

# **TERMS AND CONDITIONS**

## **PARTIES**

The **COORONG DISTRICT COUNCIL** of 95 Railway Terrace, Tailem Bend SA 5260 (**Council**)

The party named as the Applicant on the Application Form (**Applicant**)

## **BACKGROUND**

- A. The Council is a council constituted under the *Local Government Act* 1999 (**LG Act**) and it is entitled to exercise the powers conferred on it under the LG Act.
- B. The Council is vested with the fee simple of the whole of the roads within the Council's area.
- C. The Applicant wishes to undertake and maintain the Alteration for the Authorisation Period.
- D. The Applicant is not permitted to undertake the Alteration without an authorisation from the Council issued in accordance with the LG Act.
- E. The Council has received the Application from the Applicant under Section 221 of the LG Act.
- F. The Council has, if required, complied with the public consultation requirements of Sections 223(1) and 223(2) of the LG Act.
- G. The Council has agreed to grant an authorisation to the Applicant to undertake the Alteration in accordance with the terms and conditions of this Agreement.

## **AGREED TERMS**

### **1. DEFINITIONS AND INTERPRETATION**

#### **1.1 Definitions**

In this Agreement:

**Alteration** means the alteration to the Road described on the Application Form.

**Applicant** means the party as the Applicant on the Application Form and where the context permits includes employees, contractors,

agents, authorised representative and other invitees.

**Application** means the application made by the Applicant for the granting of the Authorisation.

**Authorisation** means this authorisation granted by the Council to the Applicant for the Alteration in accordance with Section 221 of the LG Act.

**Authorisation Period** means the period described on the Application Form.

**Commencement Date** means the date described on the Application Form.

**Council** means the party described as "Council" in this Agreement and where the context permits includes its members, employees, contractors, agents, authorised representative and other invitees.

**Fee** means the fee as set out in the Coorong District Council's Fees and Charges Register or such other amount as the Council may notify to the Applicant.

**Legislation** includes any relevant Statute or Act of Parliament (whether State or Federal) and any regulation or by-law, including any by-laws issued by any local government body or authority.

**LG Act** means the *Local Government Act* 1999.

**Plans** means the plans attached as Annexure A as approved or amended and approved by the Council.

**Road** means that the portion of public road described on the Application Form and where relevant includes the Structure (if any).

**Statutory Requirements** means all relevant and applicable Legislation and all lawful conditions, requirements, notices and directives issued or applicable under any such Legislation.

**Structure** means any structure fixture fitting or property erected and/or installed in, on, across, under or over the Road (and includes any tree or vegetation planted on the Road) forming part of the Alteration as permitted and authorised by the Authorisation in accordance with the Plans.

## 1.2 Interpretation

Unless the contrary intention appears:

- 1.2.1 a reference to the Application Form is a reference to the Application Form to which these General Conditions are attached;
- 1.2.2 a reference to a Schedule is a reference to a schedule forming part of this Agreement;
- 1.2.3 a reference to an Annexure is a reference to an annexure attached to this Agreement;
- 1.2.4 a reference to a Statute shall include all amendments for the time being in force and any other statute enacted in substitution thereof and regulations and by-laws for the time being under the statute and any notice demand order direction requirement or obligation under or pursuant to that statute or those regulations or by-laws and the expressions “statute” “act” “by-laws” shall mean any federal state or local government statute act regulation or by-law from time to time in force and any notice demand or direction requirement or obligation issued made given or imposed under or pursuant to the same;
- 1.2.5 words importing the singular embrace the plural and words importing one gender shall embrace the other gender and vice versa respectively;
- 1.2.6 any reference to a person shall be deemed to include a corporate body and vice versa;

1.2.7 headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement;

1.2.8 any special condition in the Schedule will apply to this Agreement and in the event of any inconsistency with the terms and conditions in the body of this Agreement then those special conditions will prevail.

## 2. GRANT OF AUTHORISATION

- 2.1 In consideration of payment of the Fee, the Council authorises the Applicant pursuant to Section 221 of the LG Act, to undertake and thereafter maintain the Alteration and any Structure during the Authorisation Period.
- 2.2 The rights conferred in this Agreement rest in contract only and do not create or confer upon the Applicant, any tenancy, estate or interest in or over the Road and the rights of the Applicant under this Agreement shall be those of a licensee only and do not comprise or include any further or other rights.

## 3. APPLICANT'S COVENANTS

The Applicant expressly covenants and agrees with the Council that during the Authorisation Period the Applicant shall comply with the covenants, terms and conditions of this Agreement as follows:

### 3.1 Fee

To pay to the Council the Fee.

