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**CONFIDENTIAL CHIEF EXECUTIVE  
OFFICER PERFORMANCE REVIEW  
COMMITTEE MEETING**

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**CONFIDENTIAL MATTERS**

- 9.1 Chief Executive Officer Employment Agreement Extension  
(Attachments).....4
- 9.2 Review the Chief Executive Officer's Quarterly Performance.....47

Released 30 April 2019

## **9.1 CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT EXTENSION**

Contact Person: Mayor Glenn Docherty

### **Why is this matter confidential?**

Subject to an order pursuant to Section 90 (3) (a) of the Local Government Act 1999, this matter is confidential because the matter relates to personal affairs of the CEO Mal Hemmerling and is not a matter of public knowledge at this point in time.

### **A. COUNCIL/COMMITTEE TO MOVE MOTION TO GO INTO CONFIDENCE**

No action – this motion passed in the open section.

### **B. THE BUSINESS MATTER**

## **9.1 CHIEF EXECUTIVE OFFICER EMPLOYMENT AGREEMENT EXTENSION**

**Responsible Executive Manager :** Ms Rosemary Munslow

**Report Author :** Ms Rosemary Munslow

**Delegated Authority :** Matters delegated to the Committee.

**Attachments :**

1. Amended Employment Agreement - Track Changes
2. Draft Employment Agreement - Mal Hemmerling

### **PURPOSE**

For the Committee to consider the Draft CEO Employment Agreement following Council approval to extend the Agreement with Mal Hemmerling till September 2019.

### **RECOMMENDATION**

That the Committee endorse the Draft Employment Agreement (attachment 2) and issuing to Mal Hemmerling for signing.

### **EXECUTIVE SUMMARY**

The Council received an application at the February Council meeting from the CEO seeking an extension of his Employment Agreement. After consideration the Council endorsed the application and delegated to the CEO Performance Review Committee to draw up a new Employment Agreement and issue to the CEO. The report provides a draft Agreement for the Committees consideration.

## **1. BACKGROUND**

At the 12 February 2018 CEO Performance Review Committee meeting the Committee received correspondence from the CEO requesting an extension of his Agreement by 12 months, which is in line with his current Agreement.

The Committee resolved the following:

*The Committee accepts the correspondence dated the 7<sup>th</sup> February 2018 received from the Chief Executive Officer in relation to contract extension, and recommends to Council to endorse an extension of the Employment Agreement.*

At the 27 February 2018 Council meeting Council acknowledged receipt of the application and endorsed an extension of the Chief Executive Officers Employment Agreement to 21 September 2019. In addition the Council delegated to the CEO Performance Review Committee to endorse the new Employment Agreement be drawn up and issued to the CEO.

## **2. RELEVANCE TO STRATEGIC PLAN**

The CEO Performance Agreement and Contract is linked to and informed by the Strategic Plan.

## **3. PUBLIC CONSULTATION**

There is no requirement to consult the community on this matter.

## **4. DISCUSSION**

- 4.1** Norman Waterhouse has been engaged to draft up the new Employment Agreement. Attached to this report are two documents. The amended (attachment 1) reflects the changes that have been made to the CEO's existing Agreement with track changes. The Draft (attachment 2) document provides a clean version with the change in dates to reflect the commencement and expiry dates for the new Agreement which is for the Committees consideration and endorsement.
- 4.2** Following consideration of the CEO's application the Council must notify the CEO at least three months prior to the Expiry Date whether or not a new employment agreement is to be offered.
- 4.3** At the 12 February CEO Performance Review Committee meeting the Committee received and considered correspondence from the CEO requesting an extension of the Agreement by 12 months.

## 5. OPTIONS

### Recommendation

That the Committee endorse the Draft Employment Agreement (attachment 2) and issuing to Mal Hemmerling for signing.

### Option 2

That the Committee endorse the Draft Employment Agreement (attachment 2) and issuing to Mal Hemmerling for signing with the following amendments:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. \_\_\_\_\_

Released 30 April 2019

## EMPLOYMENT AGREEMENT

City of Playford  
and  
Malcolm Hemmerling

Norman  
Waterhouse  
LAWYERS

Level 15, 45 Pirie Street  
Adelaide SA 5000  
Telephone + 61 8 8210 1200  
Fax + 61 8 8210 1234  
[www.normans.com.au](http://www.normans.com.au)

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THIS IS AN EMPLOYMENT AGREEMENT between:

**CITY OF PLAYFORD** of 12 Bishopstone Road, Davoren Park in the State of South Australia  
(the Employer)

AND

**MALCOLM HEMMERLING** of 63 Milan Terrace, Stirling in the State of South Australia (the  
CEO)

#### INTRODUCTION

- A. The Council is a body corporate constituted by proclamation pursuant to the *Local Government Act 1999* (SA).
- B. The Employer wishes to employ the CEO in accordance with Section 96 of the *Local Government Act 1999* (SA) and the CEO has agreed to accept that employment on the terms and conditions set out herein.

C. Malcolm Hemmerling will be known as the Chief Executive Officer.

D. The Parties acknowledge that the CEO commenced employment with the Employer on [insert date] and has accrued leave entitlements to his credit as at the Commencement Date. Those entitlements may be accessed by the CEO during the Term of the Agreement.

E. The CEO's employment under this Agreement commenced on [insert date], and will expire on the Expiry Date.

F. The Background and Schedules are correct and form part of this Agreement.

#### 1. DEFINITIONS

In this Agreement, unless expressed or implied to the contrary:

**Act** means the *Fair Work Act 1994* (SA);

**Agreement** means this employment agreement;

**Award** means the South Australian Municipal Salaried Officers Award or a successor award;

**Commencement Date** means [insert new date];

Deleted: 21 September 2015

**Confidential Information** means:

- (a) information relating to the business affairs and employees of the Employer;
- (b) matters of a technical nature, future directives and policies, technical data pertaining to the general affairs of the Employer, internal procedures and information, financial information, information pertaining to other employees, salaries, strategic and business plans and like information relating to the Employer;

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- (c) other information which the Employer tells the CEO is confidential or which if disclosed, the CEO knows or ought reasonably to know would be detrimental to the Employer;
- (d) all other information which is imparted to the CEO in circumstances which the CEO knows or should reasonably know that the information is confidential to the Employer or any other persons with whom the Employer is concerned; and
- (e) excludes any information that is public knowledge otherwise than as a consequence of a breach by the CEO of obligations under this Agreement or breach by some other person of a duty of confidence to the Employer.

**Council** means the elected body of the City of Playford (or referred to as the Employer);

**Duties** means the responsibilities, duties and functions of the CEO specified in this Agreement and in Schedule 1;

**Expiry Date** means the date upon which this Agreement expires, being insert date unless otherwise terminated in accordance with this Agreement;

**TEC Package** means the monetary and non-monetary entitlements detailed at Clause 11.

**Term** means the period of employment specified in Clause 3.1.

## 2. APPLICATION OF OTHER INDUSTRIAL INSTRUMENTS

- 2.1 This Agreement shall be read in conjunction with the Act.
- 2.2 This Agreement shall not be read in conjunction with the Award, or any other industrial award or agreement.
- 2.3 The City of Playford Enterprise Agreement 2016, or a successor agreement, does not apply to the CEO's employment.

## 3. TERM OF EMPLOYMENT

- 3.1 The CEO's employment commences on the Commencement Date and will continue under this Agreement for one year, concluding on the Expiry Date.

## 4. FURTHER AGREEMENT

4.1.1 Either the CEO or Council may enter into discussion with regard to a new employment agreement at any time before the Expiry Date.

4.1.2 If the CEO accepts an offer of a new employment agreement (if one is offered), the terms and conditions of that employment shall be set out in a further written agreement.

4.1.3 If a new employment agreement is entered into by the parties under this Clause prior to the Expiry Date, the CEO will be deemed to have continuity of service with the Employer for the purpose of determining the CEO's accrued benefits under the new employment agreement.

