



**MORNINGTON  
PENINSULA**  
*Shire*

# **Cleansing & Drainage Cleaning Services**

**AGREEMENT**

**Contract No. 2328**

with

**Downer Edi Works Pty Ltd**

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# Cleansing & Drainage Cleaning

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## Contract No. 2328

This agreement is made on \_\_\_\_\_ 2018

between the following parties:

1. **Mornington Peninsula Shire Council** (ABN 53 159 890 143) having its municipal office in Besgrove Street, Rosebud Victoria ('Shire'), and
2. **Downer EDI Works Pty Ltd** (ABN 66 008 709 608) of Level 10, 567 Collins Street, Melbourne, VIC 3000 ("Contractor")

## Background

- A. The Shire has a requirement for a contract for services relating to the maintenance and management of the Assets.
- B. The Contractor submitted a tender for the contract and the tender was accepted by the Shire in response to a request for tender.
- C. The parties enter into this agreement to record the terms of the contract between them.

## Operative provisions

### Part 1 – Contract overview

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#### **1 Engagement and co-operation**

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

#### **2 Contract Term**

The Contract commences on the Commencement Date 1 December 2018 and continues until 30 June 2023, unless or terminated earlier in accordance with Part 16 – Default and termination.



### 3 Definitions and References

In this Contract, the terms defined in Annexure 1 (Definitions) have the meanings indicated in Annexure 1, unless inconsistent with the context.

A reference to a clause in which the number of the clause is preceded by the letter "A" is a reference to a clause in the Annexure indicated by the number immediately following the letter "A".

### 4 Objectives

4.1 The Shire wishes to provide a sustainable and resident-focused local Cleansing and Drainage Cleaning management service for the residents of the Shire.

4.2 With this aim in mind, the Contractor must perform the Services in accordance with the objectives set out below ("**Cleansing & Drainage Cleaning Objectives**"):

- .1 **Integrated Approach:** The Services are to be delivered in a totally integrated manner, involving all key stakeholders, including the Shire's existing Safer Local Roads Service Provider, the Principal, the community and the SIMS 2 Contractor
- .2 **Value for Money:** The Services are to be delivered such that whole-of-life costs for the Assets are minimised. The actual costs for service delivery and management of the Assets must provide outstanding value-for-money.
- .3 **Environmental Management:** The practices applied, behaviours exhibited and outcomes achieved in the performance of the Services must reflect genuine sensitivity to the environment and a best practice approach to environmental management. The Services must be delivered in a sustainable way by the Contractor at all times. The Contractor must progressively reduce the impact of the performance of the Services on climate change in alignment with the Shire's policies
- .4 **Community Engagement:** The practices applied, behaviours exhibited and outcomes achieved in the performance of the Services must reflect a genuine commitment to on-going consultation with and responsiveness to the community and its diverse concerns based on the Peninsula Way principles.
- .5 **Safety:** The systems and practices applied, the behaviours exhibited and the outcomes achieved in the performance of the Services must reflect genuine commitment to maintaining a safe work culture and a best practice approach to OH&S management of all stakeholders.
- .6 **Quality Management:** The Assets must be maintained and managed such as to be fit for their intended use. The standards of materials and workmanship must be in accordance



with the requirements of the Contract and appropriate Shire and industry standards. The standards of materials and workmanship must ensure that the actual operational and maintenance costs accurately reflect those anticipated in the whole-of-life costing.

- .7 **Quality Relationship:** The Services shall be executed within the spirit of an open and understanding quality relationship between the Shire, the Contractor and the community.
- .8 **Risk Management:** The practices applied, behaviours exhibited and outcomes achieved during the delivery of the Services shall be based on managing risks and reducing exposure to risk to the Shire, the Contractor and the community.
- .9 **Innovation and Added Value:** The Services are to be delivered in an innovative and proactive form by the Contractor at all times. The Contractor shall continuously exhibit innovation, including technical, environmental and financial innovation, that will enhance the overall objectives of the Services.
- .10 **Asset Renewal:** The practices applied, behaviours exhibited and outcomes achieved during the delivery of the Services must preserve and enhance the condition of the Assets such that the intended residual life of each of the Assets (as determined by the Shire and notified to the Contractor from time to time) is achieved at the termination of the Contract.
- .11 **Social Procurement:** The practices applied, behaviours exhibited and outcomes achieved during the delivery of the Services must be based on a strong commitment to promote, develop and utilise the services of social enterprises, given the positive social impacts they provide for socially disadvantaged people.

## 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 in contravention of any Law that could impact adversely on the Shire or the Contractor's ability to perform the Services,
  - .2 it is not subject to any Conflict of Interest, and
  - .3 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

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### 6 Management Overview

- 6.1 The parties wish to give contractual effect to the Cleansing & Drainage Cleaning Objectives and establish 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, attempt to resolve Issues referred to them and make determinations on behalf of the parties where expressly authorised by the Contract or otherwise agreed, in writing, by 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.
  - .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 Each of the Contractor and the Shire must ensure that its representatives on the Service Management Team and the Operations Team, and its Senior Representative, commit to the principles and shared values set out below in the exercise of their functions under the Contract (subject to any terms of the Contract to the contrary).
  - .1 A primary focus on satisfying the Cleansing & Drainage Cleaning Objectives and delivering the outcomes required by the Cleansing & Drainage Cleaning Objectives, consistently with the terms of the Contract and the Road Asset 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
  - .4 All decisions made on a '*Best for Program*' basis
  - .5 Encouragement of innovative thinking with a commitment to achieve improved results
  - .6 Clear responsibilities



- .7 Open, respectful and honest communication
- .8 Unconditional support to working together co-operatively and to achieve the Cleansing & Drainage Cleaning Objectives.

7.2 Each of the Contractor and the Shire must ensure that its representatives on the Service Management Team and the Operations Team, and its Senior Representative, 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 ("**Senior Representative**"). 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).
- 8.3 Senior Representatives jointly have the power to exercise any function of the Service Management Team, where the Service Management Team has not done so.
- 8.4 When exercising the powers in clause 8.3, 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), the Issue shall be determined by the Superintendent and such determination shall be final and binding on the parties.

## 9 Service Management Team

- 9.1 The role of the Service Management Team is to:
  - .1 conduct the Annual Review,
  - .2 review the Performance Standards at the request of either party to ensure that they continue to meet the Cleansing & Drainage Cleaning Objectives and remain 'Best for Program',
  - .3 attend the initial and bi-annual quality relationship management workshop with the Shire and the SIMS2 Contractors,
  - .4 exercise functions conferred by the Contract Documents, and
  - .5 undertake any other roles required and jointly agreed by the parties from time to time or as directed by the Superintendent.
- 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 is chaired by a representative of the Contractor. The chairperson is responsible for convening meetings at the times required by the Contract and for chairing the meetings.
- 9.7 Decisions of the Service Management Team must be by majority agreement of all members in attendance at the meeting.
- 9.8 Where the Service Management Team is considering a matter that relates to a stakeholder specialisation, the Service Management Team must call upon and consider advice provided by the stakeholder specialist.
- 9.9 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).
- 9.10 Each party must ensure that its representatives on the Service Management Team use their best endeavours to ensure that the Service Management Team exercises all of the functions of the Service Management Team honestly, fairly and reasonably, applying the principles and values set out in clause 7 (Management principles and values).
- 9.11 In carrying out its functions, the Service Management Team may obtain expert assistance (in addition to input from the Operations Team). The cost of any expert assistance is the joint and equal responsibility of the parties, unless the Service Management Team determines otherwise.
- 9.12 Secretarial support to the Service Management Team will be provided by the Contractor.
- 9.13 The Contractor must produce minutes which record, in writing, all decisions of the Service Management Team. The minutes must 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.

- 9.14 Each party must bear its own costs relating to the Service Management Team with the exception of accommodation for meetings (if required) and administrative support, which must 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 shall comprise:
- .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 to join the Operations Team on a limited duration basis.
- 10.3 The Operations Team is chaired by an independent facilitator nominated by the Superintendent. The chairperson is responsible for convening meetings at the times required by the Contract and for chairing the meetings.
- 10.4 Appointment of discretionary members of the Operations Team is by written invitation from the Superintendent to the nominated member.
- 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 Superintendent or the Service Management Team,
  - .7 report to the Superintendent on any matter requested by the Superintendent or Service Management Team or on any matter which the Operations Team considers should be raised with the Superintendent, and



- .8 undertake any other roles required and agreed by the parties or the Superintendent from time to time.
- 10.6 Where the Operations Team is considering a matter that relates to a Stakeholder Specialisation, the Operations Team must consult with the appropriate Stakeholder Specialist.
- 10.7 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.
- 10.8 All recommendations and reports produced by the Operations Team must be agreed by a majority of the Core Members.
- 10.9 A member of the Operations Team is regarded as being in attendance at an Operations Team 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).
- 10.10 The parties must ensure that their representatives on the Operations Team use their best endeavours to ensure that the Operations Team exercises all of the functions of the Operations Team honestly, fairly and reasonably, applying the values and principles set out in clause 7 (Management principles and values).
- 10.11 Meetings of the Operations Team must be held at intervals not exceeding 2 months or within 10 Business Days of any member requesting a meeting.
- 10.12 The Operations Team may refer any Issue to the Service Management Team or the Superintendent at any time if the Operations Team considers that the Issue is something that should be brought to the attention of, or dealt with by, the Service Management Team or the Superintendent, as the case may be.
- 10.13 Each party must bear its own costs with respect to the Operations Team.

## **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 and perform the powers, functions and duties of the Superintendent as the Shire's agent and not an independent certifier or valuer.
- 11.3 The Superintendent must:
  - .1 exercise the functions and powers, and carry out the duties, of the Superintendent under the Contract, and



- .2 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 or powers, or perform any of the duties, of the Superintendent but not more than one Superintendent's representative may be delegated the same function, duty or power at the same time.
- 11.5 The Superintendent must immediately notify the Contractor of:
  - .1 the appointment of a Superintendent's representative under clause 11.4 and of the functions, duties or powers 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 power or function, or performing any duty.

## **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).
- 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 is deemed to be authorised to receive all directions and other communications on behalf of the Contractor. Any direction or other communication given to the 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. A person may be appointed as the Contract Manager on a short-term basis (such as to cover leave taken by the permanent Contract Manager), for specific projects, 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 Superintendent.

### **13 Change of nominated personnel**

- 13.1 The Contractor must not replace the Contract Manager or a representative on the Service Management Team or Operations Team without the prior written consent of the Superintendent.
- 13.2 This clause does not limit the requirements of any other clause.

### **14 Quality relationship workshop**

- 14.1 The Contractor must, within 3 months of the commencement date, conduct a one-day quality relationship workshop (the initial workshop) at an agreed site with representatives from the Shire. The workshop must be facilitated by an independent facilitator working to an agreed agenda that addresses as a minimum:
- Preparation of a Relationship Charter
  - Coordination of SIMS2 Contractors and Safer Local Roads contractor
  - Reporting Protocols and Templates
  - Badging of Plant & Personnel
  - Community Interaction
  - Inductions by Shire & Contractor
  - Media Protocols & Procedures
  - IT Relationship and Privacy Provisions
  - Any matter required by this Contract;
- 14.2 Each party are to bear their own costs for attendance at the workshop with the exception of the cost of the facilitator and venue costs which are the responsibility of the Contractor.
- 14.3 At any time during the Contract, subject to the agreement of the parties and the terms and conditions set out in clause 14.2, additional quality workshops may be held.

## Part 3 – Access to assets

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### 15 Access to Assets

- 15.1 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.
- 15.2 The Contractor acknowledges that:
- .1 the Assets are part of the Council-owned assets;
  - .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;
  - .6 the Contractor must carry out the Services in such a way as to ensure that any inconvenience to the users of each Asset are kept to a minimum;
  - .7 the Shire may at certain times prohibit the Contractor denying access to any Asset to users or potential users of that Asset and the Contractor must comply with any such prohibition;
  - .8 the Contractor must comply with the directions of the Superintendent and relevant Authorities with respect to the management of traffic;
  - .9 the Contractor must take all reasonable steps to ensure it can access the Assets when such access requires the Contractor to gain access over or through the property of a third party; and
  - .10 the Contractor shall have no claim against the Shire or the Superintendent with respect to any restricted access to an Asset or the acts or omissions of any Other Contractor or Authority with respect to an Asset, except as expressly provided otherwise in the Contract.

### 16 Co-ordination obligations

In carrying out the Services, the Contractor must:



- 16.1 work co-operatively with the Shire, Other Contractors, Authorities and contractors of Authorities,
- 16.2 liaise with the Shire, occupiers, Committees of Management, Other Contractors, Authorities and contractors of Authorities as to their anticipated programs of work on the Assets and co-ordinate its activities as far as possible with those other programs, and
- 16.3 not interfere with, delay or damage any other work of the Shire, Other Contractors, Authorities or contractors of Authorities.
- 16.4 In the event of a conflict between contractors the Superintendent shall make a determination, such determination shall be final.

#### **17 Impact of access delays or restrictions**

Without limiting clause 16 (Co-ordination obligations), if a delay takes place in giving the Contractor access to an Asset at any time or place or any direction is issued by the Superintendent restricting or revoking access to any Asset to particular days and/or times (including a prohibition of temporary closure under clause 15.2.5), 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) and is not a breach of the Contract.

## **Part 4 – Contractor's obligations**

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#### **18 Quality**

- 18.1 The Contractor must carry out the Services diligently and conscientiously, with a high standard of skill and care, and using good workmanship and materials.
- 18.2 The Contractor must ensure that the performance of all of the Services is supervised at all times by a competent representative.
- 18.3 Everything the Contractor makes or supplies under the Contract must comply with the Contract and must, subject to the specific requirements of the Contract, be reasonably suitable for its intended purposes.
- 18.4 The Contractor must ensure that the Shire obtains the benefit of any warranty available from a manufacturer or supplier of any material used in carrying out the Services. For this purpose, the Contractor must ensure that:
  - .1 wherever possible, each warranty is obtained in the name of the Shire, or
  - .2 where it is not possible to obtain a warranty in the name of the Shire, the benefit of the warranty is assigned to the Shire, in writing.

For the purposes of clause 18.4.2, the Contractor must:

- .3 obtain any necessary consent, in writing, to an assignment of the benefit of a warranty from the relevant manufacturer or supplier and provide a copy of the consent to the Shire, and
- .4 give written notice to the relevant manufacturer or supplier of the assignment of the benefit of the warranty and provide a copy of such notice to the Shire.

18.5 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.

## **19 Time**

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

### **19A Care of Services**

19A.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
- .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.

19A.2 The Contractor's liability under this clause is reduced to the extent that an Excepted Risk contributes to the loss or damage.

19A.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.

19A.4 Nothing in this clause limits the Contractor's obligations to perform the Services.

## **20 Site risks**

### **20.1 General risk allocation**

Except where the Contract (including this clause 20) expressly provides otherwise, the Contractor is responsible at its own cost and risk for carrying out the Core Services irrespective of conditions prevailing at any Worksite at which the Core Services are to be carried out (including, without limitation, weather conditions and any



impact of such weather conditions, Worksite conditions, latent conditions and any acts or omissions of third parties) at the time at which the Core Services are required to be carried out.

## 20.2 Utilities and underground services

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

## 21 People

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

21.2 Without limiting clause 21.1, the Contractor must employ (directly or indirectly):

- .1 a suitably qualified person with specialist skills in Cleansing and Drainage asset management; and
- .2 a person or persons with qualifications and expertise in the use and operation of the Knowledge Management System (KMS) to assist the Contractor in performing its obligations with respect to the KMS and the technology interface with the Shire.

21.3 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.

21.4 The Contractor must ensure that it's Agents:

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

21.5 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. The Contractor must immediately comply with any such direction.

21.6 The Contractor must ensure that it's Agents:

- .1 are attired in any manner specified in the Contract Documents;
- .2 are readily identifiable by means of a logo, name badge, ID card or other suitable means approved by the Superintendent; and

.3 have participated in the corporate induction by the Shire.

21.7 The Contractor must, as an integral part of delivering the services, provide solutions that will or may provide any or all of the following benefits:

- .1 promotion of the social, economic and environmental amenity and sustainability of the municipal district;
- .2 efficient and effective use of resources and provision of services in accordance with the Best Value Principles to best meet the needs of the local community;
- .3 improvement of the overall quality of life of people in the local community;
- .4 promotion of appropriate business and employment opportunities; and
- .5 provision of services and facilities that are accessible and equitable.

## **22 Training**

22.1 The Contractor must prepare a training plan for each Contract Year as an integral part of the Integrated Management Plan. The training plan must be updated annually as part of the Annual Review process. Any amendments to the training plan must be approved by the Superintendent.

## **23 Subcontractors**

23.1 The Contractor may only subcontract the performance of the Services or any part of the Services with the prior written consent of the Superintendent unless previously exempted by the Superintendent in writing from the need to obtain such consent. The Superintendent must not unreasonably withhold such consent if the Contractor has established that a proposed sub-contractor is suitably qualified, competent and financially stable.

23.2 The Contractor must ensure that its arrangements with sub-contractors are appropriate to ensure compliance with the Contract and must, at the request of the Superintendent, provide evidence of its compliance with this requirement.

23.3 Notwithstanding this clause 23 or any approval or acknowledgement by the Shire or the Superintendent, the Contractor:

- .1 remains liable at all times for the performance of the Contract, notwithstanding any sub-contracting of any part of the performance of the Services; 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.



**24 Industrial relations**

The Contractor is responsible for the management of relations with its own workforce and for ensuring the effective management of relations between its Agents and their employees. The Contractor is solely responsible for carrying out the Services and shall have no entitlement to claim money, extensions of time or other relief arising out of industrial action by the Contractor's employees or the employees of its Agents.

**25 Reporting**

In addition to any specific reporting requirement in the Contract, the Contractor must promptly report in writing to the Superintendent on any aspect of the Services when directed to do so by the Superintendent.

**26 Media**

26.1 Except where authorised by the Superintendent under clause 26.2, 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, or anything connected with 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, or anything connected with 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.

26.2 The Superintendent may require the Contractor to prepare media releases and provide follow up interviews within any parameters determined by the Superintendent.

**27 Conflicts of interest**

27.1 The Contractor warrants that it is unaware at the date of this Contract of any Conflict of Interest existing or likely to arise during the performance of its obligations under this Contract.

27.2 The Contractor must:

- .1 not enter into any contract or arrangement, or do any other thing, which may give rise to a Conflict of Interest with respect to its obligations under this Contract; and
- .2 use its best endeavours to ensure that no Relevant Party enters into any contract or arrangement, or does any other thing, which may give rise to a Conflict of Interest with respect to the Contractor's obligations under this Contract.

27.3 The Contractor must:

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

## **28 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.

## **29 Confidentiality**

- 29.1 The Contractor must keep all the Confidential Information confidential.
- 29.2 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.
- 29.3 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.
- 29.4 The Contractor must not disclose the Confidential Information to any third party, including any sub-contractor or employee of a sub-contractor to the Contractor, without the prior written consent of the Superintendent, which may be given to such terms as the Superintendent considers appropriate, including a condition that any person to whom confidential information is proposed to be disclosed execute a deed of confidentiality, in a form approved by the Superintendent, in favour of the Shire.

## **30 Intellectual property**

- 30.1 Subject to clause 30.3, all property and Intellectual Property rights in the Contract Material are deemed to be owned by or vest (on the creation of any Contract Material) in the Shire.
- 30.2 The Contractor is authorised to use the Contract Material during the Contract Term but only for the purposes of the Contract. Any other use may only be made with the prior written consent of the Superintendent.
- 30.3 Nothing in this Contract affects or in any way alters the Contractor's ownership of or rights to any pre-existing Intellectual Property.



- 30.4 The Contractor, in performing the Services, must use its best endeavours not to infringe the Intellectual Property rights of any third party and must indemnify, keep indemnified and hold harmless the Shire against any loss, damage and costs suffered or incurred by the Shire as a result of any such infringement.

### **31 Compliance with Law and award obligations**

- 31.1 The Contractor must comply, and must ensure that its Agents comply, with all Laws applicable to the Services and the Contract.
- 31.2 Without limiting its obligations under clause 31.1, the Contractor must comply, and must ensure that its Agents comply with Laws, and agreements endorsed by Laws, regulating employer and employee relations.
- 31.3 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), except that, if a Variation to the Services is required or directed as a result of a Qualifying Change in Law, the Variation will be made and valued in accordance with Part 7 (Variations).
- 31.4 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 Superintendent. If the Superintendent determines that there is a conflict between any Law and an obligation imposed by the Contract, the Superintendent must direct a Variation to remove the inconsistency or must recommend that an amendment to the Contract be implemented by written agreement between the parties.

### **32 Approvals**

- 32.1 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 31.3, pay any fees or charges necessary to comply with the requirements of any Law or any relevant Authority.
- 32.2 The Contractor must give the Shire, upon request, copies of documents issued to the Contractor by any relevant Authority or to any relevant Authority by the Contractor, in respect of the Services, including copies of any licences, permits, consents or approvals necessary for the performance of the Services and receipts for any fees or charges paid by the Contractor.

### **33 Personal Information**

- 33.1 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,
  - .3 take all reasonable measures to ensure that the Personal Information is protected against loss and unauthorised access, use, modification or disclosure,
  - .4 take all reasonable measures to destroy or de-identify the Personal Information when the Personal Information is no longer required by the Contractor to complete its obligations under this Contract and at the expiry or termination of this Contract, and
  - .5 at all time comply, and ensure that its Agents comply, with the *Privacy Act 1988* (Cth), the *Privacy and Data Protection Act 2014* (Vic) and all other Laws in force at any time throughout the Contract Term relating to the privacy of Personal Information.
- 33.2 The Contractor's obligations under this clause 33 (Personal Information) are in addition to any obligations imposed by Law with respect to the protection of Personal Information.
- 33.3 The Contractor must indemnify, keep indemnified and hold harmless the Shire and the Shire's Agents in respect of any loss, liability or expense suffered or incurred by the Shire and the Shire's Agents arising out of or in connection with a breach of the obligations of the Contractor under this clause, or any misuse of Personal Information by the Contractor or any of the Contractor's Agents, or any disclosure by the Contractor or any of the Contractor's Agents in breach of an obligation imposed by Law concerning the protection of Personal Information.

## Part 5 – Protecting people & property

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### 34 Protecting people

- 34.1 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, the Shire's Agents and members of the public, who may be affected by the performance of the Services.
- 34.2 The Contractor must provide the following information to the Superintendent 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.
- 34.3 The Contractor must, when requested by the Superintendent, provide reports on OH&S inspections, audits or assessments undertaken during the Contract Term.
- 34.4 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.
- 34.5 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, and
  - .2 suspend performance of the Services until such time as the Superintendent is satisfied that the Safety Breach is rectified.
- 34.6 If the Contractor's performance of the Services has been suspended under clause 34.5, 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 it desirable to perform, and
  - .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.

