

**SIGNED by Manukau City Council**  
by:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**SIGNED by North Shore City Council**  
by:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**SIGNED by Papakura District Council**  
by:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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**SIGNED by Rodney District Council**  
by:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**SIGNED by Waitakere City Council**  
by:

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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## Schedule 1: Contact details

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**Party:** Auckland Regional Transport Authority  
**Contact person:** Mark Lambert, Passenger Transport Development Manager  
**Address:** Auckland Regional Transport Authority  
Private Bag 92 236  
Auckland  
**Phone number**  
**Facsimile number** 64 9 379 4423  
**Email address** Mark.Lambert@arta.co.nz

**Party:** Auckland City Council  
**Contact person:** Denis Mander, Principal Transport Planner  
**Address:** Auckland City Council  
Private Bag 92 516  
Wellesley Street  
Auckland  
**Phone number**  
**Facsimile number** 64 9 373 6111  
**Email address**

**Party:** Franklin District Council  
**Contact person:**  
**Address:**  
**Phone number**  
**Facsimile number**  
**Email address**

**Party:** Manukau City Council  
**Contact person:**  
**Address:**  
**Phone number**  
**Facsimile number**  
**Email address**

**Party:** North Shore City Council  
**Contact person:**  
**Address:**  
**Phone number**  
**Facsimile number**  
**Email address**

**Party:** Papakura District Council  
**Contact person:**  
**Address:**  
**Phone number**  
**Facsimile number**  
**Email address**

**Party:** Rodney District Council  
**Contact person:**

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**Address:**  
**Phone number**  
**Facsimile number**  
**Email address**

**Party:**  
**Contact person:**

**Address:**

**Phone number**  
**Facsimile number**  
**Email address**

Waitakere City Council  
Tony Miguel, Group Manager: Asset  
Management  
Private Bag 93109  
Henderson  
Waitakere City  
835 0294  
835 0293  
Tony.miguel@waitakere.govt.nz

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## Schedule 2: Equipment licence

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### 1. Grant of licence

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Each Territorial Authority grants ARTA a licence to have access to and use at all times the area at or near each public transport service stop (each a **Site**) in its district for the purposes of the RTP/SP Project and this Agreement.

### 2. Licence fee

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ARTA will pay a licence fee of \$1.00 per annum to the relevant Territorial Authority for such licence for all Sites in that Territorial Authority's district, if demanded by that Territorial Authority and invoiced to ARTA during the period between 1 May and 30 June immediately preceding the relevant year.

### 3. Site schedule

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ARTA will create and maintain:

- (a) a schedule that lists the location of all Sites in the Auckland region at which a VPID has been installed (the **Site Schedule**). If ARTA wishes to remove components of the RTP/SP System from a Site or install components of the RTP/SP System at a new site, it will, subject to obtaining any required Consent and the terms of this Agreement, update the Site Schedule accordingly and notify the relevant Territorial Authority of the update to the Site Schedule;
- (b) a central database that contains:
  - (i) "as-built" specifications of the Equipment located at the relevant Site; and
  - (ii) a copy of all relevant Consents required for the relevant Site.

The Territorial Authorities will have access to the Site Schedule and the central database (either electronically or hard copy as determined by ARTA).

### 4. Electricity supply

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Each Territorial Authority will use its reasonable endeavours to assist ARTA to procure connection of components of the RTP/SP System to existing electricity or other relevant utility supply at or near the relevant Site.

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### Schedule 3: Cost contribution

Territorial Authority	Contribution
Manukau City Council	\$25,000.00
Waikare City Council	\$25,000.00
North Shore City Council	\$25,000.00
Papakura District Council	\$5,000.00
Rodney District Council	\$5,000.00
Franklin District Council	\$5,000.00

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## Schedule 4: Technisyst confirmation letter

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## Schedule 5: Code of Practice for Working in the Road

