the most recent Annual Review Scorecard.

PS9 Performance Standard 9 – Pavement Condition⁶

PS9.1 Pavement Performance Review Report submitted on time

Process/evidence: Report submitted by 31 May.

Relevant factors²: N/A

PS9.2 Required PCI for each PCI Road Category is achieved

Process/evidence: Measurement in accordance with Annexure 6 (Condition Monitoring).

Relevant factors²: N/A

PS10 Performance Standard 10 (Ordered Work)

PS10.1 Satisfactory Completion of each Ordered Work in accordance with the requirements of the Work Order Documents

Process/evidence: Identify number of Work Orders issued during the year or other applicable period.
Identify Completed Ordered Work.
Identify whether satisfactory Completion.

Relevant factors²: No of Ordered Works Projects undertaken and extent and nature of any unsatisfactory performance.
Shire approval to any departure from the Work Order Documents.
Performance against Item 2.3 (Accelerated Works Projects and Ordered Work) of the most recent Annual Review Scorecard

Notes on Performance Standards Review:

1. Performance Standard 1 is only assessable during the Accelerated Works Period and until all Defects Liability Periods associated with Accelerated Works Projects have expired.
2. Relevant factors are not conclusive, but are indicative of the sort of factors the SMT should take account of when making its assessment. They are particularly relevant to the determination of what quantity of Service Points should be applied in the event that there is non-conformance. Although not listed, Excusing Events are always relevant factors.

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Schedule 3

Performance Standards Review

The results of the most recent stakeholder review conducted under clause 36.5 (Stakeholder review) may also be relevant.

3. PS7-1 is not assessable until Contract Year 4.
4. PS7-2 is not assessable until Contract Year 4.
5. PS7-3 is not assessable until Contract Year 4.
6. Performance Standard 9 is only assessable in Pavement Performance Review Years.

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Schedule 4
Service Points

Schedule 4 –Service Points

Performance Standard	Maximum Points per occasion
Failure to achieve Performance Standard 1 (Accelerated Works Program) with respect to any Accelerated Works Project or the Accelerated Works Project as a whole	CIC
Failure to achieve Performance Standard 2 (Routine Maintenance Services) in any respect	
Failure to achieve Performance Standard 3 (Safety) in any respect	
Failure to achieve Performance Standard 4 (Contract Management) in any respect	
Failure to achieve Performance Standard 5 (Interface with Shire and Customers) in any respect	
Failure to achieve Performance Standard 6 (Inspections) in any respect	
Failure to achieve Performance Standard 7 (Sustainability) in any respect	
Failure to achieve Performance Standard 8 (Emergency Management) in any respect	
Failure to achieve Performance Standard 9 (Pavement Condition) in the following respects: • Failure to achieve Required PCI for any PCI Road Category • Failure to undertake surveys and data reporting by the dates specified in the Contract.	
Failure to achieve Performance Standard 10 (Ordered Work) with respect to any Ordered Work	

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Schedule 5
Reference Documents

Schedule 5 – Reference Documents

This schedule incorporates a CD-ROM prepared by the Shire and initialled by the parties for identification. The versions of each Reference Document set out in the CD-ROM are the correct versions that form part of the Contract.

All Australian Standards referred to in the Contract (either directly or indirectly) are the versions current as at 1 April 2005, unless the Contract expressly states otherwise.

Contractual description	Full title/description	Version
1. Mornington Peninsula - Westernport Roadsides Management Plan	Mornington Peninsula Western Port Roadsides Management Plan; Report to the Mornington Peninsula Western Port Roadside Management Plan Steering Committee	1996
2. Municipal Emergency Management Plan	The plan prepared by the Shire for the purposes of section 20 of the Emergency Management Act 1986 (Vic)	1 April 2005
3. Road Management Plan	Mornington Peninsula Shire Road Management Plan	Version 1, 06/12/2004
4. Worksite Safety Traffic Management Code of Practice	Worksite Safety – Traffic Management Code of Practice	Victorian Government Gazette No S 276, 22 Dec 2004
5. Register of Public Roads	MPS Register of Public Roads (Provisional)	As at 1 April 2005
6. Specification for Road and Drainage Works	Mornington Peninsula Shire Specification for Road and Drainage Works	As per CD-Rom forming part of this schedule and titled "Safer Local Roads -Contract No 1218 - Schedule 5- Reference Documents-Item 6 Specification for Roads and Drainage Works"
7. Standard Drawings Mornington Peninsula Shire Standard MP227	[this description covers all of the standard drawings referred to in the Schedule of Rates]	As per CD-Rom forming part of this schedule and titled "Safer Local Roads -Contract No 1218 - Schedule 5- Reference Documents-Item 7 Standard Drawings".
8. Managing Utility and Road Infrastructure in Road Reserves	Code of Practice – Management of Utility and Road Infrastructure in Road Reserves	Victorian Government Gazette No S 268, 17 Dec 2004
9. SAA HB81: "Field guide for traffic control at works on roads"	Field Guide for Traffic Control at Works on Roads Part 1: Short-term urban works, daytime only.	Australian Standards HB 81.1 – 2003 Second Edition

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Schedule 5
Reference Documents

Contractual description	Full title/description	Version
10. Mornington Peninsula Shire Planning Scheme	Mornington Peninsula Planning Scheme	As at 1 April 2005
11. "Guidelines for Municipal Emergency Management Planning" published by the Department of Justice 2001	Guidelines for Municipal Emergency Management Planning, Part 6: Emergency Management Manual Victoria	Department of Justice (Vic), 2001
12. MPSC Design Quality System	Mornington Peninsula Shire Quality Assurance Plan for Design	As at 1 April 2005
13. Austroads Guide to the Visual Assessment of Pavement Condition 1987		As at 1 April 2005

signatures

THE COMMON SEAL of the
MORNINGTON PENINSULA SHIRE
COUNCIL was hereunto affixed in the
presence of:

Personal Information

Councillor

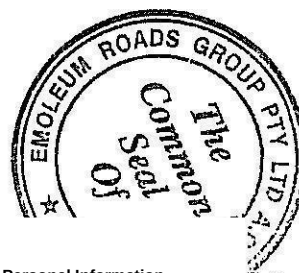
Personal Information

Manager Governance & Corporate Support



Signed

by Emoleum Roads Group Pty Limited
by its duly authorised signatory
in the presence of,



Personal Information

Witness

Personal Information

Signatory

Personal Information

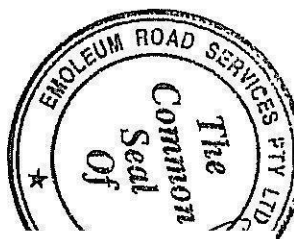
Personal Information

Name (printed)

Name (printed)

Signed

by Emoleum Road Services Pty Limited
by its duly authorised signatory
in the presence of:



Personal Information

Witness

Personal Information

Signatory

Personal Information

Personal Information

Name (printed)

Name (printed)

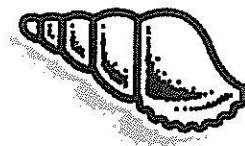
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Personal Information

Annexure 1

Definitions

Safer Local Roads
Contract No.1218



**MORNINGTON
PENINSULA**

Shire

**COMMITTED TO A
SUSTAINABLE
PENINSULA**



Annexure 1 Definitions

Annexure 1 - Definitions

In the Contract, the following terms have the meanings indicated, unless inconsistent with the context:

Accelerated Works Period means the period of 4 years commencing on the Commencement Date.