### 3.2 Additional Charges

To pay any taxes, rates, or charges levied by any government civic or municipal authority whether federal, state or local in respect of the Applicant's Alteration of the Road, or otherwise in connection with the Authorisation.

### 3.3 **Permits, Certificates, Licences, Authorisations, etc**

To provide to the Council, prior to undertaking the Alteration, with a copy of all permits, certificates and any other authorisations which may be required by the Council or some other governmental, civic, or municipal authority or otherwise to undertake the Alteration.

### 3.4 **Indemnity & Release**

3.4.1 To indemnify the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of the Authorisation and the undertaking of the Alteration except where any action, cost claim or damage is caused by the negligence or default of the Council.

3.4.2 Without limiting clause 3.4.1, the Applicant acknowledges and agrees that the Council is in no way responsible or liable for any loss or damage caused to or by the Alteration or any Structure erected or installed in, on, across, under or over the Road and the Applicant releases the Council from any liability or claim resulting directly or indirectly from any accident, damage, loss or injury occurring or arising from the Alteration or Structure.

### 3.5 **Public Risk Insurance**

3.5.1 To effect and maintain during the Authorisation Period a public risk insurance policy in the amount of **TWENTY MILLION DOLLARS (\$20,000,000.00)** per claim or such other amount as the Council may reasonably require from time to time and such policy must:

3.5.1.1 be with an insurer and on terms approved by the Council;

3.5.1.2 be in the name of the Applicant and note the interest of the Council;

3.5.1.3 have no limit on the number of claims that can be made under it;

3.5.1.4 cover events occurring during the policy's currency regardless of which claims are made; and

3.5.1.5 note that despite any similar policies of the Council, the Applicant's policy will be the primary policy.

3.5.2 The Applicant must not carry out the Alteration until the Applicant has provided to the Council a copy of the public risk insurance policy specified in clause 3.5.1.

3.5.3 Evidence of the public risk insurance policy specified in clause 3.5.1 must be provided to the Council on each anniversary of the Commencement Date during the Authorisation Period.

### 3.6 **Alteration**

3.6.1 To ensure that the Alteration permitted by the Authorisation is carried out in accordance with the Plans, subject to any variations, amendments or alterations to the Plans required by the Council and specified in the Special Conditions of this Agreement.

3.6.2 If requested by Council the Applicant must provide to the Council at its own cost and expense within 7 days of the Council having requested the same from the Applicant, a certificate from a geotechnical engineer certifying that the Alteration (and the Structure, if any) has been undertaken (including having been erected or installed) in compliance with the Plans, all relevant Statutory

Requirements and all applicable building regulations and standards and if no regulations or standards are applicable, then in a safe manner.

### **3.7 Industry Standards**

At its own cost and expense, to comply with any applicable construction industry or public health and safety standards in relation to the erection, installation, maintenance and removal of the Alteration (and if applicable, the Structure).

### **3.8 Compliance with Statutory Requirements**

At its own cost and expense to comply with all Statutory Requirements relating to the Alteration, including but not limited to the construction, erection, installation, maintenance and use of any Structure in, on, across, under or over the Road.

### **3.9 Compliance with Direction of Government Department or Authority**

3.9.1 To ensure that the Alteration does not interfere with or cause damage to or affect in any way any adjoining property or any wire, post, cable, pipe or other property or infrastructure belonging to Council and/or a service provider including but not limited to Telstra, SA Water and/or United Water, Boral, Origin Energy Limited or any other federal, state or local government department or authority or any other adjoining property owner.

3.9.2 If any damage specified in clause 3.9.1 does occur, without limiting the provisions contained in clause 3.4, the Applicant agrees to indemnify the Council to the full extent permitted by law against any claim made against the Council for such damage and

the Applicant agrees to make good any such damage or to reimburse the Council for any cost or expense it incurs in making good the damage.

### **3.10 Authorised Use**

Not to undertake or permit any alteration to the Road other than in accordance with the Authorisation.

### **3.11 Maintenance & Repair**

3.11.1 At its own cost and expense during the Authorisation Period to maintain the Alteration (including any Structure in, on, across, under or over the Road) and keep the Alteration in good, safe and proper repair and condition to the Council's satisfaction.

3.11.2 Where the Applicant undertakes maintenance work to the Alteration, the Structure, the Road or any area near the Road, the Applicant must during the period in which the works are being carried out, install and erect such warning signs and devices as are required by Council including but not limited to installing lighting and fencing on the Road in the immediate vicinity of the Alteration.