Any cost to the Shire doing anything under this clause 34.6 (including any amount paid to a third party), as determined by the Superintendent, shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire, be deducted from any payment to the Contractor under this Contract or otherwise.

## **35 Protecting property & Environment**

- 35.1 The Contractor must ensure that the Contractor and the Contractor's Agents do not cause any loss or damage to property or the Environment while carrying out the Contractor's obligations under or in relation to the Contract.



- 35.2 The Contractor must take good care of anything provided to it by the Shire for the purposes of the Contract.
- 35.3 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.
- 35.4 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 A3-25.7 (Heritage and archaeological values).
- 35.5 The Contractor must promptly make good any damage done by it or its Agents to any property of the Shire or any other person, or the Environment, in the course of performing, or purporting to perform, the Services (not including damage which is a necessary incident of the Services). Damage or disturbance to an Asset must be reinstated in accordance with A3-22.8.
- 35.6 If the Contractor fails to make good any damage to property or the Environment in accordance with clause 35.5:
- .1 the Shire may affect the necessary repairs or pay compensation to the owner of the property; and
  - .2 any cost incurred by the Principal in doing anything under clause 35.6.1, as determined by the Superintendent, shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire be deducted from any payment to the Contractor under this Contract or otherwise.
- 35.7 Before the Shire takes action under clause 35.6, 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).
- 35.8 Clause 35.7 does not apply in circumstances where the Superintendent considers that urgent action is required to prevent further damage to property or the Environment or injury to any person.

### **36 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.

### **37 No claim regarding Other Contractors**

Where the activities of another 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:



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

### **38 Appointment of the Contractor as Principal Contractor**

- 38.1 Without limiting clause 38 and for the purposes of any applicable OH&S Law, the Shire:
  - .1 appoints the Contractor, and the Contractor accepts the appointment, as Principal Contractor for the purposes of any applicable OH&S Law; and
  - .2 authorises the Contractor to manage or control the workplace to the extent necessary to discharge the duties imposed on a Principal Contractor under the OH&S Law.
- 38.2 The Contractor agrees that, as Principal Contractor for the Services that it must comply with all the obligations of a Principal Contractor under OH&S Law.

## **Part 6 – Annual Review**

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### **39 Annual Review**

#### **39.1 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 39 (Annual Review). Nothing done in relation to the Annual Review, including, without limitation any conclusion reached by the Service Management Team shall be construed as confirming that the Contractor has complied with its obligations under the Contract or of waiving, or in any other way altering, any rights or obligations of the parties under the Contract.

#### **39.2 Review period**

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

#### **39.3 Categories of performance assessment**

The Service Management Team will review the Contractor's performance during the review period in 2 stages:



- .1 a stakeholder review (if required by the Shire in any Contract Year) undertaken in accordance with clause 39.5 (Stakeholder review); and
- .2 measurement against the Performance Standards (assessed in accordance with clause 39.4 (Performance against the Performance Standards)).

#### **39.4 Measurement against the Performance Standards**

The Service Management Team will measure the Contractor's performance against the Performance Standards having regard to the process and evidence and relevant factors set out in schedule 2 (Performance Standards Review) including, as applicable, the outcomes of any stakeholder review.

The parties must cooperate fully with the Service Management Team and ensure that the Service Management Team has access to all relevant information and data required by the Service Management Team for the purposes of conducting the review. 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 in each Contract Year.

#### **39.5 Stakeholder review**

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

For the purposes of this clause, a stakeholder is a person who lives in the Shire or any other person who has an interest in the services delivered by the Shire with respect to the Assets. The Service Management Team will establish and maintain a list of not less than 3 potential stakeholders from which the Shire may select.

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 Superintendent will select one or more stakeholders to conduct the stakeholder review in each Contract Year if the stakeholder review is required by the Shire. For this purpose, the Superintendent may select the stakeholder or stakeholders from the list maintained by the Service Management Team or may select any other person or persons as the stakeholder or stakeholders.

The Shire will engage with the stakeholder or stakeholders to conduct the stakeholder review. The Contractor must reimburse the Principal for all amounts paid by the Shire to the stakeholder or stakeholders with respect to the conduct of the stakeholder review (if any) in each



year of the Contract Term. The Shire must issue to the Contractor a tax invoice for the amount payable by the Contractor.

The Contractor must cooperate fully with any nominated stakeholder and, subject to any Law, provide them with access to all relevant data and sites where the Services are performed.

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.

#### 39.6 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 Superintendent or parties, if appropriate:

- .1 reconciliation of Asset Inventory Changes (if necessary),
- .2 imposition and cancellation of Service Points and Service Point Liquidated Damages,
- .3 level of insurance cover,
- .4 impact of any changes to the Assets (whether required by Law or by the Shire) and any changes to the Integrated Management Plan,
- .5 operation of the Service Management Team 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 a summary of all audits conducted by the Shire's Auditing Officer and the Contractors response to any non-conformances issued,
- .8 any other matters required by the Contract,
- .9 any other matters which the Service Management Team considers it appropriate to review, and
- .10 any changes to the Contract that may be necessary or desirable as a consequence of any of the above,

**39.7 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 in each Contract Year.

The Superintendent must review, consider and sign off the Service Management Team's final report including conclusions and recommendations by 15 July of the subsequent Contract Year. The final report will include the Superintendent's determination in relation to the 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 or her final report based on his or her own assessment and without input from the Service Management Team. In doing so, the Superintendent must consult with the Contract Manager.

**39.8 Format**

The format and details of the Annual Review are to be agreed between the parties by 30 June 2019.

## Part 7 – Variations

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**40 Variations****40.1 Direction of Variations**

During the Contract Term, the Superintendent may direct the Contractor to:

- .1 alter the extent of the Services;
- .2 alter the character, quality or mode of performance of the Services; or
- .3 carry out any work of a character similar to the Services.

**40.2 Valuation of Variations**

The value, if any, of any variation must be added to or subtracted from any payment to the Contractor under clause A2-1.1.

Subject to clause 43 or as expressly specified otherwise in the Contract, the value of each variation must be determined by the Superintendent by applying (in descending order of priority):

- .1 rates or prices agreed by the parties;
- .2 the Rates for Asset Inventory Change, to the extent to which they are applicable;



- .3 the Schedule of Daywork Rates;
- .4 any other relevant rates or prices contained in the Contract Documents; or
- .5 reasonable rates or prices if there are no relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause.

If a variation involves a decrease in the Services or the omission of part of the Services, the Superintendent must make a reasonable allowance for the Contractor's profit and overheads.

#### **41 Continuing Variations**

Where a variation involves the addition or removal of Assets, the Superintendent must incorporate the value of any variation pertaining to the ongoing performance of the Services, or cessation of the performance of the Services, with respect to that Asset into the Monthly Service Charge. If, for example, a New Asset becomes part of the Assets and a Rate for Asset Inventory Change is applicable to that Asset, the amount determined by the Superintendent in applying the Rate for Asset Inventory Change shall be added to the Monthly Service Charge (less any variation made with respect to the removal of any relevant Asset as part of the same project).

Where any other Variation results in an ongoing change to the performance of the Services, the Superintendent must adjust the Monthly Service Charge to take account of that Variation.

#### **42 Asset Inventory Changes**

##### **42.1 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.

##### **42.2 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 Asset superseded by the New Asset.

##### **42.3 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, end of defects liability period date and details of the person who constructed it;
- .2 and include, where the Shire considers it relevant and appropriate, any information relevant to the performance of the Services in relation to the New Asset which the Shire has in relation to the New Asset, including, where applicable, 'as constructed' drawings and subdivision bills of quantities, and operational manuals: and
- .3 use formats compatible with the data schema (the nature and structure of the data) in the Knowledge Maintenance System and the Asset Inventory.

#### 42.4 **Asset Handover**

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

- .1 Within 10 Business Days of receipt of an 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. Notwithstanding the first sentence of this clause 42.4.2, the Contractor cannot reject any New Asset which has been constructed, supplied or installed by the Contractor or an Agent of the Contractor.
- .3 If the Contractor does not notify the Superintendent of its acceptance or rejection of a New Asset within 10 Business Days of receipt of the Asset Handover Notice, the Contractor is deemed to have accepted the New Asset.
- .4 If the Contractor accepts (or is deemed to have accepted) a New Asset, Asset Handover occurs on the 11<sup>th</sup> 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 Contract Manager 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 (unless otherwise agreed) the Shire must, if it wishes to have the proposed New Asset treated as a New Asset, ensure that all work necessary to bring the New Asset up to an Acceptable Standard is done (at no cost to the Contractor) before Asset Handover occurs.
- .7 If, on the joint inspection, the Superintendent determines that the New Asset is of an Acceptable Standard, the



Superintendent must, within 5 Business Days of the date of the joint inspection, issue a notice to this effect and direct that Asset Handover occurred on the 11<sup>th</sup> 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 a New Asset up to an Acceptable Standard in accordance with clause 42.4.6, the Superintendent must issue a further Asset Handover Notice to the Contractor with respect to that New Asset and the process set out above shall apply to that further Asset Handover Notice.
- .9 If the Contractor has accepted (or is deemed to have accepted) a New Asset in accordance with this clause 42.4 (Asset Handover), the Contractor must not subsequently make any claim with respect to the Condition of the New Asset irrespective of whether or not any defect in the New Asset was evident from inspection or from the documentation provided to the Contractor in the Asset Handover Notice for the New Asset. The Contractor releases the Shire from any liability with respect to any defect in a New Asset which was accepted, or deemed to have been accepted, by the Contractor in accordance with clause 42.4.

#### 42.5 **Measurement of Asset Inventory adjustments**

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

#### 42.6 **Replacement maintenance not an Asset Inventory Change**

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

However, if a Qualifying Change in Law requires a replacement Asset to be of a higher standard than an Asset which it is replacing, a Variation will be issued in accordance with clauses 31.3 and 40.1 (Direction of Variations). 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.

**43 Valuation of New Assets****43.1 Valuation for New Assets below Acceptable Standard**

If the Contractor has agreed with the Shire under clause 42.4.6 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 26<sup>th</sup> 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.

**43.2 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 must be determined in accordance with the Rates for 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 Superintendent in accordance with clause 40.2 (Valuation of Variations) on the basis of the value of work that should have been done with respect to the New Asset to bring it up to the Acceptable Standard before the Asset Handover, provided that the Contractor has performed such work.

**43.3 Apportionment between Component Prices**

To enable incorporation into the Monthly Service Charge, the Superintendent must -

- .1 identify; and
- .2 apportion between the Component Prices to which the Continuing Variation relates -

the Annual Value of each Continuing Variation.

Where the Superintendent considers that the nature of a Continuing Variation so requires, a new Component Price may be added to the Monthly Service Charge Calculation Schedule as at the next Adjustment Date.

## Part 8 – Excusing Events

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**44 Impact on time**

- 44.1 If and to the extent that an Excusing Event prevents the Contractor from carrying out any element of the Services (other than Ordered Work) in accordance with an applicable Contractual Time Requirement, the Contractor is excused from performance of the affected element of the Services for the duration of the Excusing



Event. The Contractor must recommence performance of the affected element of the Services immediately after the Excusing Event ceases.

- 44.2 Notwithstanding clause 44.1, but subject to any other express provision of the Contract, the Contractor is not required to carry out any element of the Services beyond the end of the Contract Term.
- 44.3 The parties acknowledge that timely identification of disruptive or delaying events is beneficial to both parties and consistent with the Cleansing & Drainage Cleaning Objectives. Both parties agree to keep the Operations Team informed of things that may delay or disrupt the progress of any of the Services.

#### **45 Directions to suspend Services**

- 45.1 The Superintendent may direct the Contractor to suspend the whole or part of the performance of the Services for any reason for a period nominated by the Superintendent.
- 45.2 If the Superintendent directs a suspension because of a default, or negligent or wrongful act or omission, by the Contractor or any of the Contractor's 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,
  - .2 if the Services which have been suspended 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 Superintendent reasonably determines to be the amount attributable to the period of the suspension,
  - .3 if the Services which have been suspended are not covered by the Monthly Service Charge, the Shire is not required to pay the Contractor for such Services 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 any costs and losses which the Shire incurs as a result of the suspension, as determined by the Superintendent, shall be a debt immediately due and payable by the Contractor to the Shire and may, at the discretion of the Shire, be deducted from any payment to the Contractor under this Contract or otherwise.
- 45.3 In the case of a suspension for any reason not referred to in clause 45.2, if the period of the suspension is likely to exceed 1 week, the Superintendent may direct that the suspension be valued as a Variation.

**46 Costs of delays**

- 46.1 Subject to any other provision of the Contract and to this clause 46, the Contractor may claim compensation for the direct cost impacts of any delay to the Services (other than Ordered Work) caused solely by a breach of the Contract or a negligent act or omission on the part of the Shire or an Agent of the Shire. The Contractor must use its best endeavours to prevent and minimise any such cost impacts.
- 46.2 The Contractor is not entitled to claim or receive any compensation under clause 46.1 if and to the extent that the delay arose out of or as a result of a direction or other action considered by the Shire or the Shire's Agent to be necessary or desirable due to an act, omission, default or unauthorised conduct by the Contractor or any of the Contractor's Agents.
- 46.3 To be eligible to claim compensation under clause 46.1, 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 breach of the Contract or the negligent action by the Shire or an Agent of the Shire and were not due in any respect to a failure by the Contractor to comply with the Contract or to manage its affairs so as to prevent or minimise the impact of any delay.
- 46.4 Clause 46.1 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 as a result of an Excusing Event.

**47 Relaxation of requirements**

- 47.1 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.
- 47.2 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 Superintendent 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

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### 48 Price

- 48.1 The Price, for each month during the Contract Term, is as determined in accordance with clause A2-1 (Payments Due), subject to clauses 49, 50, 51 and 52. The Price is payable by monthly amounts due.
- 48.2 The Price is deemed to include allowances for all fees, charges and costs incurred by the Contractor in performing the Services (including, without limitation, profit, overheads, preliminaries, attendance and supervision), except as expressly stated otherwise in this Contract.

### 49 Payments by the Shire

- 49.1 The Contractor must, not later than 10 Business Days following the end of each month, provide the Superintendent with a payment claim for the Price for that month.
- 49.2 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 from the Shire or the Shire from the Contractor, as the case may be.

The Superintendent's certification must take into account any amounts payable by the Contractor to the Shire or which the Shire is entitled to deduct from payments to the Contractor, whether under this Contract or otherwise.

No failure by the Superintendent to take into account any amount payable by the Contractor to the Shire or which the Shire is entitled to deduct from any payment to the Contractor shall constitute a waiver or release with respect to that amount and such amount may be taken into account in the certification of any subsequent payment claim or, at the option of the Shire, must be paid by the Contractor to the Shire within 10 Business Days of the Contractor's receipt of a tax invoice for the amount from the Shire.

The party to which payment is to be made in accordance with the Superintendent's certification must provide a tax invoice (in accordance with clause 52) for the amount certified as payable to the other party.

- 49.3 The Superintendent may issue a payment certificate at any time even if the Contractor has not lodged a payment claim.
- 49.4 Within 10 Business Days of the date of a party's receipt of a tax invoice issued by a party in accordance with the requirements of clauses 49.2 and 52, the party to which the tax invoice is addressed must pay the amount stated in the tax invoice (if it corresponds to the amount certified by the Superintendent) by electronic funds transfer to the other party's nominated bank account.



- 49.5 The Contractor's payment claim under clause 49.1 and the Superintendent's assessment under clause 49.2 (if it does not agree with the Contractor's claim) must be accompanied by work papers clearly setting out the derivation of all figures.

## **50 Valuation of payment claims**

### **50.1 Monthly Service Charge**

For the performance of the Core Services, the amount due to the Contractor is the Monthly Service Charge.

### **50.2 Other lump sums**

For the performance of the Services to which a lump sum price (other than the Monthly Service Charge) 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 that the Superintendent considers appropriate.

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

### **50.4 Payment valuation to include Service Point Liquidated Damages**

If Service Point Liquidated Damages have been imposed or cancelled in accordance with clause 71 (Application of Service Points) at any time, the Superintendent must also take into account the applicable Service Point Liquidated Damages in valuing a payment claim (but failure to do so does not preclude the Shire from making the adjustment).

### **50.5 Payment not evidence of acceptance**

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

### **50.6 Set off**

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



**50.7 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.

**51 Payment of employees and subcontractors**

51.1 The Contractor must include in each payment claim submitted to the Superintendent under 49.1 certification that the Contractor has:

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

51.2 The Superintendent may require that certification by the Contractor under clause 51.1 is confirmed by a statutory declaration.

51.3 If the Contractor does not provide the certification under clause 51.1 or the statutory declaration under clause 51.2, the Shire may:

- .1 withhold any payment which would otherwise be due to the Contractor under this Contract, and
- .2 retain the withheld amount or 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.

**52 GST**

- 52.1 Prices and rates in this Contract are exclusive of GST, unless otherwise expressly stated.
- 52.2 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.
- 52.3 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.
- 52.4 Terms used in this clause 52 (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

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**53 Insurances to be held**

- 53.1 Before commencing any work under the Contract, the Contractor must provide certificates of currency as evidence to the Superintendent in accordance with clause 62 that the Contractor has effected the following insurances and paid all premiums for such insurances:
  - .1 workers compensation insurance in accordance with clause 54 (Workers compensation insurance),
  - .2 a public liability policy of insurance in accordance with clause 55 (Public liability insurance),
  - .3 Professional indemnity insurance in accordance with clause 56 (Professional indemnity insurance),
  - .4 Motor vehicle comprehensive insurance in accordance with clause 57 (Motor vehicle insurance),
  - .5 Construction Risks Insurance in accordance with clause 58 (Construction Risks Insurance).
- 53.2 If the Superintendent forms the opinion that any certificate of currency as required by clause 53.1, is deficient in detail, e.g. does not disclose exclusions, the Superintendent may require that additional evidence of insurance be provided by the Contractor.



**54 Workers compensation insurance**

- 54.1 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 completion of all of the Contractor's obligations under the Contract.
- 54.2 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.
- 54.3 The Contractor must also ensure that every subcontractor to the Contractor 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.

**55 Public liability insurance**

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

- .1 cover the liability of the Contractor and its Agents to the Shire, and
- .2 be for an amount per occurrence of at least Commercial in Confidence or the amount determined in accordance with clause 59.2 (Review of insurance levels), whichever is the greater.

**56 Professional indemnity insurance**

- 56.1 The Contractor must, at all times during the Contract Term and for 10 years after the completion of all of the Contractor's obligations under the Contract, be the holder of a current professional indemnity insurance. The professional indemnity policy of insurance must:
- .1 cover the Contractor for errors in inspection, documentation, supervision, other professional duties of, or assessments made

by, the Contractor in the course of performing the Contract and any other activities forming part of the Services which are capable of being covered under such a policy, and

- .2 be for an amount per occurrence and in the aggregate of **CIC** or the amount determined in accordance with clause 58 (Review of insurance levels), whichever is the greater.

56.2 The Contractor must also ensure that every subcontractor to the Contractor complies with clause 56.1 as if it were the Contractor if such Contractor is to perform any activities capable of being covered under professional indemnity insurance and the amount of insurance cover shall be such amount as considered reasonable having regard to the volume and value of the subcontract works being provided.

## 57 Motor vehicle insurance

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

- .1 cover the Contractor and others for damage caused to property by any registered motor vehicles owned or used by the Contractor directly in connection with performance of the Contract, and
- .2 be for an amount per occurrence of **CIC** or the amount determined in accordance with clause 58 (Review of insurance levels), whichever is the greater.

57.2 The Contractor must also ensure that every subcontractor to the Contractor complies with clause 57.1 as if it were the Contractor if such Contractor is to perform any activities capable of being covered under comprehensive motor insurance and the amount of insurance cover shall be such amount as considered reasonable having regard to the volume and value of the subcontract works being provided.

## 58 Construction Risks Insurance

The Contractor must, at all times during the Contract Term and until the completion of all of the Contractor's obligations under the Contract, have in place Construction Risks Insurance with insurers and on terms satisfactory to the Superintendent.

## 59 Review of insurance levels

59.1 The levels of insurance required by the Contract will be reviewed and determined by the Superintendent every three years as part of the



Annual Review. Any additional cost incurred by the Contractor as a result of a determination under this clause will be valued as a Variation.

- 59.2 The risk of any premium increases that occur during the Contract Term (except to the extent that they result from an increase in the level of cover determined in accordance with clause 59.1) is to be borne by the Contractor (on the understanding that this risk will be adequately addressed by Indexation in accordance with the Contract).

## **60 Policy requirements**

- 60.1 All the insurance policies required by clauses 55, 56 and 57 must be effected with insurers authorised to carry on non-life insurance business in Australia under the *Insurance Act 1973* (Cth).
- 60.2 The public liability policy of insurance required by clauses 55 (Public liability insurance), must:
- .1 cover the Shire as an additional insured party in respect of liabilities arising out of the Contractor's performance of the Services, and

- 61 include a cross liability clause in which the insurer agrees to waive all rights of subrogation, except where the rights of subrogation or recourse are acquired in consequence or otherwise following a Vitiating Act in which circumstances insurers may enforce such rights notwithstanding the continuing or former status of the vitiating party as an insured.

## **62 Evidence of insurance**

The Contractor must provide the Superintendent with certificates of currency as evidence, to the satisfaction of the Superintendent, of the currency of the insurances required by the Contract at least 7 days prior to the Commencement Date, at each anniversary of the Commencement Date and at any other time within 2 Business Days of a written direction by the Superintendent.

## **63 Indemnity**

The Contractor must indemnify, keep indemnified and hold harmless the Shire and the Shire's Agents from and against all actions, claims, losses, damages, penalties or costs (including, without limitation, all indirect and consequential losses, damages and arising from, related to, or connected with property damage or personal injury costs on a full indemnity basis) arising out of or in connection with any breach of the Contract by the Contractor, or an Agent of the Contractor, any breach of any Law by the Contractor or an Agent of the Contractor or any negligent or wrongful act or omission of the Contractor or an Agent of the Contractor in the performance or purported performance of the obligations of the Contractor under this Contract.

