

# SPECIFICATION FOR THE PROVISION OF FENCING SERVICES



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Council has entered into contracts with fencing companies to provide fencing services for Council owned properties. The details and contact details of these contractors and the schedule of rates for to provision of fencing services are detailed in this specification. Property owners can elect to use their own fencing contractors. Where owners use their own contractors, the works must be in accordance with this specification and Council will contribute a maximum of 50 percent of the contracted price according to the schedule of rates GST inclusive.

## Contact details for Council's Approved Fencing Contractors

### Paling & Colourbond Fences

Surround Fencing  
PO Box 102  
Diggers Rest Vic 3427  
PH/FX 9740 1143

## 3.4 SCOPE OF SERVICE -TIMBER PALING FENCE

### 3.4.1 Removal of Existing Fencing

The Contractor shall be required to be responsible for the removal of existing fencing and for clearing the work site. The cost of fence pull down and cleanup shall be included as a separate item in each quotation.

The Contractor must remove the pulled down fencing materials and clear the site prior to commencing construction of a new fence. Pulled down fencing and related materials must not be stored on Council owned land or reserves overnight. All materials must be removed prior to close of business each day.

Where the manner in which storage of pulled down fence and related materials results in the deposition of waste from other sources by unrelated parties, the Contractor shall also be responsible for legal disposal of that waste at no additional cost.

All pulled down fence and related materials become the property and responsibility of the Contractor unless otherwise stated in writing by the Supervisor prior to commencement of the work. All surplus materials belonging to the Contractor is to be removed from the site following completion of the works.

Any variations to the contract price must be approved by the supervisor prior to proceeding with the works.

### **3.4.2 New Fencing**

For new fencing the Contractor is required to set out and supply all materials, plant and labour for the construction of either 1630 mm high or 1900mm high paling fences, as determined by the Supervisor, on various sites which will be specified during the contract period.

### **3.4.3 Establishment of boundaries**

Where the correct location of the title property boundaries is not clearly established a licensed land surveyor must be engaged to determine the correct boundary line. It is the responsibility of the Contractor to ensure that the proposed fence line is along the title correct boundary line.

The cost of any licensed land surveyor boundary establishment survey shall be borne by the Council and the adjoining property owner. The Supervisor must approve the engagement of a licensed land surveyor prior to his or her engagement to carry out a boundary survey.

### **3.4.4 Fencing Repairs**

Fences requiring repairs will be specified to the Contractor during the contract period. All repaired fencing must be erected on the alignments of the fences being replaced unless otherwise directed by the Supervisor. Where this presents practical or other difficulties, the Contractor must seek direction from the Supervisor.

### **3.4.5 Materials To Be Used**

The following requirements apply to materials used in the repair of existing fences and the construction of new fences.

#### **3.4.5.1 Posts**

##### **3.4.4.1.1 Timber**

All timber posts shall be of Red Gum or other timber of equivalent stress grade and durability with minimum cross-sectional dimensions 125mm X 75mm.

Fence posts up to 1630mm in height are to be founded at least 900 mm into the ground.

Fence posts up to 1900mm in height are to be founded at 1000mm into the ground.

Fence posts holes are to be not less than 250mm in diameter and backfilled with well mixed cement stabilised soil the cement content of which shall be not less than 1/4 of a standard 40kg bag of cement per post hole.

Posts shall be set straight and plumb to tolerances not exceeding plus or minus 10 mm.

Post tops are to be splayed to shed water.

Checkouts are to be chiselled out, not vertically sawn, and must offer a neat fit to the rails. Where checkouts are not neat, the contractor must ensure that the top and middle rails are tight against the top of the checkout, and the bottom rails are tight to the bottom of the checkout.

Spacing between posts is not to exceed 2700mm.

### 3.4.5.2 Palings

#### 3.4.4.2.1 Treated Pine

Treated Pine must conform to the Australian Standard 1604-1993.

Paling sizes shall be as follows;

Base Palings 150mm X 12mm  
Over Palings 100mm X 12mm

The type of palings to be used on specific jobs will be determined by the Supervisor following consideration of the paling type in nearby fences.

#### 3.4.4.2.2 Unseasoned Hardwood

Base Palings 125mm X 12mm  
Over Palings 100mm X 12mm

#### 3.4.4.2.3 Fixing

Base Palings are to be nailed using two (2) X 50mm minimum length flat head nails at each rail position.