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Count	Depot	Vehicle ID	Make	Model	Registration	Date in Service/ Remanufacture	Date of Commissioning	SN
101	SA Shore	B2472	M.A.N.	17-223	CRT237	10-Jun-05	16-Jan-06	6401-0411-2424-6690
102	SA Shore	B2473	M.A.N.	17-223	CRT239	10-Jun-05	13-Jan-06	6401-0411-2424-6691
103	SA Shore	B2474	M.A.N.	17-223	CST636	30-Jun-05	13-Jan-06	6401-0411-2424-6692
104	SA Shore	B2475	M.A.N.	17-223	CST637	30-Jun-05	17-Jan-06	6401-0411-2424-6693
105	BTL	BTL B0037	MAN				61 20-Jan-06	6401-0509-2845-7168
106	BTL	BTL B0038	TBA - yet to arrive at depot				62 20-Jan-06	6401-0509-2845-7169
107	Rit Swanson	463	Mercedes	0.305	UI 2945			
108	Rit Swanson	663	Optara Excel		CSM939	2005		6401-0411-2424-6722
109	SA City	1366	MAN	12.223	AWZ511	4-Oct-02	7-Feb-06	6401-0509-2845-7172
110	SA City	B1360	MAN	12.223	AWZ512	4-Oct-02	10-Mar-06	6401-0509-2845-7171
111	SA City	B1618	SL200		KN 4881	10-Feb-82	10-Mar-06	6401-0509-2845-7172
112	SA Papakura	B0619	MAN	11-190	UB 484	25-Mar-96	18-Jan-06	6401-0509-2845-7204
113	SA Papakura	B0620	MAN	11-190	UB 485	25-Mar-96	18-Jan-06	6401-0509-2845-7205
114	SA Papakura	B0640	MAN	11-190	UH 7217	23-Jul-96	19-Jan-06	6401-0509-2845-7206
115	SA Papakura	B0704	MAN	11-190	XG 2084	28-Aug-98	18-Jan-06	6401-0509-2845-7207
116	SA Papakura	B0705	MAN	11-190	XG 2085	28-Aug-98	18-Jan-06	6401-0509-2845-7208
117	SA Papakura	B0706	MAN	11-190	XG 2087	4-Sep-98	19-Jan-06	6401-0509-2845-7209
118	SA Papakura	B0707	MAN	11-190	XG 2088	4-Sep-98	18-Jan-06	6401-0509-2845-7210
119	SA Papakura	B0708	MAN	11-190	XG 2089	7-Sep-98	18-Jan-06	6401-0509-2845-7211
120	SA Papakura	B0709	MAN	11-190	XI 9041	11-Sep-98	18-Jan-06	6401-0509-2845-7212
121	SA Papakura	B0710	MAN	11-190	XI 9042	11-Sep-98	10-Mar-06	6401-0509-2845-7180
122	SA Papakura	B0711	MAN	11-190	XI 9043	18-Sep-98	10-Mar-06	6401-0509-2845-7181
123	SA Papakura	B0745	MAN	11-190	XN 8107	4-Dec-96	10-Mar-06	6401-0509-2845-7185
124	SA Roskill	B0027	M.A.N.	10.100	OU3699	9-Feb-90	5-Jan-06	6401-0509-2845-7173
125	SA Roskill	B0028	M.A.N.	10.100	OZ8699	17-May-90	5-Jan-06	6401-0509-2845-7174
126	SA Roskill	B0029	M.A.N.	10.100	OZ8661	7-May-90	6-Jan-06	6401-0509-2845-7175
127	SA Roskill	B0030	M.A.N.	10.100	OZ8660	7-May-90	1-Feb-06	6401-0509-2845-7176
128	SA Roskill	B0031	M.A.N.	10.100	OZ8664	8-May-90	6-Jan-06	6401-0509-2845-7177
129	SA Roskill	B1651	MAN	SL200	KX 8648	27-Oct-82	6-Jan-06	6401-0509-2845-7178
130	SA Roskill	B1652	MAN	SL200	KX 8647	27-Oct-82	5-Jan-06	6401-0509-2845-7179
131	SA Roskill	B1630					1-Feb-06	6401-0509-2845-7184
132	SA Swanson	B0032	M.A.N.	10.100	OZ8665	8-May-90	1-Feb-06	6401-0509-2845-7182
133	SA Swanson	B0033	M.A.N.	10.100	OZ8666	8-May-90	1-Feb-06	6401-0509-2845-7183
134	SA Wiri	B0035	M.A.N.	10.100	OZ8668	8-May-90	6-Jan-06	6401-0509-2845-7188
135	SA Wiri	B0165	MAN	SL202	NZ 8003	16-Dec-88	18-Jan-06	6401-0509-2845-7199
136	SA Wiri	B0169	MAN	SL202	OG 8399	1-May-89	18-Jan-06	6401-0509-2845-7205
137	SA Wiri	B0549	MAN	11-190	TJ 2515	26-May-95	1-Feb-06	6401-0509-2845-7189
138	SA Wiri	B0552	MAN	11-190	TR 1644	3-Oct-95	19-Jan-06	6401-0509-2845-7192
139	SA Wiri	B0613	MAN	11-190	UB 500	17-May-96	18-Jan-06	6401-0509-2845-7201
140	SA Wiri	B0614	MAN	11-190	UB 499	17-May-96	18-Jan-06	6401-0509-2845-7202
141	SA Wiri	B0618	MAN	11-190	UB 482	20-Mar-96	18-Jan-06	6401-0509-2845-7203
142	SA Wiri	B0751	M.A.N.	11-190	XP6952	15-Jan-99	1-Feb-06	6401-0509-2845-7193
143	SA Wiri	B2476	M.A.N.	17-223	CST638	30-Jun-05	13-Jan-06	6401-0509-2845-7197
144	SA Wiri	B2477	M.A.N.	17-223	CST639	30-Jun-05	13-Jan-06	6401-0509-2845-7198
145	SA Wiri	B0034	M.A.N.	10.100	OZ8667	8-May-90	9-Feb-06	6401-0509-2845-7187
146	SA Wiri	B0550	MAN	11-190	TJ 2516	26-May-95	9-Feb-06	6401-0509-2845-7190
147	SA Wiri	B0551	MAN	11-190	TR 1643	3-Oct-95	9-Feb-06	6401-0509-2845-7191
148	SA Wiri	B0752	M.A.N.	11-190	XP6953	22-Jan-99	9-Feb-06	6401-0509-2845-7194
149	SA Wiri	B0753	M.A.N.	11-190	XP6954	22-Jan-99	9-Feb-06	6401-0509-2845-7195
150	SA Wiri	B2451	M.A.N.	17-223	CPL838	7-Apr-05	9-Feb-06	6401-0509-2845-7196

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# **AGREEMENT FOR SALE AND PURCHASE OF ASSETS**

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between  
**WAITAKERE CITY COUNCIL**

and

**AUCKLAND REGIONAL TRANSPORT AUTHORITY**

**AGI**

  
**Simpson  
Grierson**

**THIS AGREEMENT** is dated the ??????? 2006

**BETWEEN**       **WAITAKERE CITY COUNCIL** a body corporate duly constituted under the Local Government Act 2002 ("Vendor")

**AND**           **AUCKLAND REGIONAL TRANSPORT AUTHORITY** a body corporate duly constituted under the Local Government (Auckland) Amendment Act 2004 ("Purchaser")

**BACKGROUND**

- A.       The Vendor owns the Assets. Technisyst Pty Limited has in a letter dated 15 March 2006 (attached as schedule 3) agreed to the transfer of the Rapid licences and intellectual property purchased by the Vendor to the Purchaser.
- B.       The Vendor agrees to sell and the Purchaser agrees to purchase the Assets and assume certain liabilities relating to the Assets on the terms of this agreement.

