

## **Part D - Draft Management Services Contract**

### **PENROSE PARK RECREATION RESERVE**

**AGREEMENT** dated [ \_\_\_\_\_ ]

**BETWEEN**

**Department of Planning & Environment (ABN 20 770 707 468), (the Principal)**

**AND**

[Insert Name of Contractor Business] (ABN XXXX) (the contractor)

**RECITALS**

- A. The Principal is the duly appointed Crown Land Manager of the Penrose Park Recreation Reserve (the "Park") which is Crown Land reserved for the public purpose of 'Public Recreation, (R34483), notified 17 May 1902.
- B. The Principal invited applications for the provision of contract services to manage the Park.
- C. The Contractor has tendered/applied to provide the Services under this Agreement.
- D. The Principal has accepted the Contractor's tender application and has agreed to engage the Contractor to provide the Management Services on the terms and conditions of this Agreement.

**OPERATIVE PART**

It is agreed by and between the parties as follows:

**1 INTERPRETATIONS, DEFINITIONS AND ADMINISTRATION**

1.1 In this Agreement unless the contrary intention appears:

**Agreement** means this agreement including all Schedules and Annexures hereto;

**Business Day** means any day which is not a Saturday, Sunday or Public Holiday in NSW;

**Commencement Date** means the date referred to Item 4 of Schedule One;

**Confidential Information** means information that is by its nature confidential or which a party knows or ought to know is confidential (including but not limited to all Records and any financial or personal information relating to any visitor or customer at the Park) but does not include information which is or becomes public knowledge other than by breach of the Agreement or any other confidentiality obligation;

**Contractor** means the contracted person/s or organisation to provide Management Services at the Park referred to in Item 3 of Schedule One;

**Contractor's Supplies** means the goods, equipment and/or consumables referred to in Schedule Five

"GST", "taxable supply", "consideration", "tax invoice" and "GST amount" have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999*;

**Improvements** mean any structure of a permanent nature attached to the land;

**Law** includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

**Long term Casual Agreement** means an agreement between the Principal and a Park occupant for the occupation of a site within the Park for a specified term subject to certain conditions;

**Minister** means the Minister administering the *Crown Lands Management Act 2016*, and includes the Minister's delegate(s);

**Outgoings** means the outgoings specified in Item 6 of Schedule One;

**Park** means the land and/or the buildings described in Item 1 of Schedule One;

**Performance Criteria** means the performance criteria specified in Schedule Three;

**Personnel** means any natural person who is an employee, officer, agent, subcontractor or professional adviser of the Contractor;

**Principal** means the Department of Planning & Environment (ABN 20 770 707 468) being the duly appointed Crown Land Manager of the Park under the *Crown Land Management Act 2016*, and includes any other Crown Land Manager of the Park, appointed under that act, if that Crown Land Manager's appointment instrument specifies that it is also the Principal for the purposes of this contract;

**Principal's Supplies** means the goods, equipment and/or consumables specified in Schedule Four;

**Records** means the records in clause 7 and also specified in Schedule Two or Schedule Three;

**Service Fees** means the fees and charges specified in Item 7 of Schedule One;

**Services** means the services referred to in Schedule Two;

**Term** means the term of operation of this Agreement in relation to the Park set out in Item 5 of Schedule One.

## 2 CONSTRUCTION & INTERPRETATION

### 2.1 Construction of terms

#### 2.1.1 In this Agreement except where the contrary intention is expressed:

- a) Headings are for convenience only and do not affect the construction of this Agreement;
- b) Words importing the singular include the plural and vice versa.
- c) Words importing any gender include the other genders.
- d) References to Annexures, Clauses, Items and Schedules are references to Annexures, Clauses, Items and Schedules of this Agreement, and a reference to the Agreement includes any annexure, Clause, item or schedule of the Agreement;
- e) A reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as notated, altered, supplemented or replaced from time to time;
- f) A reference to "A\$", "\$A", "AUD", "dollar" or "\$" is to Australian currency;
- g) A reference to time is to the time in the place where the obligation is to be performed at the Park;
- h) A reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assignees and substitutes;
- i) A reference to a person or individual includes a natural person, partnership, body corporate, association, or a government or statutory body or authority or agency, or other entity, and the legal personal representatives, successors and assigns of that person;
- j) If the Contractor is a trustee, the Contractor enters the Agreement personally and in its

capacity as trustee and warrants that it has the power to perform its obligations under this Agreement;

- k) A reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- l) Where any word or expression is given a defined meaning, any other part of speech or any other grammatical form in respect of such word or expression shall have a corresponding meaning;
- m) The meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- n) If a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- o) Where a party consists of two or more persons, or a term is used in this Agreement to refer to more than one party:
  - (i) An obligation of those persons is joint and several; and
  - (ii) A right of those persons is held by each of them jointly and severally.

