



# Licence Agreement Parkside Drive Reserve

*Reference: [insert]*

Sydney Water Corporation  
*ABN 49 776 225 038*

Georges River Council  
*ABN 57 789 014 855*

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# Agreement

## Date

## Parties

### First party

<b>Name</b>	Sydney Water Corporation ( <b>Sydney Water</b> )
<b>ABN</b>	49 776 225 038
<b>Contact</b>	Mike Alaaeddin
<b>Telephone</b>	02 88493671

### Second party

<b>Name</b>	Georges River Council ( <b>Council</b> )
<b>ABN</b>	57 789 014 855
<b>Contact</b>	Gail Connolly (General Manager)
<b>Telephone</b>	9330 9400

## Background

- A. The aim of the Project is to improve waterway health by construction of planted stormwater treatment areas, thus resulting in reduction of pollution runoff, increased amenity and liveability for the local community, cleaner stormwater entering Kogarah Bay and creation of new habitat areas for native plants and wildlife.
- B. Council owns, manages or has custody of the Council Land.
- C. Sydney Water owns the Sydney Water Land.
- D. The terms and conditions for the Licence to permit the Project to be carried out and to permit maintenance of the Project are as set out in this agreement.
- E. Council agrees to grant Sydney Water access to the Council Land to undertake the:
  - a. Works; and
  - b. Vegetation Maintenance,on the terms of this agreement.

## Operative part

### 1 Definitions

In this agreement, unless the context indicates a contrary intention:

**Acid Sulfate Soil Management Plan** means the plan in Annexure E of this agreement.

**Address for Service** means the address appearing in Item 10 or Item 11 of Schedule 1 or any replacement address last notified by the party under clause 13.2.

**Authority** means any government, semi-government, administrative or judicial body or tribunal, department, commission, agency, minister, public, local or statutory authority or corporation or instrumentality.

**Business Day** means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.

**Claim** means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and any legal costs on a full indemnity basis).

**Commencing Date** means the date set out in Item 4 of Schedule 1.

**Completion** means means the point at which the Council Works and/or the Sydney Water Works are complete (as the case may be).

**Concept Design** means the detailed concept design agreed by the parties shown in the drawings at Annexure A, and the specifications and related documents contained and/or referred to in this agreement.

**Contamination and contaminate** have the same meaning as in section 5 of the Contaminated Land Management Act 1997 (NSW).

**Consequential Loss** means any loss of income, loss of revenue, loss of profit, loss of financial opportunity, loss of business or loss of business opportunity, loss of contract, loss of goodwill, loss of use, loss of production or failure to realise anticipated savings (whether the loss is direct or indirect).

**Construction and Maintenance Boundaries** means the plan attached at Annexure F of this agreement.

**Construction Contract** means the design, development and construction contract under which Sydney Water will engage the Contractor to perform the Works.

**Contractor** means the person engaged by Sydney Water under the Construction Contract to perform the Works.

**Council Land** means the land:

- (a) owned by Council as coloured orange; and
- (b) managed by or over which the Council has custody as coloured purple and light green, [depends on the colours used in the plan]

as shown in Annexure C of this agreement.

**Council Representative** means the person identified in Item 10 of Schedule 1.

**Council Works** has the meaning given in Item 7 of Schedule 1.

**Customer Contract** means the Sydney Water standard form customer contract (as varied, amended or replaced from time to time) which, as at the date of this agreement, is included as Schedule 4 of the Operating Licence.

**Defect** means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Works or any other matter which, in the reasonable opinion of Council, prevents the Council Works from complying with the terms of this agreement.

**Defects Liability Period** means the period of 12 months from the date on which the Council Works reach Completion.

**Environment** has the meaning given in the Protection of the Environment Operations Act 1997 (NSW).

**Expiry Date** means the date set out in Item 5 of Schedule 1.

**Government Agency** means:

- (c) a government or government department or other body;
- (d) a government, semi-governmental or judicial person; or
- (e) a person (whether autonomous or not) who is charged with the administration of a law.

**Initial Condition Report** means the condition report required by clause 5.1 procured by Sydney Water in accordance with clause 9.6.

**Insolvency Event** means if Sydney Water or Council:

- (f) becomes insolvent;
- (g) makes an assignment of its estate for the benefit of creditors;
- (h) goes into liquidation, a receiver or receiver and manager or mortgagee's or chargee's agent is appointed;
- (i) becomes subject to any petition or proceedings in a court for compulsory winding up;
- (j) becomes subject to supervision of a court either voluntarily or otherwise; or
- (k) enters into a scheme of arrangement with creditors.