Over Palings are to be nailed using two (2) X 65mm minimum length flat head nails at each rail position.

***Note: Under no circumstances must "T" head nails be used for the fixing of any palings and care must be taken to ensure the nail gun pressure is always correctly set.***

#### 3.4.5.2.4 Spacing

Spacing between base palings is to be 50mm.

Spacing between over palings is to be 100mm.

### 3.4.5.3 Rails

#### 3.4.5.3.1 Timber

Unseasoned Hardwood must be used and must comply with the following nominal sizes:

Top: 75mm X 50mm nominal size.  
Centre: 75mm X 38mm nominal size.  
Bottom: 75mm X 50mm nominal size.

#### 3.4.5.3.2 Fixing of Rails

Rails must be fitted in a manner to ensure that the outside face of the rail is flush with the outside face of the post. Over checking or under checking of posts must be rectified before a fence will be considered as satisfactorily completed.

#### 3.4.6.4 Plinths

Timber used for plinths must be to a minimum nominal size of 150mm X 25mm and of the following timber types:

CCA Treated Radiata Pine AS 1604.  
Unseasoned Hardwood.

Plinths must be nailed using two (2) X 75mm flathead nails at each post. Joins in plinths shall be butt joined over the centre line of a post to a maximum tolerance of plus or minus 10mm.

### 3.5 SCOPE OF SERVICE –CHAIN MESH FENCING

#### 3.5.1 Removal of Existing Fencing

The Contractor shall, if required by the Supervisor, be responsible for the removal of existing fencing and/or clearing the work site. The cost of the pull down and removal of fencing if varying from the contract price will be agreed between the contractor and the supervisor before the commencement of the works.

All salvaged materials become the property of the Contractor unless otherwise stated in writing by the Supervisor prior to commencement of the work. All surplus material belonging to the Contractor is to be removed from the site.

#### 3.5.2 Establishment of boundaries

Where the correct location of the title property boundaries is not clearly established a licensed land surveyor must be engaged to determine the correct boundary line. It is the responsibility of the Contractor to ensure that the proposed fence line is along the title correct boundary line.

The cost of any licensed land surveyor boundary establishment survey shall be borne by the Council and the adjoining property owner. The Supervisor must approve the engagement of a licensed land surveyor prior to his or her engagement to carry out a boundary survey.

### **3.5.3 Fencing Repairs**

Fences requiring repair will be specified to the Contractor during the contract period. All repaired fencing must be erected on the alignments of the fences being replaced unless otherwise directed by the Supervisor. Where this presents practical or other difficulties, the Contractor must seek direction from the Supervisor.

### **3.5.4 Materials To Be Used**

The following requirements apply to materials used in the construction of new fencing and the repair of existing fences.

#### **3.5.4.1 Posts**

##### **3.5.4.1.1 Galvanised Pipe**

All posts used are to be made of galvanised pipe.

End Corner Posts

Size: 50mm

Intermediate Posts

Size: 40mm

Bracing Posts

Size: 32mm

Top Rail

Size: 32mm

Post Caps

Must be galvanised and fitted to all corner posts and intermediate posts.

Spacing between posts shall not exceed 2700mm. If the ground is unstable the contractor must seek the direction of the supervisor as to the post spacings.

#### **3.5.4.2 Chain Mesh**

3.5.4.2.1 Chain Mesh to be galvanised or plastic coated :

Size: 50mm x 2..50mm

#### **3.5.4.3 Straining Cables**

Straining cables to be positioned at top, centre and bottom of posts

Size: 3.5mm

#### **3.5.4.4. Lacing Wire**

Wire to match fence under construction

Size: 1.5mm

### **3.5.4.5 Footings**

Posts are to be set plumb and embedded to a minimum depth of 900mm.

Post holes shall be bored to a diameter of 250mm. Holes are to be refilled with Batch Mix 20mpa concrete, allowing for a minimum of 50mm of concrete to be placed under the post.

Any exposed concrete surfaces must be sloped away from the post to allow for shedding of water.

Wherever possible, concrete should be left undisturbed for a period of at least 24 hours except in locations subject to high winds where the minimum period must be 48 hours.