### **3.12 Inspection of Alteration**

3.12.1 To permit the Council at any time to inspect the Alteration and the Road and to comply with all reasonable requests of the Council in relation to the Alteration, the Road (including the Applicant's use of the Road under the Authorisation), and any maintenance or repair to the Alteration and/or the Road.

3.12.2 If the Applicant does not repair and maintain the Alteration (including the Structure) and the Road (pursuant to the Authorisation) to the reasonable satisfaction of the Council, the Council may without formal notice having been given to the Applicant,

carry out any such repair and maintenance to the Alteration, the Structure or the Road and the Council shall be entitled to recover any costs incurred in doing so from the Applicant as a liquidated debt.

### **3.13 Notification of Damage**

3.13.1 The Applicant must when:

3.13.1.1 undertaking the Alteration;

3.13.1.2 maintaining the Alteration; and

3.13.1.3 removing the Alteration;

take all reasonable precautions to avoid damage to the Road and any part of the Road in the immediate vicinity of the Alteration.

3.13.2 If the Applicant does cause any damage to the Road or any part of the Road, or any of Council's property as a result of the Applicant's use or misuse of the Road, the Applicant must at its own cost and expense immediately rectify the damage and reinstate the Road to the reasonable satisfaction of the Council.

3.13.3 If the Applicant fails to rectify and repair any such damage to the Road, or any Council owned property pursuant to clause 3.13.2, the Council may undertake the rectification and repairs itself, without formal notice having been given to the Applicant and the Council shall be entitled to recover from the Applicant as a

liquidated debt any costs incurred in doing so.

### **3.14 Location of Alteration**

To ensure that the Alteration remains within the confines of the Road and that no further alteration (within the meaning of Section 221 of the LG Act) of the Road or any part of the Road, is undertaken by the Applicant without a formal written authorisation from the Council.

## **4. MUTUAL COVENANTS**

### **4.1 Ownership of Structure**

4.1.1 Unless otherwise agreed in writing between the parties, the Alteration and the Structure (if any) are the property of the Council.

4.1.2 Clause 4.1.1 does not affect the Council's right to require the Applicant to remove the Alteration and Structure (if any) under clause 4.7

### **4.2 Warranty**

The Applicant acknowledges that the Council does not warrant that the Road will for the duration of the Authorisation be structurally or otherwise suitable for the Alteration.

### **4.3 Agreement Not Transferable**

This Agreement is not transferable.

### **4.4 Execution of Agreement**

The Authorisation is not effective until the Applicant has received a copy of this Agreement signed by the Council.

#### 4.5 **Contractual Rights Only**

This Agreement does not confer on the Applicant any exclusive right, entitlement or proprietary interest in the Road.

#### 4.6 **Termination of Authorisation**

4.6.1 The Authorisation will immediately cancel on the earlier of:

4.6.1.1 the expiration of the Authorisation Period; or

4.6.1.2 the termination of the Authorisation by the Council as permitted under this Agreement.

#### 4.7 **Consequences of Termination or Expiry**

4.7.1 Upon the expiration or earlier termination of the Authorisation and subject to the Applicant being granted either a renewal of the Authorisation in accordance with clause 4.8 or the granting of a new authorisation pursuant to Section 221 of the LG Act, the Applicant must at its own cost and expense remove the Alteration and return the Road to its condition prior to the Alteration having been made, including but not limited to:

4.7.1.1 removing the Structure (if any); and

4.7.1.2 repairing any damage caused to the Road and areas in the vicinity of the Road in removing the Structure and the Alteration.

4.7.2 If the Applicant fails to remove the Alteration in accordance with clause 4.7.1, the Council may undertake the work itself and any costs incurred by the Council in doing so, may be recovered from the Applicant as a liquidated debt.

#### 4.8 **Renewal of Authorisation**

If noted on the Application Form, the Applicant may, prior to the expiration of the Authorisation apply in writing to the Council for a renewal of the Authorisation (**Further Authorisation**) at least 3 months and no more than 6 months prior to the expiration of the Authorisation and provided the Applicant is not in breach of any provision of the Authorisation (**Original Authorisation**) the Council agrees to grant a Further Authorisation to the Applicant for the period specified on the Application Form on such similar terms and conditions as was granted under the Original Authorisation excepting that the Further Authorisation shall exclude this clause 4.8.

#### 4.9 **Breach**

4.9.1 If the Applicant breaches a provision of the Authorisation, and such breach is capable of remedy, it will have 7 days from the receipt of a notice from Council advising of the breach (**Notice**) and if the Applicant fails to remedy the breach within 7 days of the Notice, the Council may give the Applicant a written notice in respect of the breach and the proposed termination of the Authorisation.