**Law** means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b).

**Licence Fee** has the meaning in clause 3.1.

**Licence Fee** means \$1 if demanded.

**Make Good** means restoring the Council Land including the Site Compound Areas, other than permanent structures created by the Works, as nearly as practical to their original state (as evidenced by the Second Condition Report) prior to the commencement of the operation of this agreement including, where applicable, subsurface structures, soil profiles, turf and surfaces that comply with the Council's usual specifications, standards and requirements.

**Operating Licence** means the Sydney Water Corporation Operating Licence 2015-2020 issued by the Independent Pricing and Regulatory Tribunal, or any replacement or substitute licence.

**Permitted Hours** means the hours described under Item 9 of Schedule 1.

**Permitted Use** has the meaning given in Item 6 of Schedule 1.

**Pollution and pollute** have the meaning given in the Protection of the Environment Operations Act 1997 (NSW).

**Project** means the project described in Item 1 of Schedule 1, as more fully described in the Design.

**Second Condition Report** means the condition report procured by Sydney Water in accordance with clause 9.6.

**Services** means services (including, without limitation, water, sewerage, drainage, gas, electricity, communications, essential services, fire prevention, air conditioning and elevators) to the Council Land and/or Sydney Water Land provided by Council or any Governmental Agencies and which are intended to service, or are for the benefit of the Site.

**Site** means that part of the Council Land and Sydney Water Land on which the Project is to be conducted, as further described in Item 3 of Schedule 1.

**Site Compound Areas** means those parts of the Site shown in Annexure B to be occupied by the Contractor for use as temporary construction site offices and storage facilities.

**State** means a state or territory of Australia.

**Sydney Water** means Sydney Water, its servants, agents and any other person in or about the Site at any time at the request of or under the control or discretion of Sydney Water.

**Sydney Water Land** refers to the land owned by Sydney Water as shown in Annexure E of this agreement.

**Sydney Water Works** has the meaning given in Item 8 of Schedule 1.

**Term** means the term of the Licence under this agreement, beginning on the Commencing Date and ending on the Expiry Date.

**Vesting Date** means the date that all right, title and interest in the Council Works vests in the Council pursuant to clause 7.1.

**Vegetation Maintenance** means the activities associated with the maintenance of vegetation required under the Construction Contract.

**Vegetation Maintenance Period** means the 24 months period commencing from the date of Completion of the Works.

**WHS Laws** means the *Work Health and Safety Act 2011* (NSW) and associated regulations and instruments.

**Works** means all works performed or delivered for the Project under the Construction Contract including the Sydney Water Works and the Council Works.

## 2 Interpretation

### 2.1 General

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to a document is to the document as varied, amended, supplemented, novated or replaced from time to time;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this agreement;
- (d) **(Background)** the Background forms part of this agreement;
- (e) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- (f) **(including)** including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- (g) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (h) **(singular and plural)** the singular includes the plural and the plural includes the singular;
- (i) **(gender)** words importing one gender include all other genders;
- (j) **(legislation)** a reference to legislation or any legislative provision includes:
  - (i) any modification or substitution of that legislative provision; and
  - (ii) any subordinate legislation issued under that legislation or legislative provision including under that legislation or legislative provision as modified or substituted;
- (k) **(time and date)** a reference to a time or date is to the time and date in Sydney, Australia;
- (l) **(joint and several)** an agreement, representation, covenant, warranty, right or obligation:
  - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (ii) on the part of two or more persons binds them jointly and severally;
- (m) **(writing)** means a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement.
- (n) **(replacement bodies)** a reference to a body that ceases to exist or whose powers or functions are transferred to another body is to the body that replaces it or that substantially succeeds to its powers or functions; and

- (o) **(Australian currency)** a reference to dollars or \$ is to Australian currency.

## **2.2 Construction**

Neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

## **2.3 Timing of acts or things**

- (a) If:
  - (i) the time for doing any act or thing required to be done under this agreement; or
  - (ii) a notice period specified in this agreement expires on a day other than a Business Day,the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing done under this agreement is done after 5 pm on a day, it is taken to have been done on the following Business Day.

# **3 Licence**

## **3.1 Licence and certification**

- (a) The Council grants to Sydney Water, with effect from the Commencing Date, a licence to access and use such parts of the Site as are located on Council Land for the Permitted Use during the Term (**Licence**).
- (b) Sydney Water must promptly notify the Council in writing of the Commencing Date and provide a copy of the executed Construction Contract to the Council.

