

# *General Terms and Conditions of Authorisation*

## **Background**

- A. The City of Burnside ("the Council") is a council constituted under and is entitled to exercise the powers conferred on it under the Local Government Act 1999.
- B. The Council is vested with the fee simple of the whole of the roads, which includes all footpaths, in the Council's area.
- C. The Applicant wishes to alter a portion of the Council's Road as described in the Application.
- D. The Council has agreed to grant this Authorisation in accordance with the terms of this document.

## **Grant of Authorisation**

The Council will Authorise the Applicant under Section 221 of the Local Government Act 1999 to alter the Road for the Term set out in the Special Conditions.

## **When this Authorisation is Issued**

- A. The Applicant agrees to comply with the General Conditions set out in this Application.
- B. The Applicant agrees to comply with any Special Conditions that are set out in the Authorisation.
- C. The Applicant will provide a copy of all certificates that are required by either the General Conditions or Special Conditions of the Authorisation.
- D. The Applicant will pay the fee set out in the Special Conditions, which may be increased from time to time in the manner set out in the Special conditions.

## **GENERAL CONDITIONS**

### **1. Indemnification & Release**

- 1.1 The Applicant agrees to indemnify the Council from and against all actions, costs, claims and damages, which may be brought or claimed against the Council arising out of or in relation to the granting of this Authorisation.
- 1.2 The Applicant agrees to release the Council from any liability or claim resulting directly or indirectly from any accident, damage or injury occurring from the Applicant's alteration to or use of the Road.
- 1.3 The Applicant agrees that the Council will have no responsibility or liability for any loss or damage to any of the Applicant's goods and property located on or adjacent to the Road pursuant to this Authorisation.

## 2. **Public Risk Insurance**

The Applicant must take out and keep current a public risk insurance policy in the joint name of the Council and the Applicant. The policy must insure for the minimum amount of **TWENTY MILLION DOLLARS (\$20,000,000)** per claim or such other amount as the Council reasonably requires from time to time and must cover injury, loss or damage to persons or property arising directly or indirectly from the Applicant's alteration of the Road.

## 3. **Disclosure and Evidence of Policy**

- 3.1 The policy must bear an endorsement from the Insurer indicating the Insurer accepts the indemnity given by the Applicant.
- 3.2 The insurance policy must also bear an endorsement from the Insurer that it will notify the Council if the premium is not paid or the policy is allowed to lapse or is cancelled.
- 3.3 A copy of the policy and evidence of payment of the premium must be provided to Council before the Authorisation is effective.

## 4. **Transfer of Authorisation**

This Authorisation is not transferable.

## 5. **Compliance with Statutory Requirements**

- 5.1 The Applicant must comply with any Act of Parliament, regulation or by-law relating to the use of the Road, including in particular the Liquor Licensing Act, the Disability Discrimination Act, and the Work Health and Safety Act.
- 5.2 Wherever there is any cost involved in complying with the preceding requirement, the Applicant will be responsible for payment of those costs.

## 6. **Compliance with Direction of Government Department or Authority**

- 6.1 The structure and its construction shall not interfere with or cause damage to or effect in any way any wire post, cable pipe or other thing the property of the SA Power Network, Telstra, SA Water and/or United Water, Boral, Origin Energy Limited or other Federal, State or local government department or authority.
- 6.2 If any such damage does occur the Applicant accepts total responsibility to the Council to make good any such damage.

## 7. **Execution of Authorisation**

This Authorisation will not be effective until the Applicant has received an Authorisation letter signed by the Council.

## 8. **Contractual Rights Only**

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

## 9. Expiry or Termination of Authorisation

This Authorisation will terminate on the earlier of:

- 9.1 The fifth anniversary of the commencement date of this Authorisation, or
- 9.2 Pursuant to Clause 11.2 one (1) month, or such earlier date as the Council may determine pursuant to Clause 11.4, from the date of the Council's notice to the Applicant identifying any breach by the Applicant of this Authorisation as set out in Clause 11.3.

## 10. Consequences of Termination

- 10.1 When the Authorisation expires or is terminated, if requested by the Council the Applicant will:
  - 10.1.1 at its own cost, remove the Structure and make good the Road by:
    - repairing any damage caused to the Road in removing the Structure;
    - leaving the Road in good order and cleanliness to the satisfaction of the Council.
- 10.2 The Applicant must make good the Road in accordance with ordinary engineering standards as determined by the Council.
- 10.3 If the Applicant fails to remove the Structure in accordance with this Clause 11, the Council may undertake the work itself and recover its costs in doing so from the Applicant.
- 10.3 Any reasonable costs incurred by the Council in repairing any damage caused by the Applicant in vacating the Road and removing the Structure pursuant to this Clause 11 may be recovered from the Applicant.

## 11. Breach

- 11.1 If the Applicant breaches a provision of this Authorisation, the Council may give the Applicant written notice to remedy the breach and the notice will identify that failure to remedy the breach will result in cancellation of the Authorisation.
- 11.2 If the Applicant fails to remedy the breach within a time specified in the Council's notice then, the Council may cancel this Authorisation.
- 11.3 Before the Council cancels this Authorisation pursuant to Clause 11.2 of this Authorisation, the Council will give the Applicant written notice of the proposed cancellation stating the grounds on which the Council proposes to act and allowing the Applicant one (1) month to make written representations to the Council on the proposed cancellation.
- 11.4 The Council will, within one month after receiving any representations pursuant to Clause 11.3 confirm in writing to the Applicant;
  - 11.4.1 that the Council is satisfied by the Applicant's written representations that the breach can be remedied by the Applicant (to the Council's satisfaction) and this Authorisation will not be cancelled; or
  - 11.4.2 that the Council will cancel this Authorisation effective on a date specified by the Council.

**Applications can be lodged:**

**In person:** 401 Greenhill Rd, Tusmore SA 5065

**By mail:** City of Burnside, PO Box 9, Glenside SA 5065

**By email:** burnside@burnside.sa.gov.au

11.5 The Council may determine that the period allowed, under Clause 11.3 of this Authorisation, to the Applicant to make written representations to the Council on the proposed cancellation, shall be less than one (1) month to protect the health or safety of the public or otherwise to protect the public interest.

## 12. **GST**

The amount payable for any supply made under or in accordance with the Authorisation after the introduction of the GST shall be increased by the GST imposed on or in respect of that supply.

Supply means a taxable supply as defined in A New Tax System (Goods and Services Tax) Act.

## 13. **Fees**

13.1 The Applicant shall pay any fees as per Fees and Charge that can be found on the City of Burnside website:

[http://www.burnside.sa.gov.au/Live/Bookings\\_Payments/Fees\\_Charges](http://www.burnside.sa.gov.au/Live/Bookings_Payments/Fees_Charges)

These fees and charges may be reviewed and increased from time to time.

13.2 The Applicant will pay any taxes, rates or charges levied by any government whether federal, state or local in respect of the location of the Structure on the Road.

13.3 The Applicant shall pay or reimburse to Council the costs of preparing and negotiating this Authorisation.

## 14. **Interpretation**

In this Authorisation reference to:

**"the Application"** means the Application that forms part of this Authorisation;

**"the Council"** include its members, employees and agents;

**"the Applicant"** includes its employees, servants and agents;

**"the Road"** means that portion of **(road name)**.

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