## 2.2 Interpretation

- a) No rules of construction shall apply to the disadvantage of any party responsible for preparation of this Agreement or any part of it.
- b) An amendment of any Clause in this Agreement must be in writing and signed by the Parties.
- c) If any part of this Agreement is or becomes illegal, invalid or unenforceable in a relevant jurisdiction, the legality, validity or enforceability of the remainder of this Agreement will not be affected and this Agreement will be read as if that part had been deleted.
- d) This Agreement constitutes the whole understanding between the Parties and embodies all terms and conditions of the transaction.
- e) This Agreement is governed by the laws of the State of New South Wales and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that jurisdiction.
- f) Where in any provision of this Agreement a Party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

## 1. RELATIONSHIP BETWEEN THE PARTIES

- 1.1 The Parties expressly acknowledge and agree that no relationship of employment or of partnership or of principal and agent or of joint venture is created between the Parties to this Agreement nor will such a relationship be deemed to exist between the Parties arising out of any circumstances associated with this Agreement.
- 1.2 The Contractor must not:
  - a) Hold itself out as being an employee or agent of the Principal, or being in any way entitled to make any contract on behalf of the Principal, or to bind the Principal to the performance, variation, release or discharge of any obligation; or
  - b) Hold out its Personnel or allow its Personnel to hold themselves out as being employees or agents of the Principal.

## 2. TERM OF THE AGREEMENT

- 2.1 This Agreement shall commence on the Commencement Date and remain operative for the Term unless terminated in accordance with this Agreement.

### **3. PROVISION OF SERVICES**

- 3.1 The Contractor must ensure that it and its Personnel carry out and complete the Services:
- a) In accordance with the terms of this Agreement, and all applicable laws including but not limited to:
    - i. *Crown Land Management Act 2016*;
    - ii. *Local Government (Manufactured Home Estates, Caravan Parks, Camping Grounds and Moveable Dwellings) Regulation 2005*; and
    - iii. The requirement that no visitor to the Park be allowed to stay more than that period of time prescribed in a Long-Term Casual Occupation Agreement, in force from time to time, or in any other case, 50 days;
  - b) With due skill and care and to the best of the Contractor's knowledge and expertise;
  - c) In accordance with the Performance Criteria;
  - d) In accordance with relevant Australian industry standards, best practice and guidelines or where none apply, relevant international industry standards, best practice and guidelines; and
  - e) In accordance with any of the Principal's reasonable directions or procedures in relation to the Services, or the use, occupation, and operation of the Park, notified in writing to the Contractor from time to time.
- 3.2 The Contractor must ensure that it and its Personnel are competent and have the necessary skills, experience and appropriate professional and/or industry qualifications to supply and carry out the Services, and must, always, act in the best interests of the Principal.
- 3.3 The Contractor represents and warrants that:
- a) It has the right to enter into this Agreement;
  - b) It has all rights, title, licences, interests and property necessary to lawfully perform the Services;
  - c) It and its Personnel have the necessary experience, skill, knowledge and competence to perform the Services; and
  - d) The Services will be complete, accurate and free from material faults.

### **4. MONITORING OF SERVICES**

- 4.1 The Contractor must:
- a) Meet with the Principal or the Minister at the times set out in the Performance Criteria (or otherwise as agreed in writing between the parties) to discuss any issues in relation to the provision of the Services. The Contractor must ensure it is available to attend such meetings and answer any queries relating to the provision of the Services raised by the Principal or the Minister.
  - b) The Contractor must provide the Principal with reports in accordance with the Performance Criteria.

### **5. BOOKS & RECORDS**

- 5.1 The Contractor shall:
- a) keep complete and accurate records and books of account with respect to the performance of the Services (the "Records"), including, where applicable, in accordance with Australian Accounting Standards, and must retain such Records for a minimum of seven (7) years after expiry or termination of this Agreement;
  - b) authorise the Principal or the Minister or their agent (the "Auditors") to examine and inspect, at reasonable times and on reasonable Notice, the Records, and allow any such Records to be copied; and
  - c) must provide all reasonable assistance for the Auditors to properly carry out the inspections and audits referred to in this Clause.

## **6. PAYMENT**

- 6.1 Subject to this Clause and the Services meeting the Performance Criteria, the Principal must pay to the Contractor the Service Fees.
- 6.2 The Contractor must provide a correctly rendered tax invoice to the Principal for the Service Fees.
- 6.3 Unless otherwise specified in this Agreement, the Principal must make payment of a correctly rendered tax invoice within 14 days after receiving the invoice.
- 6.4 If an invoice is found to have been rendered incorrectly after payment, any underpayment or overpayment will be recoverable by or from the Contractor, as the case may be, and, without limiting recourse to other available means, may be offset against any amount subsequently due by the Principal to the Contractor under this Agreement.
- 6.5 Unless specified otherwise in this Agreement, the Contractor must not charge the Principal for any fees, charges or expenses in addition to the Service Fees. The Principal is under no obligation to pay any amount in excess of the Service Fees.