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**Deleted:** <#>The parties agree that the CEO's appointment and employment will terminate on the Expiry Date unless this Agreement is.¶

<#>Terminated prior to the Expiry Date pursuant to Clause 18 of this Agreement; or¶ <#>Extended pursuant to Clause 4 of this Agreement.¶

<#>The parties agree that, in consideration of the terms and conditions of this Agreement, the employment of the CEO will not be ongoing but will continue only for the Term, subject to earlier termination in the terms of this Agreement, or such extension of the Term as may apply under Clause 4.1.¶

**Deleted:** <#>Twelve Month Extension of Agreement¶

<#>At the CEO's sole discretion, the Agreement may be extended for a period of up to an additional twelve months from the Expiry Date by the CEO notifying the Employer not less than six months before the Expiry Date of his wish to do so.¶ <#>If the Agreement is extended by the CEO pursuant to this Clause, the terms and conditions herein will continue to apply and the Agreement will terminate at the end of the additional period.¶

<#>Further Employment Agreement¶

**Deleted:** <#>At least six months prior to the Expiry Date, the CEO may make a written application to the Employer for a new employment agreement. Alternatively, the Employer may make an offer of further employment to the CEO no later than six months from the Expiry Date.¶

<#>Following consideration of the CEO's application in Clause 4.2.1, the Employer must notify the CEO at least three months prior to the Expiry Date whether or not a new employment agreement is to be offered to the CEO.¶

<#>Following consideration of the Employer's offer under Clause 4.2.1, the CEO must notify the Employer at least t...

**Deleted:** If the terms of a new employment agreement cannot be agreed by the parties by the Expiry Date, the CEO's employment will conclude on the Expiry Date.

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5. **HOURS OF WORK**

- 5.1 The CEO's hours of work average 38 hours per week including reasonable additional hours and will be as required for him to perform the Duties and the other functions pursuant to this Agreement.
- 5.2 No additional remuneration or penalties are payable for hours additional to 38 hours per week or the circumstances in which they are performed. The TEC Package is in full compensation for all entitlements and hours of work performed.

**Deleted:** <#>Nothing in this Clause prevents the parties from discussing the terms and conditions of a new employment agreement during the Term.¶

6. **REQUIREMENTS OF POSITION**

- 6.1 The CEO must perform the Duties set out in Clause 7 and Schedule 1 to this Agreement. The CEO will be consulted in the development of key performance indicators, which will be set by the Employer and appended to this Agreement within three months of the Commencement Date.
- 6.2 The Employer may change any of the Duties set out in Schedule 1, in consultation with the CEO, as long as those Duties remain within the skills and expertise of the CEO.

7. **DUTIES AND RESPONSIBILITIES**

- 7.1 The CEO must:
- 7.1.1 Comply with the Code of Conduct for Council Employees;
  - 7.1.2 observe and comply with statutory responsibilities arising from the *Local Government Act 1999 (SA)* and all other applicable legislation;
  - 7.1.3 observe and comply with all lawful directions and instructions of the Council;
  - 7.1.4 perform the Duties with such a degree of skill, care and diligence, which is appropriate to the Duties;
  - 7.1.5 be just and faithful to the Employer and shall promptly give to the Employer full information and truthful explanations of all matters relating to his Duties and responsibilities under this Agreement;
  - 7.1.6 act in the best interest of the Employer at all times;
  - 7.1.7 account to the Council for any remuneration or other benefit received from a third party in the CEO's capacity as CEO in any business conducted or promoted by the Employer or any related corporation;
  - 7.1.8 be informed and up to date on issues and developments that affect all areas of responsibility;
  - 7.1.9 attend meetings of the Council and other bodies as required;
  - 7.1.10 exercise responsibilities and Duties where the Employer has delegated authority;

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- 7.1.11 personally observe the requirements of the Employer's policies and procedures in force from time to time;
- 7.1.12 carry out and perform the Duties:
  - 7.1.12.1 lawfully;
  - 7.1.12.2 with proper decorum;
  - 7.1.12.3 to the best of the CEO's ability and judgment; and
  - 7.1.12.4 to the satisfaction of the Employer;
- 7.1.13 promote the aims and objectives of the Employer;
- 7.1.14 maintain a current, unimpeded South Australian driver's licence throughout the Term; and
- 7.1.15 at all times comply with any legislation applying to matters within the scope of the CEO's employment.

7.2 The CEO accepts that the Council may require him to carry out any and all Duties which are within his skills and competence, including those Duties specifically outlined in Schedule 1.

#### 8. ACCOUNTABILITY

- 8.1 The CEO is accountable to the Council and is required to satisfactorily carry out the responsibilities, Duties and functions set out in the position description in Schedule 1, which forms part of this Agreement.
- 8.2 The CEO will be subject to the direction and control of the Council at all times.
- 8.3 The CEO will devote his whole time and attention during the hours reasonably required to properly perform the Duties.

#### 9. DISCLOSURE OF INTERESTS

- 9.1 The CEO will disclose to the Employer any interests (whether direct or indirect) which may give rise to a conflict with his performance of the Duties and responsibilities pursuant to this Agreement.
- 9.2 The parties acknowledge and agree that the CEO has involvement with the bodies currently listed on the CEO's return.

#### 10. OUTSIDE INTERESTS

- 10.1 The CEO must not be directly or indirectly engaged, concerned or interested in any employment, trade, business, profession or occupation requiring the provision of services or advice by the CEO (other than the employment provided by this Agreement), except with the prior written consent of the Employer, which will not be unreasonably withheld.
- 10.2 If the Employer provides its consent to the CEO pursuant to Clause 10.1, the CEO agrees that he will give priority to the employment obligations under this

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Agreement over and above any other business or employment in which he is authorised by the Employer to engage.

**11. TOTAL EMPLOYMENT COST PACKAGE (TEC PACKAGE)**

- 11.1 In consideration of performing the Duties, the CEO is entitled to the TEC Package, which will incorporate annual salary, superannuation and a value in respect of the provision of a vehicle (howsoever provided) outlined in this Clause and Schedule 2.
- 11.2 Regardless of Clause 11.1, the parties may agree to enter into any lawful salary packaging arrangement by mutual agreement between them, which will be recorded in writing in Schedule 2 of this Agreement. The Employer will bear the cost of Fringe Benefits Tax (if any) associated with any salary packaging arrangements reached with the CEO.
- 11.3 No additional remuneration is paid for overtime worked by the CEO, it being noted that the salary component of the TEC Package is loaded in consideration of such hours.
- 11.4 The cash component of the TEC Package will be paid in arrears in equal fortnightly instalments, or as otherwise provided by the Employer, by direct deposit to an account nominated by the CEO.

**11.5 Superannuation**

- 11.5.1 The Employer must make superannuation contributions in accordance with its obligations under the *Superannuation Guarantee (Administration) Act 1992* (Cth), and as necessary to ensure that the Employer is not subject to the charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth).
- 11.5.2 The CEO has nominated the Hemmerling Family Superannuation Fund as the fund into which superannuation contributions are to be made.
- 11.5.3 Any statutory increase to superannuation will be borne by the Employer as an addition to the TEC Package, as it applies at the time of the statutory increase.

**11.6 Deductions**

- 11.6.1 The Employer must:
- 11.6.1.1 Deduct from the cash component of the TEC Package and remit to the Australian Taxation Office instalments of income tax in compliance with its obligations under the *Income Tax Assessment Act 1936* (Cth); and
- 11.6.1.2 Make any other deduction which the Employer is lawfully authorised or obliged to make.

**11.7 Vehicle**

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- 11.7.1 The Employer requires the CEO to have a vehicle and current, unimpeded driver's licence so as to fulfil the Duties in this Agreement.
- 11.7.2 The Employer will provide the CEO with a fully maintained vehicle for business and private use, if the CEO so chooses.
- 11.7.3 The type of vehicle shall be chosen by the CEO at his discretion up to the value outlined in Schedule 2 and advised to the Council as soon as practicable after acceptance of the terms of this Agreement.
- 11.7.4 The Employer will be responsible for the payment of the Fringe Benefits Tax associated with the vehicle (if any).
- 11.7.5 Payments for fuel will be the responsibility of the Employer.
- 11.7.6 The parties agree that the CEO's spouse or partner may be nominated as a driver of the vehicle.
- 11.7.7 Upon the cessation of the Agreement, the CEO will have the option to purchase the vehicle provided at the trade in price that is available to the Council. If this option is exercised, the Council will withhold monies owing to the CEO upon cessation of the Agreement to offset (either wholly or in part) the value of the vehicle. Any outstanding amount can be collected by the Council as a debt.

## 12. PROVISION OF WORK-RELATED EQUIPMENT

- 12.1 The Employer shall provide the CEO with the following equipment, and ensure payment in respect of the following services, to assist in the performance of his Duties:
  - 12.1.1 Mobile phone;
  - 12.1.2 Laptop computer;
  - 12.1.3 iPad;
  - 12.1.4 Establishment (if not established as at the Commencement Date) and maintenance of an internet connection at the CEO's residence;
  - 12.1.5 Establishment (if not established as at the Commencement Date) and maintenance of a telephone landline at the CEO's residence.
- 12.2 The CEO is required to return the mobile phone, laptop computer and iPad to the Employer by the Expiry Date, unless otherwise agreed with the Employer.

