



**BITUMEN SUPPLY AND WORKS AGREEMENT
AGREEMENT DETAILS**

COUNCIL:

Name: Flinders Council	ABN: 75 754 974 669
Address: 4 Davies Street, Whitemark TAS 7255	Ph: (03) 6359 5001

COUNCIL'S REPRESENTATIVE:

Name: Brian Barnewall	Ph: 0427 592 069
Position: Works and Services Manager	Email: brian.barnewall@flinders.tas.gov.au

CONTRACTOR:

Name: [insert]	ABN: [insert]
Address: [insert]	Ph: [insert]

CONTRACTOR'S REPRESENTATIVE

Name: [insert]	Ph: [insert]
Position: [insert]	Email: [insert]

AIRPORT OPERATIONAL OFFICER:

Name: Ben Foot	Ph: 03 6359 2144
Address: 4 Davies Street Whitemark TAS 7255	Email: airport.operations@flinders.tas.gov.au

WORKS SAFETY OFFICER:

Name: Ben Foot	Ph: 03 6359 2144
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BITUMEN SUPPLY AND WORKS AGREEMENT

Address: 4 Davies Street Whitemark TAS 7255

Email: airport.operations@flinders.tas.gov.au

PRODUCT

The Product is bitumen which complies with the Specifications set out in Appendix A.

WORKS

The Works involve the stabilisation, compacting and final trim of the Product at the Sites in accordance with the Specifications as set out in Appendix A.

RATES

Rates per square metre to supply the Product (all associated materials) and perform the Works as set out in the Specifications as follows:

(non- Airport Sites).

1. where Specifications require 3.6 kg per m² of GP cement to depth of 100mm: [insert rate]
2. where Specifications require 5.4 kg of GP cement and 5.4 kg of quicklime per m² to depth of 150mm: [insert rate]

(Airport Sites)

3. where Specifications require 2% bitumen based on an MDD of 2.0t/m³: [insert rate]
4. where Specifications require 3% bitumen based on an MDD of 2.0t/m³ including 1% secondary binder: [insert rate]

COUNCIL POLICIES:

- Drugs and Alcohol Management Plan; Risk Management Policy; Anti-Discrimination, Harassment, and Bullying Policy; and any other Flinders Council policy as may be advised to the Contractor by the Council prior to any works being undertaken.
- Applicable workplace health and safety policies as notified by Flinders Council to the Contractor from time to time.



BITUMEN SUPPLY AND WORKS AGREEMENT

INSURANCES:

Public Liability Insurance:	\$20,000,000 per event
Workers Compensation Insurance:	As required by law

DATES:

Commencement Date:	[date TBC] February 2017
Completion Date:	[date TBC] March 2017

EXECUTED as an Agreement on

20

EXECUTED for and on behalf of **FLINDERS COUNCIL (ABN 75 754 974 669)** in the presence of:

.....
Signature of authorised person

.....
Name of authorised person (print)

.....
Signature of witness

.....
Name of witness (print)

EXECUTED by _____
(**ABN** _____) pursuant to
section 127 of the Corporations Act 2001 by:

.....
Director Signature

.....
Director Full Name (print)

.....
*Director/*Secretary Signature

.....
*Director/*Secretary Full Name (print)

(* please strike out inapplicable *If Sole Director/Secretary write 'Sole')



BITUMEN SUPPLY AND WORKS AGREEMENT

1 DEFINITIONS

In this Agreement, unless the contrary intention is expressed, defined terms have the meanings set out below and in the Agreement Details:

Aerodrome Manual means the Flinders Island Airport Aerodrome Manual set out in Appendix D to this Agreement (as may be updated from time to time).

Agreement means the Agreement Details, these General Terms and Conditions and all appendices to these General Terms and Conditions.

Agreement Details means that part of this Agreement referred to as such.

Airport means the Flinders Island Airport located at Palana Road, Whitemark, Tasmania.

Airport Operational Officer means the Flinders Island Airport Operational Officer named in the Agreement Details or as may be otherwise notified by Council from time to time.

Amount Payable means the amount payable by Council to the Contractor as calculated in accordance with the Rates set out in the Agreement Details.

Approval means any licence, permit, authorisation, consent, determination, accreditation, certificate or other requirement of any Authority.