Accelerated Works Project means each of the works identified in Annexure 7 (Accelerated Works Program), which are to be designed (to the extent required by the Contract) and constructed by the Contractor and subsequently maintained by it as part of the Services.

Accelerated Works Program means, at the Commencement Date, the program set out in Annexure 7 (Accelerated Works Program) and at any later time, the Accelerated Works Program as amended with the approval by the Service Management Team.

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 Service Management Team; 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.

Activity means an activity defined by an Activity Specification.

Activity Standard means, with respect to each Activity, the requirements listed under the heading "Activity Standards" of the Activity Specification for that Activity.

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

Adjusted Component Price means a Component Price adjusted to take account of Continuing Variations and Indexation in accordance with clause A2-3 (Annual determination of the MSC).

Adjusted MSC Calculation Schedule means, at any time, the MSC Calculation Schedule at that time after all of the calculations and adjustments required by clause A2-3 (Annual determination of the MSC) have been undertaken.

Adjustment means an adjustment of the MSC, the Component Prices or any other rate, undertaken in accordance with Annexure 2 (Price).

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Annexure 1 Definitions

Adjustment Date means 1 July in each Contract Year.

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.

AMIS is the Contractor's road asset management system excluding any pavement modelling component.

Annual Reseal Program means, in any Contract Year, the annual program for resealing and rehabilitation works to be undertaken on the Assets in that Contract Year, as developed in accordance with clause A3-4 (Annual Reseal Program).

Annual Reseal Services means, in each Contract Year, the Services required to carry out and complete the Annual Reseal Program for that Contract Year.

Annual Review means the annual review to be undertaken in accordance with clause 36 (Annual Review).

Annual Review Scorecard means the scorecard in schedule 2 (Annual Review Scorecard) or any replacement methodology determined by the Service Management Team for the purpose of annually measuring the Contractor's performance.

Annual Value means, with respect to a Variation at the time of its issue, the amount to be paid in each Remaining Year for that Variation as then determined and excluding the effects of future Indexation and further Variations. (The Annual Value must be derived from the valuation of the Variation as determined under clause 39 (Valuation and timing of Variations) or otherwise in accordance with the Contract).

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).

Approved AW Design means, with respect to each Accelerated Works Project, the design and any associated specifications and drawings approved by the SMT for that Accelerated Works Project.

Asset Handover means the handover of responsibility for provision of the Services with respect to the New Assets, as set out in clause 38.4 (Asset Handover).

Asset Handover Notice means a notice issued in accordance with clause 38.3 (Asset Handover Notification).

Asset Inspection means a routine inspection of the Assets primarily for the purpose of identifying Defects.

Asset Inventory means:

- (a) on the Commencement Date, Annexure 9 (Asset and Network description); and
- (b) at any other time, the inventory maintained by the Contractor in accordance with the Contract.

Asset Inventory Change means a change to the Asset Inventory made in accordance with clause 38 (Asset Inventory Changes).

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Annexure 1 Definitions

Asset Management Officer (Roads) means the person appointed by the Shire as the Asset Management Officer (Roads) (either generally or for the purposes of this Contract), as notified by the Superintendent. Changes in the identity of the Asset Management Officer (Roads) must be notified by the Superintendent.

Asset Management Services Refresh means a refreshment of the Services relating to the long term management of, and delivery of services for, the Assets and in particular the Annual Reseal Services, Condition Monitoring and the Required PCI.

Asset Management Specialist means:

- (a) in the case of the Contractor, the person from time to time appointed under clause 20.2 as its Asset Management Specialist; and
- (b) in the case of the Shire, the Asset Management Officer (Roads).

Assets means, at any time, the assets as defined in clause A3-2 at that time.

Authority means a person with Lawful authority, not including the Shire but including the MERO (while acting in that capacity).

AWP is an abbreviation of Accelerated Works Program.

AWP Job 14 means the Accelerated Works Project identified in Annexure 7 (Accelerated Works Program) as job number 14, Waterfall Gully Road, Rosebud (1100m from Goolgowie – top of hill).

Back Payment Amount means, at any time, the amount due to the Contractor on account of:

- (a) the Cumulative Cash Flow Differential (moneys owing to Contractor) at that time ; and
- (b) the Variation Value of Funded Variations.

Bank Bill Rate means, the average bid rate for bills having a tenor closest to the applicable Interest Period as displayed on the "BBSY" page of the Reuters Monitor System on the Rate Set Day..

However, if the average bid rate is not displayed by 11:00am on the Rate Set Day, or if it is displayed but there is an obvious error in that rate, Bank Bill Rate means:

- (a) in the case of a rate set under clause 41.3.3(c), a suitable rate per annum determined in accordance with clause 41.3.3 but discounted by 1% per annum; and
- (b) in the case of a rate set under clause 75.2.6, a suitable rate determined by the Superintendent in good faith, having regard, to the extent possible, to the rates otherwise bid for 90 day bank accepted bills at or around that time (including any displayed on the "BBSW" page of the Reuters Monitor System).

Best for Program means the optimal result for the safe and environmentally sustainable management of the Shire's local Roads within the Price, but without compromising the legitimate commercial interests of the Contractor.

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Annexure 1 Definitions

Business Day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a day that is wholly or partly observed as a public holiday throughout Victoria;

Call-Out Service means the service provided or to be provided by the Contractor under clause A4-27 (Call-Out Service) and includes Initial Response.

Cash Flow Differential means, for any Contract Year, the difference as calculated once annually with respect to the Adjustment Date for that Contract Year, between the Variable Base Annual Service Charge and the Flat Base Annual Service Charge.

Certificate of Contract Completion means the certificate issued by the Superintendent under clause 65 (Certification of Contract Completion).

Cleansing Contract means a contract awarded by the Shire for the performance of the activities listed in schedule A3-1 (Scope of Cleansing Contract).

Cleansing Contractor means, at any time, the contractor holding the Cleansing Contract at that time.

Commencement Date means 1 July 2006.

Completion means the stage in any Ordered Work, Accelerated Works Project, Shire Works or works involved in creating a New Asset when:

- (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 Service Management Team, are essential for the use, operation and maintenance of the works have been supplied to the Shire.

Component Price means a price listed in the MSC Calculation Schedule for any Service (not including any amount that is a total or other derivative of any other price) and, at any time after an Adjustment, means the then Adjusted Component Price.