## 13. PERSONAL AND PROFESSIONAL DEVELOPMENT

- 13.1 The Employer agrees to provide the CEO with professional and/or personal development opportunities of up to two weeks' duration for each year of the Agreement.
- 13.2 The costs associated with professional development opportunities will be borne by the Council.

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13.3 The costs associated with personal development opportunities will be borne either by the CEO or by utilising funds outlined in Clause 15 of this Agreement.

13.4 Any application for professional development must be made by written application to the Mayor for its acceptance at least one month prior to the opportunity to which the application relates. Approval will not be unreasonably withheld.

**14. PROFESSIONAL MEMBERSHIPS**

14.1 The Employer will pay for the cost of the CEO's professional membership(s) to bodies relevant to the CEO's Duties and/or to fund professional development opportunities throughout the Term of this Agreement, including interstate and/or overseas travel, as nominated by the CEO, by agreement with the Employer.

**15. PERSONAL DEVELOPMENT AND TRAINING ALLOWANCE**

15.1 The Employer agrees to provide the CEO with an allowance up to a maximum of \$25,000.00 per annum for personal development training incurred by the CEO in the course of his employment (excluding those incurred in relation to Clause 13 above) upon the provision of relevant invoices. This amount is to be utilised at the CEO's discretion.

15.2 Any amount to the CEO's credit upon the anniversary of the Commencement Date for each year of the Term will be paid to the CEO as a lump sum, as wages.

**16. PERFORMANCE REVIEW**

16.1 The parties agree that the CEO will undergo a performance review in accordance with the Personal Evaluation System each year, typically in July, for the Term of this Agreement. The CEO must participate in any performance review required by the Employer.

16.2 The performance review shall be conducted by a Performance Review Panel appointed by the Council (**the Panel**).

16.3 The Panel will assess the CEO's performance by reference to review process that currently exists at the Council measured against the CEO's Duties as outlined in this Agreement, Position Description and any other factors considered relevant by the Panel. The Panel will evaluate the extent to which the CEO has discharged the CEO's goals, objectives, responsibilities and Duties outlined in Schedule 1.

16.4 The performance review will review the CEO's Position Description and key performance indicators through the review process that currently exists at the Council.

16.5 A written report shall be compiled with respect to the performance review and a copy provided to the CEO. The report shall set out in detail any particular aspects of the CEO's performance that require improvement, together with reasonable time frames within which the Panel expects those areas of performance to be improved to a specified standard.

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- 16.6 The Employer must provide whatever counselling, advice and assistance are reasonably necessary to enable the CEO to improve his performance during that period.
- 16.7 At the conclusion of the time frames referred to in Clause 16.5 and after taking into account the written report referred to in that Clause (and such other matters as the Employer considers relevant), the CEO will either:
- 16.7.1 Be informed that performance has improved to the satisfaction of the Employer and that no further action will be taken; or
- 16.7.2 Be provided with further written notice, providing final warning that unless the CEO's performance improves in the same stipulated areas, once again within a time frame, the Employer will terminate this Agreement pursuant to Clause 18.3.1.
- 16.8 The CEO's Position Description must be reviewed and, if necessary, amended by agreement within two months after each performance review.

#### 17. TEC PACKAGE REVIEW

- 17.1 The TEC Package specified in Clause 11 and Schedule 2 shall be reviewed annually in conjunction with the performance review process.
- 17.2 The TEC Package review will be conducted within one month of the performance review set out in Clause 16 (if reasonably practicable), and any change to the TEC Package shall take effect from the date on which the performance review is concluded.
- 17.3 The review of the TEC Package will take into account the following:
- 17.3.1 The key performance indicators;
- 17.3.2 The CEO's Position Description;
- 17.3.3 Remuneration paid to CEO's of similar sized councils in South Australia; and
- 17.3.4 Any other factor the Panel considers relevant.
- 17.4 Despite the foregoing, the CEO is not entitled, by right, to any increase in the TEC Package during the Term.

#### 18. TERMINATION OF AGREEMENT

##### 18.1 Summary Termination

- 18.1.1 This Agreement may be terminated by the Employer without notice and without the payment of compensation in lieu of notice in the event that the CEO:
- 18.1.1.1 commits any serious or persistent breach of any of the terms of this Agreement;
- 18.1.1.2 engages in serious and wilful misconduct;

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- 18.1.1.3 is guilty of serious neglect of duty in the discharge of the Duties;
- 18.1.1.4 knowingly acts in breach of the Employer's policies in force from time to time;
- 18.1.1.5 makes improper use of the Employer's property;
- 18.1.1.6 fails to display and exercise the CEO's duty of fidelity or good faith towards the Employer which the Employer might reasonably expect of the CEO; or
- 18.1.1.7 is convicted of any criminal offence which prescribes a term of imprisonment.

#### 18.2 Termination due to illness or incapacity

The parties agree that this Agreement may be terminated by the Employer ~~with~~ notice in the event that the CEO is incapacitated from performing the Duties pursuant this Agreement due to ill health of any type for a period of greater than three months and where all leave entitlements have been exhausted, except where such illness constitutes a compensable disability pursuant to the provisions of the *Return to Work Act 2014* (SA), or successor legislation.

**Deleted:** without notice and without the payment of compensation in lieu of

#### 18.3 Termination by the Provision of Notice

18.3.1 In the event that the Employer determines through the performance review process that the CEO has failed to reasonably meet the performance expected, and provided that the Employer has complied with the procedure as specified in Clause 16 above, the Employer may terminate this Agreement by giving no more than three months' notice or ~~the balance of the Term, whichever is the lesser. The Council may, at its absolute discretion, make a~~ payment in lieu of notice (or part thereof).

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18.3.2 This Agreement may be terminated by the Employer, without cause, by giving six months' notice, or ~~payment of the~~ the balance of the Term, whichever is the lesser. The Council may, at its absolute discretion, make a payment in lieu equivalent to the relevant notice (or part thereof) as required.

18.3.3 This Agreement may be terminated by the CEO giving the Council a period of three months' notice in writing, unless otherwise negotiated with the Employer.

18.3.4 In addition to any right of termination, and without derogating from any right available in this Agreement, the CEO's employment may at any time be terminated by the mutual agreement of the parties on whatever notice and terms upon which the parties may then agree.

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**19. LEAVE****19.1 Annual Leave**

19.1.1 The CEO is entitled to ~~50~~ working days of annual leave per completed year of service, which may be taken at any time approved by the Employer. This leave is cumulative from year to year if unused. The CEO is not entitled to any leave loading payment.

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19.1.2 The Employer may direct the CEO to take any outstanding leave.

19.1.3 Any entitlement to annual leave standing to the credit of the CEO at the time of cessation of employment shall be discharged by the Employer by payment based on the CEO's TEC Package.

**19.2 Personal (Sick/Carer's) Leave**

19.2.1 The CEO is entitled to 10 working days sick/carer's leave for each year of service for the purpose of:

19.2.1.1 Convalescing in respect of a personal injury or illness (**sick leave**);

19.2.1.2 Providing care and support to an immediate family or household member who is suffering from an injury or illness (**carer's leave**).

19.2.2 There shall be no entitlement to payment in lieu of accrued sick/carer's leave entitlements upon cessation of the CEO's employment.

19.2.3 The Employer may require the CEO to provide documentary evidence in support of any sick/carer's leave absence, whether or not the CEO seeks payment for such absence.

**19.3 Long Service Leave**

Long service leave entitlements will be accrued and granted in accordance with the provisions of the *Long Service Leave Act 1987 (SA)*.

**19.4 Bereavement Leave**

19.4.1 The CEO is entitled to two days' paid bereavement leave on the death of the CEO's family member or in other special circumstances as are shown to exist to the satisfaction of the Employer.

19.4.2 The CEO may be required to provide evidence to the Employer in respect of an absence for bereavement leave, whether or not the CEO seeks payment for such absence.

**19.5 Parental Leave**

The CEO is entitled to parental leave in accordance with the provisions of the Act.

**19.6 Leave at the direction of the Employer**

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The Employer may, at any time during the employment, direct the CEO to take leave at full pay and direct the CEO not to report for Duties in whole or in part.

**20. CONFIDENTIALITY OF CONTRACT**

Subject to any applicable law and the written consent to disclosure by both parties, the terms of this Agreement will be kept confidential.

**21. CONFIDENTIALITY OF INFORMATION**

21.1 The CEO will not at any time during this Agreement, nor at any time thereafter, otherwise than in the discharge of the CEO's Duties hereunder or with the prior consent of the Employer:

21.1.1 Divulge to any other person any Confidential Information which the CEO may acquire or have acquired in the course of this Agreement.