## **3.2 Council's Land**

- (a) The Council acknowledges that it owns, manages or has custody of the Council Land, and that it is authorised to grant the Licence over the Council Land.
- (b) The grant of the Licence confers upon Sydney Water a licence in respect of the Site but no other estate or interest in the Council Land or Site.
- (c) Despite any public notification of this agreement carried out by the Council (if required in accordance with local government legislation), Sydney Water must notify local residents of the Project and keep them informed of the status of the Project at regular and reasonable intervals throughout the construction process. Sydney Water shall, in good faith, consult with Council in complying with its obligations under this clause. For the sake of certainty, nothing in this clause shall limit the Council's ability to keep the public informed of the Project independently of Sydney Water.

## **3.3 Permitted Use**

Sydney Water must not use the Site otherwise than for the Permitted Use.

## **3.4 Acceptance of condition**

Sydney Water accepts the Site on an "as is" basis (including any contamination and defects).

### **3.5 Interruption of Services**

- (a) Sydney Water will procure that the Contractor will provide its own Services.
- (b) Sydney Water cannot terminate this agreement or make any claim against the Council for any failure or interruption of Services (including an interruption by the Council for inspection or repairs).

### **3.6 Hours of Use**

- (a) Subject to subclause (b), Sydney Water must not occupy or permit the Site to be occupied or used by Sydney Water or persons under its control outside the Permitted Hours unless otherwise authorised by the Council in writing.
- (b) In the case of an emergency, or otherwise authorised by the Council in writing Sydney Water may, and may permit persons under its control to occupy and use the Site Compound Areas outside the Permitted Hours.

## **4 Licence Fee and payments**

- (a) Sydney Water shall pay the Licence Fee (if demanded) to Council (receipt of which is acknowledged by Council).
- (b) Despite clause 3.5, if the Contractor does require access to Services:
  - (i) Sydney Water must pay to the relevant Governmental Agencies all accounts and charges for utility and other services (which may include without limitation water, sewerage, drainage, gas, electricity and communications) connected or supplied to the Site according to the meter reading.
  - (ii) If any utility or other service is not separately metered or if any meter is defective Sydney Water must pay the amounts assessed by the relevant Governmental Agencies supplying the service or by the Council acting reasonably.
  - (iii) If Sydney Water makes default in payment of such accounts and the Council incurs a fee or charge, the Council may (but is not obligated to) pay the same and immediately recover the amount paid as a debt due and payable by Sydney Water.

## **5 Project**

### **5.1 Construction Contract**

- (a) The parties acknowledge and agree that Sydney Water utilises a panel of construction companies which have entered into a revised form of the GC21 form of contract with Sydney Water.
- (b) Sydney Water will seek tenders for the Works from its panel of construction companies. The Construction Contract will include a "Deed Poll" issued by the Contractor in favour of the Council giving the Council direct rights against the Contractor in respect of the Council Works.

- (c) Prior to issuing the Construction Contract to tenderers, Sydney Water must provide Council with a draft of the Construction Contract. Council will provide any reasonable amendments to the Construction Contract to Sydney Water within 10 Business Days of receipt of the draft Construction Contract. Sydney Water must have due regard to the amendments requested by Council and must amend the Construction Contract as it considers appropriate.

## **5.2 Initial Condition Report**

- (a) Prior to commencement of the Works, Sydney Water must procure that an initial condition report be prepared which records the condition of the Council Land, the Sydney Water Land, the Site and all other relevant structures relevant to the Project.
- (b) The initial condition report must be prepared to meet the requirements of clause 9.6.

## **5.3 Design of Works**

- (a) The parties have agreed the Concept Design.
- (b) Sydney Water must procure the Contractor to prepare detailed designs in accordance with the Concept Design
- (c) Sydney Water must involve the Council in the development of the detailed design by:
  - (i) meeting, consulting and collaborating with the Council at regular meetings during the detailed design process;
  - (ii) providing copies of the detailed design to the Council at the 90% detailed design stage;
  - (iii) having reasonable regard to any matters or concerns raised by the Council following receipt of the 90% detailed design; and
  - (iv) providing the 'issued for construction' design documentation to the Council which incorporates the matters and concerns raised by the Council which Sydney Water reasonably regarded as requiring changes to be made.
- (d) Council must raise any matters or concerns within 15 Business Days of the receipt by the Council of the 90% detailed design documentation.
- (e) Council's review of, acceptance of, or no response to any of the design documentation:
  - (i) does not create or infer any duty of care or responsibility in the Council to identify or notify Sydney Water of the existence of any matter in the design documentation including errors, omissions, and inconsistencies or non-compliances with this agreement; and
  - (ii) does not relieve Sydney Water from its responsibilities or liabilities in connection with the design documentation.
- (f) Sydney Water will not be entitled to make, and Council will not be liable in connection with, any Claim arising out of or in any way relating to Council not detecting or not notifying Sydney Water of any errors, omissions or any inconsistencies or non-compliances with this agreement.