**THE PARTIES AGREE:**

**1.       INTERPRETATION**

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In this agreement unless the context indicates otherwise:

**1.1       Definitions:**

"Assets" means:

- (a)       the systems, controls, software (including archival and back-up copies), hardware, databases (including archival and back-up copies), cabling and other equipment and components comprising and/or used in association with the RTP/SP System which are owned by or licensed to the Vendor, as at the commencement of business on the Closing Date, including such assets listed in Schedule 2;
- (b)       the records and documentation relating to the RTP/SP System, including operating and maintenance manuals and technical information (including instruction manuals and user guides);
- (c)       the Vendor's rights and interests under and to the Contracts; and
- (d)       the Intellectual Property;

"Business Day" means a day on which registered banks are normally open for ordinary over-the-counter banking business other than a Saturday or Sunday in Auckland;

"Closing" means the closing of the sale and purchase of the Assets in accordance with this agreement;

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**"Closing Date"** means 10 Business Days after the Conditions are satisfied or waived in accordance with clause 2;

**"Condition"** means the condition precedent set out in clause 2;

**"Contracts"** means the contracts relating to the Assets which have not already been novated or assigned pursuant to the Licence Agreement;

**"Intellectual Property"** means the specifications, designs, copyright, trade marks, techniques, know-how, processes, methods, and any other intellectual property rights which are owned or licensed for use by the Vendor (whether or not registered) in connection with the operation of the Assets or the RTPI/SP System, including those rights set out in Schedule 1;

**"IPTIS"** means the software programme used by ARTA to calculate timetabling and routes for bus services in the Auckland region;

**"Licence Agreement"** means the licence agreement between the Vendor and the Purchaser dated on or about the date of this agreement under which the Vendor appoints the Purchaser as manager of the RTPI/SP System and licenses the Purchaser to use the Assets until Closing;

**"Long Stop Date"** means, in the case of the Condition in clause 2.1(a), 30 June 2008, and in the case of the Condition in clause 2.1(b), 31 May 2006;

**"Purchase Price"** has the meaning set out in clause 4.1;

**"RAPID"** means the software programme used to operate the RTPI/SP system;

**"RTPI/SP System"** means Real Time Passenger Information/Signal Pre-emption System operated by the Vendor, which includes the VPID units and related Intellectual Property, software, hardware and communications systems, equipment and components;

**"Schedule"** means a schedule to this agreement;

**"SCATS"** means the Sydney Coordination Adaptive Traffic Control System and related software operated by Transit New Zealand for control of traffic signalling at intersections;

**"Vodafone GPRS"** means the satellite communication system provided for the RTPI/SP System by Vodafone New Zealand Limited; and

**"VPID"** means the Variable Passenger Information Display units used in relation to the RTPI/SP System.

- 1.2 **Defined Expressions:** expressions defined in the main body of this agreement have the defined meaning in the whole of this agreement including the background;
- 1.3 **Headings:** section, clause and other headings are for ease of reference only and will not affect this agreement's interpretation;
- 1.4 **Negative Obligations:** any obligation not to do anything includes an obligation not to suffer, permit or cause that thing to be done;

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- 1.5 **Parties:** references to parties are references to parties to this agreement;
- 1.6 **Plural and Singular:** words importing the singular number include the plural and vice versa; and
- 1.7 **Sections and Clauses:** references to sections and clauses are references to this agreement's sections and clauses.

## 2. CONDITIONS

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- 2.1 **Conditions Precedent:** This agreement is subject to:
- (a) the Purchaser and the Vendor obtaining a legislative amendment or a binding ruling from the Inland Revenue Department to the effect that the transfer of Assets under this agreement does not result in gift duty payable by either the Vendor or the Purchaser; and
  - (b) the Purchaser obtaining approval from the Auckland Regional Council to enter into this agreement.
- 2.2 **Benefit of Conditions:** The Condition in clause 2.1(a) is inserted for the benefit of the Vendor and the Purchaser. The Condition in clause 2.1(b) is inserted for the benefit of the Purchaser.
- 2.3 **Fulfilment of Conditions:** The parties will each make all proper applications, diligently pursue those applications, do all other acts, matters and things within their power and control and supply all such information reasonably required to satisfy the Conditions.
- 2.4 **Non-fulfilment of Conditions:** If the Conditions are not satisfied or waived, either wholly or in part, by the Vendor and the Purchaser (as the case may be) by the Long Stop Date or such other date as may be agreed in writing by them, the Vendor and Purchaser will:
- (a) negotiate in good faith an alternative arrangement to give effect to the transaction contemplated by this agreement;
  - (b) if the parties fail to reach agreement for such alternative arrangement within 30 Business Days of that date, then the parties will endeavour to reach such agreement in accordance with the dispute resolution procedure under clause 19; and
  - (c) if the parties fail to reach an agreement within 30 Business Days after the matter has been referred to the dispute resolution procedure under clause 19, then either party may terminate this agreement by notice in writing to the other of them in which case this agreement will end and no party will have any claim against any other party arising under or in connection with termination.

## 3. AGREEMENT TO SELL AND PURCHASE

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The Vendor agrees to sell and the Purchaser agrees to purchase the Assets on the Closing Date free from any encumbrance on the terms and conditions contained in this agreement.

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#### 4. PURCHASE PRICE AND PAYMENT

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**4.1 Purchase Price:** The price payable by the Purchaser to the Vendor for the Assets will be the Purchase Price. The Purchase Price is NZD1.00.

**4.2 Payment:** The Purchase Price shall be paid by the Purchaser in one lump sum in cash.

#### 5. OPERATION OF ASSETS PENDING CLOSING

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The Vendor undertakes that from the date of this agreement until Closing the Vendor will, subject to the Licence Agreement:

**5.1 Operate and Maintain Assets:** operate the Assets in a normal, proper, responsible and efficient manner and maintain the Assets in good operating condition and repair;

**5.2 No Encumbrances:** not dispose of, lease or otherwise encumber or permit any encumbrance to arise (whether by operation of law or otherwise) over any of the Assets, without the Purchaser's prior written consent;

**5.3 No further contracts:** not enter into any agreement or arrangement relating to the RTPI/SP System or the Assets without the prior written consent of the Purchaser;

**5.4 Legal proceedings:** promptly notify the Purchaser of any claims, asserted or commenced, by or against the Vendor regarding the RTPI/SP System or the Assets; and

**5.5 Notify Purchaser:** promptly notify the Purchaser of any events which have, or may have, a material adverse effect on the Assets.