21.1.2 Use Confidential Information obtained for the CEO's own benefit or the benefit of any other person or entity.

21.2 All documents, memoranda, reports, books, manuals, papers, records, tools, computer software and hardware and electronically stored information in respect of the operations or statutory obligations of the Employer shall be and remain the sole property of the Employer and shall be delivered up by the CEO to the Employer upon demand.

21.3 The CEO acknowledges that the obligations imposed by this Clause shall be in addition to the obligations imposed or implied at common law in respect of CEOs.

21.4 The CEO's obligations under this Clause shall survive the termination of this Agreement.

**22. INTELLECTUAL PROPERTY AND OTHER PROPERTY OF THE EMPLOYER**

**22.1 Intellectual Property**

22.1.1 All materials provided to the CEO by the Employer, including materials provided to enable performance of the Duties, and all intellectual property in those materials, are and remain the property of the Employer.

22.1.2 All material produced by the CEO in performing the Duties (in or out of working hours) and all intellectual property in that material are the property of the Employer alone, on and from creation, unless otherwise agreed in writing by the Employer.

22.1.3 The CEO must do all acts and sign all documents the Employer reasonably requests to secure its ownership or registration of its intellectual property, during and after the Employment.

22.1.4 At the Employer's request, the CEO must return all the Employer's materials (in any form) and the CEO is not entitled to retain copies of the Employer's materials in any form.

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**22.2 Other property**

22.2.1 The CEO must take all reasonable care in using the Employer's property.

22.2.2 On termination of the CEO's Employment or upon the Employer's request, the CEO must return in good condition (subject to fair wear and tear) any property in the CEO's possession or control belonging to the Employer.

**22.3 Breach**

A breach of the CEO's obligations under this Clause is a serious breach of this Agreement. In addition to the Employer's other remedies, the Employer may sue the CEO for damages sustained as a result of such a breach, interest and legal costs on a solicitor and own client basis.

**23. GOVERNING LAW**

This Agreement shall be governed by, construed and take effect in accordance with the laws of South Australia and the parties hereto irrevocably submit to the jurisdiction of the courts of South Australia.

**24. WARRANTY OF QUALIFICATIONS**

24.1 The CEO warrants that he holds the qualifications and has the requisite experience, as stated to the Council before the Commencement Date, to undertake the Duties. The parties acknowledge the provision of the signed, original academic transcripts by the CEO prior to the Commencement Date.

24.2 If the CEO does not have the qualifications or experience stated, the Employer may summarily terminate this Agreement.

**25. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties regarding the employment of the CEO as herein provided and supersedes all prior agreements, understandings and negotiations regarding the employment of the CEO.

**26. DISPUTE RESOLUTION**

26.1 Any dispute between the parties in relation this Agreement may be settled by any agreed process or, failing agreement as to a process, may be referred to an agreed third party for mediation and conciliation. Both parties may be represented at any mediation or conciliation.

26.2 The cost of engaging the agreed third party referred to in Clause 26.1, if any, will be borne equally by the parties.

**27. NO WAIVER**

27.1 A party waives a right under this Agreement only by written notice to the other party that it waives that right.

27.2 A waiver is limited to the specific instance to which it relates and to the specific purpose for which it was given.

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28. **SEVERABILITY**

The Employer and the CEO consider the covenants, obligations and restrictions herein contained to be reasonable in all the circumstances of the employment and each and every one of such covenants, obligations and restrictions in each and every part thereof, shall be deemed to be a severable and independent covenant, obligation and restriction to the intent that, if they are taken together, be judged to go beyond what is reasonable in all the circumstances, but would be adjudged reasonable with any one or more such covenants, obligations or restrictions or any one or more parts thereof deleted the covenants, obligations and restrictions herein contained shall be deemed to apply as if such covenants, obligations or restrictions or parts thereof as are so adjudged, unreasonable were deleted.

29. **NOTICES**

Any notice to be given pursuant to this Agreement shall be in writing and may be delivered personally or delivered by prepaid registered post to the address of the parties set out in this Agreement, or at the known place of abode or business of the party or such other address as the party may from time to time notify to the other party for the purposes of service of any notice.

30. **VARIATION**

This Agreement shall only be varied by further agreement of the parties in writing.

31. **SIGNATORIES**

**Signed** by an authorised representative  
of the **City of Playford** in the presence  
of:

.....  
Signature of witness

.....  
Authorised representative

.....  
Name of witness (print)

.....  
Date

**Signed by Malcolm Hemmerling** in the  
presence of:

.....  
Signature of witness

.....  
Malcolm Hemmerling

.....  
Name of witness (print)

.....  
Date

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**SCHEDULE ONE: CHIEF EXECUTIVE OFFICER JOB & PERSON SPECIFICATION****POSITION DESCRIPTION**

<b>Title</b>	<b>Chief Executive Officer</b>
<b>Level of Work</b>	<b>Executive</b>
<b>Reports to</b>	<b>Council through Mayor</b>
<b>Business Unit</b>	<b>Executive</b>

**1. POSITION OBJECTIVE**

The Chief Executive Officer, in partnership with the Mayor and Councillors is responsible for leading, managing and implementing efficient and effective services to the community.

Ensure that the Council's statutory and governance obligations are met in a timely and effective manner.

**2. POSITION ACCOUNTABILITIES****Leadership and Strategy**

- Work closely with Council to ensure that Strategic Plans are developed, implemented and monitored within appropriate and legislated timeframes
- Drive and ensure financial sustainability of the Council through the development of strategic and operational financial plans within the parameters set by relevant legislation and guided by the Council
- Effectively communicate the Council vision and strategy to all stakeholders
- Drive and sponsor continuous improvement across the organisation, integrating and aligning all aspects of the organisation, to effectively manage the quantum of continuous improvement required
- Provide and demonstrate clear direction through consistent messaging and guidance, to ensure fair and ethical behavior at all times

**Finance and Asset Management**

- Ensure Annual and Long Term Financial Plans are developed, monitored, communicated and controlled
- Closely monitor and control budgets
- Ensure Council has the required corporate infrastructure to fulfil its plans and obligations
- Ensure maximum value is derived from the broad use of Council services physically, financially and intellectually, for community benefit
- Monitor organisational performance to ensure objectives are achieved and opportunities for development are identified

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- Effectively manage all assets to optimise their use, benefits and return to the community
  - Develop and maintain effective strategies and procedures to manage and mitigate risk
- People and Culture**
- Attract and retain talent to achieve the Council's objectives
  - Bring people along with change in ways that support, stretch and develop their capabilities
  - Draw the diverse range of staff into a collaborative, positive, team oriented culture that fosters talent, individual accountability and leaderships at all levels
  - As the responsible Officer, take reasonable steps to ensure Council completes all required obligations under the Workplace Health, Safety Act 2012 and associated legislation to ensure a safe and positive working environment
  - Create and maintain a work environment that fosters mutually beneficial relationships between employee and employer
- Service Delivery**
- Proactively champion, develop and maintain a strong customer service focus for the organisation
  - Ensure all the residents, ratepayers and businesses of the City of Playford are treated as its customers and that their best interests are reasonably served at all times.
  - Review and add value to Council processes, reports and debate to ensure they support the Mayor and Councillors decision making, effective governance and responsible action.
- Stakeholder Engagement**
- Provide input and influence into International, Commonwealth, State or Local Government initiatives or programs affecting the City.
  - Engage others outside the community to bring benefit and attract resources to the Council and region.
  - Lead the development of relevant strategic partnerships
  - Establish and maintain quality relationships with local businesses and industry, educational institutions, community service providers, and government agencies.
- Council Relationship**
- Develop and maintain a positive and collaborative working relationship with the Mayor and Councillors
  - Provide Council with reports that indicate the status, success and effectiveness of all operations and major projects.
  - Ensure all decisions of Council are progressed, implemented and reported on (where applicable) in a timely and appropriate manner.
  - Provide the Mayor and Councillors with appropriate professional development opportunities which include mandated training.
  - Ensure workplace policies, procedures and systems for risk identification, risk assessment, risk control and workplace health and safety meet or exceed expected standards
  - Implement all policies and procedures adopted by the City of Playford including the Code of Conduct for Council Employees is complied with by self and team to expected standards.