## Part 11 – Security

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### 64 Performance security

- 64.1 The Contractor must ensure that the Shire holds a Performance Security provided by the Contractor 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 64.5.
- 64.2 Each Performance Security provided by the Contractor must be a perpetual, irrevocable and unconditional bank guarantee for an amount of 5% of the amount determined by multiplying the MSC by 12 (Indexed) and must be in a form, and from a bank, approved by the Shire.
- 64.3 The initial Performance Security must be delivered to the Superintendent immediately upon execution of this Contract, and as a precondition to the making of any payment by the Shire to the Contractor.
- 64.4 The Shire must release any superseded Performance Security within 5 Business Days of receiving the replacement Performance Security.
- 64.5 The Shire must return the Performance Security (or the balance thereof, if any, remaining after the exercise of a right of recourse) to the Contractor as follows:
- .1 1 of the 2 bank guarantees for the last year of the Contract Term at the conclusion of the Contract Term; and
  - .2 the other bank guarantee for the last year of the Contract Term on the last to occur of (1) expiry of the last Defects Liability Period under the Contract, and (2) the date 13 months after the conclusion of the Contract Term.
- 64.6 If the Shire exercises a right of recourse to the Performance Security, the Contractor must, if directed by the Shire at any time prior to the last to occur of the events referred to in clause 64.5, 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.
- 64.7 The Shire is entitled to have recourse to the Performance Security at any time: to recover any moneys owing from the Contractor to the Shire under the Contract or otherwise.



## Part 12 – Completion obligations

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### 65 Defects Liability Periods

65.1 It is agreed that:

- .1 for the Routine Maintenance Services carried out within the last 3 months prior to the conclusion of the Contract Term or the earlier termination of the Contract there will be a Defects Liability Period for 3 months from the date on which they are completed,
- .2 for each Programmed Maintenance Service carried out within 12 months prior to the conclusion of the Contract Term or the earlier termination of the Contract there will be a Defects Liability Period for 12 months from its completion,
- .3 for each service that is not paid by a Monthly Service Charge (other than one which comprises temporary repairs) there will be a Defects Liability Period for 12 months from its Date of Completion, and

65.2 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 directed by the Superintendent. Upon completion of the rectification work, a further Defects Liability Period of equal length to the original Defects Liability Period shall apply with respect to the rectification work from the date of completion of the rectification work, as certified by the Superintendent.

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

### 66 Transfer to new contractor

66.1 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 or the earlier termination of the Contract.

66.2 Without limiting the Contractor's obligations under clause 66.1, the Contractor must:

- .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
- .2 complete all unfinished works, co-operate with the Shire in relation to the transition to a new contractor and perform such

other transitional services as the Shire may reasonably determine.

The Contractor shall not be entitled to any additional payment with respect to the performance of its obligations under this clause 66.

## **67 Completion of obligations**

On expiry of the Contract Term or earlier termination 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 under the Contract, and
- .4 deliver to the Shire all records of the Contractor relating to the Services or the Assets.

The Contractor shall not be entitled to any additional payment with respect to the performance of its obligations under this clause 67.

## **68 Continuing obligations**

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

- 68.1 full compliance with the relevant obligation, or
- 68.2 7 years from the date of termination of the Contract or the expiry of the Contract Term.

# **Part 13 – Dispute resolution**

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## **69 Disputes**

- 69.1 It is the intention of the parties that, wherever possible, issues will be resolved at the level of the Superintendent or by reference to the Senior Representatives before they become disputes or differences.
- 69.2 Notwithstanding clause 69.1, if a dispute (including a difference) arises between the Shire and the Contractor, either during the Contract Term or after the termination of the Contract or expiry of the Contract Term, as to any matter or thing connected with or arising under this Contract, either party may give to the other party a notice of the dispute.



- 69.3 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.
- 69.4 Within 5 Business Days of the date of receipt of any notice of dispute under this clause by the party on which it is served ("Receipt Date"), the parties must each appoint a senior executive (not being a Senior Representative or the 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.
- 69.5 If the appointed executives are unable to resolve the dispute within 20 Business Days of the Receipt Date (or within such longer period as the senior executives agree is appropriate), either party may litigate the dispute.
- 69.6 The parties may use any form of dispute resolution mechanism on which they agree to resolve any dispute, including arbitration, mediation and expert determination. Nothing in this clause 69.6 is intended, however, to prevent a party initiating litigation with respect to a dispute, provided that the party has followed the process set out in clauses 69.2, 69.3, 69.4 and 69.5.
- 69.7 If reasonably possible, performance of obligations under the Contract must continue during arbitration or legal proceedings, and no payment due or payable by the Shire that is not in dispute must be withheld on account of the arbitration or legal proceedings, unless so authorised by the Contractor or by the Contract, provided that nothing in this clause 69 is intended to prevent a party terminating the Contract in accordance with an entitlement under the Contract or in response to a repudiation of the Contract by the other party.

## Part 14 – Force Majeure

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### 70 Force Majeure and its effects

- 70.1 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
  - .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.
- 70.2 Upon the notice under clause 70.1 having been given, the party giving the notice must provide the other party with all further relevant information pertaining to the Force Majeure Event.
  - 70.3 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.
  - 70.4 The party that has issued a notice of a Force Majeure Event under this clause 70 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.
  - 70.5 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.
  - 70.6 Subject to clause 70.7, 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.
  - 70.7 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.

- 70.8 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.
- 70.9 The Shire is not required to pay the Contractor for any Service that is not provided during and as a consequence of a Force Majeure Event.

## Part 15 –Performance Standards defaults

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### 71 Application of Service Points

#### 71.1 Superintendent may apply Service Points at any time

The Superintendent may impose 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 71.9 (Service Point show cause) and has not done so to the Superintendent's satisfaction -

#### ("Performance Default")

In imposing Service Points, the Superintendent must determine:

- .3 the number of Service Points to be imposed (in accordance with clause 71.2); and
- .4 whether Service Point Liquidated Damages (determined in accordance with clause 71.3) are to be imposed.

#### 71.2 Number of Service Points

The Superintendent must take account of all factors which he or she reasonably considers to be relevant in determining the number of Service Points to be imposed in respect of a Performance Default.

Relevant factors include, without limitation, the following:

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

- .3 whether factors beyond the Contractor's control have caused or contributed to the Performance Default; 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 numbers of Service Points that can be awarded in respect of any single Performance Default are set out in Schedule 3 (Service Points).

### 71.3 Applying Service Point Values

If Service Points have been imposed on the Contractor with respect to any Performance Default, the Superintendent must determine if:

- .1 Service Point Liquidated Damages are to be imposed with respect to the Service Points;
- .2 Service Points Liquidated Damages are not to be imposed with respect to the Service Points; or
- .3 the Service Points are to be suspended.

Service Point Liquidated Damages must only be applied with respect to Service Points where the Superintendent reasonably considers that:

- .4 there are significant actual or potential financial or community consequences arising from the relevant Performance Default;
- .5 the nature or circumstances of the relevant Performance Default indicates a disregard by the Contractor for its contractual obligations (for example, where the failure to achieve a Performance Default is repeated);
- .6 the relevant Performance Default has resulted in a material windfall or financial or other benefit for the Contractor; or
- .7 the Shire has suffered or incurred a material loss as a result of the relevant Performance Default.

The Superintendent may determine that the Service Points are to be suspended for a period of up to 12 months from the date on which the Service Points are imposed.

If the Superintendent determines that Service Point Liquidated Damages are to be imposed with respect to any Service Points, the amount of the Service Point Liquidated Damages must be determined in accordance with the following formula:

$$A = B \times C$$

Where:



- A = the Service Point Liquidated Damages;
- B = the number of Service Points; and
- C = the Service Point Value (Indexed).

#### **71.4 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 being awarded a total of 250 points in any Contract Year, the Shire may give notice of termination of the Contract in accordance with clause 74 (Powers on Contractor default) without the need for a Termination Show Cause Notice.

#### **71.5 SMT may recommend cancellations at Annual Review**

The Service Management Team may make a recommendation to the Superintendent for the cancellation of any Service Points or Service Point Liquidated Damages as part of any Annual Review report:

- .1 where the Performance Default for which the Service Point or Service Point Liquidated Damages were imposed has been Rectified without material loss to the Shire or unfair gain to the Contractor and the Contractor has provided reasonable evidence that the relevant type of Performance Default will not be repeated; or
- .2 where the Annual Review determines that the Contractor has achieved the Performance Standard for which the Service Points had previously been imposed and the Contractor has provided reasonable evidence that the relevant type of Performance Default will not be repeated; or
- .3 where, for any other reason, the Service Management Team considers it reasonable to cancel some or all of the Service Points.

#### **71.6 Superintendent's powers**

Subject to clause 71.7 and without limiting any other provision of the Contract, the Superintendent has power to cancel Service Points or Service Point Liquidated Damages following any Annual Review.

If the Superintendent determines to cancel any Service Point Liquidated Damages which have already been deducted from a payment to the Contractor, the amount of the Service Point Liquidated Damages must be included in the next monthly payment to the Contractor.

#### **71.7 Factors to be considered by Superintendent**

The Superintendent must apply the same factors and principles in making any determination under clause 71.6 (Superintendent's



powers) with respect to the cancellation of Service Points and Service Point Liquidated Damages as the Superintendent is required to apply in clauses 71.2 (Number of Service Points) and 71.3 (Applying Service Points Values), and must take into consideration any recommendation of the SMT under clause 71.5 (SMT may recommend cancellations at Annual Review).

#### **71.8 Determination of failure to achieve a Performance Standard**

For the purposes of clause 71.1.1, the Superintendent must determine the question of whether the Contractor has failed to achieve a Performance Standard having regard to the process and evidence and relevant factors set out in schedule 2 (Performance Standards Review).

#### **71.9 Service Point Show Cause**

If at any time the Superintendent considers that the Contractor has failed to achieve a Performance Standard, the Superintendent must:

- .1 notify the Contractor in writing of:
  - (a) the Performance Standard which the Superintendent considers that the Contractor has failed to achieve; and
  - (b) the respect (or respects) in which the Superintendent considers that the Contractor has failed to achieve the Performance Standard; and
- .2 allow the Contractor 10 Business Days to Rectify the Performance Default, prepare a comprehensive plan at their own cost for the Rectification of the Performance Default or otherwise show cause, in writing, why Service Points or Service Point Liquidated Damages should not be imposed.

Nothing in clause 71.9 is intended to alter or abrogate any other right or obligation of a party under the Contract with respect to, or in connection with, a Performance Default.

#### **71.10 Reserved Rights**

If, in accordance with clause 71.9.2, the Contractor submits a plan for the Rectification of a Performance Default, the Superintendent may consider whether the plan offers reasonable assurance that the Rectification will occur within a reasonable time. In response to a plan, the Superintendent may elect to suspend a decision as to whether Service Points or associated Service Point Liquidated Damages should be imposed until the Contractor has implemented the plan or the time for implementation of the plan has passed.

Nothing in this clause 71 shall operate to prevent the Shire or the Superintendent taking action with respect to any breach of the Contract.



## Part 16 – Default and termination

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### 72 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.

### 73 Termination show cause notice

73.1 The Shire may give notice to the Contractor requiring it to show cause why the powers contained in clause 74 (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 pursuant to the Contract.

73.2 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.

### 74 Powers on Contractor default

74.1 If:

- .1 the Contractor fails to show cause, within 7 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, or
- .4 terminate the Contract by notice to the Contractor.

74.2 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.

## **75 Termination for Contractor insolvency**

75.1 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 75.1.2 happens to any of the partners which is a company;
- (c) any of the partners becomes bankrupt, or files or is served with a petition in bankruptcy;
- (d) any of the partners is served with a bankruptcy notice;
- (e) any of the partners makes an assignment for the benefit of his, her or its creditors;
- (f) any of the partners becomes bound as a debtor by any scheme of arrangement;
- (g) any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or
- (h) any of the partners has a mortgagee or other creditor take possession of any of his, her or its assets, or

.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.

## **76 Payments on termination for default or insolvency**

76.1 If the Contract is terminated by the Shire under clause 74 (Powers on Contractor default) or 75 (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 or losses suffered or incurred by the Shire as a consequence of, or in connection with, any default by the Contractor or as a consequence of the exercise by the Shire of its power of termination (including, without limitation, the cost of making good any defaults in the Contractor's performance of the Services, any amount by which the cost to the Shire of completing the Services which should have been performed in the remainder of the Contract Term exceeds the amount which would otherwise have been payable to the Contractor, the cost to the Shire of providing emergency and temporary services, and losses, and all legal costs on a full indemnity basis).

76.2 The amount payable under this clause 76 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.

76.3 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.

76.4 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.

76.5 Nothing in this clause affects clause 68 (Continuing obligations).

## **77 Termination for convenience**

77.1 The Shire may terminate the Contract at any time on 3 months' notice for its convenience.

77.2 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,
- .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 to and possession of those items or materials passes to the Shire upon payment,



- .3 an amount to reimburse the Contractor for all demobilisation costs reasonably and necessarily incurred by the Contractor as a consequence of the early termination,
- .4 an amount to reimburse the Contractor for all redundancy and employee relocation costs reasonably and necessarily incurred by the Contractor as a consequence of the early termination,

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

- 77.3 The Contractor has a duty to do what it reasonably can to ensure that the costs recoverable from the Shire under clause 77.2 are minimised. The Contractor must consult with the Shire prior to incurring costs under clause 77.2.3 (demobilisation) and clause 77.2.4 (redundancy and employee costs).
- 77.4 Without limiting anything in clause 77.2, amounts recoverable by the Contractor under clause 77.2 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.
- 77.5 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.
- 77.6 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.
- 77.7 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.
- 77.8 Nothing in this clause affects clause 68 (Continuing obligations).

## **78 Termination by the Contractor**

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



Contractor later terminating the Contract, including during any period that the performance of the Services is suspended.

- 78.2 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 determination in accordance with clause 77 (Termination for convenience) and payment must be made in accordance with that clause.

## Part 17 – General

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### 79 Notices

- 79.1 A notice required or permitted to be given by a party, body or person to another party, body or person under this Contract must be legible and in writing and must be addressed to the recipient party at the facsimile number or the address given in Schedule 1 (Contract Details) or at any other facsimile number or address for the service of notices of which that party, body or person gives notice to all parties, bodies and persons for whom the facsimile number and address details are given in Schedule 1.
- 79.2 A notice given to a party, body or person in accordance with this clause 79 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.

### 80 Relationship between the parties

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

**80.3 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.

**81 Legal operation**

- 81.1 The Contract does not fetter or restrict the powers or discretions of the Shire in the exercise of its statutory functions.
- 81.2 The rights and remedies of a party under the Contract are not waived by any representation, statement or conduct unless a notice of an express intention to waive rights and remedies is given to the other party in writing.
- 81.3 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.
- 81.4 This Contract may be amended only by a written instrument duly executed by the parties.
- 81.5 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.

**82 Entire agreement**

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

**83 No assignment**

- 83.1 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.
- 83.2 Consent to assignment or novation may be given subject to any conditions which the Shire considers appropriate. All reasonable internal and external costs of the Shire (including reasonable legal and other consultants' costs) in considering and documenting any assignment or novation requested by the Contractor must be met by the Contractor.



- 83.3 For the purposes of this clause 83, an assignment of the Contractor's rights under this Contract includes any change in the beneficial ownership of the share capital of the Contractor, if it is a company, which alters the effective control of the Contractor.

#### **84 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.

#### **85 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**

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#### **86 Document change management**

- 86.1 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.
- 86.2 Each party must ensure that procedures are in place and enforced to ensure that the persons administering the Contract or performing any Services have at all times access to the Current version of the Contract and that outdated versions are withdrawn from use. Where documents are kept in electronic format, a back-up must be kept and the media must be tested from time to time and updated where appropriate to ensure ongoing accessibility and integrity of the records.
- 86.3 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).

- 86.4 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).
- 86.5 The Contractor is entitled to have access to a hard copy and to a write-protected soft copy of the Contract Document register at any time upon the giving of reasonable notice.

## **87 Interpretation**

- 87.1 The following rules apply in the interpretation of this Contract, except where the context or words used indicate otherwise:
- .1 headings and underlining 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 corresponding meanings,
  - .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 anything (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,
  - .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.
- 87.2 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.
- 87.3 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.
- 87.4 If there is any discrepancy or inconsistency between the Contract Documents, the Superintendent must make a determination as to the proper interpretation of the Contract and the parties must give effect to such interpretation. No such determination of the Superintendent shall be construed as giving rise to a Variation.
- 87.5 In this Contract, a reference to "\$" or "dollars" is a reference to Australian dollars.
- 87.6 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.

## **88 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)

## **89 Reference Documents**

- 89.1 Where documents are referred to in the Contract, the Contractor must make itself aware of the requirements of such documents. The Shire will not consider any claim resulting from the Contractor failing to become acquainted with the various documents included or referred to in the Contract.
- 89.2 As at the Commencement Date, the Current version of a Reference Document is the version identified in Schedule 4 (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 86 (Document change management).

## **90 Counterparts**

This Contract may be executed in any number of counterparts.

| Item    | Details                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|---------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item 1  | <p>The initial Senior Representatives are:</p> <p>For the Shire – Niall McDonagh</p> <p>For the Contractor – Marcus Stephens</p>                                                                                                                                                                                                                                                                                                                                                 |
| Item 1A | <p>The initial members of the Service Management Team are:</p> <p><b>Shire representatives</b></p> <ul style="list-style-type: none"> <li>• Position 1            Jessica Wingad</li> <li>• Position 2            Peter Young</li> <li>• Position 3            Graham Riley</li> </ul> <p><b>Contractor representatives</b></p> <p>Position 1, Manager (Title) Robert Semaganda, National Delivery Manager</p> <p>Position 2, Manager (Title) Chris Godsil, Contract Manager</p> |
| Item 2  | <p>The initial members of the Contractor Operations Team are:</p> <p>Position 1                      Contract Manager</p> <p>Position 2            <b>CIC</b>            Operations Manager</p> <p>Position 3                      Manager Projects</p>                                                                                                                                                                                                                          |
| Item 3  | <p>The initial members of the Shire Operations Team are:</p> <ul style="list-style-type: none"> <li>• Position 1</li> <li>• Position 2                      <b>I&amp;S</b></li> <li>• Position 3</li> </ul>                                                                                                                                                                                                                                                                      |
| Item 4  | <p><b>The initial Superintendent is:</b>                      <b>CIC</b></p>                                                                                                                                                                                                                                                                                                                                                                                                     |
| Item 5  | <p>The initial Contract Manager is:                      <b>CIC</b></p>                                                                                                                                                                                                                                                                                                                                                                                                          |
| Item 6  | <p>Relevant addresses for service of notices are as follows:</p> <p>Shire/Superintendent    By mail:            90 Besgrove Street, Rosebud, Victoria<br/>3939 (attn: Chief Executive Officer)</p> <p>By email:            CustomerService@mornpen.vic.gov.au</p>                                                                                                                                                                                                                |
|         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |



**Schedule 1**  
**Contract Details**

| Item              | Details                                                                                                                                                                                                     |
|-------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Item 6<br>(contd) | <p>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</p> |
|                   | <p>Contract Manager      By mail:    10 Pound Road, Hastings Victoria 3915</p> <p>By hand:    10 Pound Road, Hastings Victoria 3915</p> <p>By email:    chris.godsil@downergroup.com</p>                    |
|                   | <p>Shire's Senior Representative      By mail:    90 Besgrove Street, Rosebud, Victoria 3939 (attn: Niall McDonagh)</p> <p>By email:    CustomerService@mornpen.vic.gov.au</p>                              |
|                   | <p>Contractor's Senior Representative      By mail:    Level 10, 567 Collins Street, Melbourne, VIC 3000</p> <p>By hand:    Level 10, 567 Collins Street, Melbourne, VIC 3000</p>                           |
|                   | <p>Contractor:      By mail:    Level 10, 567 Collins Street, Melbourne, VIC 3000</p> <p>By hand:    Level 10, 567 Collins Street, Melbourne, VIC 3000</p>                                                  |
|                   |                                                                                                                                                                                                             |

# Schedule 2 – Performance Standards Review

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## Measurement of achievement of Performance Standards

### PS1 Performance Standard 1 (Reporting)

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#### PS1.1 Compliant reporting

Process/evidence: Identify all specified reports during the period covered by the review.  
Determine, with respect to each, that the report is compliant.

Relevant factors No. of reports.  
Reports that were not available on time.  
Nature or extent of non-compliance (if any).  
Shire consent to non-compliance (if any).  
Performance against Schedule A3-3 (Format of monthly certification)

#### PS1.2 Report is useful and accurate

Process/evidence: Identify each component of the report is compliant.

Relevant factors No. of reports incomplete or inaccurate.  
Nature or extent of non-compliance (if any).  
Performance against clause A3-10 (Reporting) of the most recent Audit by the Shire.

#### PS1.3 Special Reports

Process/evidence: Identify each component of the report is compliant with directions given.

Relevant factors No. of reports incomplete or inaccurate.  
Nature or extent of non-compliance (if any).  
Report failed to address the matter requested  
Report not delivered by specified deadline  
Performance against clause 25 (Reporting) of the most recent Audit by the Shire.