Once fixed, all posts must be checked for rigidity and any looseness detected must be rectified.

Where the ground is sloping or unstable, extra posts should be used to take account of such conditions.

## **3.6 SCOPE OF SERVICE - TREATED PINE BOLLARDS**

### **3.6.1 Removal of Existing Bollards**

The Contractor shall, if required by the Supervisor, be responsible for the removal of existing bollards and/or clearing the work site. The cost of the pull down and removal of fencing if varying from the contract price will be agreed between the contractor and the supervisor before the commencement of the works.

All salvaged materials become the property of the Contractor unless otherwise stated in writing by the Supervisor prior to commencement of the work. All surplus material belonging to the Contractor is to be removed from the site.

### **3.6.2 New Bollards**

For new bollards the Contractor is required to set out and supply all materials, plant and labour for the placement of 1800mm high x 150mm diameter dome topped bollards, as determined by the Supervisor, on various sites which will be specified during the contract period.

### **3.6.3 Bollards Repairs**

Bollards requiring repair will be specified to the Contractor during the contract period. Where difficulties occur, the Contractor must seek direction from the Supervisor.

### **3.6.4 Materials To Be Used**

The following requirements apply to materials used in the placement of new bollards and the repair of existing bollards.

#### **3.6.4.1 Bollards**

All bollards used are to be made of treated pine.

### **3.6.4.2 Footings**

Posts are to be set plumb and embedded to a minimum depth of 800mm where ground conditions permit.

Post holes shall be bored to a diameter of 300mm. Holes are to be refilled with Batch Mix 20mpa concrete, allowing for a minimum of 50mm of concrete to be placed under the post.

Any exposed concrete surfaces must be sloped away from the post to allow for shedding of water.

Wherever possible, concrete should be left undisturbed for a period of at least 24 hours except in locations subject to high winds where the minimum period must be 48 hours.

Once fixed, all posts must be checked for rigidity and any looseness detected must be rectified.

Where the ground is sloping or unstable, extra posts should be used to take account of such conditions.

## **3.7 SCOPE OF SERVICE - TREATED PINE HURDLES**

### **3.7.1 Removal of Existing Hurdles**

The Contractor shall, if required by the Supervisor, be responsible for the removal of existing hurdles and/or clearing the work site. . The cost of the pull down and removal of fencing if varying from the contract price will be agreed between the contractor and the supervisor before the commencement of the works.

All salvaged materials become the property of the Contractor unless otherwise stated in writing by the Supervisor prior to commencement of the work. All surplus material belonging to the Contractor is to be removed from the site.

### **3.7.2 New Hurdles**

For new hurdles the Contractor is required to set out and supply all materials, plant and labour for the placement of the hurdle, as determined by the Supervisor, on various sites which will be specified during the contract period.

### **3.7.3 Hurdle Repair**

Hurdles requiring repair will be specified to the Contractor during the contract period. Where difficulties occur, the Contractor must seek direction from the Supervisor.

### **3.7.4 Materials To Be Used**

The following requirements apply to materials used in the placement of new hurdles and the repair of existing hurdles.

#### **3.7.4.1 Hurdles**

All hurdles used are to be made of round pole treated pine unless otherwise specified.

#### **3.7.4.2 Dimensions**

Posts: 1800mm x 150/175mm  
Rail: Variable x 125/150mm

#### **3.7.4.3 Bolts**

Galvanised 12mm coachbolts with galvanised nuts and washers. Bolts are to be cut flush with nuts.

#### **3.7.4.4 Footings**

Posts are to be set plumb and embedded to a minimum depth of 800mm where ground conditions permit.

Post holes shall be bored to a diameter of 300mm. Holes are to be refilled with Batch Mix 20mpa concrete, allowing for a minimum of 50mm of concrete to be placed under the post.

Any exposed concrete surfaces must be sloped away from the post to allow for shedding of water.

Wherever possible, concrete should be left undisturbed for a period of at least 24 hours except in locations subject to high winds where the minimum period must be 48 hours.

Once fixed, all posts must be checked for rigidity and any looseness detected must be rectified.

Where the ground is sloping or unstable, extra posts should be used to take account of such conditions.