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### 3. QUALIFICATIONS/KNOWLEDGE/EXPERIENCE

**Qualifications:****Essential**

- Tertiary Qualifications in a relevant discipline

**Desirable**

- MBA or equivalent post graduate qualification

**Knowledge, Skills & Experience (Essential)**

- Experience in Executive Management
- Extensive experience in the management of multi-functioned service organisation, together with extensive experience in the supervision and management of strategy staff, assets and finances
- Sound knowledge of relevant Local, State and Federal Government legislation
- Highly developed, communication skills (written and oral), suitable for a range of audiences and situations
- Proven ability to negotiate and influence at senior levels
- Demonstrated capacity to lead and develop relationships across a broad spectrum
- Ability to plan, prioritise and effectively manage complex and competing tasks
- Capability to mentor, empower and develop strong performers
- Capacity and ability to effectively respond to unforeseen circumstances
- Well-developed presentation and public speaking skills
- Active and strong networks across Northern Adelaide, South Australia and Nationally
- Local Government knowledge and/or experience
- An understanding of the importance of effective Human Resource Principles and Equal Employment Opportunity

**Personal Attributes**

- Conducts self with a high level of personal integrity and honesty
- Shows interest in the development of communities and networks
- Has the courage to have robust conversations
- Demonstrates resilience, perseverance, and ethical behavior
- Has a high degree of self-motivation and enthusiasm
- Demonstrates a high level of interpersonal skills and work ethic including high degree of confidentiality, discretion and diplomacy

**SCHEDULE TWO – TOTAL EMPLOYMENT COST PACKAGE**

Annual base salary (gross)	\$297,978.66
Superannuation contribution	\$ 25,000.00
Full and unrestricted use of a fully maintained vehicle	\$ 25,000.00
Personal development and training allowance	\$ 25,000.00
<b>TOTAL (gross)</b>	<b>\$372,978.66</b>

## EMPLOYMENT AGREEMENT

City of Playford

and

Malcolm Hemmerling

Norman  
Waterhouse  
LAWYERS

Level 15, 45 Pirie Street  
Adelaide SA 5000  
Telephone + 61 8 8210 1200  
Fax + 61 8 8210 1234  
[www.normans.com.au](http://www.normans.com.au)

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**THIS IS AN EMPLOYMENT AGREEMENT** between:

**CITY OF PLAYFORD** of 12 Bishopstone Road, Davoren Park in the State of South Australia  
(the Employer)

AND

**MALCOLM HEMMERLING** of 63 Milan Terrace, Stirling in the State of South Australia (the CEO)

## INTRODUCTION

- A. The Council is a body corporate constituted by proclamation pursuant to the *Local Government Act 1999* (SA).
- B. The Employer wishes to employ the CEO in accordance with Section 96 of the *Local Government Act 1999* (SA) and the CEO has agreed to accept that employment on the terms and conditions set out herein.
- C. Malcolm Hemmerling will be known as the Chief Executive Officer.
- D. The Parties acknowledge that the CEO commenced employment with the Employer on **21 September 2015** and has accrued leave entitlements to his credit as at the Commencement Date. Those entitlements may be accessed by the CEO during the Term of the Agreement.
- E. The CEO's employment under this Agreement commenced on **22 September 2018**, and will expire on the Expiry Date.
- F. The Background and Schedules are correct and form part of this Agreement.

## 1. DEFINITIONS

In this Agreement, unless expressed or implied to the contrary:

**Act** means the *Fair Work Act 1994* (SA);

**Agreement** means this employment agreement;

**Award** means the South Australian Municipal Salaried Officers Award or a successor award;

**Commencement Date** means **22 September 2018**;

**Confidential Information** means:

- (a) information relating to the business affairs and employees of the Employer;
- (b) matters of a technical nature, future directives and policies, technical data pertaining to the general affairs of the Employer, internal procedures and information, financial information, information pertaining to other employees, salaries, strategic and business plans and like information relating to the Employer;

- (c) other information which the Employer tells the CEO is confidential or which if disclosed, the CEO knows or ought reasonably to know would be detrimental to the Employer;
- (d) all other information which is imparted to the CEO in circumstances which the CEO knows or should reasonably know that the information is confidential to the Employer or any other persons with whom the Employer is concerned; and
- (e) excludes any information that is public knowledge otherwise than as a consequence of a breach by the CEO of obligations under this Agreement or breach by some other person of a duty of confidence to the Employer.

**Council** means the elected body of the City of Playford (or referred to as the Employer);

**Duties** means the responsibilities, duties and functions of the CEO specified in this Agreement and in Schedule 1;

**Expiry Date** means the date upon which this Agreement expires, being 21 September 2019 unless otherwise terminated in accordance with this Agreement;

**TEC Package** means the monetary and non-monetary entitlements detailed at Clause 11.

**Term** means the period of employment specified in Clause 3.1.

## 2. APPLICATION OF OTHER INDUSTRIAL INSTRUMENTS

- 2.1 This Agreement shall be read in conjunction with the Act.
- 2.2 This Agreement shall not be read in conjunction with the Award, or any other industrial award or agreement.
- 2.3 The City of Playford Enterprise Agreement 2016, or a successor agreement, does not apply to the CEO's employment.

## 3. TERM OF EMPLOYMENT

- 3.1 The CEO's employment commences on the Commencement Date and will continue under this Agreement for one year, concluding on the Expiry Date.

## 4. FURTHER AGREEMENT

- 4.1 Either the CEO or Council may enter into discussion with regard to a new employment agreement at any time before the Expiry Date.
- 4.2 If the CEO accepts an offer of a new employment agreement (if one is offered), the terms and conditions of that employment shall be set out in a further written agreement.
- 4.3 If a new employment agreement is entered into by the parties under this Clause prior to the Expiry Date, the CEO will be deemed to have continuity of service with the Employer for the purpose of determining the CEO's accrued benefits under the new employment agreement.

## 5. HOURS OF WORK

- 5.1 The CEO's hours of work average 38 hours per week including reasonable additional hours and will be as required for him to perform the Duties and the other functions pursuant to this Agreement.
- 5.2 No additional remuneration or penalties are payable for hours additional to 38 hours per week or the circumstances in which they are performed. The TEC Package is in full compensation for all entitlements and hours of work performed.

## 6. REQUIREMENTS OF POSITION

- 6.1 The CEO must perform the Duties set out in Clause 7 and Schedule 1 to this Agreement. The CEO will be consulted in the development of key performance indicators, which will be set by the Employer and appended to this Agreement within three months of the Commencement Date.
- 6.2 The Employer may change any of the Duties set out in Schedule 1, in consultation with the CEO, as long as those Duties remain within the skills and expertise of the CEO.

## 7. DUTIES AND RESPONSIBILITIES

- 7.1 The CEO must:
- 7.1.1 Comply with the Code of Conduct for Council Employees;
  - 7.1.2 observe and comply with statutory responsibilities arising from the *Local Government Act 1999* (SA) and all other applicable legislation;
  - 7.1.3 observe and comply with all lawful directions and instructions of the Council;
  - 7.1.4 perform the Duties with such a degree of skill, care and diligence, which is appropriate to the Duties;
  - 7.1.5 be just and faithful to the Employer and shall promptly give to the Employer full information and truthful explanations of all matters relating to his Duties and responsibilities under this Agreement;
  - 7.1.6 act in the best interest of the Employer at all times;
  - 7.1.7 account to the Council for any remuneration or other benefit received from a third party in the CEO's capacity as CEO in any business conducted or promoted by the Employer or any related corporation;
  - 7.1.8 be informed and up to date on issues and developments that affect all areas of responsibility;
  - 7.1.9 attend meetings of the Council and other bodies as required;
  - 7.1.10 exercise responsibilities and Duties where the Employer has delegated authority;

- 7.1.11 personally observe the requirements of the Employer's policies and procedures in force from time to time;
- 7.1.12 carry out and perform the Duties:
  - 7.1.12.1 lawfully;
  - 7.1.12.2 with proper decorum;
  - 7.1.12.3 to the best of the CEO's ability and judgment; and
  - 7.1.12.4 to the satisfaction of the Employer;
- 7.1.13 promote the aims and objectives of the Employer;
- 7.1.14 maintain a current, unimpeded South Australian driver's licence throughout the Term; and
- 7.1.15 at all times comply with any legislation applying to matters within the scope of the CEO's employment.

7.2 The CEO accepts that the Council may require him to carry out any and all Duties which are within his skills and competence, including those Duties specifically outlined in Schedule 1.

## 8. ACCOUNTABILITY

- 8.1 The CEO is accountable to the Council and is required to satisfactorily carry out the responsibilities, Duties and functions set out in the position description in Schedule 1, which forms part of this Agreement.
- 8.2 The CEO will be subject to the direction and control of the Council at all times.
- 8.3 The CEO will devote his whole time and attention during the hours reasonably required to properly perform the Duties.