Authority means any government authority, administrative or judicial body or tribunal, public authority or statutory corporation.

Business Day has the same meaning as in the SOP Act.

Completion Date means the date that the supply of the Product and the performance of the Works is to be completed as set out in the Agreement Details.

Consequential Loss means loss or damage arising from a breach of contract, tort (including negligence), under statute or any other basis in law or equity including, but without limitation, the following: loss of profits, loss of revenue; loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, loss of business reputation, future reputation or publicity and indirect, remote, abnormal or unforeseeable loss, or any similar loss whether or not in the reasonable contemplation of the parties at the time of execution of this Agreement.

Contaminant means anything (including a solid, a liquid, a gas, an odour, temperature, sound, vibration, radiation, hazardous material, smell or noise) which makes or may make the environment:

- (a) unsafe or unfit for humans or animals;
- (b) degraded in any way including in its capacity to support plant life; or
- (c) materially diminished in value,

and includes any inert waste, putrescible waste, prescribed

wastes and heavy metals, hydrocarbons and other toxic chemicals.

Contamination means the existence in, on or under any land, building, structure or waters of any Contaminant.

Contractor means the party referred to as such in the Agreement Details.

Contractor's Equipment means all Equipment owned by the Contractor and used by the Contractor to supply the Product and perform the Works.

Contractor's Personnel means all employees, workers, subcontractors, volunteers and invitees of the Contractor.

Corporations Act means the *Corporations Act 2001* (Cth).

Council means Flinders Council (ABN 75 754 974 669).

Council Depot means Council's storage and works depot located at Patrick Street, Whitemark, Flinders Island in Tasmania.

Council Equipment means the equipment hired to the Contractor by Council for carrying out the Works, as identified in Appendix E.

Council Policies means the policies set out in the Agreement Details which may be reasonably amended from time to time at Council's discretion.

Defect means any defect, fault, error, malfunction, omission or problem in or arising from the design, material, manufacture or workmanship of the Product or the Works (or any component of the Product or the Works) including any defect, fault, error, malfunction, omission or problem relating to, or arising from:

- (a) non-compliance with the Specifications; or
- (b) a breach by the Contractor of this Agreement.

Defects Liability Period means 48 months from the Completion Date.

Environmental Law means a Legislative Requirement, or any policy, code of practice, information bulletin, guideline or other instrument, relating to the environment, land use, planning, environmental assessment, heritage, water catchments, pollution of air or waters, noise, soil or groundwater Contamination, chemicals and hazardous substances, the ozone layer, waste, dangerous goods, building regulation, occupation of buildings and fire safety, public health, occupational health and safety, noxious trades and any aspect of the protection of the environment or a person or property, or the enforcement or administration of any of those Legislative Requirements, policies, codes of practice, information bulletins, guidelines or other instruments.

Equipment means the equipment used by the Contractor in connection with supplying the Product and carrying out the Works (including the Council Equipment and the Contractor's Equipment).

GST has the meaning given in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax)*

GENERAL TERMS AND CONDITIONS

Act 1999 (Cth) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in this Agreement.

Insolvency Event means the happening of any of the following events in relation to a party:

- (a) a party commits any act which is defined as "an act of bankruptcy" under the *Bankruptcy Act 1966* (Cth);
- (b) a garnishee notice, or a notice under section 120 of the *Personal Property Securities Act 2009* (Cth), is given to:
 - (i) a debtor of that party; or
 - (ii) any other person that otherwise owes or may owe money at any time to that party,in connection with any money that the party is said to owe;
- (c) an application is made to a court for a provisional or final order declaring a party provisionally or finally bankrupt or insolvent;
- (d) a party has a Controller appointed (as defined in the *Corporations Act*), is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver appointed to any part of its property;
- (e) a party is or states that it is unable to pay its debts when they fall due;
- (f) a party is the subject of an event described in section 459(C)(2) of the *Corporations Act*; or
- (g) anything analogous or having a substantially similar effect to any of the events specified above happens in relation to a party.

Legislative Requirements means acts, laws, ordinances, regulations, by-laws, orders, awards and proclamations whether Commonwealth, State or local.

Loss includes damage, loss (including Consequential Loss), cost, claim, liability or expense.