## Schedule 2

### Performance Standards Review

#### PS1.4    **Audit Responses**

|                   |                                                                                                                                                                                                                        |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Identify the timeliness of responses to audit reports, requests from the Shire's Auditing Officer for additional information, responses to non-conformances issued and any other matter which the Auditor may request. |
| Relevant factors  | No. of responses incomplete or inaccurate.<br>Nature or extent of non-compliance (if any).<br>Report failed to address the matter requested<br>Report not delivered by specified deadline                              |

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#### PS2    **Performance Standard 2 (Routine Maintenance Services)**

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

|                   |                                                                                                                                                                                                                             |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Review 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 factors  | No. of Defects.<br>Level of non-compliance, if any, having regard to volume of Defects and call-outs.<br>Performance against Annexure 4, Activity Specifications.                                                           |

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

|                   |                                                                                                                                                                       |
|-------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Review records and non-conformance records and reports. Assess compliance.                                                                                            |
| Relevant factors  | Performance against clause A3-29, Programmed maintenance of the most recent Audit<br>Performance against Annexure 4, Activity Specifications of the most recent Audit |

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#### PS3    **Performance Standard 3 (Safety)**

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##### 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.<br>Review Contractor safety statistics for the Contract.<br>Audit of IMP as regards the Contractor's safety management processes and procedures (if the Superintendent considers appropriate).<br>Review any non-compliances and audit reports |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

## Schedule 2

### Performance Standards Review

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Relevant factors  | <p>Performance against ten (10) random requirements of OH&amp;S laws.</p> <p>Nature and cause of any incidents occurring.</p> <p>Dissemination of information throughout the organisation ensures strict adherence to legislative requirements.</p> <p>Number of non-compliances</p>                                                                                                                                                                                                                                                                                                                           |
| <b>PS3.2</b>      | <b>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.</b>                                                                                                                                                                                                                                                                                                                                                                                                                      |
| Process/evidence: | <p>Identify what processes the Contractor has in place and whether these are complied with.</p> <p>Audit IMP safety components (if the Superintendent considers appropriate).</p> <p>Review any relevant non-conformances and audit reports.</p> <p>Review any Contractor corrective actions</p>                                                                                                                                                                                                                                                                                                               |
| Relevant factors  | <p>Performance against ten (10) random requirements of the Contractors IMP.</p> <p>Business Improvement Register is up to date.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>PS3.3</b>      | <b>Compliance with clause A3-23 (Safety)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| Process/evidence: | <p>Identify what processes the Contractor has in place and whether these are complied with.</p> <p>Review Contractor safety statistics for the Contract (including internal and potential impact on others).</p> <p>Audit of IMP as regards the Contractor's safety management processes and procedures (if the Superintendent considers appropriate)</p> <p>Identify reports made by the Contractor concerning safety improvement works on the Network.</p> <p>Review any relevant non-conformance and audit reports (for example, regarding management of signage and liaison with Utility Authorities).</p> |
| Relevant factors  | <p>Performance against clause A3-23 (Safety) of the most recent Annual Review.</p> <p>Compliance with approved Traffic Management Plan</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>PS3.4</b>      | <b>Compliance with clause A3-20 (Traffic management)</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
| Process/evidence: | <p>Review number of accidents, incidents and near misses (if any) at Worksites and consider causes.</p> <p>Review any applicable non-conformance and audit reports.</p> <p>Review training records of Contractor personnel</p>                                                                                                                                                                                                                                                                                                                                                                                 |



**Schedule 2**  
**Performance Standards Review**

|       |                                                                               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------|-------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | Relevant factors                                                              | Performance against the requirements of the <b>Code of Practice for Worksite Safety - Traffic Management</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| PS3.5 | <b>Compliance with clause 34 (Protecting people)</b>                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|       | Process/evidence:                                                             | Review Contractor compliance with reporting obligations regarding injuries and other matters.<br><br>Review number of accidents, incidents and near misses.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|       | Relevant factors                                                              | Performance against relevant safety laws<br>Compliance with approved Traffic Management Plan<br>Performance against clause 34 Protecting People.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| PS3.6 | <b>No action is taken under the Contract with respect to a Safety Breach.</b> |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|       | Process/evidence:                                                             | Identify directions given under clause 34.5 (if any)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
|       | Relevant factors                                                              | N/A                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |
| PS4   | <b>Performance Standard 4 (Contract Management)</b>                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| PS4.1 | <b>Compliance with clause A3-9 (Integrated Management Plan)</b>               |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|       | Process/evidence:                                                             | Identify that the Contractor has an Integrated Management Plan and that it complies with the requirements of the Contract.<br><br>Identify the steps (if any) taken by the Contractor to ensure that the IMP remains effective.                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|       | Relevant factors                                                              | Compliance with AS/NZS ISO 9001-2008, AS/NZS ISO 14000-2007 and AS/NZS 4801:2001                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
| PS4.2 | <b>Compliance with the Integrated Management Plan</b>                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|       | Process/evidence:                                                             | Identify conformance reports, audit reports and other relevant evidence of compliance with the processes set out in the IMP.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|       | Relevant factors                                                              | Performance against the requirements of the IMP (Contractor's skills in inspections, reporting, recording & service delivery) of the most recent Annual Review.<br><br>Performance against the requirements of the IMP (Staff development/training) of the most recent Annual Review.<br><br>Performance against the requirements of the IMP (Quality of monthly meetings, reports, including monthly report to Council) of the most recent Annual Review.<br><br>Performance against the requirements of the IMP (Safety) of the most recent Annual Review.<br><br>Performance against the requirements of the IMP (Environmental Control) of the most recent Annual Review. |

**Schedule 2**  
**Performance Standards Review**

**PS4.3 Compliance with clause A3-10 (Management of the Contract)**

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Identify issues arising during the relevant year and how they have been handled.<br><br>Identify issues arising regarding the management of subcontractors.                                                                                                                                                                                                                                                                                                                                                                      |
| Relevant factors  | Performance against clause A3-10.1.1 (appointment of competent personnel) of the most recent Annual Review.<br><br>Performance against clause A3-10.1.2 (Service Management Team) of the most recent Annual Review.<br><br>Performance against clause A3-10.2 (Management and supervision of Contract) of the most recent Annual Review.<br><br>Performance against clause A3-10.3 (Adopted Organisation Chart) of the most recent Annual Review.<br><br>Performance of subcontractors against the requirements of the contract. |

**PS4.4 Issues arising in the management of the Contract are identified early and promptly referred to the Shire Operations Team**

|                   |                                                                                                                                                                                 |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Identify issues that could give rise to disputes and whether they have been referred promptly to the SMT or SOP.                                                                |
| Relevant factors  | Appointment of Facilitator.<br><br>The existence of a bona fide dispute.<br><br>Performance against clause 14 (Quality relationship workshop) of the most recent Annual Review. |

**PS4.5 Compliance with the Contractor's obligations under clause 14 (Quality Relationship)**

|                   |                                                                                                                                                                                                                                                                                |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Identify that initial workshop and subsequent joint workshops have been held.                                                                                                                                                                                                  |
| Relevant factors  | Level of cooperation from Shire and inter-dependence of SIMS2 Contractors, the Safer Local Roads Contractor and the Shire.<br><br>Performance against clause 14.1 (Workshop Outcomes) of the most recent Annual Review.<br><br>Implementation of workshop decisions or actions |

**PS4.6 Compliance with the Contractor's obligations under clause 53 (Insurances to be held)**

|                   |                                                                                                                      |
|-------------------|----------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Audit results of the Contractor's insurance certificates and policies for compliance with the contract requirements. |
|-------------------|----------------------------------------------------------------------------------------------------------------------|



## Schedule 2

### Performance Standards Review

|                  |                                                                                                                                                                         |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Relevant factors | <p>All insurances required are current and Certificates of Currency have been provided.</p> <p>Compliance with the individual contract requirements for insurances.</p> |
|------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

#### PS5 **Performance Standard 5 (Interface with Shire and Customers)**

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##### PS5.1 **Calls are answered by the Contractor's staff in person between the hours of 8.00 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 factors

Performance against A4-12 (Timely service) of the most recent Annual Review.

Performance against A4-12 (Complaints about service) of the most recent Annual Review.

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

##### PS5.2 **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 factors

Performance against A4-12 (Correspondence) of the most recent Annual Review.

Performance against A4-12 (Complaints about service) of the most recent Annual Review.

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

##### PS5.3 **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.

Quality of notes on individual cases.

Relevant factors

Performance against A4-12 (Timely service) of the most recent Annual Review.

Performance against A4-12 (Complaints about service) of the most recent Annual Review.

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

**Schedule 2**  
**Performance Standards Review**

- PS5.4 If the case is to take more than 10 Business Days to close the customer is advised of likely timeframe for a response and noted on the Service Request.**
- Process/evidence: Review Contractor's template correspondence and randomly sample compliance from MERIT.
- Relevant factors The Contractor has advised customer within the MERIT timelines.
- Number of complaints about the service received in relation to MERIT cases.
- Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.
- PS5.5 Where necessary or upon specific request from a customer, the Contractor takes reasonable steps to meet with a 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 customer visits to the Contractor's depot and mail register (or other relevant record) to determine dates of request by customers.
- Review records to determine date of action.
- Review audits and non-conformance reports, as applicable.
- Relevant factors Performance against A4-12 (Performance Requirements) of the most recent Annual Review.
- Performance against A4-12 (Complaints about service) of the most recent Annual Review.
- Performance against customer satisfaction surveys during the relevant Contract Year or other applicable period.
- PS5.6 Compliance with clause A3-16 (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 on a monthly basis.
- Relevant factors Performance against A4-12 (Performance Requirements) of the most recent Annual Review.
- Performance against A4-12 (Complaints about service) of the most recent Annual Review.
- PS5.7 Badging of Plant (A3-33 Plant Requirements). All plant is to comply with the requirements of clause A3-33 regarding badging, plant age and overnight parking.**
- Process/evidence: Review audit and conformance records of plant badging and age in compliance with the provision of the contract.



**Schedule 2**  
**Performance Standards Review**

|                  |                                                                                                                                                                                                                       |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Relevant factors | Compliance with clause A3-33.2 for badging including joint badging and advertising.<br><br>Performance against the requirements for no plant to have an age of greater than five years as required by clause A3-33.3. |
|------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**PS6      Performance Standard 6 (Inspections)**

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**PS6.1      Compliance with the inspection frequencies required under the relevant Asset Management Plans.**

Process/evidence:      Review audit and conformance records. Review records for inspection reports. Determine frequency.

Relevant factors      Performance against Item A3-11.1.6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review.

**PS6.2      Compliance with clause A3-11 (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 factors      Performance against clause A3-11 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review.

**PS6.3      Compliance with clause A3-12 (Initiation of work)**

Process/evidence:      Review of Contractor/Shire records.  
  
Review of audit and non-conformance reports.

Relevant factors      Performance against clause A3-12.1 (Defect identification and logging) of the most recent Annual Review.  
  
Performance against clause A3-12.4 (Defect rectified prior to compulsory intervention) of the most recent Annual Review.

**PS6.4      Compliance with clause A3-13 (Records of action taken)**

Process/evidence:      Compare inspection program against contract requirements.

Relevant factors      Performance against clause A3-15 (Maintaining of Asset Inventory) of the most recent Annual Review.

**Schedule 2**  
**Performance Standards Review**

**PS6.5 Compliance with clause A3-14 (Provision of KMS and other data)**

Process/evidence: Confirm KMS accessible.  
Confirm condition data available.  
Confirm electronic access to outputs and other system constraint data from MERIT, KMS and other associated database programs relating to the Service programs.

Relevant factors N/A

**PS6.6 Compliance with clause A3-15 (Asset Inventory)**

Process/evidence: Review notifications of New Assets provided by the Shire and confirm these have been included in Asset Inventory.  
Audit of KMS records (if appropriate).

Relevant factors Performance against clause A3-15.3 (Submission of Asset Inventory) within 30 Business Days  
Performance against clause A3-15 (Maintaining of Asset Inventory) of the most recent Annual Review.

**PS6.7 Compliance with clause Annexure 6 (Data collection & transfer requirements)**

Process/evidence: User survey to verify availability of access to KMS  
Audit of KMS records (if appropriate) to ensure entry of data within required time frames and appropriate data fields.  
Confirm training provided as required.

Relevant factors 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 clause A3-15 (Maintaining of Asset Inventory) of the most recent Annual Review.

**PS6.8 Compliance with the program development obligations set out in Annexure 4 (Activity Specifications)**

Process/evidence: Confirm annual programs prepared as required.

Relevant factors Performance against Annexure 4 (Performance Standards) of the most recent Annual Review.  
Performance against Annexure 4 (Development, implementation and operation of programs) of the most recent Annual Review.  
Performance against the delivery of approved programs.



## Schedule 2

### Performance Standards Review

**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 Contractor's 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 factors:** Level of non-compliance, if any, having regard to volume of Defects and call-outs
- Performance against Annexure 4 (Performance Standards) of the most recent Annual Review.
- Performance against Annexure 6 (Inspection, recording and reporting on Asset condition/safety) of the most recent Annual Review.
- Performance against Annexure 4 (Development, implementation and operation of programs) of the most recent Annual Review.

**PS7 Performance Standard 7 (Environmental Protection)**

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**PS7.1 Greater than CIC of all materials removed during the Services are recycled or re-used on the Assets having regard to the technology and methods reasonably available at that time**

- Process/evidence:** Review records of materials used in Services (or recycled for other uses within the Network).
- Relevant factors** Technology and materials available.
- Shire approval of other materials.

**PS7.2 Reduction of greenhouse gases generated based on a reduction of CIC during Year 1, followed by a further reduction of CIC per annum in the performance of the Services due to work method chosen**

- 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.

## Schedule 2

### Performance Standards Review

|                   |                                                                                                                                                                                                                                                                                                                                        |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Relevant factors  | <p>Performance against (Sustainable service enhancements provided) of the most recent Annual Review.</p> <p>Performance against (Evidence of continuous improvement, doing things smarter) of the most recent Annual Review.</p> <p>Any offsets provided by the Contractor within the Shire.</p>                                       |
| <b>PS7.3</b>      | <b>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 annum</b>                                                                                                                    |
| Process/evidence: | Measure recorded Environmental incidents caused by the Contractor.                                                                                                                                                                                                                                                                     |
| Relevant factors  | Performance against clause A3-25 (Operation of environmental management system) of the most recent Annual Review.                                                                                                                                                                                                                      |
| <b>PS7.4</b>      | <b>The Contractor's Agents include local residents and businesses.</b>                                                                                                                                                                                                                                                                 |
| Process/evidence: | Identify local residents and businesses among the Contractor's Agents (subject to protection of privacy where individuals are concerned)                                                                                                                                                                                               |
| Relevant factors  | <p>Performance against clause 21 (Traineeship/work experience opportunities) of the most recent Annual Review.</p> <p>Performance against clause 23 (Commitment to employment of local contractors) of the most recent Annual Review.</p>                                                                                              |
| <b>PS7.5</b>      | <b>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.</b>                                                                                                                                                         |
| Process/evidence: | Confirm the program is in place and ongoing                                                                                                                                                                                                                                                                                            |
| Relevant factors  | Performance against clause 21.7 (Traineeship/work experience, Social Procurement opportunities) of the most recent Annual Review.                                                                                                                                                                                                      |
| <b>PS7.6</b>      | <b>Compliance with clause A3-25 (Protection of Environment and Heritage)</b>                                                                                                                                                                                                                                                           |
| Process/evidence: | <p>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.</p> <p>Identify examples of relevant behaviours to be rewarded and encouraged.</p> |
| Relevant factors  | <p>Proportionality of any failure having regard to volume of work done over the relevant period.</p> <p>Performance against clause A3-9.1 (Operation of Environmental Management System) of the most recent Annual Review.</p>                                                                                                         |



## Schedule 2

### Performance Standards Review

#### PS7.7 Compliance with clause A3-25 (Sustainability)

|                   |                                                                                                                                                                                                                                                                                                                                                                           |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Identify examples of behaviours that indicate that the Contractor is operating in accordance with the relevant principles or vice versa.                                                                                                                                                                                                                                  |
| Relevant factors  | <p>Shire leadership or otherwise on sustainability principles.</p> <p>Performance against clause A3-25 (Operation of Environmental Management System) of the most recent Annual Review.</p> <p>Performance against (Community care) of the most recent Annual Review.</p> <p>Performance against (Sustainable service enhancements) of the most recent Annual Review.</p> |

#### PS8 Performance Standard 8 – (Compliance with programs)

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##### PS8.1 Compliant program delivery

|                   |                                                                                                                                                                                                                    |
|-------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | <p>Identify all specified programs during the period covered by the review.</p> <p>Determine, with respect to each, that the program is compliant.</p> <p>New assets are being inspected.</p>                      |
| Relevant factors  | <p>No. of reports.</p> <p>Programs that were not compliant regarding time.</p> <p>Nature or extent of non-compliance (if any).</p> <p>Shire approval of non-compliance.</p> <p>No. of non-conformances issued.</p> |

##### PS8.2 Program Preparation

|                   |                                                                                                                                                                                              |
|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | Identify each component of the report is compliant.                                                                                                                                          |
| Relevant factors  | <p>No. of Programs incomplete or inaccurate.</p> <p>Nature or extent of non-compliance (if any).</p> <p>Performance against A3-10 7.3 (Reporting) of the most recent Audit by the Shire.</p> |

**Schedule 2**  
**Performance Standards Review**

**PS8.3 Compliance with transfer of asset data**

|                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | <p>Identify each completed project or program with asset data transfer.</p> <p>With respect to each completed project or program:</p> <ul style="list-style-type: none"> <li>- Identify any deficiencies or inaccuracies outstanding at Completion and whether they have been rectified.</li> <li>- Identify any data transfers not undertaken on time and whether they have been rectified.</li> </ul> <p>Identify any subsequent directions/ notices and whether they have been complied with.</p> |
| Relevant factors  | Asset data transferred in accordance with Annexure 6.                                                                                                                                                                                                                                                                                                                                                                                                                                                |

**PS9 Performance Standard 9 (Ordered Work)****PS9.1 Satisfactory Completion of each Ordered Work in accordance with the requirements of the Work Order Documents**

|                   |                                                                                                                                                                                                                                                                     |
|-------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | <p>Identify number of Work Orders issued during the year or other applicable period.</p> <p>Identify Completed Ordered Work.</p> <p>Identify whether satisfactory Completion.</p>                                                                                   |
| Relevant factors  | <p>No of Ordered Works Projects undertaken and extent and nature of any unsatisfactory performance.</p> <p>Shire approval to any departure from the Work Order Documents.</p> <p>Performance against Annexure 8 (Ordered Work) of the most recent Annual Review</p> |

**PS9.2 Satisfactory compliance with the Ordered Work process as set out the Work Order Documents and Schedules**

|                   |                                                                                                                                                                                                                                                            |
|-------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Process/evidence: | <p>Audit a random sample of Ordered Works to check compliance with the required processes..</p> <p>Identify any situations where the process has not been followed.</p> <p>Identify whether any corrective action has been taken.</p>                      |
| Relevant factors  | <p>No of Ordered Works Projects undertaken and extent and nature of any unsatisfactory processes.</p> <p>Shire approval to any departure from the Work Order Processes.</p> <p>Performance against Annexure 8 (Ordered Work) of the most recent Audit.</p> |



**Schedule 2**  
**Performance Standards Review**

**Notes on Performance Standards Review:**

1. Relevant factors are not conclusive, but are indicative of the sort of factors the Service Management Team 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. The results of the most recent stakeholder review conducted under clause 39.5 (Stakeholder review) may also be relevant.

**Schedule 3**  
**Service Points**

## Schedule 3 –Service Points

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| Performance Standard                                                                                                                      | Maximum Points per occasion |  |
|-------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------|--|
| Failure to achieve Performance Standard 1 (Reporting) with respect to any Report.                                                         | 10                          |  |
| Failure to achieve Performance Standard 2 (Routine Maintenance Services) in any respect                                                   | 20                          |  |
| Failure to achieve Performance Standard 3 (Safety) in any respect                                                                         | 20                          |  |
| Failure to achieve Performance Standard 4 (Contract Management) in any respect                                                            | 10                          |  |
| Failure to achieve Performance Standard 5 (Interface with Shire and Customers) in any respect                                             | 10                          |  |
| Failure to achieve Performance Standard 6 (Inspections) in any respect                                                                    | 15                          |  |
| Failure to achieve Performance Standard 7 (Environmental Protection) in any respect                                                       | 15                          |  |
| Failure to achieve Performance Standard 8 (Compliance with Programs) in the following respects:                                           |                             |  |
| <ul style="list-style-type: none"> <li>Failure to undertake surveys and data reporting by the dates specified in the Contract.</li> </ul> | 20                          |  |
| Failure to achieve Performance Standard 9 (Ordered Work) with respect to any Ordered Work                                                 | 10                          |  |



**Schedule 4**  
**Reference Documents**

## Schedule 4 – Reference Documents

All Australian Standards referred to in the Contract (either directly or indirectly) are the versions current as at [6 April 2018], unless the Contract expressly states otherwise.