## 9. DISCLOSURE OF INTERESTS

- 9.1 The CEO will disclose to the Employer any interests (whether direct or indirect) which may give rise to a conflict with his performance of the Duties and responsibilities pursuant to this Agreement.
- 9.2 The parties acknowledge and agree that the CEO has involvement with the bodies currently listed on the CEO's return.

## 10. OUTSIDE INTERESTS

- 10.1 The CEO must not be directly or indirectly engaged, concerned or interested in any employment, trade, business, profession or occupation requiring the provision of services or advice by the CEO (other than the employment provided by this Agreement), except with the prior written consent of the Employer, which will not be unreasonably withheld.
- 10.2 If the Employer provides its consent to the CEO pursuant to Clause 10.1, the CEO agrees that he will give priority to the employment obligations under this

Agreement over and above any other business or employment in which he is authorised by the Employer to engage.

## 11. TOTAL EMPLOYMENT COST PACKAGE (TEC PACKAGE)

11.1 In consideration of performing the Duties, the CEO is entitled to the TEC Package, which will incorporate annual salary, superannuation and a value in respect of the provision of a vehicle (howsoever provided) outlined in this Clause and Schedule 2.

11.2 Regardless of Clause 11.1, the parties may agree to enter into any lawful salary packaging arrangement by mutual agreement between them, which will be recorded in writing in Schedule 2 of this Agreement. The Employer will bear the cost of Fringe Benefits Tax (if any) associated with any salary packaging arrangements reached with the CEO.

11.3 No additional remuneration is paid for overtime worked by the CEO, it being noted that the salary component of the TEC Package is loaded in consideration of such hours.

11.4 The cash component of the TEC Package will be paid in arrears in equal fortnightly instalments, or as otherwise provided by the Employer, by direct deposit to an account nominated by the CEO.

### 11.5 Superannuation

11.5.1 The Employer must make superannuation contributions in accordance with its obligations under the *Superannuation Guarantee (Administration) Act 1992* (Cth), and as necessary to ensure that the Employer is not subject to the charge under the *Superannuation Guarantee (Administration) Act 1992* (Cth).

11.5.2 The CEO has nominated the Hemmerling Family Superannuation Fund as the fund into which superannuation contributions are to be made.

11.5.3 Any statutory increase to superannuation will be borne by the Employer as an addition to the TEC Package, as it applies at the time of the statutory increase.

### 11.6 Deductions

11.6.1 The Employer must:

11.6.1.1 Deduct from the cash component of the TEC Package and remit to the Australian Taxation Office instalments of income tax in compliance with its obligations under the *Income Tax Assessment Act 1936* (Cth); and

11.6.1.2 Make any other deduction which the Employer is lawfully authorised or obliged to make.

## **11.7 Vehicle**

- 11.7.1 The Employer requires the CEO to have a vehicle and current, unimpeded driver's licence so as to fulfil the Duties in this Agreement.
- 11.7.2 The Employer will provide the CEO with a fully maintained vehicle for business and private use, if the CEO so chooses.
- 11.7.3 The type of vehicle shall be chosen by the CEO at his discretion up to the value outlined in Schedule 2 and advised to the Council as soon as practicable after acceptance of the terms of this Agreement.
- 11.7.4 The Employer will be responsible for the payment of the Fringe Benefits Tax associated with the vehicle (if any).
- 11.7.5 Payments for fuel will be the responsibility of the Employer.
- 11.7.6 The parties agree that the CEO's spouse or partner may be nominated as a driver of the vehicle.
- 11.7.7 Upon the cessation of the Agreement, the CEO will have the option to purchase the vehicle provided at the trade in price that is available to the Council. If this option is exercised, the Council will withhold monies owing to the CEO upon cessation of the Agreement to offset (either wholly or in part) the value of the vehicle. Any outstanding amount can be collected by the Council as a debt.

## **12. PROVISION OF WORK-RELATED EQUIPMENT**

- 12.1 The Employer shall provide the CEO with the following equipment, and ensure payment in respect of the following services, to assist in the performance of his Duties:
  - 12.1.1 Mobile phone;
  - 12.1.2 Laptop computer;
  - 12.1.3 iPad;
  - 12.1.4 Establishment (if not established as at the Commencement Date) and maintenance of an internet connection at the CEO's residence;
  - 12.1.5 Establishment (if not established as at the Commencement Date) and maintenance of a telephone landline at the CEO's residence.
- 12.2 The CEO is required to return the mobile phone, laptop computer and iPad to the Employer by the Expiry Date, unless otherwise agreed with the Employer.

## **13. PERSONAL AND PROFESSIONAL DEVELOPMENT**

- 13.1 The Employer agrees to provide the CEO with professional and/or personal development opportunities of up to two weeks' duration for each year of the Agreement.
- 13.2 The costs associated with professional development opportunities will be borne by the Council.

13.3 The costs associated with personal development opportunities will be borne either by the CEO or by utilising funds outlined in Clause 15 of this Agreement.

13.4 Any application for professional development must be made by written application to the Mayor for its acceptance at least one month prior to the opportunity to which the application relates. Approval will not be unreasonably withheld.

#### 14. PROFESSIONAL MEMBERSHIPS

14.1 The Employer will pay for the cost of the CEO's professional membership(s) to bodies relevant to the CEO's Duties and/or to fund professional development opportunities throughout the Term of this Agreement, including interstate and/or overseas travel, as nominated by the CEO, by agreement with the Employer.

#### 15. PERSONAL DEVELOPMENT AND TRAINING ALLOWANCE

15.1 The Employer agrees to provide the CEO with an allowance up to a maximum of \$25,000.00 per annum for personal development training incurred by the CEO in the course of his employment (excluding those incurred in relation to Clause 13 above) upon the provision of relevant invoices. This amount is to be utilised at the CEO's discretion.

15.2 Any amount to the CEO's credit upon the anniversary of the Commencement Date for each year of the Term will be paid to the CEO as a lump sum, as wages.

#### 16. PERFORMANCE REVIEW

16.1 The parties agree that the CEO will undergo a performance review in accordance with the Personal Evaluation System each year, typically in July, for the Term of this Agreement. The CEO must participate in any performance review required by the Employer.

16.2 The performance review shall be conducted by a Performance Review Panel appointed by the Council (**the Panel**).

16.3 The Panel will assess the CEO's performance by reference to review process that currently exists at the Council measured against the CEO's Duties as outlined in this Agreement, Position Description and any other factors considered relevant by the Panel. The Panel will evaluate the extent to which the CEO has discharged the CEO's goals, objectives, responsibilities and Duties outlined in Schedule 1.

16.4 The performance review will review the CEO's Position Description and key performance indicators through the review process that currently exists at the Council.

16.5 A written report shall be compiled with respect to the performance review and a copy provided to the CEO. The report shall set out in detail any particular aspects of the CEO's performance that require improvement, together with reasonable time frames within which the Panel expects those areas of performance to be improved to a specified standard.

- 16.6 The Employer must provide whatever counselling, advice and assistance are reasonably necessary to enable the CEO to improve his performance during that period.
- 16.7 At the conclusion of the time frames referred to in Clause 16.5 and after taking into account the written report referred to in that Clause (and such other matters as the Employer considers relevant), the CEO will either:
- 16.7.1 Be informed that performance has improved to the satisfaction of the Employer and that no further action will be taken; or
  - 16.7.2 Be provided with further written notice, providing final warning that unless the CEO's performance improves in the same stipulated areas, once again within a time frame, the Employer will terminate this Agreement pursuant to Clause 18.3.1.
- 16.8 The CEO's Position Description must be reviewed and, if necessary, amended by agreement within two months after each performance review.

## **17. TEC PACKAGE REVIEW**

- 17.1 The TEC Package specified in Clause 11 and Schedule 2 shall be reviewed annually in conjunction with the performance review process.
- 17.2 The TEC Package review will be conducted within one month of the performance review set out in Clause 16 (if reasonably practicable), and any change to the TEC Package shall take effect from the date on which the performance review is concluded.
- 17.3 The review of the TEC Package will take into account the following:
- 17.3.1 The key performance indicators;
  - 17.3.2 The CEO's Position Description;
  - 17.3.3 Remuneration paid to CEO's of similar sized councils in South Australia; and
  - 17.3.4 Any other factor the Panel considers relevant.
- 17.4 Despite the foregoing, the CEO is not entitled, by right, to any increase in the TEC Package during the Term.