Method of Working Plan means the method of working plan prepared by Council set out in Appendix F and as amended by Council and provided to the Contractor from time to time.

Product means the bitumen product which complies with the Specifications set out in Appendix A.

Program means the program specifying the dates by which the supply of the Product and the performance of the Works at various Sites, must be completed as set out in Appendix C.

Rates means the rates by which the Amount Payable is calculated, as set out in the Agreement Details.

Sites means each of the sites set out in Appendix B.

SOP Act means the *Building and Construction Industry Security of Payment Act 2009* (Tas).

Specifications means the specifications set out in Appendix A.

Term means the term referred to in clause 2.

WHS Requirements means all requirements relating to work health and safety matters which arise under any Legislative Requirement, including but not limited to all those requirements arising under the *Work Health and Safety Act 2012* (Tas).

Workplace Health and Safety Management System means a system focussed on legislative compliance and improving safety performance by combining and integrating planning and implementation review processes with the management of organisational and consultative arrangements at the workplace and includes policies, plans and procedures.

Works means the works required to be carried out by the Contractor in accordance with the Specifications.

Works Safety Officer means the Flinders Island Airport Works Safety Officer named in the Agreement Details or as may be otherwise notified by Council from time to time.

2 TERM

This Agreement commences on the Commencement Date and, subject to clause 19 continues until all of the Contractor's obligations have been performed to the satisfaction of Council (**Term**).

3 SUPPLY OF PRODUCT AND PERFORMANCE OF WORKS

The Contractor acknowledges and agrees that it will supply the Product and perform the Works:

- (a) in accordance with the Specifications and the terms of this Agreement;
- (b) in accordance with dates set out in the Program;
- (c) for the Rates;
- (d) in accordance with Council's reasonable directions and policies (including Council's Policies);
- (e) in accordance with all Legislative Requirements; and
- (f) by the Completion Date.

4 PRODUCT OBLIGATIONS

4.1 Contractor to supply Product

The Contractor will supply the Product:

- (a) for the purpose of carrying out the Works under this Agreement;
- (b) in a manner and volume that enables it to perform the Works in accordance with the Program;
- (c) with the due care and skill, and to a standard reasonably to be expected of a person both competent and experienced in supplying the Product and items similar to the Product;
- (d) in accordance with this Agreement (including the Specification set out at Appendix A);
- (e) together with all documents required to transfer ownership of the Product to Council.

4.2 Regulatory compliance

The Contractor warrants that at all times during the Term, it will:

- (a) obtain and maintain, at its cost, all licences, Approvals, authorisations, consents or permits necessary for the Supplier to supply the Product in accordance with this Agreement; and
- (b) comply with all regulations, codes of conduct and requirements of relevant Authorities in relation to the supply of the Product.

4.3 Quality

All Product must conform strictly with the Specification and otherwise be of merchantable quality and fit for purpose.

4.4 Delivery

- (a) The Contractor must transport and deliver (at the Contractor's cost) the Product (and all Contractor's Equipment required to be used in connection with the supply of the Product and the performance of the Works) to the relevant Sites where the Works will be undertaken.
- (b) In the event that excess Product remains after undertaking the Works (in whole or in part), deliver and transport such excess Product to the Council Depot for storage, with the Contractor being responsible for all associated delivery and transport costs.
- (c) The Contractor is also responsible for all costs associated with transporting all Contractor's Equipment after the completion of the Works and returning all Council's Equipment to the Council Depot (or as otherwise directed by Council).

GENERAL TERMS AND CONDITIONS

4.5 Storage of Product

The parties agree that in respect of Product storage during the Term:

- (a) the Contractor may, on giving Council reasonable notice, store the Product (in whole or in part) at the Council Depot; and
- (b) Council will be responsible for the Product during such times it is stored at the Council Depot.

4.6 Purchase of excess Product

The parties acknowledge that due to bulk transportation requirements, there may be an excess of Product at the completion of the Works. In this respect:

- (a) the Contractor agrees to sell any excess quantity of Product to Council at the cost price per litre for that Product, as notified by the Contractor to Council from time to time (**Excess Product Purchase Price**); and
- (b) Council may purchase any excess quantity of Product from the Contractor at the Excess Product Purchase Price,

at the completion of the Works.