Compulsory Intervention Level means, with respect to a Defect, that the Defect has reached a level where a 24 hour (or shorter) Response Time applies.

Condition means, in respect of an Asset, the physical and functional condition of that Asset.

Condition Data (Automated) means data relating to roughness, rutting and texture depth.

Condition Data (Visual) means data collected by visual field survey as identified in schedule A6-4 (Conditions to be assessed for PCI).

Condition Monitoring has the meaning given in clause A3-3 (Core Services).

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Annexure 1 Definitions

Confidential Information 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:

- (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.

Continuing Variation has the meaning given in clause 40.2 (Continuing Variations – definition).

Contract means:

- (a) at the Commencement Date, this document, its schedules and its annexures (including any CD-Rom 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 Superintendent in accordance with clause 84 (document change management).

Contract includes any Work Order issued in accordance with the Contract.

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 in accordance with clause 12 (Contract Manager).

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 any Extended Contract Term.

Contract Year means each period of 12 months of the Contract Term beginning on 1 July.

Contractor means the party identified as the Contractor in this document.

Contractor Operations Team means the persons from time to time responsible on behalf of the Contractor for the day to day management of operations under the Contract. The initial members of the Contractor Operations Team are identified in item 2 of schedule 1 (Contract Details).

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.

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Annexure 1 Definitions

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 42 (Impact on time) or in accordance with the conditions of any Work Order.

Core Members has the meaning given in clause 10.2.

Core Services means the services described in clause A3-3 (Core Services), any Continuing Variations and any Non-Continuing Variations which vary the Core Services..

Cumulative Cash Flow Differential means, at any Contract Year, the cumulative Cash Flow Differential calculated by aggregating the Cash Flow Differentials for each Contract Year up to and including the Contract Year.

Cure Plan means, with respect to any PCI Default Event, the Cure Plan for that PCI Default Event, as prepared and submitted in accordance with clause 69 (Cure of PCI Default Events).

Current at any time, means identified as Current at that time in the Contract Document register maintained in accordance with clause 84 (Document change management) and 87 (Reference Documents).

Date for Completion means, with respect to any Ordered Work, the Date for Completion identified in the Work Order Documents for the Ordered Work (as extended in accordance with clause A8-12 (Extensions of Time) of the Work Order Conditions.

Date of Completion means, with respect to any Ordered Work, the date on which the Ordered Work actually reaches Completion.

Daywork means work which is ordered by the Superintendent to be carried out as Daywork.

Daywork Rates means the rates set out in schedule A2-3 (Daywork Rates).

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 or other Condition that has reached or given rise to an Intervention Level.

Defects Liability Period means, with respect to any Service, the defects liability period applicable to that Service as defined by clause 61.1.

Deighton Software means dTims software developed and licensed by Deighton Associates Limited of Canada.

Design & Investigation Fee Schedule means the schedules (incorporating a percentage fee and hourly rates) headed 'Design & Investigation Fee Schedule' in schedule A2-4 (Design & Investigation Fee Schedule).

Design & Investigation Fees means the fees set out in or calculated in accordance with the Design & Investigation Fee Schedule.

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Annexure 1 Definitions

Design & Investigation Services means, except as provided in clause A3-1.2.5, all design, design documentation, survey, geotechnical investigation and other services listed in the Design & Investigation Fee Schedule and reasonably required to carry out the Accelerated Works Program together with any services ancillary or incidental to those services.

Design & Investigation Subcontract means the subcontract between the Contractor and the Shire for the provision of design and associated services by the MPSC Design Team.

Determining Authority means the person or body with authority conferred by the Contract to make any determination or issue any direction.

Dispute Resolution Process means the process for resolution of disputes as set out in clause 66 (Disputes) (not including the statement of intention in clause 66.1).

EMA Emergency has the same meaning as "emergency" under the Emergency Management Act 1986 (Vic).

Emergency means an EMA Emergency or any unplanned occurrence on or affecting the Network or adjacent areas, which prejudices the safety of the public (including road users and those living adjacent to the Network) or which affects the structural integrity of an Asset or any structure above or below an Asset.

Emergency Management means the services the Contractor is required to provide with respect to EMA Emergencies.

Environment means the natural and man-made environment.

Establishment Fee means CIC

Excepted Risk means any of the following:

- (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,
- (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 a Force Majeure Event, an Excepted Risk, , a breach of contract by the Shire or any other circumstance not within the Contractor's reasonable control to prevent.

Extended Contract Term means each period of time (commencing immediately after the end of the Initial Contract Term or the Extended Contract Term, as the case may be) by which the Contract is extended in accordance with clause 89 (Contract extensions).

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Annexure 1 Definitions

Final PPR Year means Contract Year 14 in the Initial Contract Term and the last PPR Year in an Extended Contract Term.

Flat Annual Service Charge means, in respect of any Contract Year, the amount determined in accordance with clause A2-3.2 (step 22) and, in respect of any Prior Year, the amount determined as the Flat Annual Service Charge for that Prior Year in the applicable Prior Year (including, in Contract Year 1, the Flat Annual Service Charge shown in the MSC Calculation Schedule).

Flat Base Annual Service Charge means, in respect of any Contract Year, the amount determined in accordance with clause A2-3.2 (step 9) and, in respect of any Prior Year, the amount determined as the Flat Base Annual Service Charge for that Prior Year in the applicable Prior Year (including, in Contract Year 1, the Flat Base Annual Service Charge shown in the MSC Calculation Schedule).

Force Majeure Event means an event or circumstance which:

- (a) occurs after the Commencement Date,
- (b) is beyond the control of the party affected by it ('Affected Party'),
- (c) could not reasonably have been avoided or overcome (at least as to its effect) by the Affected Party, and

is attributable to one or more of the following causes:

- (d) Emergency,
- (e) earthquake, bushfire, tidal wave, natural disaster,
- (f) excessive rainfall or inundation occurring as a result of a storm event,
- (g) hurricane, action of the elements, extreme weather (in the case of each of these, exceeding a 1:100 year magnitude),
- (h) war (declared or undeclared), invasion, terrorist activities, hostilities, riots, civil commotion, terrorism, sabotage other than by a party's agents, revolution, insurrection, military takeover or usurped power, martial law, military requisition or confiscation by order of any Authority,
- (i) fire, explosion, radioactive or chemical contamination which is not itself due to the act or omission of the Affected Party or its Agents,
- (j) 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.

Funded Variation has the meaning given in clause 41.1 (Funded Variations – Definition).

Furniture and Signs Contract means a contract awarded by the Shire for the performance of the activities listed in schedule A3-2 (Scope of Furniture and Signs).

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Annexure 1 Definitions

Furniture and Signs Contractor means, at any time, the contractor holding the Furniture and Signs Contract at that time.

Hold Point means, with respect to an activity, a point beyond which the Contractor is not permitted to go without approval.