## **18. TERMINATION OF AGREEMENT**

### **18.1 Summary Termination**

- 18.1.1 This Agreement may be terminated by the Employer without notice and without the payment of compensation in lieu of notice in the event that the CEO:
- 18.1.1.1 commits any serious or persistent breach of any of the terms of this Agreement;
  - 18.1.1.2 engages in serious and wilful misconduct;

- 18.1.1.3 is guilty of serious neglect of duty in the discharge of the Duties;
- 18.1.1.4 knowingly acts in breach of the Employer's policies in force from time to time;
- 18.1.1.5 makes improper use of the Employer's property;
- 18.1.1.6 fails to display and exercise the CEO's duty of fidelity or good faith towards the Employer which the Employer might reasonably expect of the CEO; or
- 18.1.1.7 is convicted of any criminal offence which prescribes a term of imprisonment.

## 18.2 Termination due to illness or incapacity

The parties agree that this Agreement may be terminated by the Employer with notice in the event that the CEO is incapacitated from performing the Duties pursuant this Agreement due to ill health of any type for a period of greater than three months and where all leave entitlements have been exhausted, except where such illness constitutes a compensable disability pursuant to the provisions of the *Return to Work Act 2014* (SA), or successor legislation.

## 18.3 Termination by the Provision of Notice

- 18.3.1 In the event that the Employer determines through the performance review process that the CEO has failed to reasonably meet the performance expected, and provided that the Employer has complied with the procedure as specified in Clause 16 above, the Employer may terminate this Agreement by giving no more than three months' notice or the balance of the Term, whichever is the lesser. The Council may, at its absolute discretion, make a payment in lieu of notice (or part thereof).
- 18.3.2 This Agreement may be terminated by the Employer, without cause, by giving six months' notice, or payment of the balance of the Term, whichever is the lesser. The Council may, at its absolute discretion, make a payment in lieu equivalent to the relevant notice (or part thereof) as required.
- 18.3.3 This Agreement may be terminated by the CEO giving the Council a period of three months' notice in writing, unless otherwise negotiated with the Employer.
- 18.3.4 In addition to any right of termination, and without derogating from any right available in this Agreement, the CEO's employment may at any time be terminated by the mutual agreement of the parties on whatever notice and terms upon which the parties may then agree.

## 19. LEAVE

### 19.1 Annual Leave

- 19.1.1 The CEO is entitled to 50 working days of annual leave per completed year of service, which may be taken at any time approved by the Employer. This leave is cumulative from year to year if unused. The CEO is not entitled to any leave loading payment.
- 19.1.2 The Employer may direct the CEO to take any outstanding leave.
- 19.1.3 Any entitlement to annual leave standing to the credit of the CEO at the time of cessation of employment shall be discharged by the Employer by payment based on the CEO's TEC Package.

### 19.2 Personal (Sick/Carer's) Leave

- 19.2.1 The CEO is entitled to 10 working days sick/carers' leave for each year of service for the purpose of:
  - 19.2.1.1 Convalescing in respect of a personal injury or illness (**sick leave**);
  - 19.2.1.2 Providing care and support to an immediate family or household member who is suffering from an injury or illness (**carer's leave**).
- 19.2.2 There shall be no entitlement to payment in lieu of accrued sick/carers' leave entitlements upon cessation of the CEO's employment.
- 19.2.3 The Employer may require the CEO to provide documentary evidence in support of any sick/carers' leave absence, whether or not the CEO seeks payment for such absence.

### 19.3 Long Service Leave

Long service leave entitlements will be accrued and granted in accordance with the provisions of the *Long Service Leave Act 1987* (SA).

### 19.4 Bereavement Leave

- 19.4.1 The CEO is entitled to two days' paid bereavement leave on the death of the CEO's family member or in other special circumstances as are shown to exist to the satisfaction of the Employer.
- 19.4.2 The CEO may be required to provide evidence to the Employer in respect of an absence for bereavement leave, whether or not the CEO seeks payment for such absence.

### 19.5 Parental Leave

The CEO is entitled to parental leave in accordance with the provisions of the Act.

#### 19.6 **Leave at the direction of the Employer**

The Employer may, at any time during the employment, direct the CEO to take leave at full pay and direct the CEO not to report for Duties in whole or in part.

#### 20. **CONFIDENTIALITY OF CONTRACT**

Subject to any applicable law and the written consent to disclosure by both parties, the terms of this Agreement will be kept confidential.

#### 21. **CONFIDENTIALITY OF INFORMATION**

21.1 The CEO will not at any time during this Agreement, nor at any time thereafter, otherwise than in the discharge of the CEO's Duties hereunder or with the prior consent of the Employer:

21.1.1 Divulge to any other person any Confidential Information which the CEO may acquire or have acquired in the course of this Agreement.

21.1.2 Use Confidential Information obtained for the CEO's own benefit or the benefit of any other person or entity.

21.2 All documents, memoranda, reports, books, manuals, papers, records, tools, computer software and hardware and electronically stored information in respect of the operations or statutory obligations of the Employer shall be and remain the sole property of the Employer and shall be delivered up by the CEO to the Employer upon demand.

21.3 The CEO acknowledges that the obligations imposed by this Clause shall be in addition to the obligations imposed or implied at common law in respect of CEOs.

21.4 The CEO's obligations under this Clause shall survive the termination of this Agreement.

#### 22. **INTELLECTUAL PROPERTY AND OTHER PROPERTY OF THE EMPLOYER**

##### 22.1 **Intellectual Property**

22.1.1 All materials provided to the CEO by the Employer, including materials provided to enable performance of the Duties, and all intellectual property in those materials, are and remain the property of the Employer.

22.1.2 All material produced by the CEO in performing the Duties (in or out of working hours) and all intellectual property in that material are the property of the Employer alone, on and from creation, unless otherwise agreed in writing by the Employer.

22.1.3 The CEO must do all acts and sign all documents the Employer reasonably requests to secure its ownership or registration of its intellectual property, during and after the Employment.

- 22.1.4 At the Employer's request, the CEO must return all the Employer's materials (in any form) and the CEO is not entitled to retain copies of the Employer's materials in any form.

**22.2 Other property**

- 22.2.1 The CEO must take all reasonable care in using the Employer's property.

- 22.2.2 On termination of the CEO's Employment or upon the Employer's request, the CEO must return in good condition (subject to fair wear and tear) any property in the CEO's possession or control belonging to the Employer.

**22.3 Breach**

A breach of the CEO's obligations under this Clause is a serious breach of this Agreement. In addition to the Employer's other remedies, the Employer may sue the CEO for damages sustained as a result of such a breach, interest and legal costs on a solicitor and own client basis.

**23. GOVERNING LAW**

This Agreement shall be governed by, construed and take effect in accordance with the laws of South Australia and the parties hereto irrevocably submit to the jurisdiction of the courts of South Australia.

**24. WARRANTY OF QUALIFICATIONS**

- 24.1 The CEO warrants that he holds the qualifications and has the requisite experience, as stated to the Council before the Commencement Date, to undertake the Duties. The parties acknowledge the provision of the signed, original academic transcripts by the CEO prior to the Commencement Date.

- 24.2 If the CEO does not have the qualifications or experience stated, the Employer may summarily terminate this Agreement.

**25. ENTIRE AGREEMENT**

This Agreement constitutes the entire agreement of the parties regarding the employment of the CEO as herein provided and supersedes all prior agreements, understandings and negotiations regarding the employment of the CEO.

**26. DISPUTE RESOLUTION**

- 26.1 Any dispute between the parties in relation this Agreement may be settled by any agreed process or, failing agreement as to a process, may be referred to an agreed third party for mediation and conciliation. Both parties may be represented at any mediation or conciliation.

- 26.2 The cost of engaging the agreed third party referred to in Clause 26.1, if any, will be borne equally by the parties.

**27. NO WAIVER**

27.1 A party waives a right under this Agreement only by written notice to the other party that it waives that right.

27.2 A waiver is limited to the specific instance to which it relates and to the specific purpose for which it was given.

**28. SEVERABILITY**

The Employer and the CEO consider the covenants, obligations and restrictions herein contained to be reasonable in all the circumstances of the employment and each and every one of such covenants, obligations and restrictions in each and every part thereof, shall be deemed to be a severable and independent covenant, obligation and restriction to the intent that, if they are taken together, be judged to go beyond what is reasonable in all the circumstances, but would be adjudged reasonable with any one or more such covenants, obligations or restrictions or any one or more parts thereof deleted the covenants, obligations and restrictions herein contained shall be deemed to apply as if such covenants, obligations or restrictions or parts thereof as are so adjudged, unreasonable were deleted.

**29. NOTICES**

Any notice to be given pursuant to this Agreement shall be in writing and may be delivered personally or delivered by prepaid registered post to the address of the parties set out in this Agreement, or at the known place of abode or business of the party or such other address as the party may from time to time notify to the other party for the purposes of service of any notice.

**30. VARIATION**

This Agreement shall only be varied by further agreement of the parties in writing.