## **7. GST**

- 7.1 In this Clause 9, a word or expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 7.2 If a party (Supplier) makes a supply under or in connection with this Agreement in respect of which GST is payable, the recipient of the supply (Recipient) must pay to the Supplier, an additional amount equal to the GST payable on the supply (GST Amount).
- 7.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with Clause 9.2.
- 7.4 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.
- 7.5 Adjustments
  - a) If the GST payable by a Supplier on any supply made under or in connection with this Contract varies from the GST Amount paid or payable by the Recipient under Clause 9.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
  - b) Any payment, credit or refund under this Clause is deemed to be a payment, credit or refund of the GST Amount payable under Clause 9.2.
  - c) If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.
- 7.6 A party need not make a payment for a taxable supply made under or in connection with this Agreement until it receives a tax invoice for the supply to which the payment relates.

## **8. WORK HEALTH & SAFETY**

- 8.1 The Contractor must, at all times in connection with the provision of the Services and the use, occupation and management of the Park:
  - a) Comply with all relevant Work Health & Safety laws ("WHS Law");

- b) Use its best endeavours to prevent a breach of any WHS Law;
- c) Report to the Principal any breach of any WHS Law (even if accidental); and
- d) Provide to the Principal as soon as reasonably practicable details of notices received by or proceedings commenced against the Contractor pursuant to a WHS Law relating to a breach or alleged breach by the Contractor or the Principal of a WHS Law.

8.2 The Contractor covenants to comply with all policies, regulations and directives prepared by the Principal or Minister from time to time relating to WHS Laws at the Park and notified in writing to the Contractor.

8.3 Where the Park or any part of the Park becomes to the knowledge of the Contractor (or which ought reasonably to be in the knowledge of the Contractor) unsafe, hazardous or dangerous, the Contractor must immediately erect such warning signs, fences and barricades as may be necessary until the Park is rendered safe.

8.4 The Contractor must give to the Principal prompt notice in writing of any serious accident to any person or accident to the Park or serious defect at or to the park unless that defect or accident is capable of being and is promptly remedied by the Contractor.

## **9. CONFIDENTIALITY & PRIVACY**

9.1 Subject to Clause 11.2, the Contractor must not, without the prior written consent of the Principal, disclose any Confidential Information to a third party.

9.2 The obligations on the parties under this Clause 11 will not be taken to have been breached to the extent that Confidential Information:

- a) Is disclosed to the Principal, the Minister or any authority by the Contractor or its Personnel solely in order to comply with obligations under this Agreement;
- b) Is disclosed to the Contractor's Personnel, solely to enable effective management or auditing of Agreement-related activities;
- c) Is in the public domain otherwise than due to a breach of this Clause 11.

9.3 The Contractor acknowledges and agrees that its obligations under this Clause 11 continue, notwithstanding the expiry or termination of this Agreement:

9.4 Nothing in this Clause 11 derogates from any obligation which either party may have either under the *Privacy Act 1988* (Cth) as amended from time to time, or under this Agreement, in relation to the protection of personal information.

## **10. CONTRACTOR'S SUPPLIES**

10.1 The Contractor must supply, at its expense, and for its use in the operation, management and maintenance of the Park, the Contractor's Supplies as set out in Schedule Five.

## **11. PRINCIPAL'S SUPPLIES**

11.1 The Principal will supply, at the Principal's expense and for the use of the Contractor in the operation, management and maintenance of the Park (and not otherwise), the Principal's Supplies.

11.2 The provision of the Principal's Supplies shall be subject to:

- a) The Contractor's observation of, and compliance with, any applicable warranty, safe and/or best work practices, and the terms of any operating manual for the use and/or operation of the Principal's Supplies; and
- b) The Contractor taking appropriate and due care of the Principal's Supplies
- c) Any damage plant equipment and machinery supplied by the Principal is to be promptly reported to the Principal