### **3.8 SCOPE OF SERVICE - COLORBOND FENCING**

#### **3.8.1 Materials**

Colorbond fencing materials shall be manufactured from genuine BHP Steel Colorbond materials in accordance with the BHP Lysaght steel design specifications. Any variation from the BHP Steel design specifications must be approved in writing by the supervisor.

#### **3.8.2 Installation**

Colorbond fencing shall be designed and installed to ensure compliance with the BHP Lysaght Colorbond fencing installation guide available from BHP Steel. Any variation from the Colorbond fencing installation guide must be approved in writing by the supervisor.

### **3.9 VARIATIONS FROM STANDARD CONSTRUCTION**

Where conditions vary from standard construction the contractor must obtain the approval of the supervisor prior to proceeding with the works.



The contractor must assure that adjoining fencing is secured to the new work to form one continuous line.

### **3.10 MANAGEMENT AND SUPERVISION OF THE CONTRACT**

The Contractors will be responsible to Hume City Council's Fencing Officer ("**the Supervisor**") who will also be the Contractor(s) point of contact for any matters relating to the Contract. All work carried out by the Contractors must be to the satisfaction of the Supervisor.

### **3.11 PAYMENTS**

Claims for payment are to be prepared by the Contractor/s and submitted monthly in accordance with the following provisions:

- 3.11.1** The Contractor must invoice the Council monthly in arrears for the provision of the Service and the invoice must be received within the seven (7) days following the end of the month in which the service was provided;
- 3.11.2** any invoice submitted to the Council for payment must be in such a form and contain such matters as the Supervisor shall direct; and
- 3.11.3** notwithstanding anything to the contrary in the General Conditions on Contract, no revision of the Schedule of Rates of the Contract amount shall apply.

### **3.12 CONDUCT AND BEHAVIOUR OF CONTRACTOR'S EMPLOYEES**

#### **3.12.1 Prohibited Behaviour**

The Contractor shall ensure that no employee, agent or sub-contractor of the Contractor -

- 3.12.1.1 consumes any alcoholic beverage;
- 3.12.1.2 is intoxicated; or
- 3.12.1.3 is under the influence of any drug which could impede his or her ability to safely or efficiently perform the Service,

while engaged in the performance of the Service or any related activities.

#### **3.12.2 Conduct of Employees**

The Contractor shall ensure that all employees, agents and sub-contractors of the Contractor:

- 3.12.2.1 conduct themselves towards Councillors of the Council, Council Staff and all members of the public in a civil and inoffensive manner; and
- 3.12.2.2 carry out their duties at all times with as little inconvenience and disturbance to others as possible and without causing any nuisance.

### **3.12.3 Directions of Supervisor**

The Supervisor may by notice to the Contractor require that any employee, agent or sub-contractor of the Contractor not be employed or continue to be engaged in the performance of the Service or any related activities.

## **3.13 PROPERTY**

### **3.13.1 Damage to Property**

The Contractor shall at once remedy any damage done by its employees, agents or sub-contractors to any property of the Council or any other person. Should the Contractor fail to do so, the Supervisor may effect the necessary repairs or pay compensation to the owner of the property. The cost of effecting any necessary repairs or the amount of any compensation shall be paid on demand by the Contractor to the Council or may be deducted by the Council from any monies due or becoming due to the Contractor under this Contract at the option of the Council.

### **3.13.2 Cost of Damage**

The Supervisor shall determine the cost of effecting any necessary repairs or the amount of compensation to be paid to the owner of any property.

## **3.14 DEFECTS LIABILITY**

The contractor agrees to a defects liability period of 12 months from the date of practical completion of the works in accordance with, Australian Standard 4000 - 1997, General Conditions of Contract, Clause 35.

## **3.15 CONTRACTOR'S ROLE/OBLIGATIONS**

The contractor's obligations are to:

**3.15.1** ensure project/s and activities are commenced no later than the negotiated and agreed commencement date/s;

**3.15.2** regularly report to the Supervisor as required;

## **4.1 ROLE OF THE CONTRACTOR**

### **4.1.1 Professional Duty of Independent Judgement**

If the Contractor is required to exercise his or her professional judgement between the Council and a third party with whom the Council has a Contract then it shall be done so independently and as required by the terms of that Contract.