- (g) Sydney Water must procure that the Works are carried out in accordance with the 'issued for construction' design documentation issued to the Council. If Sydney Water (or its Contractor) requires any significant amendment to the 'issued for construction' design documentation that affects the existing infrastructure and structural integrity of the Site it must first obtain the Council's consent before making such amendment.

#### **5.4 Carrying out of Works**

- (a) Sydney Water must provide its approval, or must procure that the approval of all relevant Government Agencies has been obtained, prior to commencing the Works. Council may require Sydney Water to provide copies of all approvals and certificates of compliance from all relevant Government Agencies.
- (b) Sydney Water is responsible for the cost of all Works in the Site undertaken by or on behalf of Sydney Water and Council.
- (c) Sydney Water agrees that, following the Commencing Date, it will ensure that the Contractor will construct the Works and carry out the Project at the Site:
  - (i) in a proper and workmanlike manner with all due care, skill and judgment;
  - (ii) in accordance with the 'issued for construction' detailed design;
  - (iii) in accordance with the Laws relating to the Works, the Site, or the Environment; and
  - (iv) in a way that systematically manages work health and safety in accordance with the systems, plans, standards and codes specified in the Construction Contract.
- (d) Sydney Water must procure that the Contractor provides adequate perimeter fencing to maintain site security for the Site during the Term.

#### **5.5 Environmental law**

Sydney Water must ensure that, and procure that the Contractor ensures that, the carrying out of the Works:

- (a) complies with all legislative requirements relating to the protection of the Environment;
- (b) does not Pollute, Contaminate or damage the Environment; and
- (c) includes the remediation or removal at the cost of Sydney Water, of any Pollution (including asbestos), Contamination or damage to the Environment arising out of, or in any way in connection with, the carrying out of the Works in accordance with the requirements of this agreement and any applicable Laws.

#### **5.6 Inspection by Council**

- (a) During the Term, Council and any person authorised by it may (but is not obliged to) enter upon the Site with all necessary materials and equipment at all reasonable times with 3 Business Days' notice (and at any time and without notice in the case of an emergency):
  - (i) to view the state of repair of the Site;
  - (ii) to inspect the Works including construction and defects inspections;

- (iii) to carry out repairs to any utilities services located on, above or below the Site; and
  - (iv) to comply with any laws affecting the Site or with any notice served on either party by any Government Agency for which Sydney Water is not responsible under this agreement.
- (b) During any inspection in accordance with this clause, the Council must:
- (i) comply with all WHS Laws;
  - (ii) comply with the reasonable instructions of the Contractor, including attendance at induction processes; and
  - (iii) use reasonable endeavours to not do anything which may interfere with any Works.

### **5.7 WHS Laws**

- (a) During the Term Sydney Water will require that the Contractor complies with all WHS Laws applicable to the Works on the Site.
- (b) For the purposes of the WHS Laws, Sydney Water will appoint the Contractor as principal contractor for the Site and Works under the *Work Health and Safety Regulation 2011* (NSW).
- (c) The parties acknowledge and agree that Sydney Water's obligations under this clause 5.7 do not apply to the extent the Council accesses or uses the Site during the Term.
- (d) To the extent that Sydney Water's appointment of the Contractor under clause 5.7(b) is ineffective with respect to the Council Land, the Council will execute such documents to affect the appointment of the Contractor as the principal contractor

### **5.7 Site Access, Compound Areas, Maintenance and Security**

- (a) Sydney Water must (and procure that the Contractor must):
  - (i) contain the Works, materials and plant within fenced or barricaded areas that secure the Site and prevent access to the public;
  - (ii) ensure that access on and around the Site and the use of the Site for plant, compounds, working and storage areas, sheds, parking and the like is restricted to those areas approved by Council;
  - (iii) keep the Site in a neat and tidy manner including regular mowing, weeding and rubbish removal to the satisfaction of the Council's representative and to minimise hazards to persons material or equipment;
  - (iv) remove all graffiti from the Site within 48 hours of its application;
  - (v) ensure that the Site is safe and secure after hours;
  - (vi) make their own arrangements for the security of the Site and bear any associated costs; and
  - (vii) bear the responsibility for the security of all materials and assets in use or left at the Site during the course of the Works and retain adequate insurance.