4.7 Title and risk

- (a) Title in, and risk of loss of or damage to, the Product will only pass to Council once the Product has been delivered to and securely deposited on the relevant Site.
- (b) The parties acknowledge and agree that the Contractor is responsible for all costs and risks associated with the Product until the Product is delivered to and securely deposited on the relevant Site.

5 WORKS OBLIGATIONS

5.1 Location of Works

The Contractor acknowledges and agrees that the Works will be carried out various Sites, including the Airport.

5.2 General obligations

- (a) The Contractor must carry out the Works:
 - (i) in accordance with the Program;
 - (ii) at the Sites (including the Airport);
 - (iii) in accordance with the Specifications;
 - (iv) using the Equipment;
 - (v) with the due care and skill, and to a standard reasonably to be expected of a person competent and experienced in carrying out works similar to the Works;
 - (vi) in accordance with all Legislative Requirements applicable to the Works; and
 - (vii) in accordance with Council's reasonable directions.

5.3 Site obligations (general)

The Contractor must ensure that all of the Contractor's Personnel who carry out any Works on any of the Sites:

- (a) have undertaken all training and have obtained (and will maintain) all relevant Approvals necessary to carry out the Works;
- (b) produce evidence of all Approvals necessary to carry out the Works on request by Council;
- (c) comply with all Legislative Requirements applicable to the Works;
- (d) comply with Council Policies as in force from time to time; and
- (e) use and wear all safety and protective equipment required to carry out the Works.

5.4 Site obligations (Airport)

The Contractor must ensure that all of the Contractor's Personnel who carry out any Works at the Airport:

- (a) comply immediately with all directions of the Works Safety Officer and the Airport Operations Officer (as applicable from time to time);
- (b) comply with the Method of Working Plan;
- (c) cooperate with all other contractors of Council and all employees of Council, who are carrying out any works at the Airport;
- (d) comply with the Aerodrome Manual and all other policies of the Council applicable to the Airport as notified by the Council to the Contractor from time to time.

The Contractor acknowledges and agrees that:

- (e) Council's Airport operations (including the safety of aircraft) and all requirements and directions of the Airport Operations Officer and the Works Safety Officer (as applicable from time to time) will at all times take precedence over the carrying out of the Works at the Airport; and
- (f) the requirements set out in CASA Manual of Standards Part 139 will prevail over the terms of this Agreement to the extent of any inconsistency.

6 VARIATION

The Contractor must not vary the Works or the Product unless the variation, including the scope and price of any such variation, is approved in advance in writing by Council.

7 QUALITY

- (a) If Council becomes aware that the Works or the Product (or any part of the Works or the Product) do not comply with this Agreement (**Non-Conformance**), Council will as soon as practicable notify the Contractor of the relevant Non-Conformance and the Contractor must rectify that Non-Conformance at its cost as soon as reasonably practicable.
- (b) If the Non-Conformance has not been rectified so that it complies with this Agreement, then within 7 days of Council's notice:
 - (i) Council may refuse to provide payment for the Non-Conformance; or
 - (ii) Council may perform, or have performed, the Non-Conformance.
- (c) The Contractor indemnifies Council in respect of all costs incurred in relation to having the Non-Conformance carried out pursuant to clause 7(b)(ii).
- (d) This clause 7 survives the termination or expiry of this Agreement.

8 SITE ACCESS

Council will grant the Contractor:

- (a) access to non-Airport Sites (as is necessary for the Contractor to supply the Product and Perform the Works); and
- (b) subject to the requirements contained in clause 9, access to Airport Sites (as is necessary for the Contractor to supply the Product and perform the Works),

subject always to the Contractor satisfying the requirements contained in clause 11.

GENERAL TERMS AND CONDITIONS

9 AIRPORT SITE ACCESS REQUIREMENTS

9.1 Compliance with directions of Airport Operational Officer

Where the Contractor is granted access to the Airport, the Contractor acknowledges and agrees that the Airport Operational Officer has ultimate control of the Airport and may at any time and from time to time in his absolute discretion direct the Contractor:

- (a) to carry out or not carry out certain Work at particular times or in particular areas within the Airport;
- (b) to move or remove the Equipment or any other item of plant or material located at any part of the Airport; or
- (c) or any of the Contractor's Personnel, to leave the Airport or any part of the Airport for any reason,

and the Contractor and the Contractor's Personnel must immediately comply with any such direction or determination.