## **12. CONSTRUCTION, MAINTENANCE & REPAIR IN OR ON THE PARK**

- 12.1 The Principal may, from time to time, conduct or authorise to be conducted, works including construction and maintenance in or on the Park. The Contractor expressly agrees not to make any claim whatsoever arising from any works or conducted in or on the Park.
- 12.2 The Contractor shall keep the Park and shall ensure the Park is kept clean and tidy and in good order and condition.
- 12.3 The Contractor will be responsible for carrying out any regular or routine maintenance requirements specified in the Services or Performance Criteria.
- 12.4 The Principal will supply all equipment and consumables required to undertake any maintenance requirements specified in the Services or Performance Criteria, unless otherwise provided by the Principal.
- 12.5 In the event any other maintenance or repairs not specified in the Services or Performance Criteria (including emergency maintenance or repairs) is required in or on the Park, the Contractor must:
- a) Promptly notify the Principal; and
  - b) Subject to any reasonable direction given by the Principal in relation to the carrying out of the maintenance or repairs (including but not limited to engaging only those tradespersons or professionals approved by the Principal), arrange for the maintenance or repairs to be carried out at the Principal's expense.
- 12.6 Notwithstanding anything else in this Clause 14, the Contractor agrees to indemnify the Principal for any expenses incurred in carrying out any maintenance or repair in or on the Park where the damage or breakage requiring maintenance or repair is caused by or results from the Contractor's negligent act or omission or willful destruction or breach of this Agreement.
- 12.7 Subject to Clause 14.2, the Contractor must not at any time install or erect structural items, equipment, fixtures or fittings or make alterations or additions in or on the Park or paint the Park without the prior written consent of the Principal.
- 12.8 The Contractor must not impede the Principal, its servants or agents from at any time during the continuance of this Agreement entering the Park at any reasonable hour for any purpose.
- 12.9 The Contractor covenants to comply with all policies, regulations and directives prepared by the Principal from time to time relating to security and anti-terrorism at the Park and notified to the Contractor in writing.

## **13. ADVERTISING**

- 13.1 The Contractor shall not permit to be displayed or placed on the Park or any part of it any sign, advertisement or other notice without first obtaining the Principal's written consent other than safety signs, in respect of which the Principal's consent shall not be required.
- 13.2 The Principal may at any time by notice in writing require the Contractor to discontinue to use any piece or mode of advertising to which the Principal has granted consent under Sub-Clause 15 .1 which in the opinion of the Principal has ceased to be suitable or has become unsightly or objectionable and the Contractor on receipt of the notice shall comply accordingly.

## **14. KIOSK**

- 14.1 The Contractor is permitted to operate the business of a kiosk at the Park provided that:
- a) The Contractor complies with any reasonable direction given by the Principal in relation to the operation of that business including, but not limited to, directions as to the location of the kiosk and accounting of revenue and expenditure; and

- b) The operation of the kiosk complements supports and promotes the operation of the Park.

## **15. OUTGOINGS**

- 15.1 The Contractor must pay the Outgoings as reasonably directed by the Principal.
- 15.2 The Principal may from time to time provide the Contractor with an itemised statement of the outgoings attributable to the Contractor and for which the Principal has been invoiced and/or paid. The Contractor must pay the Principal within 14 days of receiving the itemised statement.

## **16. INSURANCES**

- 16.1 The Principal will, at its expense, maintain a current public liability insurance policy (\$20 million) in the names of the Principal and the Contractor. The policy will cover such risks and be subject only to such conditions and exclusions as are approved by the Principal. The cover for the Contractor is only in respect of the Services provided by the Contractor under this Agreement.
- 16.2 The Principal will, at its expense, maintain a building insurance policy in respect of any structures or dwellings located in or on the Park.
- 16.3 The Contractor must, at its expense, maintain any other insurance it is required to maintain (including Workers Compensation Insurance) or otherwise desires to maintain in connection with this Agreement.
- 16.4 The Contractor must not do, or suffer or permit to be done, any act, matter or thing that might prejudice or void or make avoidable the Principal's insurances or increase the premiums payable in respect of them.
- 16.5 The Contractor will, on request, produce to the Principal satisfactory evidence that the Contractor has effected and renewed the insurance policies referred to above.

## **17. INDEMNITY**

- 17.1 The Contractor expressly agrees to indemnify the Principal and the Minister against, and release the Principal and Minister from, all liabilities, expenses, losses, damages and costs (including but not limited to legal costs on a full indemnity basis, whether incurred by or awarded against a party) sustained or incurred by the Principal as a result of a claim made or threatened by a third party arising out of or in any way connected with or related to (in all circumstances whether directly or indirectly) the performance of the Services by the Contractor or its Personnel (including without limitation the observance, fulfilment, non-observance or non-fulfilment of any term, condition or requirement of this Agreement) except to the extent that any such claims and demands arise from or are contributed to by the negligence or willful act or omission on the part of the Principal.
- 17.2 The indemnity of the Contractor under this Clause 19 will extend to any acts or omissions of the Contractor or its Personnel and includes indemnity in relation to personal injury, property and economic loss.
- 17.3 The obligations of the Contractor under this Clause shall continue after the expiration or other determination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or determination for which the Contractor is responsible. Such obligation is to be governed by the Statute of Limitations.
- 17.4 Notwithstanding any other provision of this Agreement, both parties exclude, and agree that they shall have no rights against the other for liability for consequential or indirect loss arising out of this Agreement including (without limitation) in respect of loss of profits or loss of business. This



Clause does not apply in respect of willful acts by either party.