The Contractor is responsible for obtaining copies of these documents from the relevant source and paying any fees or charges if applicable.

| Contractual description |                                                                  | Full title/description                                                                         | Version                                               |
|-------------------------|------------------------------------------------------------------|------------------------------------------------------------------------------------------------|-------------------------------------------------------|
| 1.                      | A New Tax System (Goods and Services Tax) Act 1999               | A New Tax System (Goods and Services Tax) Act 1999                                             | 1999                                                  |
| 2.                      | AS/NZS 3000 Electrical Installations                             | AS/NZS 3000 Electrical Installations (Known as the Australian/New Zealand Wiring Rules)        | 2007                                                  |
| 3.                      | AS/NZS 4801:2001                                                 | AS/NZS 4801 Occupational health and safety management systems                                  | 2001                                                  |
| 4.                      | AS/NZS ISO 14000-2007                                            | AS/NZS ISO 14000-2007 Environmental Management Basic Set                                       | 2007                                                  |
| 5.                      | AS1742.3                                                         | Manual of Uniform Traffic Control Devices – Part 3: Traffic Control Devices for Works on Roads | 2009                                                  |
| 6.                      | AS/NZS ISO 9001-2016                                             | Quality Management Systems                                                                     | 2016                                                  |
| 7.                      | Chemical Allergy Register                                        | Chemical Allergy Register maintained by Mornington Peninsula Shire Council                     | As at Commencement Date                               |
| 8.                      | Code of Practice – Management of Infrastructure in Road Reserves | Code of Practice – Management of Infrastructure in Road Reserves                               | Victorian Government Gazette No S 117, 28 April 2016  |
| 9.                      | Code of Practice for Worksite Safety - Traffic Management        | Worksite Safety – Traffic Management Code of Practice                                          | Victorian Government Gazette No S 351, 31 August 2010 |
| 10.                     | Crown Land (Reserves) Act 1978 (VIC)                             | Crown Land (Reserves) Act 1978 (VIC)                                                           | 1978                                                  |
| 11.                     | Draft Drainage Strategy                                          | Integrated Local Flood and Drainage Strategy                                                   | Draft on exhibition                                   |
| 12.                     | Drainage 2017-18 Service Plan and Asset Management Plan          | Drainage 2017-18 Service Plan and Asset Management Plan                                        | 2017-18                                               |

**Schedule 4**  
**Reference Documents**

| <b>Contractual description</b>                           | <b>Full title/description</b>                                                                                                                                   | <b>Version</b>                                                                  |
|----------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------|
| 13. Emergency Management Act 2013 (VIC)                  | Emergency Management Act 2013 (VIC)                                                                                                                             | 2013                                                                            |
| 14. Environment Protection Act 1970                      | Environment Protection Act 1970                                                                                                                                 | 1970                                                                            |
| 15. Heavy Vehicle National Law Act 2012 (QLD)            | Heavy Vehicle National Law Act 2012 (QLD)                                                                                                                       | 2012                                                                            |
| 16. Privacy and Data Protection Act 2014                 | Privacy and Data Protection Act 2014                                                                                                                            | 2014                                                                            |
| 17. Insurance Act 1973                                   | Insurance Act 1973                                                                                                                                              | 1973                                                                            |
| 18. Local Government Act 1989                            | Local Government Act 1989                                                                                                                                       | 1989                                                                            |
| 19. Mornington Peninsula Shire Planning Scheme           | Mornington Peninsula Planning Scheme                                                                                                                            | As at the Commencement Date                                                     |
| 20. Mornington Peninsula Shire Procurement Policy        |                                                                                                                                                                 | 2017                                                                            |
| 21. Mornington Peninsula Shire Risk Management Framework |                                                                                                                                                                 | 2017                                                                            |
| 22. Mornington Peninsula Sun Smart Policy                | Sun Smart (UV) Policy; Policy No 4.51                                                                                                                           | August 2017                                                                     |
| 23. Mornington Peninsula Working with Children Policy    | Education and Care Policy and Procedure Manual; Working with Children Policy                                                                                    | January 2017                                                                    |
| 24. MPSC Design Quality System                           | Mornington Peninsula Shire Quality Assurance Plan for Design                                                                                                    | As at the Commencement Date                                                     |
| 25. Municipal Emergency Management Plan                  | The plan is prepared by the Municipal Emergency Management Planning Committee (MEMPC) for the purposes of section 20 of the Emergency Management Act 1986 (Vic) | Version 4, 2015                                                                 |
| 26. Privacy Act 1988                                     | Privacy Act 1988                                                                                                                                                | 1988                                                                            |
| 27. Public Holidays Act 1993                             | Public Holidays Act 1993                                                                                                                                        | 1993                                                                            |
| 28. Register of Public Roads                             | Mornington Peninsula Shire Register of Public Roads (Provisional)                                                                                               | Available on <a href="http://www.mornpen.vic.gov.au">www.mornpen.vic.gov.au</a> |
| 29. Road Management Act 2004                             | Road Management Act 2004                                                                                                                                        | 2004                                                                            |
| 30. Road Management Plan                                 | Mornington Peninsula Shire Road Management Plan                                                                                                                 | Version 3, 08/09/2016                                                           |
| 31. Road Safety Act 1986                                 | Road Safety Act 1986                                                                                                                                            | 1986                                                                            |



**Schedule 4**  
**Reference Documents**

| Contractual description                                            | Full title/description                                                                                            | Version                                                                            |
|--------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------|
| 32. Roads 2017-18 Service Plan and Asset Management Plan           | Roads 2017-18 Service Plan and Asset Management Plan                                                              | 2017-18                                                                            |
| 33. Specification for Road and Drainage Works                      | Mornington Peninsula Shire Specification for Road and Drainage Works                                              | Available on<br><a href="http://www.mornpen.vic.gov.au">www.mornpen.vic.gov.au</a> |
| 34. Civil Engineering Standard Drawings - Drainage                 | Mornington Peninsula Shire Civil Engineering Standard Drawings - Drainage                                         | Available on<br><a href="http://www.mornpen.vic.gov.au">www.mornpen.vic.gov.au</a> |
| 35. VicRoads Agreement                                             | Agreement between Mornington Peninsula Shire Council and VicRoads pursuant to the Road Management Act 2004        | 2004                                                                               |
| 36. Victorian Beach Cleaning Best Practice Guidelines – April 2001 | Victorian Beach Cleaning Best Practice Guidelines – Vol.1 Local Government Division, Department of Infrastructure | April 2001                                                                         |

# Signatures



THE COMMON SEAL of  
**MORNINGTON PENINSULA**  
**SHIRE COUNCIL** is affixed  
 in the presence

Personal Information

Councillor

Personal Information

Chief Executive Officer

**EXECUTED** by the Downer Edi Works  
 Pty Ltd in accordance with section 127(1)  
 of the *Corporations Act 2001* (Cth) by being  
 signed by authorised persons:

Signed by:

Personal Information

Personal Information

An Authorised Representative

CIC

Full Name of Authorised Representative

CIC

Full Name Witness





Annexures

# Annexure 1

## Definitions

Cleansing & Drainage Cleaning Services  
Contract No. 2328



MORNINGTON  
PENINSULA  
*Shire*



# Annexure 1 - Definitions

---

**Accredited Quality Management System** means a system complying with the appropriate international standard and certified by an independent Certifying Authority.

**the Annexure** means the Annexures 2-9 to this Agreement.

**Acceptable Standard** means, in relation to a New Asset, that the New Asset has been constructed in accordance with standards and specifications determined by the Shire.

**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".

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

**Adjustment Date** means 1 July in each Contract Year.

**Advertisement** means any word, letter, image, device or representation or combination used for the purpose of advertising, announcement or display.

**Advertisement Area** means the total area of an advertisement. If the advertisement does not rotate or move, the area is one side only.

**Advertising Sign** means an advertisement and any structure built specifically to support it. Includes above-verandah sign, animated sign, bed and breakfast sign, bunting sign, business identification sign, floodlit sign, high-wall sign, home occupation sign, internally illuminated sign, major promotion sign, panel sign, pole sign, promotion sign, reflective sign, and sky sign (as defined by the Mornington Peninsula Planning Scheme). This also includes commercial signage mounted on vehicles and/or trailers.

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

**Annual Review** means the annual review to be undertaken in accordance with clause 39 (Annual Review).

**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 43 (Valuation of New Assets) 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).



## Annexure 1

**Asset Handover** means the handover of responsibility for provision of the Services with respect to the New Assets, as set out in clause 411.4 (Asset Handover).

**Asset Handover Notice** means a notice issued in accordance with clause 42.3 (Asset Handover Notification).

**Asset Hierarchy** means the asset hierarchy as set out in the Roads Asset Management Plan and repeated in Annexure 9.

**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 41 (Asset Inventory Changes), subject to clause 42.6.

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

**Asset Management Specialist** means:

- (a) in the case of the Contractor, the person from time to time appointed under clause 21.2 as its Asset Management Specialist; and
- (b) in the case of the Shire, the Asset Management Officer (**Cleansing & Drainage**).

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

**Authorised Officer** means any person appointed under Section 224 of the *Local Government Act 1989*.

**Authority** means a Utility Authority, the MERO (while acting in that capacity) and any governmental or statutory body with powers, duties or functions with respect to anything relevant to the performance of the Services.

**Beach** means the area of sand between the water line and the vegetation growing on the foreshore.

**Beach Cleaning** means having a surface to a specified depth free from any debris or rubbish of any type and includes hand cleaning of the beach surface.

**Best for Program** means the optimal result for the safe and environmentally sustainable management of the Shire's Cleansing & Drainage Assets within the Price, but without compromising the legitimate commercial interests of the Contractor.

**Bushland Reserve** means Shire managed land that has been classified for its natural environmental and biodiversity value by the Shires Natural Systems Team.



**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 A4-13 (After Hours Call-Out) and includes Initial Response.

**Capital new expenditure** means expenditure that creates a new asset providing a new service to the community that did not exist beforehand.

**Capital renewal expenditure** means expenditure on an existing asset, which returns the service potential or the life of the asset up to that which it had originally. It is periodically required expenditure, relatively large (material) in value compared with the value of the components or sub-components of the asset being renewed, e.g. resurfacing or resheeting a material part of a road network, replacing a material section of a drainage network with pipes of the same capacity, resurfacing an oval.

Where capital projects involve a combination of renewal, expansion and/or upgrade expenditures, the total project cost needs to be allocated accordingly.

**Capital upgrade expenditure** means expenditure, which enhances an existing asset to provide a higher level of service or expenditure that will increase the life of the asset beyond that which it had originally, e.g. widening the sealed area of an existing road, replacing drainage pipes with pipes of a greater capacity, enlarging a grandstand at a sporting facility.

Where capital projects involve a combination of renewal, expansion and/or upgrade expenditures, the total project cost needs to be allocated accordingly.

**Certificate of Contract Completion** means the certificate issued by the Superintendent under clause A8-13 (Certification of Contract Completion).

**Cleansing & Drainage Cleaning Objectives** has the meaning ascribed to it by clause 4.2.

**Commencement Date** means the date specified in Part 1 - Contract Overview clause 2.

**Committee of Management** means a group of locally elected or appointed citizens, a municipal council, statutory body or a trustee appointed pursuant to the provisions of the *Crown Land (Reserves) Act 1978* or *The Local Government Act 1989*.

**Community Events** means an event of recreational, cultural, social or political nature, which is a not for profit event or where the majority of event proceeds are returned directly to the community.

**Community Service Facility** means buildings, structures and areas which are essentially community based and operated, even though they may be used by visitors and, in some cases they may attract visitors in their own right. These may include a public golf course, swimming pool or an aerodrome.

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

- (a) the work is complete;



## Annexure 1

- (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 Assessment** means the inspection, assessment, measurement and interpretation of the resultant data, to indicate the condition of a specific asset component.

The information is used to:

- Mitigate risks associated with asset failure;
- Optimise maintenance and rehabilitation strategies;

Assess the remaining life of an asset and predict capital investment needs.

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

**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 -

but excluding information which is at any time:

- (d) in the public domain, other than by a breach by the Contractor of this Contract, or
- (e) known to the Contractor as a result of being provided by or acquired from a source having the right to disclose the information on a non-confidential basis to the Contractor.

**Conflict of Interest** means any interest, circumstance, condition or thing which may adversely affect the Contractor's ability to perform the Services efficiently, effectively and in accordance with the highest standards of probity, integrity and honesty, including, without limitation, any interest of a Relevant Party.



**Continuing Variation** means a Variation of a type referred to in clause 41 (Continuing Variations).

**Contract** means:

- (a) at the Commencement Date, this document, its schedules and its annexures (including the Reference Documents), 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 86 (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 Objectives** means the objectives set out in clause 4.2.

**Contract Term** has the meaning given to that term in clause 2 (Contract Term).

**Contract Year** means each period of 12 months of the Contract Term beginning on the Commencement Date and in relation to the final Contract Year ending on the last day of the Contract Term.

**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.

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

**Construction Risks Insurance** means a policy of insurance to insure against any loss of or damage to the construction works executed under the Contract. The policy shall insure the construction works for their full replacement or reinstatement value plus such extra costs (including of demolition and consultants) as the Superintendent may require.

**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.

**Current** at any time, means identified as Current at that time in the Contract Document register maintained in accordance with clause 86 (Document change management) and 89 (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 A8-11 (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.

**Day** means all calendar days apart from Christmas Day and Good Friday.

**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 65.

**Deficient Work** means any obligation of the Contractor under the Contract in, or with respect to any month, which, in the opinion of the Superintendent, has not been performed or has not been performed in accordance with the Contract.

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

**Directional Signs** – means signs of a non-promotional nature that serve to provide information relating to the direction towards a feature. Includes community service facility signage (white text on blue background), and tourist attraction signage (white text on brown background).

**Dispute Resolution Process** means the process for resolution of disputes as set out in clause 69 (Disputes) (not including the statement of intention in clause 69.1).

**Dumped Rubbish** means Waste, rubbish or other discarded material that has been discharged onto a Shire controlled Asset without the consent of the Shire and the act of dumping is in contravention of current Regulations.

**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.



**Environment** means the natural and man-made environment.

**EPA** means the Environment Protection Authority as constituted in accordance with the *Environment Protection Act 1970*.

**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 an Excepted Risk or a breach of contract by the Shire.

**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).

**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, tidal wave, natural disaster,
- (f) hurricane, action of the elements, extreme weather (in the case of each of these, exceeding a 1:100 year magnitude),
- (g) 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,
- (h) explosion, radioactive or chemical contamination which is not itself due to the act or omission of the Affected Party or its Agents,
- (i) 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.



## Annexure 1

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

**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 88 (Indexation of amounts).

**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 A3-9 (Integrated Management Plan).

**Intellectual Property** means copyrights, patents, trademarks, designs (registered or unregistered), trade secrets and know how.

**Intervention Level** means, with respect to an Asset, the condition specified as an Intervention Level in the Activity Specifications.

**Issue** means a question or other matter or issue for determination, a problem, a concern, a difference of opinion, a failure to agree or inability to reach consensus within the time required by the Contract or at all, a stalemate or any other matter or issue of any nature.

**Kerb and Channel** includes all kerbs, open inverts, channel only, edge strips, semi mountable and non-mountable kerbs, spike down kerbs, asphalt kerbs and other like facilities.

**KMS** means the Shire's electronic Knowledge Management System including all of its components, including MERIT and Objective

**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.

**Legal Tipping Facility** means a waste receival facility licensed by the EPA to receive the category of waste to be discharged.

**Livestock** means an animal (excluding a bird) of any species used in connection with primary production or kept or used for recreational purposes or for the purposes of recreational sport, other than a dog or cat.



**Loose Litter** means waste material or rubbish that has been released into the atmosphere and blown or migrated onto Shire controlled land such as roads, foreshores and parks.

**Maintenance expenditure** means recurrent expenditure, which is periodically or regularly required as part of the anticipated schedule of works required to ensure that the asset achieves its useful life and provides the required level of service.

**Maintenance Period** refers to the period specified for maintenance of the asset after completion of the contract period.

**Mandatory Asset Handover Notice** means a notice issued under clause 41.4.7.

**MERIT** means that part of the Shires KMS that tracks customer requests that have been lodged with the Shire.

**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 Resource 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.

**MGB** means a Mobile Garbage Bin of 120 litre or 240 litre capacity.

**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 A2-2.2 (Calculation of MSC).

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

**Moveable Advertising Sign** means any movable board, notice, structure, banner or similar device used for the purposes of notifying of a sale, soliciting sales or notifying people of the presence of an adjacent property where goods and services may be obtained. Includes A-Frame signs. This excludes commercial signage mounted on vehicles and/or trailers.

**MRM** means the person appointed by the Shire to carry out the duties of the Municipal Recovery Manager under the *Emergency Management Act 1986* (Vic) to act as the Shire's Municipal Recovery Manager at the relevant time.

**MSC** is an abbreviation of Monthly Service Charge.

**MSC Calculation Schedule** means:

- (a) at the Commencement Date, schedule A2-1 in Annexure 2 (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 Municipal Emergency Management Planning Committee (MEMPC) 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 and parks listed in Annexure 9 (Asset and Network Description) (or, if not listed there, as listed in the Asset 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 sign, pole, seat 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:

- (a) an asset constructed as a result of Shire Works;
- (b) an asset constructed by others within the Shire (for example, as part of a new development or subdivision), responsibility for which transfers to the Shire on completion;
- (e) an asset constructed by the Contractor as Ordered Work or a 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 the Roads Corporation (VicRoads), a Utility Authority or Government Department.

**Nominated Area** for this contract means all parks and recreation areas and road reserves details of which are set out in Annexure 9 of the Specification.

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

**Non-Continuing Variation** means a variation resulting from Ordered Works.

**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. Resheet Services are an example of Non-MSC Services.

**Objective** means the Shire's corporate system for storing documentation including all inward and outward correspondence.

**Obstruction** means anything that restricts the free operation of equipment when carrying out the tasks in providing the Service.



**OH&S** means occupational health and safety.

**OH&S Law** means the *Occupation Health and Safety Act 2004* (Vic) and the *Occupational Health and Safety Regulations 2017* (Vic).

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

**Operating expenditure** means recurrent expenditure, which is continuously required excluding maintenance and depreciation, e.g. power, fuel, staff, plant equipment, on-costs and overheads.

**Operations Team** means the team identified as such in clause 10.

**Ordered Work** means Services ordered by a Work Order in accordance with clause A3-5 (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 SIMS2 Contractor, Safer Local Roads Contractor or any other contractor engaged by the Shire (not including the Contractor).

**Parks & Open Space Asset** means a Parks & Open Space Asset that is listed in the relevant Asset Database.

**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.

**Party's Representative** means:

- (a) the Superintendent in respect of the Shire; and
- (b) the Contractor's Representative in respect of the Contractor;

**Peak Tourist Season** means that period of time between 20 December and 31 January each year.

**Performance Security** means a security in the form and amount required by clause 64 (Performance Security) and includes the initial Performance Security required under clause 64.3 and each replacement Performance Security required under clause 64.6.

**Performance Standard** means a performance standard set out in Schedule 2 (Performance Standard Review).

**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.

**Planned Maintenance** means repair work that is identified and managed through a maintenance management system (MMS). MMS activities include inspection, assessing the condition against failure/breakdown criteria/experience, prioritising scheduling, actioning the



work and reporting what was done to develop a maintenance history and improve maintenance and service delivery performance.

**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.

**Programmed Maintenance Service** has the meaning given in clause A3-29 (Programmed Maintenance).

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

**Public Holiday** means a public holiday, within the meaning of the *Public Holidays Act 1993*, applying in the Shire;

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

- (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.

**Rates for Asset Inventory Change** means the rates so titled and included in schedule A2-3 contained in Annexure 2 (Rates for Asset Inventory Changes).

**Real Estate Signage** means a variety of signage used by real estate agents to draw attention towards properties for sale. Includes flags, movable advertising signs, pointer signs, and onsite signs.

**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).

**Recycle** means the set of processes (including biological) for converting recovered materials that would otherwise be disposed of as wastes, into useful materials or products.

**Recycled Materials** means materials that have been reprocessed from recovered material by means of a manufacturing process and made into a final product or into a component for incorporation into a product.

**Reactive maintenance** means unplanned repair work that carried out in response to service requests and management/supervisory directions.

**Reference Document** means an Australian Standard referenced directly or indirectly in the Contract and any document listed in schedule 4 (Reference Documents).



**Relevant Party** means:

- (a) the Contractor and the Contractor's Agents.
- (b) an associate of the Contractor or the Contractor's Agents,
- (c) a company in which the Contractor or the Contractor's Agents are involved, whether as an officer, shareholder, employee or otherwise; or
- (d) any other person with whom the Contractor or the Contractor's Agents has or have a financial or business association, whether directly or indirectly.

**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.

**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.

**Roads** means all those roads of various classifications including primary roads, secondary roads, collector roads and local roads as set out in Annexure 9 of the specification.

**Road Asset Management Plan** means the Asset Management Plan prepared by the Shire for the management of its roads assets as defined in Schedule 4 – Reference Documents.

**Road Management Plan** means the adopted Shire Road Management Plan prepared pursuant to the provisions of the *Road Management Act 2004*.

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

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

**Rural Area** means land within a Green Wedge Zone or Special Use 1 Zone of the Mornington Peninsula Planning Scheme.

**Safety Advice Signage** means signage that is erected or displayed for the sole purpose of providing advice on safety issues and concerns within the Municipality. Can be either permanent structures or signs that are displayed on a temporary basis.

**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 A2-2 (Daywork 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 the sum of \$5,000 (Indexed).

**Service Points** means Service Points awarded or which may be awarded or redeemed in accordance with clause 71 (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 as such in clause 9 (Service Management Team)

**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.

**the Shire Mark** means the name and each and every trademark (whether registered or not) of, or used by, the Shire from time to time during the Contract Term;

**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.

**Shopping Precinct or Arcade Signs** means signage structures and signs that direct people to a business or organisation located within an arcade or on a side street. These signs feature the business/organisation name, and are not used to increase the relative amount of advertising space for a business/organisation. They may form an integral part of a streetscape scheme.

**SIMS2 Contractor** means a contractor (other than the Contractor) with which the Shire has contracted to perform one or more components of the SIMS2 services.

**SMT** is an abbreviation of Service Management Team.

**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.

**Specific Incident Report (SIR)** means a report as defined by clause A3-24.4.

**Standards** means Australian Standards or any other recognised industry standards.

**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.

**Temporary Community Event and Information Signs** means temporary sign erected in an approved location to promote a community event or information relating to a community group, and from which the majority of the proceeds are returned to the community.



**Tender** means the Contractor's tender for the Contract.

**Termination Show Cause Notice** means a notice under clause 73 (Termination show cause).

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

**Township Entry Structures** means generally located at the entry to a township in the road reserve indicating the entry into a township – these are not township name signs as erected by Mornington Peninsula Shire. The structure may feature the logo or symbol of community groups and clubs but does not feature any promotional or commercial information.

**Tourist Attraction** means a commercial or non-commercial attraction or establishment, or an attraction that is actively managed by a government agency or Committee of Management. This facility caters primarily for tourists (for which a charge may or may not be applied).

**Tourist Route** means a tourist route incorporates special interest visitor trails developed in conjunction with representative organisations, to link tourist facilities of related interest, attraction or theme.

**Tourist Season** means that period of time between 1 November to 19 December and 1 February to 30 April each year.

**Traffic Control Specification** means the requirements of clause A3-21 (Traffic management).

**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 Message Sign (VMS)** means moveable illuminated signage that can be programmed to display different messages. Used to alert road users of upcoming traffic hazards and delays.

**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.

**Vitiating Act** means circumstances of fraud, misrepresentation, nondisclosure or breach of any warranty or condition of a policy of insurance

**Waste** means material or energy that have no further use and are released to the environment as a means of disposal.

**WMS** is an abbreviation of Work Method Statement.

**Work** shall have the same meaning as "Service".

**Work Method Requirements** means, in respect of any Activity, the work method requirements listed in Annexure 4 (Activity Specifications) for that Activity.

**Annexure 1**

**Work Order** means, with respect to any Ordered Work, the Work Order issued for that Ordered Work in accordance with clause A3-5 (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.

**Work Variation (WV)** means an application by the Contractor and subsequent approval by the Superintendent to vary a Works Order.

**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.

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





# Annexure 2

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## Price

**Cleansing & Drainage Cleaning Services  
Contract No. 2328**



**MORNINGTON  
PENINSULA**  
*Shire*



## Annexure 2 - Price

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## Annexure 2 – Price

**PS10 Payments due****PS10.1 Monthly payment**

The monthly payment is made up of the following components:

- Monthly Service Charge (MSC)
- Contract Variations (CV)
- Deductions (D)

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

$$\text{Monthly payment} = \text{MSC} + \text{CV} - \text{D}$$

Where:

**MSC** is the MSC for that Contract Year calculated in accordance with this Annexure (being the amount then payable for the Core Services and all other obligations of the Contractor except where expressly stated otherwise);

**CV** is the amount then payable in accordance with clause 39.2 of the Agreement (Valuation of Variations) with respect to the month to which the payment pertains for Variations which are not to be or have not yet been incorporated into the MSC;

**D** is any deduction to the amount payable to the Contractor under the Contract which the Superintendent has determined pursuant to the Contract or which the Shire is otherwise entitled to make pursuant to the Contract.

**PS10.2 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.

**PS10.3 Other Payments**

Any other amount payable to the Contractor with respect to the month to which the payment pertains is to be invoiced separately to the MSC.

**PS11 Monthly Service Charge (MSC)****PS11.1 Initial MSC**

The Monthly Service Charge (MSC):

- at the Commencement Date is Irrelevant & Sensitive excluding GST for Year 1



- Irrelevant & Sensitive
- excluding GST for Year 2 plus adjustment as per PS12 Indexation adjustment.