#### 6. INSTALLATION OF STORED AVL'S

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The Purchaser will install in Waitakere City the Assets, comprising the 50 AVL's that are currently awaiting installation on buses, should this be required due to delays prior to the closing date

#### 7. CLOSING

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**7.1 Time and Place:** Closing will take place on the Closing Date at the Vendor's solicitors' offices at 2.00 pm or at such other time or place as the Vendor and the Purchaser agree.

**7.2 Vendor's Obligations:** Subject to the Purchaser complying with its obligations under clause 4.2:

(a) **Title:** possession of, and title to, the Assets will be given and taken at Closing;

(b) **Benefit:** the benefit of Assets will accrue to the Purchaser from the commencement of business on the Closing Date;

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- (c) **Delivery of Assets on Closing Date:** on the Closing Date the Vendor will deliver and make available to the Purchaser, at all such locations as any of the Assets may be, possession and control of the Assets; and
- (d) **Delivery of Documents on Closing Date:** on the Closing Date, the Vendor will deliver to the Purchaser:
- (i) executed copies of the Contracts together with the assignment/novation required by clause 8.1 or clause 2.2 of the Licence Agreement together with any third party consent or notification required to give effect to such assignment/novation that have not already been provided to the Purchaser under clause 2.2 of the Licence Agreement;
  - (ii) any documents of title to the Assets together with all necessary executed transfers and assignments to vest legal title to the Assets in the Purchaser free from any encumbrance; and
  - (iii) releases of the Assets from any charges, liens or other encumbrance registered against any of the Assets.
- 7.3 Liability for Contracts:** On Closing, after the Vendor has complied with its obligations under clause 7.2, the Purchaser will assume liability for the obligations of the Vendor under each Contract in relation to the period after Closing.
- 7.4 Temporary access to transition hardware:** If required the Vendor will provide access to its premises for a reasonable period after Closing to enable the Purchaser to transition the RTP/SP System to another location. The Vendor will continue to provide adequate electricity supply and other utilities and services (including IT services) for the ongoing operation and maintenance of those Assets located at the Vendor's premises for such period.

## **8. CONTRACTS**

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- 8.1 Assignment or Novation:** The Vendor will use its best endeavours to obtain the consent (where necessary) of each party to the relevant Contract to the novation or assignment of that Contract to the Purchaser by Closing.
- 8.2 Vendor Indemnity:** Subject to the Licence Agreement, the Vendor agrees to indemnify the Purchaser against any claim, demand, action, proceeding, loss or expenses made, taken or suffered against or by the Purchaser arising out of the failure or omission of the Vendor to perform any obligations of the Vendor under any Contract in relation to the period prior to Closing.
- 8.3 Purchaser Indemnity:** Subject to the Licence Agreement, the Purchaser agrees to indemnify the Vendor against any claim, demand, action, proceeding, loss or expenses made, taken or suffered against or by the Vendor arising out of the failure or omission of the Purchaser to perform any obligations of the Vendor under any Contract in relation to the period after Closing.
- 8.4 No Assignment or Novation:** If and for so long as the Vendor is unable to effect any assignment or novation of any Contract (including by reason of any delay or failure to obtain the consent of any third party), the Vendor must hold the benefit of such Contracts on trust for the Purchaser and the Purchaser may enforce the Vendor's rights under the relevant Contract in the Vendor's name. The Vendor

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agrees to account to the Purchaser for all sums received by the Vendor in respect of the Contracts which relate to the period following Closing.

## 9. VENDOR ASSISTANCE

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The Vendor agrees to provide reasonable assistance to the Purchaser, as required by the Purchaser, after Closing to operate the RTPI/SP System, the VPIDs and the other Assets.

## 10. RISK

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In accordance with the Licence Agreement, the Assets will be at the Purchaser's sole risk from the date of that agreement.

## 11. WARRANTY

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**11.1 Warranty:** The Vendor represents and warrants to the Purchaser that at Closing the Vendor is the sole legal and beneficial owner of the Assets and that the Assets will pass to the Purchaser free of all encumbrances or third party rights or interests.

**11.2 Warranty Qualified:** The Warranty in clause 11.1 is given subject to any fact, matter or thing:

- (a) **Express Provisions:** expressly provided for under the terms of this agreement;
- (b) **Approved:** done or omitted to be done after the date of this agreement by or at the written request, or with the written approval, of the Purchaser.

**11.3 No other warranties:** The Vendor gives no other warranties of whatever nature in relation to the condition or capability of the Assets and the Purchaser acknowledges it is purchasing the Assets on an "as is where is" basis subject only to representation and warranty in clause 11.1.

## 12. PURCHASER'S ACKNOWLEDGMENTS

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The Purchaser acknowledges that:

**12.1 Inspection and Investigation:** before it entered into this agreement a full opportunity for inspection and investigation of the Assets has been accorded to it;

**12.2 No Reliance:** subject only to representation and warranty in clause 11.1 the Purchaser enters into this agreement and agrees to purchase the Assets on the terms of this agreement:

- (a) **Own Judgment:** relying solely on the Purchaser's own judgment after such inspection and investigation; and
- (b) **No Reliance on Vendor:** not relying on any representations, warranties, statements, agreements or undertakings of any nature made by the Vendor or the Vendor's agents; and

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- 12.3 Waiver:** to the extent that the Purchaser has been induced to enter into this agreement in reliance on any representations, warranties, statements, agreements or undertakings of any nature made by the Vendor or the Vendor's agents apart from the representation and warranty in clause 11.1, the Purchaser unconditionally and irrevocably waives any claims, rights or remedies which the Purchaser might otherwise have had in relation to any of those representations, warranties, statements, agreements or undertakings.