17.5 The Principal shall not be under any liability for any loss, injury or damage sustained by the Contractor or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Principal or enjoyed by the Contractor in conjunction with the provision of the Services under this Agreement except to the extent that any such liability arises from or is contributed to by the negligence or willful act or omission on the part of the Principal.

17.6 Subject to any other provision of this Agreement, the Contractor must not without the written consent of the Principal by any act, matter or deed or by failure or omission cause or permit to be imposed on the Principal any liability of the Contractor under or by virtue of this Agreement even though the Contractor is entitled to do so under any law present or future or otherwise.

## **18. TERMINATION - REVOCATION OF CROWN RESERVE**

18.1 The Contractor expressly acknowledges and agrees that this Agreement shall terminate if the Reserve is revoked or that part of the Reserve is revoked that comprises the whole or part of the Park unless the revocation notification otherwise provides. The termination will be effective from the date of gazettal of the revocation.

18.2 Where only part of the Park is affected by the revocation or proposed revocation the Parties undertake to consult to determine if an agreement can be reached for the continuation of this Agreement in respect to that part of the Park not affected by the revocation.

18.3 The Contractor expressly acknowledges and agrees that no compensation is payable in respect of the termination of this Agreement under this Clause 20 and no compensation shall be payable, provided that the Contractor shall be entitled to be paid for the Services rendered prior to the effective date of termination.

## **19. TERMINATION OF AGREEMENT – DEFAULT OR NOTICE**

19.1 Either party may terminate this Agreement by giving three (3) months written notice.

19.2 Without limiting any other rights or remedies the Principal may have against the Contractor arising out of or in connection with this Agreement, the Principal may terminate this Agreement effective immediately by giving notice to the Contractor if:

- a) The Contractor breaches a material provision of this Contract where that breach is not capable of remedy;
- b) The Contractor breaches any provision of this Contract and fails to remedy the breach within 14 days after receiving notice requiring it to do so; or
- c) If any of the following occur:
  - i. The Contractor being a corporation, there is any change in the direct or indirect beneficial ownership or control of the Contractor;
  - ii. The Contractor disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
  - iii. The Contractor ceases to carry on business;
  - iv. The Contractor ceases to be able to pay its debts as they become due;
  - v. The Contractor being a company enters into liquidation or has a controller or managing controller or liquidator or administrator appointed;
  - vi. The Contractor being a natural person is declared bankrupt or assigns his or her estate for the benefit of creditors; or
  - vii. Where the Contractor is a partnership, any step is taken to dissolve that partnership.

In this Clause, controller, managing controller and administrator have the same meanings as in the *Corporations Act 2001* (Cth).

19.3 Without limitation, for the purposes of Clause 21.2(a) each of the following constitutes a breach of a material provision:

- a) A failure to comply with Clause 3 (Relationship between parties)
- b) A breach under Clause 5.3 (Contractor warranties);
- c) A failure to comply with Clause 7 (Books and records);
- d) A failure to comply with Clause 8 (Occupational health and safety); or
- e) A failure to comply with Clause 11 (Confidentiality and privacy).

## **20. CONTRACTOR TO YIELD UP**

20.1 The Contractor shall forthwith upon the termination of this Agreement or any extension of it:

- a) Peaceably vacate the Park at the Contractor's expense.
- b) Remove all of the Contractor fixture/s, signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Park by or on behalf of the Contractor; and
- c) Return to the Principal all keys, any of the Principal' Supplies and any other items, equipment and Records belonging to the Principal;
- d) Meet with the Principal and/or provide to the Principal any report, as the Principal may require; and
- e) Leave the Park in a clean and tidy condition.
- f) Ensure the residence is cleaned and all the Contractor's chattels are removed and the caretaker's residence is repaired of any damage caused by the Contractor
- g) The Principal may withhold any payment due to the Contractor to offset the cost of any action required by the Principal to remedy non-compliance or breach of this of clause

## **21. NOTICES**

21.1 Any notice given under this Agreement must:

- a) Be in writing; and
- b) Be given to the relevant party by delivery, facsimile, email or pre-paid post at that party's address set forth in this Agreement.

21.2 A party must notify the other party at any time in writing, given in the manner referred to in Sub-Clause 23.1(b) of a new address for the giving of future notices to that party.