- (b) The Council will not be responsible for any loss or damage of materials or assets from the Site.

## 6 Ownership and maintenance of Sydney Water Works

### 6.1 **Ownership**

The parties agree that all right, title and interest in the Sydney Water Works vest in Sydney Water on creation.

### 6.2 **Maintenance**

As all Sydney Water Works remain under the ownership of Sydney Water, the ongoing maintenance and repair works required for the Sydney Water Works will be Sydney Water's responsibility at its cost.

## 7 Ownership and maintenance of Council Works

### 7.1 **Vesting**

The parties agree that all right, title and interest in the Council Works vest in the Council on the later of the Expiry Date or the date that the entirety of the Council Works achieves Completion (**Vesting Date**).

### 7.2 **Completion of Council Works**

- (a) Sydney Water must notify Council's Representative/s when, in the reasonable opinion of Sydney Water, the Council Works have reached Completion (**Completion Notice**).
- (b) The Completion Notice must include:
  - (i) a statement from the person with direct responsibility and supervision of the Council Works that in their opinion the Council Works have reached Completion; and
  - (ii) copies of any warranties, guarantees, maintenance information, structural report, defects management or other material reasonably required by Council to assume responsibility for the Council Works.

### 7.3 **Inspection by Council**

- (a) Council must inspect the Council Works within 10 Business Days of the date the Completion Notice is received by Council.
- (b) Council may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 7.2.
- (c) Within 10 Business Days of the date of the inspection by Council, Council must by written notice to Sydney Water:
  - (i) state that Completion has been achieved; or
  - (ii) state that Completion has not been achieved and, if so, identify the Defects, errors or omissions which, in the reasonable opinion of Council, prevent Completion.

- (d) Nothing in this clause 7.3, or any notice issued under clause 7.3(c), will:
  - (i) reduce or waive in any manner Sydney Water's responsibility to:
    - (A) deliver the Council Works in accordance with this agreement; or
    - (B) correct Defects, errors or omissions, whether or not these are identified by Council; or
  - (ii) create any liability for Council in relation to any defective aspect of the Council Works.

#### **7.4 Defects**

- (a) If the Council notifies Sydney Water of a Defect in the Council Works within the Defects Liability Period, then Sydney Water must:
  - (i) if the Defect poses a risk (in the view of the parties acting reasonably) to Council or public users of the Site, promptly procure; or
  - (ii) if (i) does not apply, as soon as reasonably practicable procure, the correction or replacement (at Sydney Water's expense) of the defective elements of the Council Works.
- (b) If Sydney Water is unable or unwilling to comply with clause 7.4(a), or fails to rectify the Defect within three months of receiving notice from the Council under clause 7.4(a), the Council may:
  - (i) rectify the Defect itself; and
  - (ii) recover the costs from Sydney Water as a debt due and owing to Council.

#### **7.5 Reinstatement**

- (a) Without limiting clause 7.4, on Completion of the Works, Sydney Water must procure that the Contractor Makes Good the Council Land (other than permanent structures created by the Works).
- (b) If Sydney Water is unable or unwilling to comply with clause 7.5(a) within three months of the date of the Completion Notice, Council may:
  - (i) rectify and otherwise Make Good the Council Land itself; and
  - (ii) recover the costs from Sydney Water as a debt due and owing to Council

#### **7.6 Maintenance**

- (a) The parties agree that the Works and Maintenance Boundaries are set out in Annexure F as follows: **[to be updated depending upon the colours used in Annexure F]**
  - (i) Purple – the area within the line coloured purple indicates the boundary of the area where the Works are to be carried out;
  - (ii) Green – the area within the line coloured green indicates the area where the Vegetation Maintenance will be carried out by or on behalf of Sydney Water for the Vegetation Maintenance Period; and
  - (iii) Orange – the area where Vegetation Maintenance will be carried out by or on behalf of the Council from the date of Completion.

- (b) The areas shown within the green line in Annexure F will be maintained by Sydney Water at its cost until the end of the Vegetation Maintenance Period.
- (c) The Council will be responsible for the ongoing maintenance of the areas outside of the orange line in Annexure F at its own cost.
- (d) As from the Vesting Date all Council Works remain under the ownership of the Council, the ongoing maintenance and repair works required for the Council Works will be Council's responsibility at its cost.