### **13. DELAY**

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No delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence by one party concerning any breach of any other party's obligations under this agreement is to:

- (a) **No Waiver:** operate as a waiver of or prevent the subsequent enforcement of that obligation; or
- (b) **No Deemed Waiver:** be deemed a delay, grant of time, release, compromise, forbearance (whether partial or otherwise) or other indulgence of, or a waiver of, any subsequent or other breach.

### **14. FURTHER ASSURANCES**

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Each party to this agreement will sign all deeds, schedules, documents and do all acts and things reasonably required by any other party to effectively carry out, and give effect to, the terms and intentions of this agreement whether before or after Closing.

### **15. NON MERGER**

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Each provision of this agreement will, notwithstanding Closing, and to the extent that it is not performed at Closing, continue in full force and effect.

### **16. AMENDMENTS**

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No amendment to this agreement will be effective unless in writing and signed by all the parties.

### **17. REMEDIES CUMULATIVE**

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Except as otherwise expressly provided for in this agreement the parties' remedies under this agreement are cumulative and will not exclude any other remedies to which any party may be lawfully entitled.

### **18. NOTICES**

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- 18.1 Form of Notice:** Any notice or other communication under this agreement must be in writing and be made either by facsimile or personal delivery to the recipient at their facsimile number or address. Each notice must be marked for the attention of the person or office holder (if any), from time to time designated for the purpose by the recipient. The initial facsimile number, address and relevant person or office holder of each party is as follows:

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- (a) **The Vendor:** if to the Vendor, to:

Tony Miguel, Group Manager Asset Management  
Waitakere City Council  
Private Bag 93 109  
Henderson, Waitakere City  
**Auckland**

Fax No: 64 9 836-8024  
For: Paul Schischka

- (b) **The Purchaser:** if to the Purchaser, to:

Mark Lambert, Passenger Transport Development Manager  
Auckland Regional Transport Authority  
Private Bag 92 236  
**Auckland**

Fax No: 64 9 379 4423  
For: Mark Lambert

**18.2 Notice Effective:** No communication is effective until received. A communication will, however, be deemed to be received by the recipient:

- (a) **Facsimile:** in the case of a facsimile, on the Business Day on which it is despatched or, if despatched after 5.00 pm (in the place of receipt) or a non-Business Day, on the next Business Day after the date of despatch;
- (b) **Personal Delivery:** in the case of personal delivery, when delivered; and
- (c) **Express Courier:** in the case of delivery by courier, on the third Business Day after the date of despatch.

## 19. DISPUTE RESOLUTION

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**19.1 Chief executives:** If a dispute arises between any of the parties relating to this Agreement, including any dispute as to its existence or validity, which is not resolved within 10 Business Days after arising, then the dispute is to be referred to the Chief Executives of the parties involved in the dispute for resolution.

**19.2 Mediation:** If, following the dispute resolution process set out in clause 19.1, the parties do not resolve the dispute, then the parties will try to settle their dispute by mediation. A party may initiate mediation by giving written notice to each other party. Such mediation process will not (unless otherwise agreed between the parties) extend beyond a period of 10 Business Days following the appointment of the mediator or 90 Business Days after referral to the Chief Executives under clause 19.1 (whichever is the later). If the parties cannot agree on a mediator within 3 Business Days of such notice, then the mediator will be appointed by the President of the Auckland District Law Society. The mediator will be deemed not to be acting as an expert or an arbitrator and will determine the timetable and procedure for mediation. The cost of mediation will be shared equally between the parties.

ASA

- 19.3 Proceedings:** No party may issue legal proceedings (other than for urgent equitable relief) in relation to a dispute relating to this Agreement unless it has taken reasonable steps to comply with this clause 19.

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**20. ASSIGNMENT**

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**20.1 Successors:** This agreement will be binding on and take effect for the benefit of the parties and their respective successors and permitted assignees or transferees.

**20.2 Assignment with Consent:** No party may assign or transfer all or part of their rights or obligations under this agreement without the prior written consent of the other party.

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**21. EXPENSES**

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Each party will bear their own legal and accountancy costs and other expenses of, and incidental to, preparation, execution and Closing of this agreement whether or not any of the transactions contemplated in this agreement are completed.

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**22. COUNTERPARTS**

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This Agreement may be executed in any number of counterparts each of which will be deemed an original and all of which together will constitute a single instrument. Any party may enter into this agreement by signing any counterpart. Facsimile copies of executed agreements will be sufficient evidence that an original of this agreement has been executed.

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**23. NEW ZEALAND LAW**

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This agreement is to be governed and construed by the laws of New Zealand.

AGI

Signed as an agreement.

**Signed by Waitakere City Council by:**

\_\_\_\_\_  
Authorised signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

**Signed by Auckland Regional Transport Authority by:**

\_\_\_\_\_  
Authorised Signatory

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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## SCHEDULE 1

### Intellectual Property

1. Intellectual Property includes the ownership or a licence to use (as the case may be) of all Licensor intellectual property under the Agreement between Technisyst Pty Ltd (Licensor) and Waitakere City Council (Licensee), including:
  - (i) all information and technical documentation required to enable a reasonably skilled software engineer to create, maintain and/or enhance that version of the Software to which the source material relates without the assistance of the Licensor or any other person, or reference to any other materials;
  - (ii) maintenance tools, (test programs and program specifications);
  - (iii) Licensor or third party system utilities (compiler and assembler descriptions);
  - (iv) description of the system/program generation;
  - (v) descriptions and locations of programs not owned by the Licensor but required for use and/or support;
  - (vi) names of key developers for the software from the Licensor's staff.

Intellectual Property includes the RAPID licences and associated intellectual property purchased by Waitakere City Council under the contract between Waitakere City Council and North Shore City Council, as part of its procurement of AVL's for 150 buses for or on behalf of Waitakere City Council.