Hold Point (SMT) means a Hold Point that can only be released with the approval of the Service Management Team.

Hold Point (Superintendent) means a Hold Point that can only be released with the approval of the Superintendent.

HP is an abbreviation of Hold Point.

IMP means Integrated Management Plan.

Indexed has the meaning given in clause 86 (Indexation of amounts).

Initial Contract Term means the initial term of the Contract as described in clause 2 (Contract Term) commencing on 1 July 2006 and ending on 30 June 2021.

Initial Response means the first on-site response to a call for assistance taken by the Call Out Service, limited to those activities necessary or required by the Contract to make the site safe including (as appropriate to the circumstances) clearing the site of debris or other obstructions (as necessary) and erecting appropriate warning and other signs.

Integrated Management Plan means the Integrated Management Plan developed by the Contractor in accordance with clause A3-11 (Integrated Management Plan).

Interest Period means:

- (a) in the case of a Funded Variation, the duration of the funding as determined in accordance with clause 41.3.2;
- (b) for the purposes of clause 75.2.6, 90 days.

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.

Job Size applies to Services provided at the rates set out in the Schedule of Rates and means:

- (a) the total value of all work under a specific Work Order;
- (b) where no Work Order has been issued, the total value of the discrete job undertaken by the Contractor; or

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Annexure 1 Definitions

- (c) where one Work Order has been issued for a program of work, the value of each discrete job undertaken under that Work Order.

Law means:

- (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.

Level 1 PCI Default Event means a PCI Default Event where the Measured PCI evidencing the PCI Default Event is not more than **CIC** below the Required PCI.

Level 2 PCI Default Event means a PCI Default Event where the Measured PCI evidencing the PCI Default Event is more than **CIC** below the Required PCI.

Mandatory Asset Handover Notice means a notice issued under clause 38.4.7.

Maximum Agreed Exposure is the maximum Cumulative Cash Flow Differential (moneys owing to the Contractor) that the Contractor has agreed to fund as part of the MSC and without the need for a Funded Variation, being: :

- (a) **CIC** (as shown in the MSC Calculation Schedule) at the Commencement Date; and
- (b) at any later date, the maximum Cumulative Cash Flow Differential (moneys owing to Contractor) that occurs naturally as a consequence of Indexation of the Component Prices and the inclusion and subsequent Indexation of Continuing Variations. .

Measured PCI means, for any PCI Road Category, the PCI for that PCI Road Category as determined by measurement in any PPR Year in accordance with Annexure 6 (Condition Monitoring).

Merit System means the Shire's customer request management system.

MERC means, at any time, the member of the Victoria Police then appointed by the State Emergency Response Co-ordinator to act as Municipal Emergency Resource Co-ordinator for the Mornington Peninsula Shire.

MERO (Municipal Emergency Response Officer) means, at any time, the person appointed by the Shire under the Emergency Management Act 1986 (Vic) to act as the Shire's municipal emergency response officer at the relevant time.

MERO Services means the provision of a person to carry out the duties of the MERO and the performance of the professional services identified in clause A3-21 (MERO Services).

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Annexure 1 Definitions

Minor Works means minor works with a value not more than **CIC** which the Shire requires to be carried out on the Network during the Contract Term.

Monthly Service Charge (MSC) means the total Monthly Service Charge for provision of the Core Services on and for the Assets as determined annually in accordance with clause A2-3.2 (Calculation of MSC).

Mornington Peninsula Shire Standard means a standard published by the Shire and the version identified in schedule 5 (Reference Documents).

MPSC Design Team means the Shire's in-house engineering design team led by the Shire's Manager – Infrastructure Project Management.

MSC is an abbreviation of Monthly Service Charge.

MSC Calculation Schedule means:

- (a) at the Commencement Date, schedule A2-1 (MSC Calculation Schedule); and
- (b) at any time after the first Adjustment, the Adjusted MSC Calculation Schedule current at that time; and
- (c) for the purposes of clause A2-3 (Annual determination of the MSC) at any Adjustment Date, the MSC Calculation Schedule as developed at the preceding Adjustment Date (and at the first Adjustment Date, schedule A2-1 (MSC Calculation Schedule)).

Municipal Emergency Management Plan means the plan so titled prepared by the Shire for the purposes of the Emergency Management Act 1986 (Vic).

NAASRA is an abbreviation of "National Association of Australia State Road Authorities", the predecessor body to Austroads.

NCV is an abbreviation of Non-Continuing Variation.

Network means the network of Roads listed in Annexure 9 (Asset and Network Description) (or, if not listed there, as listed in the Road Register as at the Commencement Date), as varied from time to time by Asset Inventory Changes.

Network Management has the meaning given in clause A3-3 (Core Services).

New Asset means, at any time, a Road or other asset of the same type as the Assets:

- (a) for which the Shire is or becomes responsible; and
- (b) which is not already part of the Assets at that time.

A New Asset may be:

- (c) an asset constructed as a result of Shire Works;
- (d) an asset constructed by others within the Shire's municipal boundaries (for example, as part of a new development or subdivision), responsibility for which devolves to the Shire on completion;

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- (e) an asset constructed by the Contractor as an Accelerated Works Project, Ordered Work or Non-Continuing Variation; and
- (f) an asset for which the Shire becomes responsible as a result of a change in Law or an agreement with VicRoads or a Utility.

Non-Conformance Report means a report of that name issued in accordance with the Integrated Management Plan.

Non-Continuing Variation has the meaning given in clause 40. 5 (Non-Continuing Variations – definition).

Non-MSC Service means a work or service that is specified in the Activity Specifications and is expressed to be payable on a schedule of rates or Dayworks basis or to require the issue of a Work Order (but does not include Minor Works). Resheet Services are an example of Non-MSC Services.

OH&S means occupational health and safety.

OP means an 'other payment', within the meaning of clause A2-1.1 (Monthly Payment).

Ordered Work means Services ordered by a Work Order in accordance with clause A3-7 (Initiation of Ordered Work) as varied by a variation under clause A8-9 (Variations).

Other Contract means a contract between the Shire and an Other Contractor.

Other Contractor means a SIMS Contractor or any other contractor engaged by the Shire (not including the Contractor).

Parks and Roadsides Contract means a contract awarded by the Shire for the performance of the activities listed in schedule A3-3 (Scope of Parks and Roadsides).

Parks and Roadsides Contractor means, at any time, the contractor holding the Parks and Roadsides Contract at that time.

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 review of the Contractor's performance against the Required PCI, as conducted each Pavement Performance Review Year in accordance with Annexure 6 (Condition Monitoring).

Pavement Performance Review Report means the report of the findings of a Pavement Performance Review prepared in accordance with clause A6-11 (Condition Assessment Reporting).

Pavement Performance Review Year:

- (a) during the Initial Contract Term, means each of Contract Year 3, Contract Year 6, Contract Year 9, Contract Year 12 and Contract Year 14; and
- (b) during any Extended Contract Term has the meaning given in clause 89.7.3.