4.9.2 If the Council does give the Applicant a Notice, such Notice must advise the Applicant:

4.9.2.1 that it is in breach of the Authorisation;

4.9.2.2 the grounds on which the Council proposes to terminate the Authorisation; and

4.9.2.3 allow the Applicant a reasonable time period within which it may give the Council written representations on the proposed termination.

4.9.3 If the Council receives written representations from the Applicant with respect to the proposed termination of the Authorisation, the Council must consider all representations.

4.9.4 The Council must, after having considered all representations from the Applicant confirm in writing to the Applicant that:

4.9.4.1 the Council accepts the written representations made by the Applicant and that the Authorisation will not be terminated; or

4.9.4.2 the Council does not accept the written representations and that the Authorisation is terminated, effective immediately.

4.9.5 If the Council serves a notice on the Applicant in accordance with clause 4.9.2, the time period specified in the notice must be at least 1 month, unless the Council determines that a shorter period should apply to protect the health or safety of the public or otherwise to protect the public interest.

#### 4.10 **GST**

4.10.1 For the purposes of this clause 4.10;

4.10.1.1 **the GST Act** means the A New Tax System (Goods and Services Tax) Act 1999 ("GST Act").

4.10.1.2 **GST** has the same meaning as that term in Section 195-1 of the GST Act.

4.10.1.3 **Tax Invoice** has the same meaning as that term in Section 195-1 of the GST Act.

4.10.1.4 **Taxable Supply** means a taxable

supply and has the same meaning as that term in the GST Act.

4.10.2 All money payable by the Applicant to the Council pursuant to the Authorisation (**Payments**) does not include any GST.

4.10.3 If when making a Payment to the Council, such Payment constitutes a Taxable Supply within the meaning of the GST Act, the Applicant shall also pay an amount on account of GST equal to the Payment multiplied by the current GST rate (**GST Amount**).

4.10.4 Upon receipt of the Payment and the GST Amount, the Council will provide the Applicant with a Tax Invoice in a form compliant with the GST Act.

4.10.5 Clause 4.10.2 does not apply to the extent that the Fee is expressly stated to already include an amount on account of GST.

#### 4.11 **Costs**

4.11.1 The Applicant is responsible for the costs incurred by the Council in preparing this Agreement.

4.11.2 The Applicant is responsible for all costs incurred by the Council as a consequence of any actual or threatened breach by the Applicant.

### 5. **FEE REVIEW**

#### 5.1 **CPI**

5.1.1 The Fee will be reviewed and adjusted effective from the dates specified on the Application Form (each called the **Relevant Review Date**) so that the Fee shall be re-calculated and adjusted by a proportion equivalent to the proportional change in the Consumer Price Index (**the CPI**) over the Review Period.

For the purposes of this clause 5.1:

5.1.1.1 **CPI** means the consumer price index for Adelaide, All Groups, published from time to time by the Commonwealth Bureau of Statistics.

5.1.1.2 A reference to the CPI at a particular point in time means the CPI which has been published and is then current.

5.1.1.3 The **Review Period** means the period from the day immediately preceding the Relevant Review Date to the day immediately preceding the date on which the Fee was last reviewed and in the case of the first review of the Fee, then the Commencement Date.

5.1.2 If there is any delay in ascertaining any adjustment of the Fee, the Applicant will continue to pay the Fee payable immediately before the Relevant Review Date and upon ascertainment of the Fee to apply as from the Relevant Review Date, any necessary adjustment will be made between the Applicant and the Council and thereafter the Fee will be paid at the new rate.

## 5.2 **Fixed Review**

5.2.1 The Fee will be reviewed and adjusted effective from the dates specified on the Application Form (each called the **Relevant Review Date**) and by the rate specified on the Application Form.

5.2.2 The Fee on and from the Relevant Review Date is calculated as follows:

$$R_2 = R_1 \times (1 + F)$$

5.2.3 For the purposes of clause 5.2.2:

$R_2$  is the Fee after the Relevant Review Date;

$R_1$  is the Fee immediately before the Relevant Review Date (disregarding any abatements, incentives or reductions); and

$F$  is the rate set out on the Application Form in relation to that Relevant Review Date.

## 5.3 **General**

5.3.1 The Fee may be reviewed at any time from a Relevant Review Date even if the review is instituted after the Relevant Review Date.

5.3.2 Regardless of the outcome of any review under this clause 5, the Fee as reviewed hereunder will not decrease.

Nothing in the Authorisation shall prevent the parties from negotiating and agreeing upon the Fee to apply from the Relevant Review Date without following the above