9.2 Conditions precedent to access to Airport

- (a) As a condition precedent to the Contractor and any of the Contractor's Personnel entering or remaining on the Airport, the Contractor must:
 - (i) ensure that any of the Contractor's Personnel who will carry out any transportation of the Product or Equipment, or who will undertake any performance of the Works at the Airport, have undertaken any induction required by Council;
 - (ii) provide the Council with certificates of currency for all insurances required under Clause 14.1; and
 - (iii) obtain and have on display at all times whilst on the Airport any security identification passes deemed necessary from time to time by the Airport Operational Officer or as may otherwise be required under the Aerodrome Manual or pursuant to any Legislative Requirement.
- (b) The Contractor is not entitled to an extension of the Completion Date by reason of any delay to the Works caused by the Contractor's Personnel failing to comply with the conditions precedent to access to the Airport in clause 9.2(a).

9.3 Cooperation with Council

The Contractor acknowledges that part of the Works are being undertaken airside at an operational airport facility and agrees that it will comply with all requests of Council to ensure that any interference with aircraft operations, or other Airport operations, are avoided or minimised.

10 ENVIRONMENT

- (a) The Contractor must, in complying with its obligations under this Agreement, comply with all applicable Environmental Laws.
- (b) The Contractor indemnifies Council against all Losses of any kind in connection with:
 - (i) the breach of any Environmental Law; and
 - (ii) the discharge, release or emission of any Contaminant into the environment,caused by the Contractor or the Contractor's Personnel.
- (c) This clause 10 survives the termination or expiry of this Agreement.

11 WORKPLACE HEALTH AND SAFETY

- (a) The Contractor must ensure that the Contractor and all of the Contractor's Personnel comply with all the WHS Requirements at all times while on the Sites, supplying the Product or performing the Works.
- (b) The Contractor:

- (i) and all of the Contractor's Personnel, must check and comply with all Site requirements including, where relevant, all Airport-specific requirements of Council (including Council's induction requirements where relevant) prior to the supply of the Product or the commencement of the Works (which the Contractor acknowledges, does not of itself satisfy its obligations to comply with the WHS Requirements);
 - (ii) must, prior to the supply of the Product and commencement of the Works, prepare a Workplace Health and Safety Management System and provide a copy to the Council for the purposes of consultation only;
 - (iii) must nominate a Workplace Health and Safety Representative who will be responsible for the Contractor's health and safety in relation to the Works;
 - (iv) must ensure that the Contractor's Personnel comply, with the Contractor's Workplace Health and Safety Management System;
 - (v) must provide to Council all things necessary to enable Council to meet its obligations under any WHS Requirement;
 - (vi) agrees that the Contractor has received from Council all relevant information held by Council that may reasonably be required by the Contractor to discharge the duties imposed on the Contractor by the WHS Requirements;
 - (vii) must provide to Council, evidence satisfactory to Council of the Contractor's compliance with the WHS Requirements; and
 - (viii) must, as far as is reasonably practicable, consult, cooperate and coordinate its activities with Council or any other applicable duty holders, in relation to any WHS Requirements, arising out of, or associated with supplying the Product and performing the Works under this Agreement.
- (c) When supplying the Product and performing the Works, and at all times when the Contractor or any of the Contractor's Personnel are on the Sites (including the Airport), the Contractor must:
 - (i) ensure that the Equipment is only operated by persons who are appropriately trained, qualified and licensed to operate the Equipment in a manner which minimises all risks to the health and safety of all persons;
 - (ii) supply the Product and perform the Works in a manner that will not cause any harm, damage or nuisance to the environment and promptly notify Council of any security breaches, accident, property or environmental damage or notifiable incident pursuant to any applicable Laws in relation to work health and safety, which occur during the course of supplying the Product or performing the Works;
 - (iii) notify Council in writing where there is a conflict between supplying the Product or performing the Works and any applicable Legislative Requirements relating to work health and safety of persons on or about the Sites (including the Airport) and must consult, co-operate and co-ordinate with Council to find an appropriate resolution; and
 - (iv) not do anything which may place Council in breach of any applicable WHS Requirement or other legal requirements.