## **22. MEDIA INQUIRIES**

22.1 Unless otherwise agreed in writing:

- a) the Principal will take sole responsibility for all media announcements regarding the Services and any other matter with respect to the management of the Park, and
- b) the Contractor must refer any media enquiries regarding the Services or Park Management to the Principal.

## **23. DISPUTE RESOLUTION**

23.1 If a dispute arises in relation to this Agreement ("a Dispute"), a party must comply with this Clause 25 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.

23.2 A party claiming that a dispute has arisen must notify the other party giving details of the dispute (Dispute Notice) in accordance with the requirements of Clause 23 (Notices).

23.3 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:

- a. If the Dispute is does not have prior direct involvement in the Dispute; and
- b. has authority to negotiate and settle the Dispute.

- 23.4 If not resolved within 10 Business Days, from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under Clause 23 must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 23.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 23.6 Each party must pay its own costs of complying with this Clause and split the costs of the mediator evenly.
- 24. Entire agreement:** This Agreement states all the express terms the parties have agreed on. It supersedes all prior contracts, obligations, representations, conduct and understandings.
- 25. Variation:** This Agreement may only be varied by agreement in writing including by an exchange of emails confirming the agreed variation
- 26. Inconsistency:** If there is any inconsistency between provisions in this Agreement then the order of precedence will be:
- b. the Operative Part; then
  - c. any Schedules or attached Annexures
- 27. SURVIVAL:** The following Clauses survive termination or expiry of this Agreement: Clause 7 (Records), Clause 11 (Confidentiality and Privacy), Clause 18 (Insurances), Clause 19 (Indemnity), Clauses 20 and 21 (Termination), and this Clause 29 and any other Clause which by its nature is intended to survive this Agreement.
- 28. WAIVER:** If a party fails to exercise any of its rights under this Agreement, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Agreement to their full force and effect.
- Any waiver by a party of a breach of this Agreement must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.
- 29. ASSIGNMENT:** The Contractor must not assign or novate your obligations or interests under this Agreement, without the prior written consent of the Principal.
- 30. COUNTERPARTS:** This Agreement may be signed in any number of counterparts which taken together will constitute one instrument.
- 31. GOVERNING LAW:** The laws of New South Wales govern this Agreement and the parties submit to the non-exclusive jurisdiction of the courts in that State.

**SCHEDULE ONE – COMMERCIAL TERMS**

Item	Description	Clause	Details
1.	Park	1	Penrose Park Recreation Reserve (R34483) within Lot 34 in DP 757309 in the Parish of Umberumberka, County of Yancowinna.
2.	Principal	1	Department of Planning & Environment ABV 20 770 707 468 or another Crown Land Manager as specified in clause 1.
3	Principal's Nominated Contact Officer	1	Ms Natalie Heckenberg, Group Leader, Far West Region, Crown Lands, Department of Planning and Environment, Crown Lands. Mob: 0417811033 Email: <a href="mailto:cl.western.region@crowland.nsw.gov.au">cl.western.region@crowland.nsw.gov.au</a> (or another person as appointed by the Principal from time to time and communicated to the Contractor in writing).
4.	Management Service Contractor (Contractor)	1	
5.	Commencement Date	4	[insert date As agreed]
6.	Term	4	
7.	Outgoings	17	Gas, electricity, water, telephone and communication services, or other services supplied to the Contractor, or consumed by the Contractor, in or on the Park.
8.	Service Fees	8	Base Monthly Fee of \$XXXX including GST per month.

## **SCHEDULE TWO – MANAGEMENT SERVICES**

The Contractor shall provide the following services under this Agreement and, for the purpose of Clause 7 (books and records), the Contractor must maintain records for those services marked [\*].

<b>Records</b>	<b>Services</b>	<b>Frequency</b>
<b>Operation</b>		
	Co-operate in the co-management of the Park to meet visitor and Park Manager requirements Behave in a manner consistent with the Crown Reserve Code of Conduct <a href="#">Code of Conduct</a>	7 days per week (Monday – Sunday)
<b>Hours of Operation</b>		
	Contractor availability is between 8am – 6pm to assist with visitor bookings. Presence in the office is during 8am -10.30am & 2.30pm-5.00pm Monday to Sunday inclusive. These hours may be extended during peak periods as necessary to cater for bookings or emergencies	7 days per week (Monday – Sunday)
<b>Administration</b>		
	Respond to email and phone queries regarding bookings that are to be recorded in a booking register.	As required
	Prepare and submit a quarterly report to the Principal detailing: <ul style="list-style-type: none"> <li>○ Number of overnight visitors with differentiation between campers, caravanners and use of existing accommodation;</li> <li>○ Income reports from Eftpos machine and banked amounts.</li> <li>○ All expenditure</li> <li>○ Net revenue</li> <li>○ Full reconciliation of income, expenditure, and banking</li> <li>○ Any maintenance or occupational WH&amp;S requirements</li> <li>○ Any visitor feedback including comments and suggestion box feedback</li> <li>○ Any media reports, advertising or other promotion of the Park</li> </ul> The format for the report is an excel spreadsheet supplied by the Principal Report electricity meter reads for the caretaker residence to allow for billing of excessive use if applicable Manage the Penrose Park email account and respond to emails in a timely manner	As required
	<b>Financial accountability</b> Receive payments for use of the Park and issue receipts for all monies taken. Payment receipts are to be retained by the Contractor. All cash money received is to be deposited weekly into the Park's bank account. Provide the Principal with a weekly report of all money received, cash deposited and bookings; Collect and bank coins from coin operated washing machine; Maintain petty cash and keep all receipts for expenditure and reconcile; Any expenditure of Park funds is to be pre-approved by the Principal; Fuel purchases using Park funds are only to be used for the Park's	Weekly