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PCI is an abbreviation of Pavement Condition Index.

PCI Assessable Pavements means the pavements identified in a Road Schedule.

PCI Automated Data Collection and Reporting Specification means the specification developed by the Contractor under clause A6-5.3 (Specification for Automated Data Collection).

PCI Cure Fund means a fund provided for the purpose of curing a PCI Default Event in accordance with clause 69 (Cure of PCI Default Events) if the Contractor is unable to do so in accordance with a Cure Plan provided under that clause.

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 Road Category has the meaning given in schedule A6-2 (PCI Road Categories).

PCI Visual Data Collection and Reporting Specification means the specification developed by the Contractor under clause A6-6.3 (Specification for Visual Data Collection).

Performance Security means a security in the form and amount required by clause 60 (Performance Security) and includes:

- (a) the initial Performance Security required under clause 60.3 and each replacement Performance Security required under clause 60.4; and
- (b) at any time, the Performance Security held by the Shire at that time.

Performance Standard means a performance standard set out in Annexure 5 (Performance Standards).

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.

PPR Year means a Pavement Performance Review Year.

Price means the Monthly Service Charge and any other amount payable to the Contractor under the Contract.

Prior Contract means the contract between the parties defined in Recital A.

Prior Year means, with respect to a Contract Year, all years occurring in the Initial Contract Term or the Extended Contract Term, as the case may be, prior to and not including that Contract Year.

Project Manager means a person whose appointment under the title of Project Manager is advised to the Contractor by the Shire.

Qualifying Change in Law means a change in Law or Standards (limited to Standards which have the force of Law) occurring after the date of the Contractor's tender other than:

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- (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.

Rate Set Day means:

- (a) for the purposes of calculating the Working Capital Percentage to apply to any Funded Variation, the Business Day on which rate is ascertained for the purposes of providing a quote for the Funded Variation; and
- (b) for the purposes of calculating the discount rate under clause 75.2.6, the day on which the termination notice takes effect (for a termination notice issued under clause 75.1) or the next Business Day thereafter (for a termination notice issued under clause 76.1).

Rates for Asset Inventory Change means the rates so titled and included in schedule A2-5 (Rates for Asset Inventory Changes).

Rectify means 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 Defect 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 Defect is governed by an Activity Specification).

Reference Document means an Australian Standard referenced directly or indirectly in the Contract and any document listed in schedule 5 (Reference Documents) and included in the CD-Rom forming part of that schedule.

Remaining Year means, with respect to a Contract Year, all years remaining in the Initial Contract Term or the Extended Contract Term, as the case may be, after and not including that Contract Year.

Representative means a representative of a party appointed to the role of Representative in accordance with the Contract.

Required PCI means, for each PCI Road Category:

- (a) at the Commencement Date, the PCI specified in Performance Standard 9 (Pavement Condition) for that PCI Road Category; and
- (b) at any later date, the Required PCI determined in accordance with Annexure 6 (Condition Monitoring).

Resheet Services means any services required under clauses A4-8 (Resheeting Unsealed Roads) and A4-14 (Resheeting Unsealed Shoulders).

Response Time means, with respect to a Defect, the time within which the Defect must be Rectified to comply with the requirements of the Contract.

Road means a road of any classification.

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Road Asset means an Asset that is a Road or that forms part of a Road or a road support network.

Road Hierarchy means the road hierarchy as set out in the Road Management Plan and repeated in schedule A6-1 (Road Hierarchy).

Road Management Plan means the road management plan prepared by the Shire for the purposes of the Road Management Act 2004 (Vic).

Road Register means the statutory register listing all public roads in the Shire.

Road Reserve means the area of a Road from building line to building line and includes that area covered by the road pavement.

Road Schedule means a road schedule set out in schedule A6-20 (Road Schedule for PCI Categories A, B and C1) or in schedule A6-21 (Road Schedule for PCI Road Categories C2 and D), as the case may be.

Routine Maintenance Services has the meaning given in clause A3-3 (Core Services).

Safety Breach means non-compliance with the OH&S provisions of the Integrated Management Plan, any obligation of the Contract concerned with OH&S or any Law concerned with OH&S.

Safety Inspection means an inspection designed to identify all Defects likely to create danger or serious inconvenience to users of the Network or the wider community or which have a Response Time of 24 hours or less.

Schedule of Daywork Rates means the schedule of Daywork Rates in schedule A2-3 (Daywork Rates).

Schedule of Rates means the schedule of rates in schedule A2-2 (Schedule of Rates).

Senior Representative means in respect of a party, the person appointed in accordance with clause 8 (Senior Representatives) to represent that party.

Service Point Value means:

- For each Service Point applied as a result of a failure to achieve the Required PCI (PCI Default Event) - CIC
- For each other Service Point – CIC (Indexed).

Service Points means Service Points awarded or which may be awarded or redeemed in accordance with clause 68 (Application of Service Points).

Service Points Status means, at any time, the number of Service Points held by the Contractor at that time.

Service Management Team (SMT) means the team identified in clause 9 (Service Management Team)

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Services means the Core Services, any Ordered Work, any Variations not encompassed by the foregoing and any other work or services required by the Contract.

Shire Operations Team (SOT) means the persons responsible on behalf of the Shire for the day to day management of operations under the Contract. The initial members of the Shire Operations Team are set out in item 3 of schedule 1 (Contract Details).

Shire Works means works carried out on the Network by the Shire or its Other Contractors.

SIMS Contractor means a contractor (other than the Contractor) appointed under any one or more of the Cleansing Contract, the Furniture and Signs Contract and the Parks and Roadsides Contract.

SLR Objectives means the objectives set out in clause 4 (Objectives).

SMT is an abbreviation of Service Management Team.

Special Arrangements means the special arrangements provided for in clause 64.3 (Special Arrangements for Back Payment Amounts) and in clause 64.4 (Special Arrangements for Unused Line Fee).

Special Charge Scheme means a scheme pursuant to the Local Government Act 1989 (Vic) under which a special charge is levied for the carrying out of particular works.

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.

Stakeholder Specialist means a person appointed to represent each stakeholder identified below in relation to each of the functional or operational specialist areas (in the case of the specialist area of "asset management, information & pavement management", the Stakeholder Specialist for each party is the Asset Management Specialist):

<i>Specialist area</i>	<i>Stakeholder</i>
Contractor internal operations	Contractor
Asset management, information & pavement management	Contractor & Shire
Customer service (community relations)	Shire
Design	Shire
Road safety	Shire

Stakeholder Specialisation means each of the operational or functional specialist areas set out in the definition of Stakeholder Specialist.

Standards means Australian Standards or any other recognised industry standards.

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Standard Drawings means, at any time, the standard drawings published by the Shire and being the versions Current at that time.

Superintendent means the person appointed to the role of Superintendent in accordance with the Contract.

Tender means the Contractor's tender for the Contract as referred to in Recital B.