12 EQUIPMENT

12.1 Hire of Equipment

The Contractor acknowledges and agrees:

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- (a) that Council will hire Council's Equipment to the Contactor for the duration of the Term at the rates specified in Appendix E; and
- (b) all Council Equipment used in the performance of the Works will be operated by Council personnel.

12.2 General obligations in respect of the Equipment

The Contractor:

- (a) must comply with all directions of Council in relation to the use and storage of the Equipment (including Council's Equipment);
- (b) must ensure that the Equipment is only operated by persons who are appropriately trained, qualified and licensed to operate the Equipment in a manner which minimises all risks to the health and safety of all persons; and
- (c) is responsible for all costs in relation to the transport of the Equipment to and from the Sites, including to and from any Council locations from which the Equipment is collected or returned.

13 TESTING OF PRODUCT AND WORKS

13.1 Testing may be undertaken

- (a) Council (or any person appointed by Council) may at any time and from time to time undertake testing of any part of the Product or Works at any of the Sites to determine if the Product or Works comply with this Agreement.
- (b) If following any test, any part of the Product or Works is found to not comply with any aspect of this Agreement then, in addition any other remedy available to Council under this Agreement or at law, the costs of the test (including the cost to make good the Product or Works) will be a debt due from the Contractor to Council.

13.2 No deemed acceptance

The Contractor acknowledges and agrees that Council will not be deemed to have accepted that the Product or Works or any part of the Product or Works complies with this Agreement by reason of Council not undertaking any test during the Term.

14 INSURANCE

14.1 Contractor's Insurances

The Contractor must take out and maintain for the Term the following insurance policies:

- (a) public liability insurance for at least the amount (per event) as specified in the Agreement Details; and
- (b) workers' compensation insurance as required by relevant Legislative Requirements,

and must provide certificates of currency for such insurance policies to Council prior to the Commencement Date, on renewal and otherwise on Council's request.

14.2 Insurance of subcontractors

The Contractor must ensure that any subcontractors engaged to provide any part of the Works are insured to a level commensurate with the insurance obligations of the Contractor under this clause 14.

15 INDEMNITIES AND WARRANTIES

15.1 Contractor indemnities

- (a) The Contractor is liable for and indemnifies Council against all Loss (including legal costs and expenses on an indemnity basis), liability (including for any loss or damage to property, environmental contamination or damage injury or death to any person) and claims by any person, arising directly or indirectly from or in connection with any one or more of the following:

- (i) the supply or failure to supply the Product or any part of the Product;
- (ii) the use of the Product by Council for the purposes generally required of products similar to the Product;
- (iii) the transportation or shipping of the Product;
- (iv) the performance or non-performance of the Works or any part of the Works;
- (v) the breach of any provision of this Agreement by the Contractor or the Contractor's Personnel;
- (vi) any interruption to the operations of the Airport caused or contributed to by the Contractor or the Contractor's Personnel;
- (vii) the negligence of the Contractor or the Contractor's Personnel in relation to the supply of the Product or the performance or non-performance of the Works,

except to the extent that any loss, liability or claim is caused by the negligence or default of Council.

15.2 Contractor warranties

- (a) The Contractor warrants that:
 - (i) the Rates make sufficient allowance for the performance and completion of all of the Contractor's obligations under this Agreement;
 - (ii) the Product will be free from all liens and encumbrances;
 - (iii) the Product will in all respects comply with the Specifications and be fit for its intended purposes;
 - (iv) the Product will not fail or otherwise become defective for a period of 4 years following the completion of the Works; and
- (b) If Council becomes aware at any time during the Defects Liability Period that the Product or any part of the Product or the Works or any part of the Works, do not comply with this Agreement, then the Contractor must rectify the Product or Works (as the case may be) at the Contractor's cost within 7 days of receiving notification from Council of the relevant defect.
- (c) If the rectification is not completed by the stated dates and in accordance with Council's requirements, Council may have the rectification carried out by others but without prejudice to any other rights and remedies Council may have. The cost incurred shall be moneys payable by the Contractor to Council and Council may, if the Contractor fails to pay such costs as required by Council, set off costs from any amount due and payable by Council to the Contractor under this Agreement.