### **4.1.2 Knowledge of Council Requirements**

The Contractor shall use all reasonable efforts to inform itself of the Council's requirements for the Service and for that purpose shall consult the Council throughout both the pre-contract and contract phases.

### **4.1.3 Additional Information Documents and Other Particulars**

If the Contractor considers that the information, documents and other particulars made available by the Council are not sufficient to enable the Contractor to provide the Services in accordance with this Agreement the Contractor may advise the Council who shall then provide such further assistance, information, or other particulars as necessary in the circumstances.

#### **4.1.4 Notice of Matters Likely to Change Scope of Timing of Services**

If the Contractor becomes aware of any matter which will change the scope of timing of the Services then notice will be given to the Council and the Notice will obtain, as far as practicable in the circumstances, particulars of the change.

#### **4.1.5 Timely Provision of Services**

The Contractor shall provide the Services in a timely manner to the extent that it is within his control to do so.

#### **4.1.6 Contractor's Representatives**

##### **4.1.6.1 Appointment of Representative**

The Contractor shall appoint a competent person to be responsible for the day to day performance of the Service and the supervision of all persons employed or engaged in carrying out the Service ("**the Contractor's Representative**"). The Contractor shall notify the Supervisor of the name of the Contractor's Representative prior to the Commencement Date and shall notify the Supervisor immediately should a new Contractor's representative be appointed.

##### **4.1.6.2 Availability of Representative**

The Contractor's Representative shall be available and able to be contacted by the Supervisor each weekday during the hours 9.00am - 5.00pm (normal working hours).

##### **4.1.6.3 Address and Telephone Numbers**

The Contractor shall, prior to the Commencement Date, provide the Supervisor with the address and telephone number of the Contractor's Representative during normal working hours. The Contractor shall notify the Supervisor immediately of any change of address or telephone numbers of the Contractor's Representative.

##### **4.1.6.4 Directions to Representative**

Any direction, instruction, notice, determination, approval or other communication made or given to the Contractor's Representative by the Council or the Supervisor shall be deemed to have been made or given to the Contractor.

#### 4.1.6.5 Knowledge of Representative

Any matter within the knowledge of the Contractor's Representative is deemed to be within the knowledge of the Contractor.

#### 4.1.7 Occupational Health and Safety

The Contractor shall carry out the Services to the highest industry standards and in a safe and satisfactory manner and comply with and require all its employees and agents to comply with the *Occupational Health and Safety Act 1985* and regulations, or any similar laws, and, in particular shall;

- 4.1.7.1 comply with the requirements of all applicable Act of Parliament or Regulations including all Regulations relating to the safety of persons on or about the fencing sites;
- 4.1.7.2 ensure that throughout the Contract that safety programs and systems exist and are in compliance with the Occupational Health and Safety Act 1985;
- 4.1.7.3 ensure that all plant, equipment and machinery conforms with applicable legislation, can be safely used to carry out the Contract Works and is maintained by the Contractor in good repair, order and condition;
- 4.1.7.4 ensure that none of the Contractor's vehicles stand on any road for any longer than is necessary for carrying out the Contract Works that such vehicles observe all road safety requirements, and that they are properly lit if operating at night;
- 4.1.7.5 be responsible for the erection of all necessary barricades or safety signs or any other necessary provisions for complete protection of staff and others during the Contract Works as well as complying with all other safety ordinances;
- 4.1.7.6 immediately discontinue any practice or remove any equipment which becomes or is reasonably likely to become dangerous or unsafe; and
- 4.1.7.7 promptly remove from the locality any employees, representatives or sub-contractors who by their conduct may cause any danger to themselves or others.

## **4.2 ROLE OF THE COUNCIL**

### **4.2.1 Provide Information, Documents and Other Particulars**

The Council shall as soon as practicable make available to the Contractor all information, documents and other particulars relating to the Council's requirements to perform the Service.

### **4.2.2 The Supervisor**

The Council shall appoint a Supervisor who shall have authority to act on behalf of the Council for all purposes in connection with this Agreement.

The appointment of a Supervisor shall not prevent the exercise of power, duty or discretion by the Council.

The Supervisor may appoint representatives or officers who shall exercise such of the Supervisor's powers as delegated in writing.