#### PS11.2 **Application**

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

### PS12 **Annual determination of the MSC**

#### PS12.1 **Timing of determination**

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

### PS13 **Indexation adjustment**

#### PS13.1 **Annual indexation**

Every Component Price, Daywork Rate, rate or price in the Schedule of Rates and other amount identified in the Contract as "Indexed" must be indexed once annually with effect from the Adjustment Date in accordance with the formula set out in clause A2-4.2 (Indexation formula).

#### PS13.2 **Indexation formula**

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

$$S \text{ (Indexed)} = \frac{S \times A}{B}$$

Where:

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

S = is the rate, price or other amount to be adjusted, which is :

- if the rate, price or amount is specified in the Contract and the adjustment is being made on the first Adjustment Date, the rate, price or amount specified in the Contract;
- if the rate, price or amount is specified in the Contract and the adjustment is being made on the second or a later Adjustment Date, the rate, price or amount as adjusted at the most recent Adjustment Date; or

- if the rate, price or amount is not specified in the Contract and has been determined since the Commencement Date:
  - if the rate, price or amount has not yet been adjusted, the rate, price or amount so determined; or
  - if the rate, price or amount has already been adjusted, the rate, price or amount as adjusted at the most recent Adjustment Date.
- A is the Applicable Index as at the June quarter of the year in which the Adjustment Date falls; and
- B is the Applicable Index as at the June quarter of the year preceding the year in which the Adjustment Date falls.

### PS13.3 **Applicable Indices**

The Applicable Indices are set out in Schedule PS13 (Applicable Indices). Where an Applicable Index is reset by the Australian Bureau of Statistics during the Contract Term, the formula set out in PS13.2 must take account of the resetting formula supplied by the Australian Bureau of Statistics.

### PS13.4 **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,
- the Superintendent may nominate another index to be used instead for the purposes of adjustments under clause PS13.2. The Superintendent must select an index which, in the reasonable opinion of the Superintendent, is the index that provides as close an approximation as possible to the original index.

### PS14 **Fixed prices**

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

### PS15 **Cost Breakdowns**

The Contractor must, in undertaking the Services under the MSC, be able to provide a cost break up based upon a particular asset class for a particular Contract Year. When requested by the Superintendent for any such breakdown, the detailed figures must be provided in an approved format within five (5) Business Days of the request.



The Contractor must keep records of monthly expenditure itemised into activities undertaken as set out in Annexure 4. Records to be kept include:

| Activity Specification                     | Expenditure Details                                                                                                                                                    |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| A4-6 Beach Cleaning                        | Disposal costs for waste                                                                                                                                               |
| A4-7 Street Sweeping                       | Sweeping expenditure and waste disposal per nominated VicRoads roads, nominated bike lanes/sealed shoulders, commercial roads, industrial roads and residential roads. |
| A4-8 Sanitary Cleaning                     | Toilet cleaning and consumables per public toilet block                                                                                                                |
| A4-9 Street and Drain Litter Collection    | Disposal costs for waste and recycling                                                                                                                                 |
| A4-15 Foreshore Camping Sanitary Cleaning  | Sanitary cleaning and consumables per toilet block                                                                                                                     |
| A4-17 Maintenance of Gross Pollutant Traps | Disposal costs for waste                                                                                                                                               |
| A4-18 Clear Culverts, Pipes and Pits       | Cleansing expenditure per catchment for culverts, pipes and pits                                                                                                       |



## Schedule A2-1 – MSC Calculation Schedule

## Schedule A2-1 - MSC Calculation Schedule (Contract Year 1)

| Item No. | Description of Work                               | Monthly Service Charge | Annual Lump Sum Amount |
|----------|---------------------------------------------------|------------------------|------------------------|
|          |                                                   | (ex GST)               | (ex GST)               |
|          | <b>MANAGEMENT AND OVERHEADS</b>                   |                        |                        |
| 1        | Contract Management                               |                        |                        |
| 2        | Integrated Management Plan                        |                        |                        |
| 3        | Data Collection and Transfer                      |                        |                        |
| 4        | Provision of Depot                                |                        |                        |
|          | <b>SWEEPING SERVICES</b>                          |                        |                        |
| CBE      | Beach Cleaning                                    |                        |                        |
| NSS      | Street Sweeping                                   |                        |                        |
| NFS      | Footpath Sweeping & Cleaning                      |                        |                        |
|          | <b>CLEANSING SERVICES</b>                         |                        |                        |
| CSA      | Sanitary Cleaning                                 |                        |                        |
| BBC      | Barbecue Facility Cleaning & Maintenance          |                        |                        |
| HVP      | High-Visibility Street Presence                   |                        |                        |
|          | <b>LITTER SERVICES</b>                            |                        |                        |
| RLC      | Street and Drain Litter Collection                |                        |                        |
| NDA      | Dead Animal Collection                            |                        |                        |
|          | <b>FORESHORE CAMPING SERVICES</b>                 |                        |                        |
| NFM      | Foreshore Camping - Sanitary Cleaning             |                        |                        |
|          | <b>DRAINAGE SERVICES</b>                          |                        |                        |
| NPT      | Maintenance of GPT's                              |                        |                        |
| DCP      | Clear Culverts, Pipes and Pits                    |                        |                        |
|          | <b>MISCELLANEOUS</b>                              |                        |                        |
| NCS      | Customer Service                                  |                        |                        |
| MEC      | After Hours Call Out                              |                        |                        |
| DCA      | Drainage Assessment Validation & Condition Report |                        |                        |
|          | <b>Total Lump Sum Amount</b>                      |                        |                        |

Irrelevant &amp; Sensitive

**Please note as per Tender Information Clarification No.4:**

The cost of waste disposal for Activities A4-7 Street Sweeping and A4-18 Clear Culverts, Pits and Pipes on a cost plus 6% margin arrangement until June 30, 2019

## Schedule A2-1 – MSC Calculation Schedule

## Schedule A2-1 - MSC Calculation Schedule (Contract Year 2)

| Item No. | Description of Work                               | Monthly Service Charge | Annual Lump Sum Amount |
|----------|---------------------------------------------------|------------------------|------------------------|
|          |                                                   | (ex GST)               | (ex GST)               |
|          | <b>MANAGEMENT AND OVERHEADS</b>                   |                        |                        |
| 1        | Contract Management                               |                        |                        |
| 2        | Integrated Management Plan                        |                        |                        |
| 3        | Data Collection and Transfer                      |                        |                        |
| 4        | Provision of Depot                                |                        |                        |
|          | <b>SWEEPING SERVICES</b>                          |                        |                        |
| CBE      | Beach Cleaning                                    |                        |                        |
| NSS      | Street Sweeping                                   |                        |                        |
| NFS      | Footpath Sweeping & Cleaning                      |                        |                        |
|          | <b>CLEANSING SERVICES</b>                         |                        |                        |
| CSA      | Sanitary Cleaning                                 |                        |                        |
| BBC      | Barbecue Facility Cleaning & Maintenance          |                        |                        |
| HVP      | High-Visibility Street Presence                   |                        |                        |
|          | <b>LITTER SERVICES</b>                            |                        |                        |
| RLC      | Street and Drain Litter Collection                |                        |                        |
| NDA      | Dead Animal Collection                            |                        |                        |
|          | <b>FORESHORE CAMPING SERVICES</b>                 |                        |                        |
| NFM      | Foreshore Camping - Sanitary Cleaning             |                        |                        |
|          | <b>DRAINAGE SERVICES</b>                          |                        |                        |
| NPT      | Maintenance of GPT's                              |                        |                        |
| DCP      | Clear Culverts, Pipes and Pits                    |                        |                        |
|          | <b>MISCELLANEOUS</b>                              |                        |                        |
| NCS      | Customer Service                                  |                        |                        |
| MEC      | After Hours Call Out                              |                        |                        |
| DCA      | Drainage Assessment Validation & Condition Report |                        |                        |
|          | <b>Total Lump Sum Amount</b>                      |                        |                        |

Irrelevant &amp; Sensitive

**Please note as per Tender Information Clarification No.4:**

For reference the value of the waste disposal above in the year 2 lump price allowed for 5,000T at Irrelevant & Sensitive or Activity A4-7 Street Sweeping Irrelevant & Sensitive and 960T at Irrelevant & Sensitive on Activity A4-18 Clear Culverts, Pits and Pipes Irrelevant & Sensitive

The cost of waste disposal could be incorporated into the contract from July 1, 2019 through an agreed variation. This may result in an adjustment to the above Year 2 Lump Sum amount as agreed by both parties prior to June 30, 2019.



## Schedule A2-2 – Daywork Rates

## Schedule A2-2 - Daywork Rates

The Dayworks Rates in this schedule:

- (a) include profit, on-costs, administration, , preliminaries, labour costs (including operators for plant and equipment), fuel, travel to and from the relevant site, supervision and all other costs incurred directly or indirectly in providing the plant or labour referred to; and
- (b) only apply to work carried out directly by the Contractor. Materials supply, sub-contract labour and hired plant are paid for in accordance with clause 48.5 (Daywork, without applicable Daywork Rates).

The Contractor will only be paid the Standby Rate with respect to any plant or equipment where the Superintendent expressly directs that the item of plant or equipment is to stand down from performing the Services, but is to remain on the site.

## PLANT AND EQUIPMENT RATES

| Item No.            | Description                                                     | Description                                 | Normal Rate          | Standby Rate         |
|---------------------|-----------------------------------------------------------------|---------------------------------------------|----------------------|----------------------|
|                     |                                                                 | (Make, model and year)<br>Description       | \$/ hour<br>(Ex GST) | \$/ hour<br>(Ex GST) |
| MANDATORY SERVICES: |                                                                 |                                             |                      |                      |
| 1.                  | Street Sweeper (suction type)                                   | MacDonald Johnston VT651                    |                      |                      |
| 2.                  | Flat Surface Cleaner                                            | Pressure Washer - Rotary Walk Behin 4000PSI |                      |                      |
| 3.                  | Utility vehicle                                                 | Holden Colaradc                             |                      |                      |
| 4.                  | Tractor & Mechanical Beach Cleaner                              | John Deere 6230 and Barber Surf Rake 600HD  |                      |                      |
| 5.                  | High Pressure Water Jet Cleaner                                 | Spoutvac SV3750JB                           |                      |                      |
| 6.                  | Easement Reel                                                   | DCS Dingo unit, Trailer Mounted             |                      |                      |
| OTHER RESOURCES:    |                                                                 |                                             |                      |                      |
| 7.                  | Skid steer loader; up to 0.5m <sup>3</sup> , bucket and trailer | Bobcat 753                                  |                      |                      |
| 8.                  | Loader; up to 1.5m <sup>3</sup> bucket                          | CAT 5T Excavator                            |                      |                      |
| 9.                  | 2WD Tractor                                                     | John Deere 6230                             |                      |                      |
| 10.                 | Truck with Crane                                                | Fuso Canter 4x2 815 Wide Cab                |                      |                      |
| 11.                 | Flex Drive Pump                                                 | Honda Flexi-Drive Pump                      |                      |                      |
| 12.                 | Sedan/Light Vehicle                                             | Holden Colaradc                             |                      |                      |
| 13.                 | Truck with Crane & Bobcat                                       | Fuso Canter 4x2                             |                      |                      |

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## Schedule A2-2 – Daywork Rates

|     |             |                              |  |  |
|-----|-------------|------------------------------|--|--|
|     |             | 815 Wide Cab +<br>Bobcat 753 |  |  |
| 14. | Hook Truck  | Hino FE 1426-<br>500         |  |  |
| 15. | Van Vehicle | Holden Colorado              |  |  |

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## Schedule A2-2 – Daywork Rates

## ACTIVITY RATES

| Item No. | Description                                         | Unit | Rate (Ex GST) |
|----------|-----------------------------------------------------|------|---------------|
| 1.       | Dumped waste greater than 4m <sup>3</sup>           | Cum  |               |
| 2.       | Sanitary Cleaning – Cycle A                         | Hour |               |
| 3.       | Sanitary Cleaning – Cycle B                         | Hour |               |
| 4.       | Portable hydration station                          | Day  |               |
| 5.       | Portable toilet                                     | Day  |               |
| 6.       | Portable outdoor surveillance system                | No.  |               |
| 7.       | High pressure cleaning                              | Hour |               |
| 8.       | Barbeque facility cleaning                          | Hour |               |
| 9.       | Beach cleaning                                      | Hour |               |
| 10.      | Street sweeping                                     | Hour |               |
| 11.      | Litter collection in roads                          | Hour |               |
| 12.      | Litter collection at Facilities, Reserves & beaches | Hour |               |
| 13.      | Footpath sweeping                                   | Hour |               |
| 14.      | Footpath deep cleaning                              | m2   |               |
| 15.      | Gross Pollutant Trap (GPT) cleaning                 | No.  |               |
| 16.      | Culvert & pipe cleaning                             | Lm   |               |
| 17.      | Pit cleaning                                        | No.  |               |
| 18.      | Soak pit cleaning                                   | No.  |               |

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## LABOUR RATES

| Item No. | Description                     | Normal Rate \$/ hour |
|----------|---------------------------------|----------------------|
| 1.       | Technical Officer               |                      |
| 2.       | Supervisor                      |                      |
| 3.       | Plant Operator                  |                      |
| 4.       | Maintenance Labourer            |                      |
| 5.       | Office Admin                    |                      |
| 6.       | Traffic Controller              |                      |
| 7.       | High-Visibility Street Presence |                      |

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## Schedule A2-3 – Rates for Asset Inventory Changes

## Schedule A2-3 - Rates for Asset Inventory Changes

| Activity                                               | Description                                                                                   | Unit                 | Contract Rate (CR)<br>(excl GST) |
|--------------------------------------------------------|-----------------------------------------------------------------------------------------------|----------------------|----------------------------------|
| A4-5 Barbecue Facility Cleaning and Maintenance        | Barbecue Facility Cleaning & Maintenance                                                      | No.                  |                                  |
| A4-6 Beach Cleaning                                    | Beach Cleaning                                                                                | Sq. m                |                                  |
| A4-7 Street Sweeping                                   | Street Sweeping<br>Car park Sweeping                                                          | Lin. m<br>Sq. m      |                                  |
| A4-8 Sanitary Cleaning                                 | Sanitary Cleaning – Cycle A<br>Sanitary Cleaning – Cycle B<br>Fish Cleaning Facility cleaning | No.<br>No.<br>No.    |                                  |
| A4-9 Street and Drain Litter Collection                | Litter collection in Roads<br>Litter collection at Facilities, Reserves & Beaches             | Lin. m<br>Area       |                                  |
| A4-11 Drainage Asset Validation & Condition Assessment | Condition assessment pits<br>Condition assessment GPTs<br>Condition assessment pipes          | No.<br>No.<br>Lin. m |                                  |
| A4-14 Footpath Sweeping & Cleaning                     | Footpath Sweeping<br>Deep Cleaning                                                            | Sq. m<br>Sq. m       |                                  |
| A4-15 Foreshore Camping Sanitary Cleaning              | Sanitary Cleaning – Cycle A<br>Sanitary Cleaning – Cycle B                                    | No.<br>No.           |                                  |
| A4-17 Maintenance of Gross Pollutant Traps             | Gross Pollutant Trap cleaning                                                                 | No.                  |                                  |
| A4-18 Clear Culverts, Pipes and Pits                   | Culvert & Pipe cleaning<br>Pit cleaning<br>Soak Pit cleaning                                  | Lin. m<br>No.<br>No. |                                  |

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## Schedule A2-4 – Applicable Indices

## Schedule A2-4 - Applicable Indices

| Item No.        | Description                            | Applicable Index                                                                                                                                                                                                                                                                                                                                                                                              | %    |
|-----------------|----------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|
| 1.              | Contract Management                    | ABS Labour Price Index 6345 Table 2: Total Hourly rates of Pay Excluding Bonuses, All Sectors, Victoria                                                                                                                                                                                                                                                                                                       | 100% |
| 2.              | Integrated Management Plan             | ABS Consumer Price Index 6401 Table 1: All Groups, Melbourne                                                                                                                                                                                                                                                                                                                                                  | 100% |
| 3.              | Inspection and Conditioning Monitoring | ABS Consumer Price Index 6401 Table 1: All Groups, Melbourne                                                                                                                                                                                                                                                                                                                                                  | 100% |
| 4.              | Data Collection & Transfer             | ABS Labour Price Index 6345 Table 2: Total Hourly rates of Pay Excluding Bonuses, All Sectors, Victoria                                                                                                                                                                                                                                                                                                       | 100% |
| 5.              | Provision of Depot                     | ABS Consumer Price Index 6401 Table 1: All Groups, Melbourne                                                                                                                                                                                                                                                                                                                                                  | 100% |
| BBC to DCP      | Routine Maintenance Services           | ABS Producer Price Index 6427 Table 17: Road & Bridge Construction                                                                                                                                                                                                                                                                                                                                            | 100% |
| Sch A2-2        | Daywork Rates for Plant & Equipment    | ABS Consumer Price Index 6401 Table 1: All Groups, Melbourne                                                                                                                                                                                                                                                                                                                                                  | 100% |
| Sch.A2-2        | Daywork Rates for Labour               | ABS Labour Price Index 6345 Table 2: Total Hourly rates of Pay Excluding Bonuses, All Sectors, Victoria                                                                                                                                                                                                                                                                                                       | 100% |
| BBC to DCP      | Rates for Asset Inventory Change       | Each rate is adjusted by the Index applicable to the Component Price to which the rate relates (by way of illustration, the rates for Network Management are adjusted using the ABS Labour Price Index 6345 Table 2: Total Hourly rates of Pay Excluding Bonuses, All Sectors, Victoria; the rates for Condition Monitoring are adjusted using ABS Consumer Price Index 6401 Table 1: All Groups, Melbourne). | 100% |
| Agreement CI 68 | Service Point Values                   | ABS Producer Price Index 6427 Table 17: Road and Bridge construction                                                                                                                                                                                                                                                                                                                                          | 100% |





# Annexure 3

## Services Specification

Cleansing and Drainage Cleaning Services  
Contract No. 2328



MORNINGTON  
PENINSULA  
*Shire*

## Annexure 3 – Services Specification

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# Annexure 3 - Services Specification

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## A3-1. Overview of the Services

### A3-1.1 Contractor's key responsibilities

The Services comprise the management of the Asset and maintenance of the Assets in accordance with the specific requirements of the Contract, and so to meet the applicable Performance Standards.

Without limitation, the Contractor must:

- .1 Regularly inspect the Assets and identify and record Defects;
- .2 Rectify Defects and plan, program and undertake work to ensure that all Defects are rectified within their respective Response Times;
- .3 Maintain and update the Asset Inventory as and when Assets are replaced in the course of performing the Services, or when new Assets are constructed as a consequence of any Ordered Work or an Accelerated Works Project and when new or reconstructed Assets are handed over by the Shire in accordance with the Infrastructure Asset Notification Procedure;
- .4 Undertake Condition Inspections to ensure that the assets are being properly maintained;
- .5 Develop and implement programs as and when required by the Contract;
- .6 Subject to the directions of any Authority, perform during the Contract all Call-Out Services (including Initial Response) within the Asset in a timely and responsible manner and otherwise in accordance with the Contract;
- .7 Carry out Ordered Work as and when required by the Contract;
- .8 Perform all activities necessary or incidental to the performance of any of the above obligations; and
- .9 Carry out any other activities which the Contractor is required by the Contract to carry out as part of the Services.
- .10 During the Due Diligence Period A3-29.2, undertake due diligence for the purposes of verifying or otherwise that the data and associated information supplied by the Shire as at

the commencement date is correct. Due diligence is to include, but is not limited to, verification of:

- (i) Asset details supplied in Annexure 9
- (ii) Confirmation that all plant and equipment has been maintained in accordance with the manufacturers specifications and manuals;
- (iii) All Assets that have an existing condition rating, have a rating of less than 8, pursuant to clause A6-8.5.

All costs associated with due diligence are part of the MSC.

#### A3-1.2 **Items outside scope**

Notwithstanding any other provision of the Contract (but without any provision of the Contract relating to Variations or Ordered Work), the Contractor is not required to carry out:

- .1 any Minor Works, Non-MSC Services or other work which requires a Work Order to initiate it until the Work Order has been issued and the Contractor has had sufficient time (having regard to the nature and scope of the Ordered Work) to mobilise;
- .2 work required on property that is not an Asset, except where this is authorised by a direction of the Superintendent; or
- .3 Where as a result of any initial inspection, customer complaint or otherwise an asset is found to be:
  - (i) outside the specified intervention criteria
  - (ii) uncompleted works as identified in outstanding Shire Customer Relationship Management System requests and actions;
  - (iii) the asset has not been maintained in accordance with the manufacturers specifications and manuals;
  - (iv) the asset is identified as having a condition rating of 8 or higher;
  - (v) any asset that is found to be beyond its normal operating life and is required to be removed or replaced.

during the Due Diligence Period A3-29.2 for the Contract, the Contractor shall not be responsible for bringing the deficient infrastructure feature to within the specified intervention criteria. The Contractor shall only undertake any additional "make good works" as Ordered Works.

#### A3-1.3 **Obligation to notify work outside scope**

If the Contractor identifies work that would be desirable to be done to improve the Condition of any Asset but that falls outside the scope of the Core Services, the Contractor must notify the



Service Operations Team of the identified work and must continue to maintain the Asset (to the extent required by the Contract) in its existing Condition until such time as the Shire undertakes the necessary work to fix it.

## A3-2. Overview of the Assets

A3-2.1 The Assets for which the Contractor is required to provide the Services as at the Commencement Date are:

- .1 all assets owned by the Shire as set out in the Annexure 9;

A3-2.2 The following assets are excluded from the Contract:

- .1 assets for which the state government is responsible unless subject to a Maintenance Agreement as listed in Annexure 9; and
- .2 any Assets on land subject to a formal lease or Occupancy Agreement including Melbourne Water Drains.

A3-2.3 The Assets are subject to change from time to time by Asset Inventory Changes made in accordance with the Contract.

A3-2.4 The Cleansing & Drainage hierarchy used within the Contract is based on the adopted hierarchy used by the Shire in the Road Management Plan and the Drainage Asset Management Plan. The Shire reserves the right to review the Cleansing hierarchy at any time during the Contract and may also make any adjustments as a result of any review part of the Annual Review.

A3-2.5 For the purposes of the Contract, the Asset Inventory is conclusive of the extent and content of the Assets at any point in time (unless it can be established at that time that the Contractor has not been maintaining the Asset Inventory properly in accordance with the requirements of the Contract).