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**SCHEDULE 2**

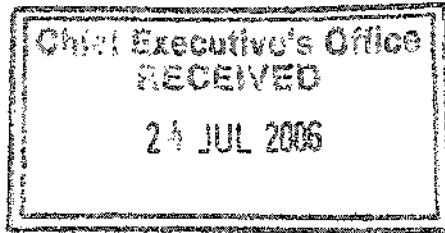
**Assets**

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**SCHEDULE 3**

**Technisyst Confirmation Letter**

A65



21 JUL 2006



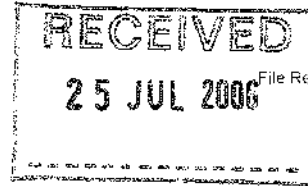
Auckland Regional Council  
TE RAUHITANGA TAIAO

20 July 2006

Harry O'Rourke  
Chief Executive  
Waitakere City Council  
Private Bag 93 109  
Henderson  
Auckland

AP  
for comment to  
FOA

21 Pitt Street  
Private Bag 92 012, Auckland  
New Zealand  
DX CP 28 008 Pitt St  
Telephone +64 9 366 2000  
Facsimile +64 9 366 2155  
www.arc.govt.nz



Dear Harry

**Regional Development Contributions**

*Request*

The Auckland Regional Council seeks the support of Auckland territorial local authorities (TAs) in its bid to gain the power for regional councils to levy development contributions.

Gaining the power requires a change in legislation. The ARC first requested this power in 2004 in its submission on the Local Government (Auckland) Amendment Act. This year, the ARC re-submitted its request in its submission to the Local Government Law Reform Bill. This submission was forwarded to Auckland mayors in a letter from the Chairman on 4 May, with a request for Auckland TA support.

The matter of regional development contributions has now been referred by the Minister of Local Government to a specific workstream within the Local Authority Funding Review. The ARC understands that this workstream will be commencing shortly and will conclude within six to eight weeks. The ARC hopes to take part in this review

The ARC aims to present the views (and hopefully support) of the Auckland territorial authorities to this review.

I have briefly outlined the ARC's case in this letter. I would be grateful if your Council could consider this matter in an appropriate committee at its earliest convenience, and you could inform me as to whether your Council supports our request for regional councils to have the power to levy development contributions. If you have any specific issues with regional councils having these powers, I would also like to understand these. I would be most grateful if you could send me your response as early as possible.

AGG

## Background

Most councils have long used the provisions of the Resource Management Act 1991, S108(2)(a) that enable them to levy *financial contributions*, in conjunction with a resource consent, for the infrastructure required to service *the site* (or have required developers to provide the infrastructure directly). Financial contributions under the RMA have been utilised by rural regional councils for works such as flood mitigation and the ARC has a policy to levy relatively small amounts to compensate for environmental impacts of stormwater on highways.

Financial contributions in general have proved inadequate for councils to recoup costs brought about by the *cumulative* effects of growth – for example the need to upgrade an arterial road or build water infrastructure such as occurs in the Auckland region.

Accordingly, the Local Government Act 2002 granted powers to TAs allowing them to apply development contributions policies to recoup the cumulative costs of growth. Six of the seven territorial local authorities in the Auckland region have subsequently adopted policies that enable them to use these powers. Councils have chosen to apply development contributions because they consider that new development should be required to pay for the new or upgraded infrastructure that councils must invest in, in order to meet the needs of that new development. The alternative would be for the whole community to bear the cost through higher rates (whether in upfront payments or to repay debt).

Regional councils were not granted these powers under the LGA 2002 even though there is no difference between regional and territorial local authorities with respect to the ability to own and invest in assets, including infrastructure – indeed development contributions are the only funding tool available to TAs that is not also available to regional councils. The ARC, in particular, funds significant regional parks and passenger transport infrastructure. In the future, the ARC could conceivably fund other regional community infrastructure.

The ARC is seeking an amendment to the LGA 2002 to:

- Enable regional councils to apply development contributions policies.
  - Broaden the definition of infrastructure in the LGA 2002 to include infrastructure that is owned by council controlled organisations (CCOs). This would clarify whether the ARC could fund the growth related expenditure made by the Auckland Regional Transport Authority (ARTA).
- Enable a collection mechanism to be made available through TAs.

**A67**

It is worth noting that gaining the power to levy a development contribution is only a necessary precondition to actually implementing a policy. The ARC would be required (as have TAs) to decide whether it wishes to require development contributions, alter its revenue and finance policy and undertake a special consultative procedure prior to implementing such a power. This consultation would include extensive consultation with TAs.

### *Benefits for the Auckland region*

The region's TAs, along with the regional community, have advocated to the ARC to continue to improve public transport across the region. The ARC has a significant shortfall in public transport funding, including for capital expenditure. If the ARC were to implement development contributions, a small but significant contribution could be made to the region's significant public transport funding shortfall.

Development contributions could also enable the ARC to ensure that development activities that cause growth pay a contribution rather than regional ratepayers having to face the burden alone. The requested amendments would provide the ARC with the ability to shift the incidence of costs in a way that is likely to be fairer and provide the market with a better reflection of the real costs of growth.

A development contribution is a tool that assists TAs to achieve an efficient, transparent and fair allocation of the capital costs of growth. The same principles apply to the funding of growth related regional-council infrastructure and, therefore, the same powers should be extended to regional councils.

### *Implications for TAs*

Please rest assured that in seeking the powers to levy development contributions, the ARC does not wish to erode TA revenue in any way. If it were granted the power to apply development contributions, the ARC would undertake extensive consultation with TAs on any future development contributions policy that it was seeking to develop.

A regional development contribution does have implementations for TAs and these are highlighted below. However, the ARC does not believe that any of these should be reasons for not allowing regional councils the powers to levy development contributions.

### The Collection of Development Contributions

As you will be aware, regional councils have no direct relationship with the developer at the point at which a development contribution is likely to be applied for regional infrastructure. It is the TA that grants building consents, which is likely to be the point at which a regional development contribution would be applied.