## Services Contract at Penrose Park Recreation Reserve

vehicle and machinery; and Prepare and lodge quarterly BAS reports	
* Collect and secure coins from coin operated machinery	Weekly
* Maintain petty cash, keep all receipts for expenditure and reconcile	Reconcile fortnightly
* Complete all temporary licence forms as required and present to nominated Principal representative	Report monthly
* Maintain and update park asset register immediately on acquisition or disposal of any asset	As required
* Complete and maintain vehicle log book	Maintain daily and reconcile monthly
* Maintain a COVID19 register	As required
* Respond to any onsite requests from the Department of Planning and Environment – Crown Lands (DPE- Crown Lands) or contractors when and if required.	As required
<b>Maintenance and Cleaning</b>	
<b>Cleaning</b> Maintain and clean all shower, toilet and laundry blocks to hygienic, dirt/dust free standard Sanitary items such as toilet paper, hand towel, soap and sanitiser must be replenished daily to comply with NSW Health Covid requirements and general health and safety requirements for caravan parks. Ongoing supplies are to be purchased from Broken Hill Cleaning Supplies using the Park's account. Clean all accommodation facilities to a dust and dirt free hygienic standard. Including cleaning of cups, plates, utensils, floor, bathroom, fridge, window sills, doors, walls and change of bed linen. Deliver dirty linen to the designated laundering service and collect when clean. On site linen supplies are to be stored in a clean and dust free environment Purchase all cleaning, disposal products as required from nominated supplier(s) with the Principal's account in place. Obtain receipt for petty cash purchases Maintain and clean barbeques and barbeque sites including removal and disposal of fat from trays after use. Timely notification to the Principal of any units requiring maintenance or nominated plumber	Twice daily (minimum) (approx. 10:00am and 4:00pm)
Clean out air-conditioning unit filters on a three monthly basis Check smoke detectors annually and report any maintenance requirements Bi-annually check and clear all gutters and down pipes in the amenities building, contractor's residence, accommodation buildings, and associated structures to ensure that they do not overflow due to blockages	Daily



## Services Contract at Penrose Park Recreation Reserve

<p><b>Provision of residence</b></p> <p>The caretaker's residence, both internal and external, must be kept clean and tidy and well maintained, including gardens and yards.</p> <p>The storage of personal items in the front yard of the caretaker residence is not permitted. The storage of all personal items is to be in the rear of the residence or in the shed provided</p>	
<p><b>Provision of vehicle and machinery</b></p> <p>As required, organise the maintenance and service of the supplied Toyota Hilux with a registered mechanic nominated at the cost of the Principle</p> <p>The vehicle is only for Park use, private use is not permitted</p> <p>The vehicle is to be kept clean and tidy at all times. The storage of items in the tray, including rubbish, is not permitted.</p> <p>Maintain and service park plant, equipment and machinery on a routine basis</p> <p>Any damage to the vehicle is to be reported to the Principal within 24 hours</p>	
<p><b>General accountabilities</b></p> <p>Attend meetings with the Principal to address the Contractor 's reports and discuss any aspect of the Park's operation as may be reasonably required by the Principal</p> <p>The Principal will have periodic inspections carried out during the contract to assess the performance of the Contractor in accordance with this schedule. Inspections may include mystery customer inspections, internal audits, safety &amp; quality inspections</p> <p>The Principal will conduct a performance review of the Contractor annually on the anniversary of the commencement of the contract. The Contractor will be assessed on the following criteria:</p> <ul style="list-style-type: none"> <li>• General compliance with this schedule</li> <li>• Interpersonal and communication skills</li> <li>• Negotiation and problem solving skills</li> <li>• Customer service skills</li> <li>• Co-ordination of people, resources and activities</li> <li>• Budget development and control</li> <li>• Marketing</li> </ul> <p>Maintenance or improvement of the current Tourism reputation</p>	
<p><b>Other requirements</b></p> <p>The Contractor must have the following licences and certificates:</p> <ul style="list-style-type: none"> <li>• Current NSW Drivers Licence</li> <li>• Current Working With Children Check number</li> <li>• Chemcert Accreditation</li> </ul> <p>Provide a correctly rendered monthly tax invoice to the Principal to enable equal payments, for the amount agreed in this contract Active Australia Business Number (ABN)</p>	