Termination Show Cause Notice means a notice under clause 71 (Termination show cause).

Third Party Funded Project means a project funded by Federal or State government funding or by a Special Charge Scheme or from any other source (not being a party to the Contract).

Total Variable Annual Service Charge means, for any Contract Year, the amount determined for that Contract Year in accordance with clause A2-3.2 (steps 18 and 19) and for any Prior Year, the amount determined as the Total Variable Annual Service Charge for that Prior Year in the applicable Prior Year (including, in Contract Year 1, the Total Variable Annual Service Charge shown in the MSC Calculation Schedule)..

Total Variable Annual Service Charge (Remaining Contract Term) means, for any Contract Year, the amount determined for that Contract Year in accordance with clauses A2-3.2 (step 21)

Total Variable Base Annual Service Charge (Remaining Contract Term) means, for any Contract Year, the amount determined for that Contract Year in accordance with clauses A2-3.2 (step 8).

Traffic Control Specification means the requirements of clause A3-28 (Traffic management).

Unused Line Fee means:

- (a) in the case of the MSC (except when Special Arrangements apply), the unused line fee determined in accordance with clause A2-3.2 (steps 14 and 15) and shown in the MSC Calculation Schedule;
- (b) in relation to a Funded Variation, the unused line fee determined in accordance with clause 41.3 (Terms applicable to Funded Variations); and
- (c) for the duration of any Special Arrangements, the unused line fee determined in accordance with clause 64.4 (Special Arrangements for Unused Line Fees).

Utilities means facilities 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.

Variable Base Annual Service Charge means, for any Contract Year, the amount so called and determined in accordance with clause A2-3.2 (steps 5 and 6) for that Contract Year and, for any Prior Year, the amount determined as the Variable Base Annual Service Charge for that Prior Year in the applicable Prior Year (including, in

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Contract Year 1, the Variable Base Annual Service Charge shown in the MSC Calculation Schedule).

Variation means, for the Services (other than Ordered Work), a variation made in accordance with part 7 (Variations) and for Ordered Work, a variation ordered under clause A8-9 (Variations) of the Work Order Conditions.

Variation Value has the meaning given in clause 41.3 (Terms applicable to Funded Variations).

Witness Point means, with respect to an activity, a point beyond which the Contractor (or other party responsible for the activity) is not permitted to go without inspection, testing or other witnessing by the Superintendent.

WMS is an abbreviation of Work Method Statement.

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 A3-7 (Initiation of Ordered Work).

Work Order Conditions means the conditions set out in Annexure 8 (Ordered Work Conditions), as incorporated into any Work Order.

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.

Works Manager means the person from time to time employed by the Contractor to carry out functions identified by the Contract as being functions of the Works Manager.

Working Capital Fee means, at the Commencement Date, the amount described as a Working Capital Fee in the MSC Calculation Schedule and, at any later date, an amount calculated as a Working Capital Fee in accordance with clause A2-3.2 (Calculation of MSC).

Working Capital Percentage means:

- (a) for any Cash Flow Differential (moneys owing to Contractor), **CIC** per annum; and
- (b) for the Variation Value of any Funded Variation, the rate per cent per annum which is the aggregate of the Bank Bill Rate and **CIC**

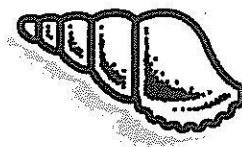
Worksite means, at any time, the place where the Services are being performed at that time.

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Annexure 2

Price

Safer Local Roads
Contract No.1218



**MORNINGTON
PENINSULA**
Shire

**COMMITTED TO A
SUSTAINABLE
PENINSULA**



Annexure 2 - Price

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Annexure 2 – Price

A2-1 Payments due

A2-1.1 Monthly payment

The amount payable to the Contractor each month during a Contract Year is as follows:

Monthly payment = MSC + CV + NCV + DF + OP

Where:

MSC is the MSC for that Contract Year calculated in accordance with this Annexure (being the amount then payable for the Core Services).

CV is the amount then payable in accordance with clause 40.3 (Payment for Continuing Variations) for Continuing Variations not yet incorporated into the MSC

NCV is the amount then payable for Non Continuing Variations and Ordered Works.

DF is the amount then payable for Design & Investigation Services.

OP is any other amount then payable to the Contractor.

A2-1.2 No limitation of rights

Nothing in this clause limits any other right of a party to payment for Services provided under the Contract or any right of set-off, deduction or withholding conferred by the Contract.

A2-2 Monthly Service Charge (MSC)

A2-2.1 Initial MSC

The Monthly Service Charge (MSC) at the Commencement Date is CIC

A2-2.2 Application

The MSC is for provision of the Services and performance of all other obligations of the Contractor under the Contract, except where otherwise expressly stated.

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A2-3 Annual determination of the MSC

A2-3.1 Timing of determination

The MSC for each Contract Year must be determined by the Superintendent by 30 September in that Contract Year (including the 1st year of the Contract) and applied retrospectively with effect from the Adjustment Date.

A2-3.2 Calculation of MSC

To determine the MSC for a Contract Year, the Superintendent must, using the MSC Calculation Schedule as a tool and a record:

- .1 Adjust each Component Price for the Contract Year to include the Annual Value of any Continuing Variation applicable to that Component Price and not then incorporated into the MSC. (This step is not required in the 1st Contract Year).
- .2 Adjust each Component Price for each Remaining Year to include the Annual Value of any Continuing Variation applicable to that Component Price and not then incorporated into the MSC. (This step is not required in the 1st Contract Year).
- .3 Adjust each Component Price (as adjusted under clause A2-3.2.1) for the Contract Year for rise and fall in accordance with clause A2-4 (Indexation adjustment).
- .4 Adjust each Component Price (as adjusted under clause A2-3.2.2) for each Remaining Year for rise and fall in accordance with clause A2-4 (Indexation adjustment).
- .5 Add together the Adjusted Component Prices for the Contract Year to determine the Variable Base Annual Service Charge for the Contract Year.
- .6 Add together the Adjusted Component Prices for each Remaining Year to determine the Variable Base Annual Service Charge for each Remaining Year.
- .7 Add together the Variable Base Annual Service Charge for the Contract Year (as determined under clause A2-3.2.5); the Variable Base Annual Service Charge for each Remaining Year (as determined under clause A2-3.2.6) and the total of the Variable Base Annual Service Charges that applied for all Prior Years.
- .8 Deduct from the total determined under clause A2-3.2.7 the total of Flat Base Annual Service Charges for all Prior Years to determine the Total Variable Base Annual Service Charge (Remaining Contract Term) for the Contract Year.