**A68**

Therefore, the ARC is seeking any amendment of LGA 2002 to provide a mechanism to enable regional councils to levy and collect development contributions through requiring TAs to collect them on its behalf. This, of course, would require the ARC to work with TAs to identify the best way to set up this mechanism in practice. The ARC would be seeking a practical and cost-efficient way to collect development contributions.

Funding the Cost of Growth for Parks

Currently under S203 of the LGA 2002, development contributions for reserves must not exceed the greater of 7.5% of the value of additional allotments created by a subdivision or the value equivalent of 20 square metres of land for each additional household unit created by the development. There are no limits for development contributions for either network infrastructure or community infrastructure, however the council policy must clearly demonstrate the costs of providing this infrastructure to new development and the contribution to this cost by each "unit of demand".

The ARC seeks separate development levies for separate growth-related expenditure to TAs. As a result, the ARC is advocating that the 7.5% fee that can be charged by local authorities is left alone, and that regional councils not have a cap but must justify any levy based on the cost that can be attributed to growth. This would also overcome the lack of historical standards on limits placed on regional parks.

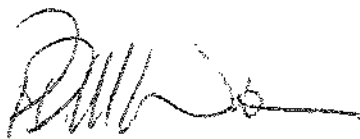
Perception of Double-Dipping

There is no potential for double-dipping between the ARC and TAs because each provides their own, quite separate infrastructure. Consequently, double-dipping should not be of concern for TAs. Further, the LGA 2002 prohibits requiring development contributions for infrastructure to the extent that it is already provided for by financial contributions under the Resource Management Act 1991, by developers, or funded by third parties.

Conclusion

The ARC looks forward to a considered response from your Council at the earliest opportunity. If your Council wishes the ARC to attend a meeting or answer further questions, we are happy to oblige.

Yours sincerely



Peter Winder  
Chief Executive

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Chief Executive	✓
Corporate Services	
City Services Moselle	
Consultancy Services	
ECC - WATER	
Strategic Group	
Consent Services	
Field Services	

**MINUTES OF A MEETING OF THE TENDERS SUBCOMMITTEE HELD IN THE  
CIVIC CENTRE, 6 WAIPAREIRA AVENUE, LINCOLN, WAITAKERE CITY,  
ON FRIDAY, 14 JULY 2006, COMMENCING AT 9.02 AM.**

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**PRESENT:** Councillor RI Clow (Deputy Chairman)  
Director: Corporate & Civic Services  
Director: Quality Assurance  
Director: Finance  
Maori Issues Manager

**IN ATTENDANCE:** Group Manager: Asset Management  
Senior Project Manager: Special Projects  
Project Manager: GEMS Financial Replacement Project  
EcoWater Services Delivery Manager  
Asset Manager: Environmental  
Sustainable Energy Manager  
Programme Leader: Community Development - Project Twin Streams  
Parks Development Officer  
Parks Contract Officer  
Contracts Officer Environment  
Democracy Support and Sister City Officer

**1 APOLOGIES**

1381/2006

MOVED by R McLeod, seconded R Rudd:

That an apology from Cr Clews, H O'Rourke and J Dragicevich for absence be received and sustained.

**CARRIED**

**2 URGENT BUSINESS**

There was no Urgent Business.

**3 CONFIRMATION OF MINUTES**

1382/2006

MOVED by R Rudd, seconded A Pollock:

That the minutes of the Meeting of the Tenders Subcommittee held on Friday, 30 June 2006, as circulated including the Public Excluded Minutes as set out at page 6 in the Confidential Supplement, be taken as read and now be confirmed.

**A10**

**CARRIED**

**4 REGISTRATION OF INTEREST FOR PROFESSIONAL SERVICES - ASSET GROUP, CITY SERVICES**

1383/2006

MOVED by R McLeod, seconded R Rudd:

1. That the Registration of Interest for Professional Services - Asset Group, City Services report be received.
2. That the Group Manager: Asset Management be delegated authority to maintain a register for providers of professional services and to implement the procurement process set out in this report.

**CARRIED**

**5 SUSTAINABLE MANAGEMENT FUND CONTRACTS**

1384/2006

MOVED by W Knox, seconded R Rudd:

1. That the Sustainable Management Fund Contracts report be received.
2. That the offer from the Sustainable Management Fund of \$258,000 for Project Twin Streams Walk and Cycleways and Sustainable Urban Development Assessment Project be accepted.
3. That authority be given to enter into a contract with the Sustainable Management Fund for Project Twin Streams Walk and Cycleways and Sustainable Urban Development Assessment Project, at no additional cost to Council.
4. That the Group Manager: Asset Management be delegated authority to execute the relevant documents.

**CARRIED**

**6 PROJECT TWIN STREAMS GLEN EDEN COMMUNITY CONTRACT**

1385/2006

MOVED by R McLeod, seconded R Rudd:

1. That the Project Twin Streams Glen Eden Community Contract report be received.
2. That the negotiated contract in the sum of \$420,000 plus \$52,500 GST totalling \$472,500 over three years with EcoMatters Environment Trust for the Project Twin Streams Glen Eden Community Contract be approved on the basis of the 1x1x1 structure of the contract.
3. That the commitment to the 2007/2008 year of the Long Term Council Community Plan 2006-2016 for the Project Twin Streams Glen Eden Community Contract of \$140,000, plus \$17,500 GST totalling \$157,500 be approved.
4. That the commitment to the 2008/2009 year of the Long Term Council Community Plan 2006-2016 for the Project Twin Streams Glen Eden Community Contract of \$140,000, plus \$17,500 GST totalling \$157,500 be approved.
5. That the authority to enter into the Project Twin Streams Glen Eden Community Contract on behalf of Council be delegated to the Group Manager: Asset Management.

**A71**

6. That the renewal for the Project Twin Stream Glen Eden Community Contract for the periods 2007/2008 and 2008/2009 financial years be reported back to the Tenders Subcommittee for approval.