## A3-3. Core Services

A3-3.1 **Description**

The Core Services are grouped generally into 5 classes for the purposes of the MSC Calculation Schedule:

- .1 Cleansing & Drainage Asset Management – all activities specified in the Contract and concerned with the management of the Asset and of the Services including inspections, identification and recording of Defects; scheduling and planning work; design of appropriate treatments and programming; contract management; servicing the Service Management Team; customer service and liaison and all other activities to ensure the

management of the Asset in accordance with the Contract,

- .2 Integrated Management Plan – all activities specified in the Contract and concerned with the preparation and maintenance of the Integrated Management Plan and the management of quality, environmental and safety compliance in the performance of the Contract,
- .3 Condition Monitoring – all activities specified in the Contract and concerned with the collection and analysis of data as in each Activity Specification.
- .4 Routine Maintenance Services – all activities specified in the Contract and concerned with the delivery of the Services as required by the Activity Specifications (other than the Non-MSC Services and Assets with a Condition Rating in excess of 8.)
- .5 Annual Programs – all activities (including analysis and program preparation) specified in the Contract and concerned with the development and implementation of Programs to maintain the condition of the Assets.

#### A3-3.2 **Payment**

The Core Services, and all work, labour, plant and materials required to carry out the Core Services are included in the Monthly Service Charge, except where the Contract expressly provides otherwise.

#### A3-3.3 **Performance of the Core Services**

The Contractor must carry out the Core Services as and when they are required during the Contract Term so as to meet the applicable Performance Standards, Contractual Time Requirements and other requirements of the Contract.

#### A3-3.4 **Software Licence**

If any software licence is required to comply with the terms of this Contract the Contractor must, at its own cost, procure the required user licences and a basic level of ongoing support and maintenance (including upgrades) for the Shire Software for a minimum duration equivalent to the Contract Term.

### A3-4. **Ordered Work**

#### A3-4.1 **Ordered Work**

In addition to the Core Services, the Contractor is required to carry out Ordered Work as and when required by Work Orders issued in accordance with the Contract, .

#### A3-4.2 **Scope of work that must be ordered**



Subject to clause A3-6 (Scope of Minor Works) and without limiting the Superintendent's power to issue Work Orders in any other circumstances:

- .1 the Contractor is entitled to carry out all Non-MSC Services and Minor Works required by the Shire with respect to the Assets during the Contract Term, and
- .2 if the Shire requires any Non-MSC Services or Minor Works at any time during the Contract Term, the Superintendent must issue a Work Order:

#### **A3-4.3 Payment for Ordered Work**

Payment for Ordered Work is outside the Monthly Service Charge and, in each case, is on the basis specified in the applicable Work Order Documents. Where the Activity Specifications specify a basis of payment for any Ordered Work, that basis of payment applies, unless the parties agree otherwise in writing.

#### **A3-4.4 Performance of Ordered Work**

Ordered Work must be carried out and completed in accordance with:

- .1 the requirements of the applicable Work Order Documents, and
- .2 if the Ordered Work is a Non-MSC Service, the applicable requirements of the Activity Specifications.

#### **A3-4.5 Quantity of Ordered Work**

The Shire gives no guarantees regarding the quantity of any Ordered Work issued under the Contract.

### **A3-5. Initiation of Ordered Work**

A3-5.1 Ordered Work will be initiated by the issue of a Work Order. Work Orders must be issued in accordance with the Work Order process in Schedule A3-2 (Work Order Process), unless otherwise agreed by the parties.

A3-5.2 All Work Orders incorporate applicable terms of the Contract.

### **A3-6. Not Used**

### **A3-7. Management of other work on the Assets**

A3-7.1 When Shire Works are being undertaken on the Asset, the Contractor is excused from performance of the Services in so far as they pertain to the site of the Shire Works, except to the extent set out below:

- .1 at all times - the Contractor must continue to provide Call-Out Services in a manner compatible with the Shire's or Other Contractor's responsibility (as the case may be) for the site of the Shire Works (but the Contractor must endeavour to contact the Shire and the Other Contractor wherever practicable prior to taking any action with respect to the Shire Works or any property of the Other Contractor), and
- .2 after practical completion of the Shire Works and during their defects liability period – the Contractor is responsible for monitoring the Condition of the Shire Works and for notifying the Shire of any deficiencies in the Condition of the Shire Works in sufficient time to enable the Shire to procure rectification during the applicable defects liability period.

A3-7.2 The Shire must:

- .1 provide the Contractor with reasonable advance notice of any Shire Works and may include a copy of the specification and an outline of the relevant terms on which the Other Contractor will be engaged (not including any terms which the Shire considers to be commercial in confidence), and
- .2 keep the Contractor informed of relevant dates and progress of the Shire Works including the date the Other Contractor takes over responsibility for the site of the Shire Works, the dates for and of practical completion and the anticipated date of expiry of the defects liability period.

A3-7.3 To the extent applicable, the Asset Handover Procedure (Refer A5-3) will apply to Shire Works, as well as works by third parties.

A3-7.4 Where works by Utilities and other third parties (not including Shire Works) are being conducted, the Contractor must continue to deliver the Services so far as reasonably practicable in a manner that minimises detriment to the works of Other Contractors, employees of Other Contractors and the Environment.

A3-7.5 The Contractor must undertake changes to scheduled works as necessary to facilitate the proficient and safe execution of Shire Works and work lawfully undertaken by others.

A3-7.6 The Contractor must liaise with Other Contractors and Utilities so as to avoid disruption, delays or possible conflicts with the Services.

A3-7.7 The Shire does not warrant the performance of third parties responsible for activities and functions relating to the Assets.



The Shire will however use all reasonable efforts to ensure that its Other Contractors:

- .1 are bound by appropriate contractual obligations consistent with standard Victorian local government practice (including a defects liability period on all capital works of not less than 12 months);
- .2 comply with their contractual obligations to the Shire; and
- .3 co-operate as appropriate with the Contractor.

A3-7.8 The Shire through its representation on the Operations Team will keep the Contractor informed of the activities and planned activities of Other Contractors insofar as such activities may impact upon the Services.

## **A3-8. Working hours**

A3-8.1 The Contractor must perform the Services when they are required, including at any time of any day, unless the Contract or a direction of the Service Management Team specifies otherwise.

A3-8.2 Except where the Contract expressly states otherwise, the Monthly Service Charge covers provision of the Core Services regardless of:

- .1 the working hours specified or required to undertake obligations under the Contract; and
- .2 any restrictions on working hours specified by the Contract or which may be imposed by any Authority as contemplated by the Contract.
- 3 any restrictions on working hours specified by any Local law or which may be imposed by any guidelines issued by the Environment Protection Authority (EPA).

## **A3-9. Integrated Management Plan**

A3-9.1 The Contractor must establish, implement and maintain an Integrated Management Plan in accordance with this clause and the requirements of AS/NZS ISO9001:2015, AS/NZS 4801:2001 and ISO 14001:2015..

A3-9.2 The Integrated Management Plan must be designed specifically to ensure compliance with the Contract and to minimise risks and liabilities associated with performance of the Services (including, without limitation, risks and liabilities in respect of persons, Assets and the Environment).

- A3-9.3 As part of the Integrated Management Plan, the Contractor must establish and maintain a systematic program for identification, assessment, control and review of all matters relating to occupational health and safety, environmental management, training and quality assurance of processes used in the performance of the Services. Appropriate records that are readily identifiable and retrievable shall be maintained.
- A3-9.4 As part of the Integrated Management Plan, the Contractor must establish and maintain a systematic program for delivery of the Services on Extreme and Code Red days including the assessment, control and review of all matters relating to fire danger used in the performance of the Services.
- A3-9.5 The Integrated Management Plan must include procedures (including work method statements, work instructions and safe operating procedures, as appropriate) and other measures to ensure compliance with the Contract (including the Performance Standards) and with Laws relating to protection of the Environment and OH&S.
- A3-9.6 The Integrated Management Plan must include procedures (including work method statements, work instructions and safe operating procedures, as appropriate) and other measures to ensure compliance with the Shires Risk Management Framework. The Risk Management Framework represents Shire's commitment to risk management, and applies to all Shire employees, Councillors, voluntary workers and contracts. In particular it must address:
- .1 Risk of injury to persons or property of members of the community.
  - .2 Environmental risks.
  - .3 The risk of damage or unauthorised entry to Shire buildings.
  - .4 The risk of damage to other Shire assets.
  - .5 The risk of damage to the Shires reputation as a good corporate citizen.
- A3-9.7 A complete Integrated Management Plan covering performance of the Core Services must be submitted to the Superintendent for review within twelve months of the commencement of the contract.
- A3-9.8 The Contractor is responsible for the quality assurance of the Services and work processes under the Contract in accordance with the Integrated Management Plan.
- A3-9.9 The Contractor must continually monitor the effectiveness of the Integrated Management Plan to meet the outcomes and



standards required by the Contract and must make improvements and adjustments to the Integrated Management Plan as and when required by the SMT.

- A3-9.10 The Integrated Management Plan does not limit any obligations of the Contractor under the Contract, notwithstanding any review or approval by the Service Management Team, the Superintendent or the Shire.
- A3-9.11 The Contractor must, when requested by the Superintendent, provide evidence of the Integrated Management Plan and of the Contractor's ongoing implementation of the Integrated Management Plan.
- A3-9.12 The Contractor must fully integrate into the Integrated Management Plan provision for stormwater management and energy conservation in accordance with any Council policies relating to Carbon Neutrality and Sustainable Procurement.
- A3-9.13 The Contractor must integrate an employment plan for social procurement that addresses the objectives for social procurement (refer Agreement clause 4.2 .11).
- A3-9.14 The Contractor must provide sufficient personnel and resources to participate in the identification, evaluation, prioritisation and treatment of risks and in the monitoring of results.
- A3-9.15 The Contractor must demonstrate to the Shire how the management of the risks inherent in the subject matter of the contract is equal to or exceeds the requirements of the Shire's Risk Management Policy.

## A3-10. **Management of the Contract**

### A3-10.1 **Contractor's responsibility**

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

- .1 appointment of sufficient and competent personnel to manage the Contract,
- .2 effectively undertaking all its obligations pertaining to the operation of the Service Management Team,
- .3 dealing in a timely manner with all matters that contribute to the effective running of the Contract, and
- .4 dealing with the Shire in a professional manner in accordance with the Contract Objectives.

### A3-10.2 **Supervision**

The Contractor is responsible for the supervision of the Services.

**A3-10.3 Operations unit**

The Contractor must establish an operations unit incorporating the positions set out in the organisation chart provided in the Integrated Management Plan. Changes to the organisation structure shown in the organisation chart require the approval of the Superintendent.

**A3-10.4 Systems interfaces**

All of the Contractor's IT and management systems used in performing the Services must be able to interface with those of the Shire and must follow the principles of transparency and auditability.

The Contractor must not change any IT or management system which would reduce the inter-operability of the system with the Shire's systems in relation to matters such as software compatibility, data protection, data integrity, virus protection and website compatibility. Any change by the Shire to its IT or to a management system that affects the inter-operability of the Contractor's system with the Shire's system will be treated as a Variation.

**A3-10.5 Monitoring of customer satisfaction**

The Contractor must provide the Shire with such information as is necessary to effectively monitor customer satisfaction with the Services including records of all customer transactions.

The Shire must make available and the Contractor must use the Shire's Customer Relationship Management System to enter records of all transactions with customers of the Shire under the Contract.

The Contractor is not to use the Shire's Customer Relationship Management System as their own maintenance management system.

**A3-10.6 Contractor to monitor own performance**

In addition to audits by the Shire under clause A3-31 (Audit), the Contractor must regularly monitor its own performance to ensure compliance with the Contract by:

- .1 self-measurement,
- .2 independent checking,
- .3 audit of compliance against the Integrated Management Plan, and
- .4 audit of compliance with Work Orders.



The results of such audits must be made available to the Service Management Team or the Superintendent on request.

#### A3-10.7 Reporting

The Contractor must regularly report to the Superintendent in relation to the performance of the Services.

Specific reporting requirements are as follows:

- .1 Contractor to report monthly to the Superintendent in relation to programmed maintenance and rehabilitation work using the shire codes and other mandatory data fields and in the formats required by Schedule A3-3 – Format of monthly certification.
- .2 Sustainability Report to be provided on an annual basis or at the request of the Superintendent.
- .3 Annual programs to be submitted in line with the Shire's budget timeline; capital programs by the last Business Day in October and for operational programs, 5 Business Days prior to Christmas each year.
- .4 Impact of Indexation on the Price is to be forecast annually and reported to the Superintendent in line with the Shire's budget timeline; 5 Business Days prior to Christmas each year – forecasts are to be based on the most recently published indices available at the time the report is required
- .5 Special reports to be submitted within the specified time as requested by the Superintendent, the Service Management Team, the Operations Team or the Shire Auditing Officers, as the case may be.
- .6 Adopted programs and other information of general public interest relating to management of the Asset to be submitted for placement on the Shire website.
- .7 All records and registers to be maintained and updated and made available in accordance with the terms of the Contract.
- .8 Report annually on the environmentally preferred products purchased by the Contractor, setting out the preferred products purchased each financial year based on:
  - type of product
  - environmental credential of product
  - quantity purchased
  - cost

## A3-11. Inspections

### A3-11.1 Program of inspections

The Contractor must plan and implement a program of inspections of the Assets which:

- .1 identifies Defects in a timely manner,
- .2 prioritises Defects requiring immediate and urgent attention because they are likely to create a danger or serious inconvenience to users,
- .3 is responsive to reports or complaints from users, internal stakeholders, the Police or other relevant organisations,
- .4 collates data to monitor performance of the Asset and to establish priorities for future works and maintenance operations,
- .5 incorporates all requirements for inspections described in the Contract,
- .6 maintains a detailed record of all inspections and works undertaken on the Asset and associated sites, and
- .7 enables monthly reporting to the Shire.

Inspections must be carried out at intervals designed to establish programs of periodic maintenance, rehabilitation and improvement works consistent with the requirements of the Contract.

The minimum frequency of the inspections by the Contractor's Quality Inspector are set out in Table A3-1 Inspections.



**Table A3-1 - Inspections**

| ACTIVITY DESCRIPTION                                     | ACTIVITY CODE | INSPECTION FREQUENCY                                                                                                                                                                                                                                                                       |                                          |
|----------------------------------------------------------|---------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------|
|                                                          |               | DEFECT                                                                                                                                                                                                                                                                                     | CONDITION                                |
| A4-5 BBQ Facility Cleaning & Maintenance                 | BBC           | Monthly                                                                                                                                                                                                                                                                                    | Annual                                   |
| A4-8 Sanitary Cleaning – Fish Cleaning Facilities only   | CSA           | Monthly                                                                                                                                                                                                                                                                                    | Annual                                   |
| A4-11 Drainage Asset Validation and Condition Assessment | DCA           | N/A                                                                                                                                                                                                                                                                                        | 5 years<br>(min. 5 years<br>max. 1 year) |
| A4-17 Maintenance of Gross Pollutant Traps               | NPT           | Monthly                                                                                                                                                                                                                                                                                    | Refer A4-11                              |
| A4-18 Clear Culverts, Pipes and Pits – Pipes only        | DCP           | Pits (non-easement)<br>Very High Risk: 6 months<br>High Risk: 18 months<br>Medium Risk: 3 years<br>Low Risk: 3 years<br>Very Low Risk: 3 years<br><br>Soak Pits<br>Very High Risk: 6 months<br>High Risk: 18 months<br>Medium Risk: 2 years<br>Low Risk: 2 years<br>Very Low Risk: 2 years | Refer A4-11                              |

\* The requirement for each type of inspection and the minimum qualifications and experience for the person undertaking the inspections are set out in Table A3-2.

**Table A3-2 – Inspection Requirements**

| Inspection Type                    | Purpose                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | Inspection Performed by & Reporting Requirements                                                                                                                                                                   |
|------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Defect/ Reactive Inspection</b> | <ul style="list-style-type: none"> <li>Inspection undertaken in accordance with a formal programmed inspection schedule to determine if the asset complies with the levels of service as specified in the Asset Management Plan;</li> <li>A record of each asset is to be completed detailing the name of the inspector, the inspection date, time, location and a description of any defects found that are at the specified intervention levels defined in the Asset Management Plan;</li> <li>In addition, a notation must be recorded of any asset inspected where no defect</li> </ul> | <ul style="list-style-type: none"> <li>Technical officer with a minimum of five-years experience in a related discipline;</li> <li>Recording to identify specific defect, time inspected &amp; by whom.</li> </ul> |



|                             |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |                                                                                                                                                                                                                                                                                                                    |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                             | was apparent under the specific rigour of the inspection.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                                                                                                                                                                                                                                                    |
| <b>Condition Inspection</b> | <ul style="list-style-type: none"> <li>▪ An inspection specifically to identify deficiencies in the various components of the assets which, if untreated, are likely to adversely affect the operation of the asset. The deficiencies may well impact short-term serviceability as well as the ability of the component to continue to perform for the duration of its intended life span;</li> <li>▪ The condition inspection process must also meet the requirements for accounting regulations and asset management;</li> <li>▪ Regular or periodic assessment, measurement and interpretation of the resulting condition data is required so as to determine the need for any preventive or remedial action and development of relevant programs of rehabilitation or renewal works.</li> </ul> | <ul style="list-style-type: none"> <li>▪ Technical officer with a minimum of five-years experience in a related discipline;</li> <li>▪ Specific data to be recorded is determined by requirements of the Asset Management Plan &amp; the Asset Information System used to assess asset component needs.</li> </ul> |

#### A3-11.2 **Condition Inspections**

Contractor must plan and implement a program of Condition Inspections of the Cleansing Assets as set out in A3-11.1 in accordance with A6-8 Asset Condition Assessment Guidelines.

#### A3-11.3 **Other planned inspections**

In addition to the planned minimum inspections set out above, the Contractor must undertake all inspections required by the Activity Specifications in accordance with the frequencies set out in the Activity Specifications.

#### A3-11.4 **Ad-hoc and other unplanned inspections**

In addition to the above planned inspection regimes, the Contractor must also undertake ad-hoc inspections in response to reports, complaints, notifications, major accidents or other adverse incidents affecting the asset or other representations made to the Contractor (either directly or via the customer enquiry system) or inspections by work crews.

#### A3-11.5 **Review of planned inspection programs**

Irrespective of the extent of planned inspections proposed in any year, the program of planned inspections must be reviewed and revised if necessary taking a risk management approach to take account of events which could lead to sudden deterioration of parts of the Asset.

#### A3-11.6 **Standard of inspections**



Inspections must be carried out by trained and competent personnel.

All inspections must be arranged so as to minimise disruption and delays to users of the Assets.

The requirement for each type of inspection and the minimum qualifications and experience for the person undertaking the inspections is specified in Table A3-2 Inspection Requirements.

#### A3-11.7 **Inspection records**

The results of all inspections (including "nil returns") taken in carrying out the Services must be recorded in the Contractor's Contract Management System and the Shire's Information Management System within 1 Business Day of completion of inspection.

### A3-12. **Initiation of work**

- A3-12.1 As soon as practicable after identifying and logging a Defect (whether as a result of inspection or otherwise), the Contractor must initiate action to Rectify the Defect within the applicable Response Time.
- A3-12.2 Where an immediate response is not required, the Contractor must ensure that the Defect is prioritised and programmed for Rectification within the appropriate Response Time.
- A3-12.3 Subject to clause A3-12.4, where the Activity required to Rectify the Defect is one that is wholly or partly subject to an annual program of works (as specified by the Activity Specification), the Contractor satisfies its obligations under the Contract by:
- .1 recording the Defect and programming it for Rectification as part of the program of works, and
  - .2 continuing to monitor the Defect so as to ensure that the Defect does not reach Compulsory Intervention Level before it is programmed for Rectification.
- A3-12.4 The Contractor must rectify any identified Defect before it reaches Compulsory Intervention Level or, at the very latest, within 24 hours of identifying that it has reached the Compulsory Intervention Level.

In the case of Activities not covered by the Monthly Service Charge, the Contractor satisfies its obligations under this clause and clause A3-12.3. by reporting the Defect to the Superintendent before it reaches Compulsory Intervention Level or, if it has already reached Compulsory Intervention Level at the time it is identified, by reporting it to the Superintendent within 2 hours of identifying it.



### **A3-13. Records of actions taken**

- A3-13.1 All actions taken by the Contractor in response to Defects must be recorded in the Contractor's Contract Management System and the Shire's Information Management System within 24 hours of completion of that action or part of action. The location of all completed works must be referenced in accordance with the Shire's GIS.
- A3-13.2 Where those actions involve disposals, modifications, relocations or the finding of assets not previously recognised, they must be recorded in the Contractor's Contract Management System and the Shire's Information Management System within 24 hours, in accordance with the Asset data requirements.
- A3-13.3 For the purposes of this clause, the Contractor must ensure that the data fields in the Contractor's Contract Management System are consistent with the reporting formats set out in Schedule A3-3 – Format of monthly certification, and that on each occasion all applicable data required to populate those data fields is recorded.

### **A3-14. Asset Management**

- A3-14.1 The Shire will supply the Contractor with an online real-time view of the Shire's Asset Register, via the Shire's Information Management System. The Contractor shall supply the Shire with updated data as required by the reporting requirements defined in A6-6. Claims for variations due to changes to the Asset Inventory must be submitted monthly with the normal monthly claim. Input will relate to assets that have been disposed, modified, relocated or found.
- A3-14.2 The Contractor will be advised of new assets by the Shire staff in accordance with the Shire's Asset Handover Procedure when they have been created by others e.g. a new subdivision, or when they have been observed by the Contractors staff and cleared by the Shire. The Contractor must review and put forward proposals for updating the Shire's Asset Handover Procedure for consideration at the first annual review.
- A3-14.3 Where the Contractor has replaced an existing asset with a new asset of the same specification or where the replacement is of a higher specification the Contractor must record all the relevant information in accordance with the requirements of Annexure 6.
- A3-14.4 All disposals e.g. demolition of Assets, must be recorded including whether or not any residual value has been realised.
- A3-14.5 The actual information required for each type of asset will be supplied by the Shire's Asset Management staff at the start of the contract. The format to be used must be agreed with the



Shire and meet all accounting standards and other requirements of this contract.

- A3-14.6 The cost of undertaking the inspections, recording the data and inputting data must form part of the Lump Sum amount for the contract and no extra payment shall be made.

### **A3-15. Asset Inventory**

- A3-15.1 Throughout the Contract Term, the Contractor must notify and supply asset data to the Shire in accordance with Annexure 6.

- A3-15.2 The parties acknowledge and agree that:

- .1 The Asset Inventory contained in Annexure 9 (Asset Description) may not provide a complete data-set of the Assets as they stood at the Commencement Date; and
- .2 They will work together to create an accurate and up to date shared data-set of all Assets. The Contractor will ensure that the shared data set is kept accurate and up to date.