### **4.2.3 Give Notice of Matters Likely to Change Scope or Timing of Services**

If the Council becomes aware of any matter, which may change the scope or timing of the Service, then the Council will give written notice to the Contractor.

## **4.3 PAYMENT TO CONTRACTOR FOR SERVICES**

The Council will pay the Contractor in accordance with clause 3.6.

## **4.4 SCOPE OF LIABILITY**

Without limiting the liability of the Contractor under this Agreement or at law, the Contractor shall be liable for all losses that the Council may suffer as a result of the negligent provision or non-provision of the Services by the Contractor or its employees or agents. Where the Contractor is more than one (1) person, then each shall be jointly and severally liable for the obligations under this Agreement.

## **4.5 COMMENCEMENT AND COMPLETION OF WORK**

### **4.5.1 Commencement Date**

Subject to clause 1.7, the Contractor shall commence performing the Service on the date specified in the Council's letter of acceptance, or if no date is specified, within seven (7) days after the date of the Council's letter of acceptance.

### **4.5.2 Extent of Contract Term**

The Contract Term is a period of 2 (two) years with a one (1) year option at the discretion of the Council, from the Commencement Date ("the Initial Contract Term") and:

4.5.2.1 any period for which the operation of the Contract is extended under clause 4.5.3, if any; and

4.5.2.2 any other period for which the operation of the Contract is extended by agreement between the parties, if any.

#### **4.5.3 Extension of Contract**

The Council may, at its sole discretion, extend the operation of this Contract beyond the Initial Contract Term:

4.5.3.1 for a period of one (1) year from the expiration of the Initial Contract Term, if it gives notice of its intention to extend the operation of the Contract at least three (3) months prior to the expiration of the Initial Contract Term; and

#### **4.5.4 Extension of Time**

Pursuant to clause 4.5.2, upon it becoming evident to the Contractor that the completion of the Services is likely to be delayed by any cause beyond his or her control or by any act or omission on the part of the Council, the Contractor shall forthwith notify the Superintendent. The Contractor then, or as soon as practicable, may claim an extension of time together with a statement of the facts on which the claims are based and the extension claimed.

The Supervisor shall determine as soon as possible whether the circumstances of the delay are such as to reasonably justify any extension of time and shall grant the Contractor such extension of time to complete the Works as is so justified and shall as soon as practicable notify the Contractor of the granting of such extension of time.

The Council shall not pay any costs incurred by the Contractor in respect of any extensions of time granted unless such costs were incurred as a result of any breach of the Agreement or by any other act or omissions on the part of the Council or any of its representatives.

#### **4.5.5 Payment of Costs if Service Delayed**

Notwithstanding clause 4.5.3, if the provision of the Service is delayed beyond a reasonable period for any reason other than a breach of the Agreement by the Council the Contractor shall pay to the Council a reasonable sum of money to cover the consequential costs, and expenses suffered by the Council as a result of the delay.

If the parties are unable to agree upon an appropriate additional sum the matter shall be referred for determination in accordance with this Agreement.

### **4.6 BREACH OF SERVICE AND CONTRACT AGREEMENT**

#### **4.6.1 Force Majeur**

Neither Party shall be liable for any delay or failure to perform its obligations pursuant to this agreement if such delay is due to force majeure.

#### **4.6.2 Council to Declare Breach**

The Supervisor has power to declare any delay, failure, default or neglect on the part of the Contractor to and carry out the terms of this Agreement to be a breach of this Agreement subject to the Dispute Determination Clauses.

#### **4.6.3 Contractor Liable to Pay Cost**

The Contractor shall be liable to pay to the Council any amount estimated or assessed by the Supervisor arising from the breach of Agreement subject to the Dispute Determination Clauses.

### **4.7 INSURANCE**

The Contractor shall indemnify and keep indemnified the Council against any death or injury or loss or damage to any property of their parties or the Council arising from the fault, negligence, breach of duty, breach of contract or other wrongful act or omission on the part of the Contractor in the provision of the Service.

#### **4.7.1 On-Site Public Liability Insurance**

4.7.1.1 Before the Contractor commences work, the Contractor must at its expense take out a public liability policy of insurance in the joint names of the Council and the Contractor which covers the Council, the Contractor, the Supervisor and all subcontractors employed from time to time in relation to the work for their respective rights and interests and covers their liabilities to the third parties ("the Public Liability Policy"). The Public Liability Policy shall also cover the Contractor's liability to the Council and the Council's liability for loss or damage to property and the death of or injury to any person (other than liability which is required by law to be insured under a "Workers Compensation Policy of Insurance").