**CARRIED**

**7 CONTRACT NO. EW03631C - READING OF WATER METERS - APPROVAL TO EXTEND**

1386/2006

MOVED by R McLeod, seconded A Pollock:

1. That the Contract No. EW03631C - Reading of Water Meters - Approval to Extend report be received.
2. That the renewal of Contract No. EW03631C - Reading of Water Meters for an additional one year to end on 30 June 2007 with Wells Instrument & Electrical Services Limited be approved.
3. That authority to extend Contract No. EW03631C - Reading of Water Meters on behalf of Council be delegated to the Group Manager: Asset Management.

**CARRIED**

**8 WATER SAVING PROGRAMME CONTRACT**

1387/2006

MOVED by R McLeod, seconded Cr Clow:

1. That the Water Saving Programme Contract report be received.
2. That authority to negotiate a contract with EcoMatters Environmental Trust to run for a period of eleven months from 1 August 2006 to 30 June 2007 be delegated to the Group Manager: Asset Management.
3. That authority to enter into a contract with EcoMatters Environment Trust to deliver Council's 2006/2007 water saving programme be delegated to the Group Manager: Asset Management.
4. That the outcome of negotiations for the 2006/2007 water saving programme contract be reported back to the Tenders Subcommittee for approval.

**CARRIED**

**9 CONTRACT NO. SP06001B - QUANTITY SURVEYING SERVICES FOR THE STURGES ROAD BRIDGE - REGISTRATION OF INTEREST**

1388/2006

MOVED by R Rudd, seconded R McLeod:

1. That Contract No. SP06001B - Quantity Surveying Services for the Sturges Road Bridge - Registration of Interest report be received.
2. That the three top scoring registrants being Rider Hunt Auckland Limited and WT Partnership Infrastructure be invited to tender for Contract No. SP06001B - Quantity Surveying Services for the Sturges Road Bridge.

**A72**

**CARRIED**

10 **CONTRACT NO. PK03600F - CEMETERY LANDSCAPE MAINTENANCE - APPROVAL TO EXTEND**

1389/2006

MOVED by A Pollock, seconded R McLeod:

1. That the Contract No. PK03600F - Cemetery Landscape Maintenance - Approval to Extend report be received.
2. That the renewal of Contract No. PK03600F - Cemetery Landscape Maintenance to Techscape Limited for the sum of \$323,948.66 plus \$40,493.58 GST, totalling \$364,442.24 be approved.
3. That authority to extend Contract No. PK03600F - Cemetery Landscape Maintenance be delegated to the Group Manager: Asset Management.

**CARRIED**

11 **CONTRACT NO. PK05016A - CIVIL WORKS - EXTENSION TO CONTRACT SUM AND PERIOD**

1390/2006

MOVED by R McLeod, seconded Cr Clow:

1. That the Contract No. PK05016A - Civil Works - Extension to Contract Sum and Period report be received.
2. That the contract sum for Contract No. PK05016A - Civil Works for 2006/2007 be extended to \$1,208,216.40 plus \$151,027.05 GST totalling \$1,359,243.45 be approved.
3. That the commitment to the 2006/2007 financial year for Contract No. PK 05016A - Civil Works for the sum of \$1,291,147.93 plus \$161,393.48 GST totalling \$1,452,541.41 be approved.
4. That authority to extend Contract No. PK05016A - Civil Works on behalf of Council be delegated to the Group Manager: Asset Management.

**CARRIED**

**PUBLIC EXCLUDED MATTER**

12 **GOVERNMENT ENTERPRISE MANAGEMENT SYSTEM (GEMS) FINANCIAL REPLACEMENT PROCUREMENT PROCESS**

**PROCEDURAL MOTION TO EXCLUDE THE PUBLIC**

1391/2006

MOVED by R McLeod, seconded Cr Clow:

That the public be excluded from the following part of the proceeding of this meeting, namely, Government Enterprise Management System (Gems) Financial Replacement Procurement Process.

The general subject of the matter to be considered while the public is excluded, the reason for passing this resolution in relation to the matter, and the specific grounds under Section 48(1) of the Local Government Official Information and Meetings Act 1987 for the passing of this resolution is as follows:

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General subject of the matter to be considered.	Reason for passing this resolution in relation to the matter.	Ground(s) under Section 48(1)(a) for the passing of this resolution.
Government Enterprise Management System (Gems) Financial Replacement Procurement Process	<p>The withholding of information is necessary in order to:</p> <ul style="list-style-type: none"> <li>• Protect information where the making available of the information -                             <ul style="list-style-type: none"> <li>(i) Would disclose a trade secret; or</li> <li>(ii) Would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.</li> </ul> </li> </ul>	That the public conduct of the relevant part of the proceedings of the meeting would be likely to result in the disclosure of information for which good reason for withholding would exist.

This resolution is made in reliance on Section 48(1)(a) of the Local Government Official Information and Meetings Act 1987 and the particular interest or interests protected by Section 7(2)(b) of that Act which would be prejudiced by the holding of the relevant part of the proceedings of the meeting in public as follows:

- *The report contains information which if released could affect the Council's negotiations.*

**CARRIED**

9.15 am        The public were excluded.

Minute Number 1392/2006 is recorded in the Confidential Section of these Minutes.

9.20 am        The public were readmitted.

**RESTATEMENT**

The Tenders Subcommittee resolved while the public were excluded (MOVED by R McLeod, seconded A Pollock) (resolution 1392/2006) *"That the Government Enterprise Management System (GEMS) Financial Replacement Procurement Process Agenda report and associated resolutions remain confidential until such time as the reasons for confidentiality no longer exist."*

9.21 am        The Chairman thanked Members for their attendance and attention to business and declared the meeting closed.

CONFIRMED AT A MEETING OF THE TENDERS  
SUBCOMMITTEE HELD ON

**DATE:**.....

A74

**CHAIRMAN:**.....