## 8 Insurance

- (a) Sydney Water will require that the Contractor, under the Construction Contract, maintains for the Term:
  - (i) public and products liability insurance with a minimum cover of \$20 million per occurrence and in the annual aggregate for products; and
  - (ii) adequate motor vehicle, workers compensation and all other insurances as are necessary to comply with all relevant Laws in relation to the Works on the Site.
- (b) Sydney Water will maintain for the Term:
  - (i) excess layer principal-controlled public and products liability insurance through the NSW State Treasury Managed Fund; and
  - (ii) appropriate contract works insurance through the NSW State Treasury Managed Fund.

## 9 Risk

### 9.1 *Risk and Release*

Sydney Water agrees to occupy and use the Site at its own risk and releases to the fullest extent permitted by law the Council, its employees, agents and contractors from all Claims and from all loss damage or injury suffered by Sydney Water and persons under its control:

- (a) in respect of any damage occurring to any property (including the fittings) in or about the Site, except to the extent the damage was caused by the negligent or wilful acts, omissions or default of the Council or its employees, agents, contractors or invitees; and
- (b) in respect of the state of Contamination of the Site or the Council Land, the death of or injury to any person, except to the extent the state of Contamination of the Site or the Council Land was caused by the negligent or wilful acts, omissions or default of the Council or its employees, agents, contractors or invitees.

### 9.2 *Indemnity*

- (a) Sydney Water must procure that the Contractor must indemnify the Council against all Claims which the Council suffers or incurs in respect of or arising out of:
  - (i) causing any new Contamination in, over or under the Site;

- (ii) failing to prevent the migrating of any existing Contamination from the whole or any part of the Site;
- (iii) the death of or injury to any person; or
- (iv) any other loss, expense or damage of every description suffered by Council or any third party,

where the damage to property, death, injury or other loss, expense or damage is caused by or arises wholly or partly from or in relation to the carrying out of the Works, except to the extent the damage was caused by the negligent or wilful acts, omissions or default of Council and its employees, agents, contractors or invitees.

- (b) The indemnities in this agreement survive the expiry or termination of this agreement.

### **9.3 Limits of Liability**

- (a) Neither party will be liable to the other for any Consequential Loss.
- (b) Subject to clause 9.3(c), to the extent permitted by law, Sydney Water's maximum aggregate liability to the Council which arises under this agreement, in tort (including negligence or otherwise), under statute and otherwise at law or in equity, arising out of or in connection with the performance of its obligations under this agreement is limited to the contract sum specified in the Construction Contract.
- (c) The limit of liability in clause 9.3(b) does not apply to the extent that a policy of insurance required under this agreement responds, or should have responded, to a particular risk, in which case the limit of liability is the amount specified for the limits of the relevant policy of insurance.

### **9.4 Contamination assessment**

- (a) Prior to commencing works on the Site, if agreed by the parties as being required, Sydney Water must undertake a pre-occupancy contamination assessment targeting soil and groundwater conditions at the Site (**Pre Occupancy Report**).
- (b) Within two months after the Completion of the Works, if agreed by the parties as being required, Sydney Water must complete a post-occupancy contamination assessment targeting soil and groundwater conditions at the Site (**Post Occupancy Report**).
- (c) Reports produced as part of both assessments may be used by the parties as a reference concerning any Contamination issues that may arise in connection with the Project.

### **9.5 Remediation**

To the extent necessary for the purpose of the Project, Sydney Water must carry out the treatment of any Acid Sulfate Contamination present within the Site in accordance with applicable Laws and the Acid Sulfate Soil Management Plan.

### **9.6 Second Condition "Dilapidation" Report**

- (a) As part of achieving Completion of the Works, Sydney Water must procure that the Contractor obtains a Second Condition Report which compares the condition

of the Council Land, Site and all other relevant structures relevant to the Project with the Initial Condition Report prepared pursuant to clause 5.1.

- (b) Each of the Initial Condition Report and the Second Condition Report must:
  - (i) be prepared by a suitably qualified professional;
  - (ii) be prepared on the basis of a Site visit in the presence of an authorised representative from both the Council and Sydney Water;
  - (iii) include a photographic recording of the condition of the Council Land, Site and all other relevant structures as specified below:
  - (iv) include a summary report in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record;
  - (v) include written confirmation, issued with the authority of the person preparing the report (and the photographer if a different person) that the Council is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images.
- (c) The photographic recording must:
  - (i) include clear images of the building facade adjoining the footpath, the footpath, nature strip, kerb and gutter, driveway crossovers and laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street;
  - (ii) be in a PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;
  - (iii) label each image to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage; and
  - (iv) number and cross reference each image to a site location plan.