15.3 Survival

This clause 15 survives the termination or expiry of this Agreement.

16 NEGATION OF EMPLOYMENT AND AGENCY

Despite any actions by either party to the contrary, the Contractor is taken to be and remains an independent contractor of Council and nothing in this Agreement will be construed so as to create a relationship of employment, agency or partnership.

17 PAYMENT

17.1 Amount Payable

Provided that the Contractor complies with its obligations under this Agreement, Council will pay to the Contractor the Amount Payable calculated by reference to the Rates set out in the Agreement Details, in accordance with this clause 17.

17.2 Tax Invoice

The Contractor may provide Council with a tax invoice each

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month, which must:

- (a) be a valid tax invoice for the purposes of the GST Act;
- (b) be addressed and sent to Council's Representative set out in the Agreement Details or as otherwise notified in writing from time to time;
- (c) contain a description of the Product and Works provided under this Agreement by the Contractor up to the date of the invoice; and
- (d) outline the basis for calculation of the amount set out in the invoice based on the Rates set out in the Agreement Details.

17.3 Assessment of claim

If Council disputes the amount claimed by the Contractor then within 10 Business Days after receipt of a tax invoice from the Contractor, Council will issue a payment certificate to the Contractor's Representative listed in the Agreement Details setting out the amount payable by Council and the reasons for the difference, including setting off for an amount which Council claims is owed by the Contractor to Council under this Contract (if any). If a tax invoice issued under Clause 17.2 is a payment claim under the SOP Act, then the payment certificate given under this clause 17.3 is deemed to be a payment schedule under the SOP Act and the payment schedule may be given to the Contractor's Representative by email.

17.4 Payment

Council will pay to the Contractor either:

- (a) if clause 17.3 does not apply, the amount claimed by the Contractor in its tax invoice, by no later than the end of the calendar month after the relevant tax invoice was received; or
- (b) if clause 17.3 does apply, the amount set out in the payment certificate, by no later than the end of the calendar month after the relevant payment certificate was issued.

18 GST

- (a) Unless otherwise stated in this Agreement, all amounts payable by one party to another party under this Agreement are GST exclusive.
- (b) If GST is imposed or payable on any supply made by a party under this Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

19 TERMINATION FOR DEFAULT

- (a) Either party (**Non-Defaulting Party**) may terminate this Agreement by giving the other party (**Defaulting Party**) notice if:
 - (i) the Defaulting Party repudiates its obligations under this Agreement;
 - (ii) the Defaulting Party does not comply with an obligation under this Agreement and, in the Non-Defaulting Party's reasonable opinion, either the non-compliance can be remedied, but the Defaulting Party does not remedy it within 14 days after the Non-Defaulting Party gives the Defaulting Party notice to remedy it or the non-compliance cannot be remedied; or
 - (iii) an Insolvency Event occurs in respect of the Defaulting Party.
- (b) Where this Agreement is terminated:
 - (i) the Defaulting Party indemnifies the Non-Defaulting

Party against any liability or loss arising and any cost incurred (whether before or after termination of this Agreement) in connection with the Defaulting Party's breach of this Agreement and the termination of this Agreement;

- (ii) the parties are relieved from future performance of this Agreement without prejudice to any right of action that has accrued prior to the date of termination; and
 - (iii) rights to recover damages are not affected by the termination.
- (c) This clause 19 survives the termination or expiry of this Agreement.

20 ASSIGNMENT AND SUB-CONTRACTING

- (a) Neither party may assign or subcontract the whole or any part of its obligations under this Agreement without the prior written consent of the other party.
- (b) The Contractor remains responsible for the supply of the Product and performance of the Works despite that the Contractor has subcontracted or assigned the supply of the Product or performance of any part of the Works, and must ensure that all subcontractors or assignees have and retain the insurances required under clause 14.1.