**31. SIGNATORIES**

**Signed** by an authorised representative  
of the **City of Playford** in the presence  
of:

.....  
Signature of witness

.....  
Authorised representative

.....  
Name of witness (print)

.....  
Date

**Signed** by **Malcolm Hemmerling** in the  
presence of:

.....  
Signature of witness

.....  
Malcolm Hemmerling

.....  
Name of witness (print)

.....  
Date

Released 30 April 2019

**SCHEDULE ONE: CHIEF EXECUTIVE OFFICER JOB & PERSON SPECIFICATION****POSITION DESCRIPTION**

<b>Title</b>	<b>Chief Executive Officer</b>
<b>Level of Work</b>	<b>Executive</b>
<b>Reports to</b>	<b>Council through Mayor</b>
<b>Business Unit</b>	<b>Executive</b>

**1. POSITION OBJECTIVE**

The Chief Executive Officer, in partnership with the Mayor and Councillors is responsible for leading, managing and implementing efficient and effective services to the community.

Ensure that the Council's statutory and governance obligations are met in a timely and effective manner.

**2. POSITION ACCOUNTABILITIES****Leadership and Strategy**

- Work closely with Council to ensure that Strategic Plans are developed, implemented and monitored within appropriate and legislated timeframes
- Drive and ensure financial sustainability of the Council through the development of strategic and operational financial plans within the parameters set by relevant legislation and guided by the Council
- Effectively communicate the Council vision and strategy to all stakeholders
- Drive and sponsor continuous improvement across the organisation, integrating and aligning all aspects of the organisation, to effectively manage the quantum of continuous improvement required
- Provide and demonstrate clear direction through consistent messaging and guidance, to ensure fair and ethical behavior at all times

**Finance and Asset Management**

- Ensure Annual and Long Term Financial Plans are developed, monitored, communicated and controlled
- Closely monitor and control budgets
- Ensure Council has the required corporate infrastructure to fulfil its plans and obligations
- Ensure maximum value is derived from the broad use of Council services physically, financially and intellectually, for community benefit
- Monitor organisational performance to ensure objectives are achieved and opportunities for development are identified

- Effectively manage all assets to optimise their use, benefits and return to the community
- Develop and maintain effective strategies and procedures to manage and mitigate risk

### **People and Culture**

- Attract and retain talent to achieve the Council's objectives
- Bring people along with change in ways that support, stretch and develop their capabilities
- Draw the diverse range of staff into a collaborative, positive, team oriented culture that fosters talent, individual accountability and leaderships at all levels
- As the responsible Officer, take reasonable steps to ensure Council completes all required obligations under the Workplace Health, Safety Act 2012 and associated legislation to ensure a safe and positive working environment
- Create and maintain a work environment that fosters mutually beneficial relationships between employee and employer

### **Service Delivery**

- Proactively champion, develop and maintain a strong customer service focus for the organisation
- Ensure all the residents, ratepayers and businesses of the City of Playford are treated as its customers and that their best interests are reasonably served at all times.
- Review and add value to Council processes, reports and debate to ensure they support the Mayor and Councillors decision making, effective governance and responsible action.

### **Stakeholder Engagement**

- Provide input and influence into International, Commonwealth, State or Local Government initiatives or programs affecting the City.
- Engage others outside the community to bring benefit and attract resources to the Council and region.
- Lead the development of relevant strategic partnerships
- Establish and maintain quality relationships with local businesses and industry, educational institutions, community service providers, and government agencies.

### **Council Relationship**

- Develop and maintain a positive and collaborative working relationship with the Mayor and Councillors
- Provide Council with reports that indicate the status, success and effectiveness of all operations and major projects.
- Ensure all decisions of Council are progressed, implemented and reported on (where applicable) in a timely and appropriate manner.
- Provide the Mayor and Councillors with appropriate professional development opportunities which include mandated training.
- Ensure workplace policies, procedures and systems for risk identification, risk assessment, risk control and workplace health and safety meet or exceed expected standards
- Implement all policies and procedures adopted by the City of Playford including the Code of Conduct for Council Employees is complied with by self and team to expected standards.

### 3. QUALIFICATIONS/KNOWLEDGE/EXPERIENCE

**Qualifications:****Essential**

- Tertiary Qualifications in a relevant discipline

**Desirable**

- MBA or equivalent post graduate qualification

**Knowledge, Skills & Experience (Essential)**

- Experience in Executive Management
- Extensive experience in the management of multi-functioned service organisation, together with extensive experience in the supervision and management of strategy staff, assets and finances
- Sound knowledge of relevant Local, State and Federal Government legislation
- Highly developed, communication skills (written and oral), suitable for a range of audiences and situations
- Proven ability to negotiate and influence at senior levels
- Demonstrated capacity to lead and develop relationships across a broad spectrum
- Ability to plan, prioritise and effectively manage complex and competing tasks
- Capability to mentor, empower and develop strong performers
- Capacity and ability to effectively respond to unforeseen circumstances
- Well-developed presentation and public speaking skills
- Active and strong networks across Northern Adelaide, South Australia and Nationally
- Local Government knowledge and/or experience
- An understanding of the importance of effective Human Resource Principles and Equal Employment Opportunity

**Personal Attributes**

- Conducts self with a high level of personal integrity and honesty
- Shows interest in the development of communities and networks
- Has the courage to have robust conversations
- Demonstrates resilience, perseverance, and ethical behavior
- Has a high degree of self-motivation and enthusiasm
- Demonstrates a high level of interpersonal skills and work ethic including high degree of confidentiality, discretion and diplomacy

**SCHEDULE TWO – TOTAL EMPLOYMENT COST PACKAGE**

Annual base salary (gross)	\$297,978.66
Superannuation contribution	\$ 25,000.00
Full and unrestricted use of a fully maintained vehicle	\$ 25,000.00
Personal development and training allowance	\$ 25,000.00
<b>TOTAL (gross)</b>	<b>\$372,978.66</b>

**C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM 9.1 IS TO BE KEPT IN CONFIDENCE**

**Purpose**

To resolve how long agenda item 9.1 is to be kept confidential.

**STAFF RECOMMENDATION**

Pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999, the Council orders that the following aspects of Item 9.1 be kept confidential in accordance with Council's reasons to deal with this item in confidence pursuant to Section 90 (3) (a) of the Local Government Act 1999:

- Report for item 9.1
- Attachment(s) for Item 9.1
- Decision for Item 9.1

This order shall operate until such time that a new Employment Agreement has been signed by the CEO or will be reviewed and determined as part of the annual review by Council in accordance with Section 91(9)(a) of the Local Government Act 1999, whichever comes first.

## **9.2 REVIEW THE CHIEF EXECUTIVE OFFICER'S QUARTERLY PERFORMANCE**

Contact Person: Ms Rosemary Munslow

### **Why is this matter confidential?**

Subject to an order pursuant to Section 90 (3) (a) of the Local Government Act 1999, this matter is confidential because the information to be discussed relates to information pertaining to the personal affairs of the Chief Executive Officer and is not a matter of public knowledge.

### **A. COUNCIL/COMMITTEE TO MOVE MOTION TO GO INTO CONFIDENCE**

No action – this motion passed in the open section.

### **B. THE BUSINESS MATTER**

## **9.2 Review the Chief Executive Officer's Quarterly Performance**

### **Why is this matter before the Council or Committee?**

The Chief Executive Officer Performance Review Committee in consultation with the Chief Executive Officer has established a Chief Executive Officer Performance Agreement which in turn was endorsed by Council.

The Committee may provide the Chief Executive Officer guidance, feedback and direction in order to assist the Chief Executive Officer meet and or exceed the expectations of the Performance Agreement.

**Presenter:** Mr Mal Hemmerling

**Purpose:** For the Committee to receive a verbal update from the Chief Executive Officer in line with the draft Performance Agreement 2017/18 and provide the Chief Executive Officer with guidance, feedback and direction as required.

**Duration:** 30 Minutes

**C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM 9.2 IS TO BE KEPT IN CONFIDENCE**

**Purpose**

To resolve how long agenda item 9.2 is to be kept confidential.

**STAFF RECOMMENDATION**

Pursuant to Section 90(2) and Section 91(7) of the Local Government Act 1999, the Council orders that the following aspects of Item 9.2 be kept confidential in accordance with Council's reasons to deal with this item in confidence pursuant to Section 90 (3) (a) of the Local Government Act 1999:

- *[The Committee to determine the need for retention]*

This order shall operate until the next scheduled annual review of confidential items by Council at which time this order will be reviewed and determined in accordance with Section 91(9)(a) of the Local Government Act 1999.