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- .9 Divide the Total Variable Base Annual Service Charge (Remaining Contract Term) for the Contract Year by the number of Contract Years remaining in the Contract Term (being the number of Remaining Years plus one) to determine the Flat Base Annual Service Charge for the Contract Year and each Remaining Year.
- .10 Deduct the Flat Base Annual Service Charge for the Contract Year from the Variable Base Annual Service Charge for the Contract Year to determine the Cash Flow Differential for the Contract Year.
- .11 Deduct the Flat Base Annual Service Charge for each Remaining Year from the Variable Base Annual Service Charge for that Remaining Year to determine the Cash Flow Differential for each Remaining Year.
- .12 Add the Cumulative Cash Flow Differential from the year preceding the Contract Year to the Cash Flow Differential for the Contract Year to determine the Cumulative Cash Flow Differential for the Contract Year. (This step is not applicable in the 1st Contract Year).
- .13 Using the amounts determined under clauses A2-3.2.11 and A2-3.2.12, calculate the Cumulative Cash Flow Differential for each Remaining Year.
- .14 If the Cumulative Cash Flow Differential in the Contract Year is less than the Maximum Agreed Exposure (and the Maximum Agreed Exposure has not been reached in any preceding Contract Year), deduct the Cumulative Cash Flow Differential for the Contract Year from the Maximum Agreed Exposure and multiply the resultant sum by **CIC** to determine the Unused Line Fee for that Contract Year.
- .15 If the Cumulative Cash Flow Differential in any Remaining Year is less than the Maximum Agreed Exposure (and the Maximum Agreed Exposure has not been reached in any preceding Contract Year), deduct the Cumulative Cash Flow Differential for the Remaining Year from the Maximum Agreed Exposure and multiply the resultant sum by **CIC** to determine the Unused Line Fee for that Remaining Year.
- .16 Multiply the Cumulative Cash Flow Differential for the Contract Year (if it represents moneys owing to the Contractor) by the Working Capital Percentage to determine the Working Capital Fee for the Contract Year.
- .17 Multiply the Cumulative Cash Flow Differential for each Remaining Year (limited to those years in which the Cumulative Cash Flow Differential represents moneys owing to the Contractor) by the Working Capital Percentage to determine the Working Capital Fee for the Remaining Years.

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- .18 Add together the Flat Base Annual Service Charge, the Working Capital Fee and the Unused Line Fee for the Contract Year to determine the Total Variable Annual Service Charge for the Contract Year. For the 1st Contract Year, the Establishment Fee must also be included in the Total Variable Annual Service Charge.
- .19 Add together the Flat Base Annual Service Charge, the Working Capital Fee and the Unused Line Fee for each Remaining Year to determine the Total Variable Annual Service Charge for each of the Remaining Years.
- .20 Add together the amounts determined under clauses A2-3.2.18 and A2-3.2.19 and the Total Variable Annual Service Charges for all Prior Years.
- .21 Deduct from the resultant sum the total of Flat Annual Service Charges for all Prior Years to determine the Total Variable Annual Service Charge (Remaining Contract Term) for the Contract Year
- .22 Divide the Total Variable Annual Service Charge (Remaining Contract Term) for the Contract Year by the number of Contract Years remaining in the Contract Term (being the number of Remaining Years plus one) to determine the Flat Annual Service Charge for the Contract Year.
- .23 Divide the Flat Annual Service Charge by 12.

A2-3.3 **Contract Year MSC**

The figure calculated under clause A2-3.2.21 is the Monthly Service Charge for the Contract Year.

A2-3.4 **Cumulative Cash Flow zero or in Contractor's favour**

If for any Contract Year the Cumulative Cash Flow Differential is zero or represents moneys owing from the Contractor to the Shire, the MSC for that Contract Year is the Flat Base Annual Service Charge, divided by 12. (This clause assumes that no Unused Line Fee will then be due because the Maximum Agreed Exposure will have been reached prior to this time. If this assumption is wrong, the Unused Line Fee must be added before determining the MSC.)

A2-3.5 **Worked example**

A worked example of the MSC calculation process is included at schedule A2-7 (Worked example).

A2-3.6 **Updating MSC Calculation Schedule**

Once the Adjustment and calculations required by clause A2-3.2 (Calculation of MSC) are complete, the Superintendent must issue a copy of the Adjusted MSC Calculation Schedule to both parties and register the Adjusted MSC Calculation in the Contract Document register kept under clause 84 (Document change

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management). In the event of any conflict between the MSC Calculation Schedule and the words in this clause, the words in this clause prevail and the Superintendent may, with the agreement of the Contractor, adjust the MSC Calculation Schedule to add new lines or remove superfluous lines accordingly.

A2-4 Indexation adjustment

A2-4.1 Annual indexation

Every Component Price, Daywork Rate, every rate or price in the Schedule of Rates and in the Design & Investigation Fee Schedule and every amount identified in the Contract as "Indexed" is adjusted for rise and fall once annually with effect from the Adjustment Date in accordance with the formula set out in clause A2-4.2 (Indexation formula).

A2-4.2 Indexation formula

Where an adjustment for rise and fall or Indexation is required under the Contract, the adjustment is to be made in accordance with the following formula:

$$S \text{ (Indexed)} = \frac{S \times AI_{n-1}}{AI_{n-2}}$$

Where:

S (Indexed) is the adjusted rate, price or other amount.

AI_{n-1} is the Applicable Index as at the June quarter of Contract Year $n-1$ where n is the Contract Year in which the Adjustment Date falls.

AI_{n-2} is the Applicable Index as at the June quarter of Contract Year $n-2$ where n is the Contract Year in which the Adjustment Date falls (except that, in Contract Year 1, AI_{n-2} is the Applicable Index for the quarter ended 30 June 2006).

A2-4.3 Applicable Indices

The Applicable Indices are set out in Schedule A2-6 (Applicable Indices).

A2-4.4 Replacement indices

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

- .1 ceases to maintain any of the Applicable Indices; or
- .2 substantially alters the method of calculation of an Applicable Index,

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the Superintendent may nominate another index to be used instead for the purposes of adjustments under this clause. The replacement index must be selected in good faith as the index that provides as close an approximation as possible to the original index.

A2-5 Fixed prices

The parties acknowledge and agree that, except to the extent otherwise expressly provided, the Component Prices are fixed.

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Schedule A2-1 - MSC Calculation Schedule

CIC

This MSC Calculation Schedule is included in the Contract to assist in calculating the MSC during the Contract Term and to specify the initial Component Prices for Adjustment in accordance with clause A2-3 (Annual determination of the MSC). With the exception of the Component Price for Accelerated Works Projects, the price breakdowns in this schedule are not suitable for any other purpose and do not necessarily bear any relation to the scope of work required to achieve the Performance Standards. The Component Price for the Accelerated Works Projects assists in defining the maximum scope of work required to be undertaken under the Accelerated Works Program in the absence of detailed design documentation.