## 10 Goods and Services Tax (GST)

- (a) If a party to this agreement (“Supplier”) makes a supply under or in connection with this agreement and is liable by law to pay GST on that supply, the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.
- (b) If this agreement requires a party to pay for, reimburse or contribute to any expense, loss or outgoing (“reimbursable expense”) suffered or incurred by another party, the amount required to be paid, reimbursed or contributed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.
- (c) If a party to this agreement has the benefit of an indemnity for a cost, expense, loss or outgoing (“indemnified cost”) under this agreement, the indemnity is for

the indemnified cost net of any input tax credit or reduced input tax credit to which that party is entitled in respect of the indemnified cost.

- (d) Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this agreement.
- (e) Subject to the operation of this clause 10, all amounts stated in this agreement are GST exclusive.

## 11 Termination

### 11.1 *Events of Default*

If at any time:

- (a) Any monies payable by Sydney Water remain unpaid for 14 days after their due date for payment (whether payment is demanded or not);
- (b) Sydney Water defaults in the performance of any material terms and conditions contained in this agreement and continues such default for 15 Business Days after service of a notice by Council on Sydney Water requiring Sydney Water to remedy such default;
- (c) Sydney Water abandons or vacates the Site or fails to conduct Sydney Water's business at the Site and such a condition continues for more than 20 Business Days; or
- (d) an Insolvency Event occurs in respect of Sydney Water;

then, Sydney Water is deemed to have defaulted under this agreement and Council may:

- (e) immediately terminate this agreement by giving notice of termination in writing to Sydney Water;
- (f) re-enter and take possession of the Council Land; and
- (g) remove or otherwise deal with as it thinks fit all of Sydney Water's property (including any fittings and fixtures) located or found on the Council Land.

### 11.2 *Vacating the Site*

At the end of the Term or if this agreement is terminated, Sydney Water must at Sydney Water's cost:

- (a) immediately stop the use of the Site and vacate the Council Land;
- (b) remove all of Sydney Water's property from the Council Land (unless Council agrees otherwise); and
- (c) undertake all work required to Make Good the Council Land.

### 11.3 *Abandoned property*

Any plant and property not removed by Sydney Water within 30 Business Days after the end of this agreement becomes the property of Council who can keep it or remove and

dispose of it and recover from Sydney Water the cost of removal, making good and disposal.

#### **11.4 Antecedent rights**

Any termination of this agreement under this clause 11 does not release either party from any breach existing at or before the date of termination.

## 12 Dispute resolution

### **12.1 Dispute resolution process**

- (a) If either party considers that there is a dispute between the parties in relation to this agreement or the Project that cannot be resolved by Council's and Sydney Water's Representatives that party will notify the other party in writing, such notice to identify the nature and details of the dispute.
- (b) A party may only lodge a notification of dispute on the earlier of:
  - (i) the date the relevant Representative has notified the parties that it has been unable to resolve the dispute at Representative level; and
  - (ii) the date which is 20 Business Days after the date the issue was raised in writing to the relevant Representative.
- (c) Following a notice of dispute being issued by a party, the parties will seek to resolve the relevant dispute by elevating the dispute to the General Manager of the Council and the Managing Director of Sydney Water to meet and attempt to resolve the dispute within a further 20 Business Days.
- (d) If a party gives a notice of dispute, the parties will continue to meet their obligations under this agreement until the dispute is resolved and, following resolution of the dispute, meet their obligations under this agreement in accordance with the resolution of the dispute.

## 13 General

### **13.1 Notices**

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing;
- (b) must be addressed and delivered to the intended recipient by hand, by post or by email at its Address for Service; and
- (c) subject to clause 2.3(b) and this clause 13.1, is taken to be given and received:
  - (i) in the case of hand delivery, when delivered;
  - (ii) in the case of delivery by post:
    - (A) if the notice is posted in the capital city of a state or territory to an address in that city, three Business Days after the date of posting; or
    - (B) if the notice is posted in the capital city of a state or territory to an address in the capital city of another state, five Business Days after the date of posting;

- (iii) in the case of delivery by email, at the time when the email is capable of being retrieved by the addressee at the email address in its Address for Service.