4.7.1.2 The Public Liability Policy of insurance shall be for a minimum of \$10,000,000 (as stated in the "Annexure to Service conditions of the Contract" contained in Part 4), and shall be effected with an insurer and in terms both approved in writing by the Contractor which approvals shall not be unreasonably held.

4.7.1.3 The Public Liability Policy must include a cross liability clause enabling the Council to sue the Contractor as if the only party named.

#### **4.7.2 Worker's Compensation Insurance**

Subject to the Contractor holding an "Exception From WorkCover Certificate", all employees of the Contractor engaged in the contract work must, before the commencement of the work, be insured under the Victorian State Government WorkCover Scheme ("WorkCover"). The Contractor is responsible for:

4.7.2.1 effecting the necessary WorkCover registration requirements for its employees;

4.7.2.2 providing evidence to the Supervisor of WorkCover registration prior to the Commencement Date;

4.7.2.3 payment of WorkCover insurance premiums; and

4.7.2.4 payment of any excess in respect of claims made.

The Council will not be liable for any loss of earnings, medical or legal expenses of any other loss or damage resulting from injuries sustained to employees of the Contractor or any sub-contractor.

The Contractor must promptly provide the Supervisor with written evidence of the Contractor's payment of WorkCover insurance premiums. If the Contractor fails to pay such premiums as required, the Council may with-hold any payment due to the Contractor until the premiums are paid.

Any sub-contractors engaged by the Contractor must also be insured under WorkCover before they carry out any of the Services.

#### **4.7.3 Motor Vehicle Insurance**

The Contractor shall effect a comprehensive motor vehicle insurance policy ("the Motor Policy") with a cover equivalent to the value of the vehicles to be used in the performance of the Contractor's obligations under this Contract and providing for an unlimited coverage in respect of third party property damage.

#### **4.7.4 Inspection and Provision of Insurance Contracts**

The Contractor must whenever required by the Council make available for inspection by the Council the insurance policies in operation to meet the Contractor's obligations under clauses 4.7.1, 4.7.2, and 4.7.3 and the receipts for payments of current premiums.

### **4.8 TERMINATION OF SERVICES**

#### **4.8.1 Termination by the Council**

Without prejudice to any other rights the Council may have under this agreement or at law, the Council may terminate the agreement immediately by notice in writing if:

4.8.1.1 the Contractor is in breach of the terms of this Agreement and the breach has not been remedied within seven (7) days of the service by the Council on the Contractor of a notice requiring the breach to be remedied; or

4.8.1.2 the Council serves on the Contractors a notice requiring that this Agreement be terminated on a date specified in the notice being not less than 60 days after from the date of issue on the notice.

#### **4.8.2 Termination Not to Affect Rights in Respect of Prior Breaches**

Termination shall be without prejudice to any claim which either party may have against the other in respect of any breach of the terms of the Agreement which occurred prior to the date of determination.



#### **4.9 WAIVER**

No right under this agreement shall be deemed to be waived except by notice in writing signed by each party.

#### **4.10 DISPUTE DETERMINATION**

##### **4.10.1 Expert Determination**

If the Council and the Contractor are in dispute regarding any matter arising out of the Agreement, then either party may by notice in writing served on the other require that such dispute be resolved by the determination of an independent third party acceptable to both parties.

The other party may accept this course of action or seek arbitration. The third party who has been agreed upon or appointed shall act as an expert and not as an arbitrator and his decision shall be final and binding upon the Council and the Contractor.

##### **4.10.2 Arbitration**

Disputes under or arising out of the Agreement may be referred to the arbitration of a person to be agreed between the Council and the Contractor. If the parties fail to agree, within one month of any party giving the other notice in writing of a dispute, then either party may request to appoint an arbitrator and the arbitrator shall be so appointed.

#### **4.11 VARIATIONS IN WRITING**

Any amendment or variation of this Agreement must be in writing.

#### **4.12 VICTORIAN LAW**

This Agreement will be interpreted in accordance with the Law of Victoria.