- A3-15.3 The Contractor will exchange data electronically using the online geospatial tool. All data provided must be in accordance with Annexure 6.

- A3-15.4 The Shire must provide details of New Assets in accordance with Agreement clause 41 (Asset Inventory Changes) and of any other work done in respect of an Asset as soon as practicable after completion of the work.

- A3-15.5 Subject to clause A3-15.6, where the Contractor has relocated, replaced or disposed of an existing Asset, the Contractor must notify the Shire in accordance with Annexure 6.

- A3-15.6 The Contractor must work with the Shire's Asset Management Team in developing the details to be supplied and reporting systems and procedures necessary to have in place to meet the Shire's requirements under clause A3-15.3.

- A3-15.7 All disposals e.g. removal of an old barbeque facility, must be recorded and reported to the Shire, including whether or not any residual value has been realised. Where materials have not been recycled or are not available for recycling they must be valued to take into account all costs associated with the new replacement materials.

### **A3-16. Customer service & community liaison**

- A3-16.1 The Contractor is the primary point of contact for customers in relation to matters concerning the management of the Asset



during the Contract Term, except where otherwise provided or required by the Shire.

- A3-16.2 The Contractor must undertake all functions necessary to process and close out customer requests in accordance with Performance Standard 5 (Interface with Shire and Customers) and Activity Specification A4-12 Customer Service.
- A3-16.3 The Contractor must develop and implement a system of consultation with stakeholders in accordance with the Contract with particular emphasis on consultation and notification relating to major works and residents with special needs.
- A3-16.4 The Contractor's staff must:
- .1 present in a friendly, honest, courteous and efficient manner to members of the public, the Shire and any other people they encounter in the performance of the Services;
  - .2 not commit the Shire to any liability or obligation or compromise the position of the Shire at any time; and
  - .3 be suitably trained in relation to the requirements of this clause.
- A3-16.5 The Contractor must conduct a customer satisfaction survey (in a form approved by the Service Management Team) at least once each year during the Contract Term.
- A3-16.6 Where customers contact the Shire to report any issues relating to the Asset and the Shire determines that resolution of the issue is part of the Services, the Shire will report the issue to the Contractor and enter it into the Shire's corporate systems.

## **A3-17. After Hours Response**

- A3-17.1 The Contractor has responsibility under this Contract for cleansing and drainage maintenance on a 24-hour basis. During this period the Contractor must be responsible to assist emergency services when defect correction is required due to floods, fires or storms, theft or accidents etc.
- A3-17.2 All corrective work resulting from emergency circumstances excluding that involved with the initial response, must be approved by the Superintendent and undertaken at Daywork rates. Work required must be programmed for execution during normal working hours.
- A3-17.3 The Contractor must cooperate with all emergency service organisations with regard to any emergency and ensure effective liaison with the Shire's Municipal Emergency Resource Officer (MERO) responsible for coordination of management in emergencies.



- A3-17.4 The Contractor must comply with a request and make available any plant and personnel used in conjunction with this contract.

## **A3-18. Road Hierarchy**

### **A3-18.1 Review of Road Hierarchy**

The Road Hierarchy used with in this specification is based on the hierarchy used in the Road Management Plan. The Shire reserves the right to review the existing road hierarchy at any time during the Contract and may make any adjustments as a result of any review as part of the Annual Contract Review.

## **A3-19. Security Measures**

- A3-19.1 The Superintendent must inform the Contractor of security measures required to gain access to any Worksites and facilities to execute the works.
- A3-19.2 Keys or security cards given to the Contractor to gain access to any building, facility or area shall remain in the possession of the Contractor or Contractor's employees at all times. The names of the Contractor's employees in possession of keys or security cards must be furnished to the Superintendent prior to the commencement of the Works.
- A3-19.3 The Contractor must immediately inform the Superintendent of lost keys or security cards within two (2) hours of the Contractor being aware of the loss. If the loss of keys or security cards by the Contractor necessitates the replacement of lock hardware or other security measures and incurring costs to the Shire, those costs must be borne by the Contractor (being deductible from the next monthly payment).
- A3-19.4 The Contractor must ensure that all security measures are enforced. Any action or inaction on the part of the Contractor's employees resulting in loss, theft or damage of the Shire's property must be replaced or made good to the satisfaction of the Superintendent.
- A3-19.5 The Contractor must inform the Superintendent of any additional insurances, not cited in the Agreement, that may be required under the works specified in this Contract.
- A3-19.6 The Contractor and all Contractor Staff must not interfere, touch and otherwise disturb any computer or audio-visual equipment in the building or facility.
- A3-19.7 The Contractor and contractor's staff must retain the principle of confidentiality by:
- not reading documents
  - not taking copies of documents



- not removing or otherwise interfering with confidential material.

- A3-19.8 The Contractor and contractor's staff must not consume alcohol on the premises nor be under the influence of restricted substances.
- A3-19.9 The Contractor and contractor's staff must not use any of the Shire's plant, equipment or facilities for private use.
- A3-19.10 The Contractor must ensure that all personnel, including that of subcontractors, used for work at any child care or aged care premises will be subject to a National Police check. The Contractor shall be responsible for the payment of all fees, any time incurred associated with the application and any other incidental expenses.
- A3-19.11 Employees or subcontractors of the Contractor carrying out the Services must wear appropriate identification including an identity card with the company name, staff member name and photograph, at all times.

## A3-20. **Stormwater Management Plan**

### A3-20.1 **Environmental Management**

The Contractor must avoid pollution of any watercourse, drain or dam. This will be done by taking measures necessary to minimise erosion by surface protection of exposed areas, control of runoff water and trapping of sediments. These measures must be detailed in the Stormwater Management Plan (SMP), which the Contractor will submit to the Superintendent.

The Contractor must make reference to and conform to all requirements of the SMP during all stages of the performance of works.

The Contractor must submit, before commencing any part of the work, details of the proposed stormwater management plan to be implemented during the Contract for review by the Superintendent.

Should circumstances arise which are not adequately covered by the SMP, the Contractor must submit an alternative SMP to the Superintendent for review prior to works proceeding. Works must not commence or continue at any location until all stormwater quality protection measures specified in the SMP have been implemented.

### A3-20.2 **Maintenance of Treatment Measures**

To ensure construction activities minimise environmental damage, the Contractor must maintain the treatment measures



throughout the duration of the works and the maintenance period.

**A3-20.3 Inspection after Runoff Events**

If works are being carried out in wet weather, the Contractor must ensure that prior to and following a runoff event all treatment measures are inspected, and any necessary maintenance is carried out

**A3-20.4 Materials for stormwater quality protection measures**

Unless otherwise specified, the Contractor must supply all materials required as part of the Works. The materials must be approved by the Superintendent.

**A3-20.5 Monitoring of Stormwater Management**

The Contractor must comply with any requests from the Superintendent to alter or improve existing stormwater management measures within one (1) day (or within 2 hours if rains is threatening) of being notified.

**A3-20.6 Provision for sediment/pollutant disposal**

The Contractor is responsible for the collection and disposal of any pollutants collected by all stormwater protection measures in accordance with all statutory requirements.

**A3-20.7 Waste disposal**

The Contractor is responsible for the collection and disposal of any waste that results from the works undertaken in accordance with all statutory requirements.

**A3-20.8 Spills Contingency Plan**

The Contractor must have a contingency plan, which must form part of the Integrated Management Plan, for the management of spills and to prevent any spilled chemicals entering the stormwater drainage system. This plan will include methods and access to materials to contain the spill, to clean up the spill and to dispose of or reuse the recovered residues.

Any materials necessary to contain chemical spills must be available on Worksites where storage of such chemicals occurs.

The IMP will contain key contacts at appropriate agencies to contact in case of chemical spillage.

**A3-21. Traffic Management**

**A3-21.1** The Contractor must comply with all applicable Laws in relation to clearways and other restrictions applicable within the Worksite.

- A3-21.2 The Contractor is required to provide traffic management services in conjunction with all Services undertaken within any road reserve. The Contractor must ensure that those traffic management services are executed in accordance with this Annexure, AS 1742.3, the Road Management Act 2004, and the Code of Practice for Worksite Safety - Traffic Management. The Code of Practice for Worksite Safety - Traffic Management has precedence where any conflict of requirements occurs.
- A3-21.3 The Contractor must submit for review and comment by the Shire all traffic management plans (TMPs) prepared for the Services. TMPs may be prepared on a project specific basis or by way of standard arrangements for recurrent situations (the latter must be resubmitted each 12 months). TMPs must comply with the following conditions:
- .1 All Worksite traffic management signage must comply with and be erected in accordance with a TMP approved by the Shire
  - .2 All TMP's should be kept on file, and be able to be accessed by the Shire upon request
  - .3 All Worksite traffic control signage must comply with AS 1742.3
  - .4 All affected residents should be notified of works
  - .5 If a TMP for a particular Service or works requires major traffic control items including:
    - (a) Worksite speed limits
    - (b) Portable traffic signals including "Stop Here On Red Signal" signs,
- the application for review of the TMP must be accompanied by an application for referral to VicRoads and/or the Shire, as appropriate, to seek a Memorandum of Authorisation (MOA).
- A3-21.4 If the Shire provides the Contractor with comments on any TMP, the Contractor must consider those comments and must use its best endeavours to accommodate the Shire's concerns.
- A3-21.5 If the Shire does not comment on or reject any TMP within 10 Business Days of its submission under clause A3-21.3, the Contractor is authorised to implement the TMP.
- A3-21.6 Nothing in this clause prevents the Shire from commenting at any time on a TMP and making suggestions for improvement.
- A3-21.7 Reference in any TMP or other document relating to traffic management (and related records and checklists) must use



terminology consistent with AS 1742 and the Code of Practice for Worksite Safety - Traffic Management.

- A3-21.8 The Contractor must supply all necessary signs and temporary barriers to comply with this clause and must ensure that damaged signs are replaced immediately. Works must not commence or continue at any location until all signs and devices specified in the approved traffic management plan are in place. The Shires Auditing Officer will undertake regular audits of the Contractor's traffic management at Worksites to ensure compliance with the Contract and the relevant standards as defined above.
- A3-21.9 The Contractor must provide for use of variable message signs (VMS), where appropriate, in its traffic management plans. The plans must clearly show which activities require the installation of VMS. The Superintendent may direct the erection of VMS facilities where considered appropriate to provide suitable advance warning and advanced messages of work activities within the road reserve and form part of the Lump Sum.
- A3-21.10 Personnel of the Contractor engaged in traffic management must at all times be accredited in accordance with the Code of Practice for Worksite Safety - Traffic Management and their accreditation issued by a Registered Training Organisation (RTO). Personnel so trained and accredited will be required to supervise provisions for traffic at each Worksite. The cost of this training with respect to provision of the Core Services must be borne by the Contractor.
- A3-21.11 In carrying out the Services at any Worksite, the Contractor must:
- .1 avoid obstruction or damage to roadways and footpaths, drains and water-courses and public services and other services on or adjacent to the Worksite which are visible or the location of which can be ascertained by the Contractor from the appropriate authority or from the Contract;
  - .2 have any obstruction removed immediately;
  - .3 at the Contractor's cost, make good all damage caused by the Contractor or any of its Agents (In the event of the Contractor's failure to do so, the Shire may have the remedial work carried out and the cost incurred will be a debt due from the Contractor to the Shire which may be deducted or recovered by the Shire); and
  - .4 take appropriate and reasonable measures to minimise nuisance to the owners, tenants or occupiers of properties adjacent to the Worksite and to the public generally, in accordance with the requirements of the Shire and any relevant Authorities.



- A3-21.12 Where the works at a Worksite remain uncompleted, the Worksite must be inspected and audited at night by the Contractor in accordance with a schedule approved by the Superintendent.
- A3-21.13 Public notice in an approved form must be given for future works that may cause traffic or resident disruption.
- A3-21.14 Where signs have been erected to control traffic and the works are completed, the signs must be removed from the Worksite within 1 Business Day of completion.

## **A3-22. Manner of work**

### **A3-22.1 No roads, parks and open space closures**

Wherever possible, the Services will be undertaken without roads, parks and open space closure and accordingly the Contractor must provide adequate protection for roads, parks and open space users.

### **A3-22.2 Co-ordinated works programs**

The Operations Team and the Contractor must consult with the Shire, Utilities and Other Contractors in the planning and programming of the Services so as to ensure that all works programs are co-ordinated wherever possible.

### **A3-22.3 Standards of materials and workmanship**

All materials and workmanship used in performing the Services (including materials incorporated into any Asset) must comply with the standards and specifications set out in the Contract.

If there are no applicable standards in the Contract, Australian Standards apply where appropriate, unless otherwise approved by the Superintendent.

### **A3-22.4 Test methods to be applied**

Where test methods are appropriate, the Contractor must use Australian Standard test methods, except where otherwise approved by the Operations Team.

### **A3-22.5 Testing and results**

The Contractor must undertake all testing required by the Contract and must make test results available at the request of the Operations Team or Superintendent.

### **A3-22.6 Fire restrictions**

Before and during any fire restriction periods declared by the Country Fire Authority, the Contractor must inspect and maintain spark arresters on all plant to ensure effective operation. Knapsack pumps, fully charged and in good condition, must be carried on all items of automotive plant and



trucks during fire danger periods. The Contractor must comply with any restrictions on the operation of plant during any fire danger period.

**A3-22.7 Compliance with relevant Asset Management Plan**

The Contractor must comply with the relevant Asset Management Plan as it affects the Services at all times.

The parties agree that, whenever any relevant Asset Management Plan is modified, the equivalent modifications will be made to the Contract to ensure ongoing consistency with the Asset Management Plan. Where changes to the Contract are required pursuant to this clause, those changes will be implemented by way of Continuing Variation (accompanied, as considered appropriate by the Superintendent, by a deed of variation).

The Shire must nominate the Contractor as a stakeholder to be consulted in any review of any relevant Asset Management Plan.

**A3-22.8 Disturbance of Assets**

Any Asset disturbed as a result of the performance of the Services must be reinstated to a Condition equivalent to that existing prior to disturbance within:

- .1 the lesser of the applicable Response Time and a period of 4 weeks, if the disturbance has caused a Defect to arise; and
- .2 a maximum period of 4 weeks if there is no Defect.

## A3-23. **Safety**

- A3-23.1 The Contractor must plan, manage, design and carry out the Services with the objective of minimising the number of accidents and casualties within all types of user groups on the Asset.
- A3-23.2 The Contractor must provide a safe working environment for all its employees and implement safe working procedures.
- A3-23.3 The Contractor must take account of health and safety risks in all aspects of the performance of the Services including in relation to maintenance and disposal, as applicable.
- A3-23.4 Within the bounds of clause A3-21.1 (No asset closures), the Contractor must ensure that optimum use is made of all traffic management measures for operations and works to minimise overall disruption to traffic and reduce the risk of conflict between vehicles, pedestrians, other Asset users or occupants and the Contractor's operations.
- A3-23.5 The Contractor must:
- .1 provide, erect, maintain, reposition, cover, uncover, or remove traffic signs as required by the Contract; and
  - .2 where practicable, ensure that all approved asset closures are clearly signed at least two weeks before implementation and that all closures are reopened to traffic within the specified time;

## A3-24. **Reporting of Incidents**

- A3-24.1 The Contractor shall immediately inform the Superintendent of any incident of graffiti or vandalism. All incidents shall be recorded by the Contractor and be reported to the Superintendent upon request.
- Full details of the requirements for Graffiti removal are detailed in Activity Specification – A4-20 Graffiti Removal (CGR) in Annexure 4 of the Building Services Contract No. 1743.
- A3-24.2 For all emergencies and incidents within sites under the Contractors control the Contractor shall submit a written report on the incident to the Superintendent within 1 Business Day of the Contractor being aware, or advised, of the incident. A report is required under the following circumstances:
- .1 where Shire property is damaged in any way;



- .2 where an incident involves a fatality, or serious injury involving the Shire staff, public or Contractor's employees.
- .3 where a claim may be lodged against either the Contractor or the Shire as the result of an incident.
- .4 when a Notice has been issued by the the Environment Protection Authority.
- .5 when a reportable incident had occurred as defined by the Occupational Health and Safety Act 2004.

A3-24.3 Where damage has been caused to the Assets due to an accident, the details of this shall be clearly stated on the incident report. Repairs should be carried out as soon as possible after Superintendent's approval of a Work Order and details kept of the number of workers and the hours worked, hours of work of items of plant and the quantities of materials used on the job. As soon as the work is complete, this information shall be forwarded to the Superintendent to enable the Shire to recover the cost of repairs from the person responsible for the damage or their insurers.

A3-24.4 When a Specific Incident Report (SIR) is requested by the Superintendent for the purposes of recording the outcomes of any incidents subject to claim, the claim must be prepared and returned to the Superintendent within five Business Days of receipt of the SIR request and forms part of the Lump Sum.

## A3-25. **Protection of the Environment and heritage**

### A3-25.1 **General**

All Services must be carried out in such a manner as to avoid nuisance and damage to the Environment. Services must be executed in compliance with any Environmental codes of practice, guidelines and Laws in force at any Worksite and in accordance with the requirements of this clause.

### A3-25.2 **Avoidance of erosion, contamination and sedimentation**

The Contractor must plan and carry out the Services to avoid erosion, contamination and sedimentation of the Worksite and its surroundings. Vehicle and machinery movements must be restricted to avoid damage to vegetation.

### A3-25.3 **Use of chemicals**

Herbicides and other toxic chemicals must not be used on the Asset without the prior approval of the Superintendent. Care must be taken not to use chemicals at locations listed in the Shire's Chemical Allergy Register.

### A3-25.4 **Protection of watercourses**



The Contractor must avoid pollution of watercourses, drains and dams in carrying out the Services by taking appropriate measures to minimise erosion by surface protection of exposed areas, control of runoff water and trapping of sediments.

#### **A3-25.5 Avoidance of nuisance**

The Contractor must not make or permit unnecessary or excessive noise, smoke or other similar nuisance when carrying out the Services. Whether noise, smoke or other nuisance is excessive or unnecessary will be reasonably determined by the Superintendent. All Services must comply with noise control guidelines specified by the Environmental Protection Authority (Vic).

#### **A3-25.6 Dust minimisation**

The Contractor must ensure that dust generated by the performance of the Services is minimised by a method approved by the Superintendent.

#### **A3-25.7 Heritage and archaeological values**

The Contractor must protect features significant to heritage or of archaeological value that may be affected by the Services. Without limitation, if the Contractor uncovers anything of possible archaeological, Environmental or cultural significance (including bones or artefacts) at a Worksite or otherwise within the worksite and environs, it must cease operations at that Worksite or locality and must inform the Operations Team and the Superintendent of the finding and liaise with relevant Shire officers (e.g. heritage planner, conservation officers, etc) and relevant government departments. The Contractor must not recommence operations at the affected Worksite or locality until it receives advice from the Superintendent that it may do so.

#### **A3-25.8 Waste management**

All material removed off-site (including material containing invasive weed species) must be disposed of in a manner and place approved by the Superintendent.

The IMP must contain a detailed procedure for the disposal of the various types of waste likely to be encountered in the delivery of the Services.

The disposal of all unwanted material and waste arising from the performance of the Core Services forms part of the Monthly Service Charge.

### **A3-26. Sustainability**

- A3-26.1 The Contractor must ensure that in the delivery of the Services it addresses the needs of the diverse community of the Shire in accordance with the following principles:



- .1 **Inter & intra generation equity** - the Services must be provided in a manner which is within the community's current financial capacity to pay, having regard to the social and environmental impacts. The Shire warrants that it has the financial capacity to pay the Contractor for the Services required by the Contract.
- .2 **Enhancement of economic and social well-being** - the Services must be provided at the level necessary to meet the community's expectations in the area of safety and security, access to work, recreation and social contacts, improved amenity and increased efficiency and operation or functioning of towns, provided that this clause does not increase specific obligations of the Contractor under the Contract.
- .3 **Conserve non- renewable and use renewable resources** – the Services must be provided in a manner which has regard to the need to conserve resources and reduce reliance on non-renewable resources wherever this is possible consistent with the performance of the Contract. Materials and product used in provision of infrastructure should have regard for a "whole of life" accountability.
- .4 **Maintain & enhance biodiversity** - service and infrastructure design should reflect the need to preserve the biodiversity. Innovation and efficient maintenance and construction methods together with standards should be engaged which maintain and enhance the built infrastructure and natural environment consistent with the requirements of the Contract.
- .5 **Develop community awareness & support** - community participation in the management and provision of Services should be encouraged and pursued wherever possible.
- .6 **Sustainable Procurement** – the Contractor must purchase, where possible, products that are environmentally preferred products and may include but are not limited to:
  - i) products made with recycled materials
  - ii) products that create fewer greenhouse gas emissions;
  - iii) products that are less damaging to the environment and/or human health such as water saving products and non-toxic products or products that have been reused or refurbished in place of sending to landfill or procuring new products.



### **A3-27. Working areas**

- A3-27.1 The Contractor must arrange secure and safe parking of plant, and the siting of any temporary buildings required for its own use. All locations for parking, temporary storage requirements and temporary buildings within the Asset must be approved by the Superintendent.
- A3-27.2 The Contractor must make all necessary arrangements for office space and depot establishment.
- A3-27.3 The Services must be planned and executed so as to minimise disruptions to vehicular and pedestrian traffic.
- A3-27.4 Written notice must be provided to the occupants of properties whose access is affected by works forming part of the Services.
- A3-27.5 The Contractor must provide access at the completion of each day's work to properties adjoining the works.
- A3-27.6 Works directly in front of and affecting access to commercial properties must be carried out such that where properties have more than one access then access must be maintained at one access at all times. All accesses to these properties must be reinstated immediately after each operation which restricts access.
- A3-27.7 Where access to private property is required to undertake any works under this Contract, except in emergencies, the Contractor must give 48-hours notice to the property owner prior to entry. A record of all notices given must be retained by the Contractor and provided to the Superintendent on request.
- A3-27.8 When it is necessary to obtain water from mains, channels, streams, drains or dams, the Contractor must obtain permission from the responsible water authority, pay all relevant fees and observe conditions laid down.

### **A3-28. Rubbish Disposal**

- A3-28.1 All rubbish accumulated during both cleaning and maintenance operations must be disposed of legally and responsibly.
- A3-28.2 Disposal of rubbish must incorporate the principles of optimal recycling as set out in the IMP and as agreed with the Superintendent.

### **A3-29. Programmed Maintenance**

- A3-29.1 The Shire requires a cleansing maintenance service that will effectively respond to the routine maintenance requests and be pro-active in preserving the life of the assets. The Contractor must reduce the component of unspecified maintenance and