## Services Contract at Penrose Park Recreation Reserve

**SCHEDULE THREE – PERFORMANCE CRITERIA**

For the purpose of Clause 6 (Monitoring of Services), the Contractor must meet the following Performance Criteria in the provision of the Services, provided that the Principal may direct the Contractor to provide any further reports the Principal reasonably requires to know and understand all aspects of the Park's operation:

Item	Frequency
Prepare and submit to the Principal a written report detailing for the preceding three-month period: <ul style="list-style-type: none"> <li>a) Visitor numbers to the Park;</li> <li>b) Bed Nights;</li> <li>c) All income;</li> <li>d) All expenditure;</li> <li>e) Net revenue;</li> <li>f) Full reconciliation of income, expenditure and banking;</li> <li>g) Gross income from the Contractor 's operation of the kiosk;</li> <li>h) Any maintenance or occupational health &amp; safety requirements;</li> <li>i) Any visitor feedback including comments and suggestion box feedback; and</li> <li>j) Any media reports, advertising or other promotion of the Park.</li> </ul>	Within the 1 <sup>st</sup> week of the end of each BAS quarter (Jan, April, July, November)
Attend meetings with the Principal to address the Contractor 's reports and discuss any aspect of the Park's operation as may be reasonably required by the Principal	Monthly
The Principal will have periodic inspections carried out during the contract (e.g. Mystery Customer inspections, internal audits, safety & quality inspections) where the Contractor and the Contractor's representative's performance will be assessed and rated.	
The Principal will conduct a performance review of the Contractor annually on the anniversary of the commencement of the contract. The Contractor will be assessed on the following criteria: <ul style="list-style-type: none"> <li>• Interpersonal and communication skills;</li> <li>• Negotiation and problem solving skills;</li> <li>• Customer service skills;</li> <li>• Co-ordination of people, resources and activities;</li> <li>• Budget development and control;</li> <li>• Marketing; and</li> <li>• Maintenance or improvement of the current Tourism Rating.</li> </ul>	
The Contractor must provide a correctly rendered tax invoice to the Principal for the Service Fees and maintain an Australia Business Number (ABN).	Monthly

**SCHEDULE FOUR – PRINCIPAL’S SUPPLIES**

Item	Description
Accommodation	The Principal will provide a residence at the Park for the Contractor's accommodation. The accommodation tenure is granted under the <i>CLM Act 2016</i> and therefore does not form a tenancy under the <i>Residential Tenancies Act 2002</i> .
Computers, software, telephone, and other IT equipment	Telephone supplied, internet connection (contractor's residence only) and laptop for the performance of the Management Services.
Tools and Equipment	Plant, equipment and machinery maybe supplied at the discretion of the Principal.
Consumables	Consumables, including cleaning products, to be purchased by the Contractor at the Principal's expense, where the Principal has an account or with Petty Cash.

**SCHEDULE FIVE – CONTRACTOR’S SUPPLIES**

Item	Description
Tools and Equipment	Unless supplied by the Principal, any necessary equipment to carry out the maintenance and cleaning activities set out in Schedule 2, including a suitable vehicle.

## Execution Clauses

### For the Principal

Signed for and on behalf of Department of Planning & Environment (ABN 20 770 707 468), by its authorised signatory but not so as to incur personal liability:

Type name of Departmental manager with financial delegation

\_\_\_\_\_  
Signature

Date: \_\_\_\_\_

### For the Contractor (corporation)

Signed for on and on behalf of insert name of Company in accordance with Section 127 of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director(1)

\_\_\_\_\_  
Signature of Director(2)/ Company Secretary

\_\_\_\_\_  
Name of Director(1)

\_\_\_\_\_  
Name of Director(2)/ Company Secretary

\_\_\_\_\_  
Address of Director(1)

\_\_\_\_\_  
Address of Director(2)/ Company Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### ***Contractor Alternative Signature Block***

### For the Contractor (Sole Trader)

By entering into this Contract the signatory warrants that the signatory is duly authorised to execute this Agreement on behalf of the Contractor

\_\_\_\_\_  
Signature of Authorised Signatory

\_\_\_\_\_  
Name of Authorised Signatory

Date: \_\_\_\_\_