### **13.2 Address for Service**

- (a) The Addresses for Service of the parties are set out in Item 10 and Item 11 of Schedule 1 to this agreement.
- (b) Subject to clause 13.2(c), a party may change its Address for Service and must promptly notify each other party of any such change.
- (c) Each party must not change its postal address in its Address for Service to a postal address that is not in the capital city of a State.

### **13.3 Costs and expenses**

Each party will bear its own costs of negotiating and performing its obligations under this agreement.

### **13.4 Relationship between parties**

- (a) Nothing in this agreement:
  - (i) constitutes a partnership between the parties; or
  - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
  - (i) bind another party; or
  - (ii) contract in the name of another party.

### **13.5 Further assurances**

Except as expressly provided in this agreement, each party must, at its own expense, do all things reasonably necessary (including executing documents) to give full effect to this agreement and the matters contemplated by it.

### **13.6 Variation**

No variation of this agreement is effective unless made in writing and signed by each party.

### **13.7 No assignment**

A party cannot assign or otherwise transfer its rights under this agreement without the prior written consent of the other party.

### **13.8 Counterparts**

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

### **13.9 Stamp duty**

Sydney Water must pay all stamp duty assessed on or in relation to this agreement and any instrument or transaction required by or necessary to give effect to this agreement.

### **13.10 Unfettered Discretion**

Nothing in this agreement in any way restricts or otherwise affects Council's or Sydney Water's unfettered discretion to exercise any of their respective statutory functions, powers as a public authority (in the case of Council) or powers to any law, or, in the case of Sydney Water, the ability of Sydney Water to comply with its Operating Licence and Customer Contract (each as amended from time to time).

### **13.11 Entire agreement**

The contents of this agreement constitutes the entire agreement between the parties in relation to its subject matter and supersedes any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

### **13.12 Invalidity**

- (a) A word or provision must be read down if:
  - (i) this agreement is void, voidable, or unenforceable if it is not read down;
  - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
  - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
  - (i) despite the operation of clause 13.11, the provision is void, voidable or unenforceable if it is not severed; and
  - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 13.12(b)(i) or clause 13.12(b)(ii) applies.

### **13.13 Waiver**

A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right or remedy. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right or remedy operate as a subsequent waiver of the same right or remedy or of any other right or remedy of that party.

### **13.14 Governing law and jurisdiction**

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

## Schedule 1

Item	Subject	Information
1	Project Description	
2	Council Land	Means the areas so identified in Annexure E
3	Site	The sites on which the Project is to be performed, as indicated in the Concept Design.
4	Commencing Date	The next Business Day after the date on which Sydney Water enters into the Construction Contract with the Contractor for the Works.
5	Expiry Date	The next Business Day after the date on which Sydney Water entirely vacates possession of the Site.
6	Permitted Use	<ul style="list-style-type: none"> <li>(a) All things required for the Project, including, the Works;</li> <li>(b) storage of materials and equipment;</li> <li>(c) preparation of project documentation, including quality, safety, preconstruction dilapidation surveys, soil testing and flow management plan;</li> <li>(d) development of the Design into detailed design, construction specifications and issued for-construction drawings;</li> <li>(e) site preparations including temporary works, demolition, treatment of acid sulphate on site and disposal of unused material off-site;</li> <li>(f) bank stabilisation construction – earthworks and rockworks;</li> <li>(g) pipework and hydraulic structures;</li> <li>(h) planting, landscape and restoration;</li> <li>(i) documentation including as-built drawings; and</li> <li>(j) maintenance including 12 months Defects Liability Period and 24 months Vegetation Maintenance Period</li> </ul>
7	Council Works	<p>The works to be installed on the Council Land under the Construction Contract and:</p> <ul style="list-style-type: none"> <li>(a) marked in the Concept Design as Council Works; and/or</li> </ul>

		(b) located outside if the orange line as indicated in Annexure F
8	Sydney Water Works	All works performed or delivered under the Construction Contract other than the Council Works unless otherwise agreed in writing by the parties.
9	Permitted Hours	Monday – Friday – 7am – 6pm (other than public holidays) Saturday – only for emergency Sunday - only for emergency
10	Council's representative	Gail Connolly, General Manager Georges River Civic Centre Corner MacMahon and Dora Streets, Hurstville mail@georgesriver.nsw.gov.au
11	Sydney Water's Representative	Mike Alaaeddin 1 Smith Street, Parramatta NSW 2150 mike.alaaeddin@sydneywater.com.au







Annexure C

Land Ownership



Annexure E      Acid Sulfate Soil Management Plan