21 DISPUTES

- (a) If a dispute arises between the parties, either party may give a notice to the other party which contains specific detail identifying the nature of the dispute or complaint.
- (b) Both parties within 21 days of the delivery of a dispute notice will meet and use their best endeavours to resolve the dispute to the mutual satisfaction of both parties as soon as possible.
- (c) If the parties are not able to reach a resolution of the dispute within 21 days after the date of the notice of the dispute, the dispute may be submitted to mediation.
- (d) The Resolution Institute Mediation Rules (as at the date of this Agreement) as amended by this clause 21 apply to the mediation, except where they conflict with this clause 21.
- (e) If the mediation does not resolve the dispute or complaint within 20 Business Days then either party may commence a court action or proceedings.
- (f) Nothing in this clause 21 prevents:
 - (i) either party from seeking urgent interlocutory relief; or
 - (ii) Council from seeking recovery for any claim that Council reasonably considers to be a monetary claim, or
 - (iii) either party from taking action pursuant to clause 18.
- (g) The parties agree to perform their obligations under this Agreement, notwithstanding the existence of a dispute.
- (h) This clause 21 survives the termination or expiry of this Agreement.

22 NOTICES

A notice or other communication to be given or made under this Agreement must be in writing and addressed to the representative of each of the parties at the address outlined in the Agreement Details, and is taken to be served:

- (a) in the case of hand delivery – when delivered; or
- (b) if sent by prepaid post – on the sixth Business Day after the date of posting.

GENERAL TERMS AND CONDITIONS

23 GENERAL

- (a) The Contractor must notify Council as soon as it becomes aware of a conflict or inconsistency which exists between this Agreement and any Specifications, document, or Australian Standard referred to in the Specifications and Council will direct the Contractor as to how to deal with the discrepancy.
- (b) An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.
- (c) If any provision or part of any provision of this Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from this Agreement and does not affect the validity, operation or enforceability of any other provision of this Agreement, unless the severance would change the underlying principal commercial purpose or effect of this Agreement.
- (d) This Agreement is governed by the law of Tasmania, and the parties submit to the jurisdiction of the courts of Tasmania.

Appendix A

Specifications

Specifications in respect of the Product:

The Product is Class 170 Bitumen.

All Product must comply with Australian Standard *AS 2008 – 1997 Residual Bitumen for Pavements* as applicable for Class 170 Bitumen.

The Contractor must supply the quantities of Product required to meet the Specifications for the Works as set out below.

Specifications in respect of the Works:

(non-Airport Sites)

- Stabilise, compact and final trim 21,500 square metres of in situ material (Gravel Roads) with 3.6 kg per square metre of GP cement to a depth of 100mm;
- Stabilise, compact and final trim 10,000 square metres of in situ material (Gravel and Bitumen Roads) with 5.4 kg of GP cement and 5.4 kg of Quicklime per square metre to a depth of 150mm.

(Airport Sites)

- Stabilise, compact and final trim including the provision of compaction testing 4,000 square metres in 4 separate large patches of in situ material (Bitumen Airport Runway) with foam bitumen to a depth of 300mm.
- Specific Airport Product mix requirements:
 - a. 2% bitumen based on an MDD of 2.0t/m³; and
 - b. 3% bitumen based on an MDD of 2.0t/m³ including 1% secondary binder (Quick Lime or cement).

Spread rate to be determined after Contractor has undertaken testing and mix design.

Contractor to supply all necessary plant, equipment (save and except for Council's Equipment), materials and labour to stabilise approximately 5km of road and 4,000 square metres of Airport runway at various Sites located at Flinders Island in Tasmania.

Appendix B

Sites

The Contractor must deliver the Product to and perform the Works at the following Sites (approximate areas specified):

- Flinders Island Airport (4,000 m²)
- Lagoon Road, Whitemark (900m²)
- Lackrana Road (2 sections) (8,400 m²)
- Coast Road, Lady Barron (7,200 m²)
- Palana Road (2 sections) (6,000 m²)
- Port Davies Road (17,280 m²)

Appendix C

Program

[To be developed in consultation with the Contractor]

Appendix D

Aerodrome Manual

Appendix E

Equipment

Council Equipment	Hire rate per item (all rates include operator)
2 X Caterpillar 12H Graders	\$145 per hour
2 X 9000 lt Water Trucks	\$125 per hour
1 X Caterpillar 300C Multi Tyred Roller	\$85 per hour
1 X Dynapac CP132 Multi Tyred Roller	\$120 per hour
1 X Mercedes Benz 6000lt Bitumen Sprayer Truck	\$170 per hour

Appendix F

Method of Working Plan