



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

CONFIDENTIAL MATTERS

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Released 27 November 2018

9.1 CEO CONTRACTUAL OBLIGATIONS

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 CEO CONTRACTUAL OBLIGATIONS

Responsible Executive Manager : Mr Mal Hemmerling

Report Author : Ms Rosemary Munslow

Delegated Authority : Matters which cannot be delegated to a Committee or Staff.

Attachments : 1. Amended CEO Contract

PURPOSE

For Council to consider the amended CEO contract in line with guidance provided to the CEO Performance Review Committee.

RECOMMENDATION

That the amended CEO Contract (attachment 1) be endorsed with the following amendments:

1. _____
2. _____
3. _____

EXECUTIVE SUMMARY

After the completion of the CEO Performance Agreement review in October 2016, the CEO Performance Review Committee consider the amended CEO Contract in accordance with guidance provided from Council at the Ordinary Meeting 28 February 2017.

1. BACKGROUND

At the Council meeting of 25 October 2016 Council received an update on the CEO performance review 2015/16.

At the CEO Performance Review Committee of the 13 February 2017 the Committee resolved the following:

In accordance with the CEO Employment Agreement 17.2 and 17.3 that the TEC Package be reviewed within one month of the performance review, the Chief Executive Officer Performance Review Committee seek Councils guidance on the CEO TEC Package salary increase from zero to 2.5%.

Taking into account the CEO has performed against his Performance Agreement 2015/2016 the following needs to be considered when review the TEC Package:

- *The key performance indicators*
- *The CEO's Position Description*
- *Remuneration paid to CEO's of similar sized councils in South Australia*
- *Any other factor the Panel considers relevant*

At the Ordinary Meeting of Council 28 February 2017 Council resolved the following as a guide for the CEO Performance Review Committee to consider when negotiating any amendments to the CEO Contract:

That Council give guidance to the CEO Performance Review Committee to negotiate the following:

1. *In lieu of pay increase that 10 additional days of annual leave be provided,*
2. *That \$10,000 is transferred from Superannuation contribution to personal training and development,*
3. *That the Committee negotiate a mutually agreed extension of the CEO's Contract.*

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 In preparation for the Committee and Council to consider the CEO Contract legal advice has been sought on the relevant amendments to the CEO Contract.

4.2 As highlighted in track changes of the Amended CEO Contract attachment 1 the following clauses have been amended for consideration:

- Clause 4.1 – amended the period of extension from six months to twelve months;

- Clause 4.2.3 – amended the notification period from three months to two months prior to the Expiry Date. This is to allow the CEO reasonable timeframe to consider and respond to the Council's offer under Clause 4.2.2;
- Clause 19.1.1 and 19.1.2 – amended annual leave entitlement from 30 to 40 days.

4.3 In relation to the guidance from Council to transfer \$10,000 from Superannuation contribution to personal training and development, consideration needs to be made as to where this may sit and the relevant clauses in the Contract be amended.

5. OPTIONS

Recommendation

That the amended CEO Contract (attachment 1) be endorsed with the following amendments:

1. _____
2. _____
3. _____

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

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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 ~~106 Grasby Road, Balhannah~~ 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.

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 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;
- (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;

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 2018;

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 2012, 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 three years, concluding on the Expiry Date.
- 3.2 The parties agree that the CEO's appointment and employment will terminate on the Expiry Date unless this Agreement is:
 - 3.2.1 Terminated prior to the Expiry Date pursuant to Clause 18 of this Agreement; or
 - 3.2.2 Extended pursuant to Clause 4 of this Agreement.
- 3.3 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.

4. FURTHER AGREEMENT

4.1 Six-Twelve Month Extension of Agreement

- 4.1.1 At the CEO's sole discretion, the Agreement may be extended for a period of up to an additional six-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.
- 4.1.2 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.

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4.2 Further Employment Agreement

- 4.2.1 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.
- 4.2.2 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.
- 4.2.3 Following consideration of the Employer's offer under Clause 4.2.1, the CEO must notify the Employer at least ~~three~~ two months prior to the Expiry Date whether or not he accepts the Employer's offer.
- 4.2.4 If the CEO accepts an offer of a new employment agreement, the terms and conditions of that employment shall be set out in a further written agreement. 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.
- 4.2.5 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.

- 4.3 Nothing in this Clause prevents the parties from discussing the terms and conditions of a new employment agreement during the Term.

5. HOURS OF WORK

- 5.1 The CEO's hours of work average 38 hours per week 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.

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- 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

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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 \$15,000.00 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.

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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 without notice and without the payment of compensation in lieu of 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 by making an equivalent payment of compensation 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 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 30-40 working days of annual leave per completed year of service, which may be taken at any time approved by the Employer. The CEO is not entitled to any leave loading payment.
- 19.1.2 There should not be more than 30-40 days annual leave to the credit of the CEO at the end of any year of service. 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 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**).

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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

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.

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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**

[INSERT]

SCHEDULE TWO – TOTAL EMPLOYMENT COST PACKAGE

Annual base salary (gross)	\$297,978.66
Superannuation contribution	\$35,000.00
Full and unrestricted use of a fully maintained vehicle	\$25,000.00
Personal development and training allowance	\$15,000.00
TOTAL (gross)	\$372,978.66

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 Council has considered this item and made a determination to amend the CEO's contract 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 and Ms Jane Jeffreys

Purpose: For the Committee to receive a verbal update from the Chief Executive Officer and Ms Jane Jeffreys in line with the draft Performance Agreement 2016/17 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.

9.3 EXTERNAL SUPPORT CONTRACT REVIEW

Contact Person: Ms Rosemary Munslow

Why is this matter confidential?

Subject to an order pursuant to Section 90 (3) (d) of the Local Government Act 1999, this matter is confidential because the disclosure of this information could reasonably be expected to confer a commercial advantage on a third party because the information contains financial estimates and performance of the party currently engaged to support the Committee in managing the CEO contractual arrangements.

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

No action – this motion passed in the open section.

B. THE BUSINESS MATTER

9.3 External Support Contract Review

Why is this matter before the Council or Committee?

The current contract of the external facilitation support is due for review by late 2017. With the pending expiry date 31 October 2017 it is prudent for the Committee to review and consider the existing contract and determine if they wish to extend the contract or call for tenders.

Presenter: Ms Rosemary Munslow

Purpose: To review the period and performance of the existing contract and consider the options to renegotiate or call for tender.

Duration: 15 Minutes

C. COUNCIL/COMMITTEE TO DECIDE HOW LONG ITEM 9.3 IS TO BE KEPT IN CONFIDENCE

Purpose

To resolve how long agenda item 9.3 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 9.3 be kept confidential in accordance with Council's reasons to deal with this item in confidence pursuant to Section 90 (3) (d) of the Local Government Act 1999:

- [committee to determine need to any retention] 9.3

This order shall operate until *(trigger event i.e. execution of a contract or release of public report by an external body or specific date)*, 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.