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Schedule A2-2 – Schedule of Rates

Schedule A2-2 - Schedule of Rates

Item	Description	unit	Rate excluding GST
1.	QUALITY SYSTEM		
	Plan, develop and maintain a documented quality system and environmental management plan specific to each Ordered Work and in accordance with Section A of the Specification for Road and Drainage Works	item	CIC
2	TRAFFIC CONTROL		
2.1	Erection and maintenance of warning signs, lights, barriers and traffic control devices (per site)	per week	CIC
2.2	VMS boards (2 No.)	per day	CIC
2.3	Portable traffic signals (2 No. signals)	per day	
2.4	Supply of labour for stop/go battens and two-way radio link (2 persons)	per day	
3.	SITE FACILITIES		
	Establishment of site facilities including accommodation and toilet	per week	
4.	VEGETATION REMOVAL		
4.1	Trimming of branches		
	Works to include supply of tipper truck and chipper, minimum of two people in crew including a qualified arborist, and all plant, labour and material costs and liaison and communication activities.	per hour	
4.2	Removal of trees		
	Supply all materials, plant and labour to fell, grub stump and remove from site individual tree.		
	Tree under 100mm trunk diameter	each	
	Tree 100mm to 250mm trunk diameter	each	
	Tree 250mm to 500mm diameter	each	
	Tree 500mm to 1000mm diameter	each	
	Tree 1000mm to 1500mm diameter	each	
5.	DRAINAGE PIPES		
	Supply, excavate, bed, lay and backfill the following reinforced concrete drainage pipes.		
5.1	300 mm (Class 2) rubber ring jointed		

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Schedule A2-2 – Schedule of Rates

Item	Description	unit	Rate excluding GST
	Up to 1.5 m depth	per metre	CIC
	1.5m to 2.5m depth	per metre	
	Up to 1.5 m depth with FCR backfill	per metre	
	1.5m to 2.5m depth with FCR backfill	per metre	
5.2	375 mm (Class 2) rubber ring jointed		
	Up to 1.5 m depth	per metre	
	1.5m to 2.5m depth	per metre	
	Up to 1.5 m depth with FCR backfill	per metre	
	1.5m to 2.5m depth with FCR backfill	per metre	
5.3	450 mm (Class 2) rubber ring jointed		
	Up to 1.5 m depth	per metre	
	1.5m to 2.5m depth	per metre	
	Up to 1.5 m depth with FCR backfill	per metre	
	1.5m to 2.5m depth with FCR backfill	per metre	
5.4	525 mm (Class 2) rubber ring jointed		
	Up to 1.5 m depth	per metre	
	1.5m to 2.5m depth	per metre	
	Up to 1.5 m depth with FCR backfill	per metre	
	1.5m to 2.5m depth with FCR backfill	per metre	
5.5	600 mm (Class 2) rubber ring jointed		
	Up to 1.5 m depth	per metre	
	1.5m to 2.5m depth	per metre	
	Up to 1.5 m depth with FCR backfill	per metre	
	1.5m to 2.5m depth with FCR backfill	per metre	
5.6	Additional Cost for use of Class 3 in lieu of Class 2		
	300 mm rubber ring jointed Class 3 (surcharge over Class 2)	per metre	
	375 mm rubber ring jointed Class 3 (surcharge over Class 2)	per metre	
	450 mm rubber ring jointed Class 3 (surcharge over Class 2)	per metre	
	525 mm rubber ring jointed Class 3 (surcharge over Class 2)	per metre	
	600 mm rubber ring jointed Class 3 (surcharge over Class 2)	per metre	

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Schedule A2-2 – Schedule of Rates

Item	Description	unit	Rate excluding GST
6.	SUBSOIL DRAINAGE		
6.1	Subsoil Drainage (Corrugated)		
	Supply, deliver, excavate, bed ,lay, joint and backfill with screenings 100mm corrugated P.V.C. AG pipe to Mornington Peninsula Shire Standard MP227	per metre	
6.2	Subsoil Drainage in Pavement (Corrugated)		
	Supply, deliver, excavate, bed ,lay, joint and backfill with screenings 20mm corrugated P.V.C. AG pipe to Mornington Peninsula Shire Standard MP227	per metre	
6.3	Subsoil Drainage (Slotted Pipe)		
	Supply, deliver, excavate, bed ,lay, joint and backfill with screenings 150mm P.V.C. AG/slotted pipe to Mornington Peninsula Shire Standard MP227	per metre	
7.	DRAINAGE PITS		
	Construct Drainage Pits as shown on the Standard Drawings including excavation; forming, supply and placing of concrete, stripping of forms, backfilling, supply and placing of lids, grates and step irons where required.		
7.1	SIDE ENTRY PIT TYPE 1 or TYPE 2		
7.1a	Construct side entry pit 900mm x 600mm (I.D.) to Mornington Peninsula Shire Standards MP201 or MP203		
	Up to 1.5 m deep	each	
	1.5 to 2.0 m deep	each	
	2.0 to 2.5 m deep	each	
7.1b	EXTENDED THROAT SIDE ENTRY PITS		
	Construct concrete Side Entry Pits 900mm x 600mm (I.D.) to Mornington Peninsula Shire Standard MP201 with extended throat.		
	Up to 1.5m deep.	each	
	1.5 to 2.0m deep	each	
	2.0 to 2.5m deep	each	
7.1c	DOUBLE CHAMBER SIDE ENTRY PITS		
	Construct concrete Side Entry Pits 900mm x 600mm (I.D.) to Mornington Peninsula Shire Standard MP201 with double chamber.		

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Schedule A2-2 – Schedule of Rates

Item	Description	unit	Rate excluding GST
	Up to 1.5m deep.	each	CIC
	1.5 to 2.0m deep	each	
	2.0 to 2.5m deep	each	
7.1d	DOUBLE WIDTH THROAT SIDE ENTRY PITS		
	Construct concrete Side Entry Pits 900mm x 600mm (I.D.) to Mornington Peninsula Shire Standard MP234 with double chamber and single throat (double width) with steel frame and lintel to MP233		
	Up to 1.5m deep.	each	
	1.5 to 2.0m deep	each	
	2.0 to 2.5m deep	each	
7.2	GRATED PITS		
	Construct side entry pit 900mm x 600mm (I.D) to Mornington Peninsula Shire Standard MP216.		
	Up to 1.5 m deep	each	
	1.5 to 2.0 m deep	each	
	2.0 to 2.5 m deep	each	
7.3	CATCH PITS		
	Construct side entry pit 900mm x 600mm (I.D) to Mornington Peninsula Shire Standard MP215.		
	Up to 1.5 m deep	each	
	1.5 to 2.0 m deep	each	
	2.0 to 2.5 m deep	each	
7.4	JUNCTION PITS		
	Construct side entry pit 900mm x 600mm (I.D) to Mornington Peninsula Shire Standard MP211.		
	Up to 1.5 m deep	each	
	1.5 to 2.0 m deep	each	
	2.0 to 2.5 m deep	each	
7.5	BREAK INTO EXISTING PIT		
	Break into existing pit and connect proposed pipe to design level.	each	
7.6	BREAK OUT EXISTING PIT		

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