

“Dry Hire” Agreement

THIS AGREEMENT is made on the date in the Schedule

BETWEEN **Oberon Council** of 137 – 139 Oberon Street, Oberon in the State New South Wales (“the Principal”) of the one part

AND **THE CONTRACTOR** referred to in the schedule (“the Contractor”) of the other part

WHEREAS

- A.** The parties have agreed that the Principal will engage the Contractor to provide the plant and equipment as described in the Schedule subject to the following terms and conditions:-
1. The plant and equipment referred to in the Schedule shall be suitable for the works to be carried out by the Principal and shall be maintained by the Contractor in good continuous working condition at the Contractor’s own expense **AND** as far as practicable all maintenance and repairs to the plant and equipment shall be carried out by the Contractor outside normal working hours.
 2. The parties agree that the Contractor shall not be entitled to recover any sum whatsoever from the Principal as a result of any delay, inconvenience or loss incurred by the Contractor due to any accident, breakdown or defect in the plant and equipment provided none of the said circumstances have occurred as a result of negligent act or omission caused by or on behalf of the Principal during the term of this Agreement or extension of the same.
 3. The Contractor also warrants that in respect of the plant and equipment which registered in accordance with the provisions of the *Road Transport (General) Act 2005* or the *Road Transport (Vehicle Registration) Act 1997* or any other statutory enactment or regulation and if requested by the Council Engineer or his nominee the Contractor shall produce such certificated, licences, permits or exemption certificated to ensure that all legislative requirements in respect of the plant and equipment have been complied with.
 4. The Contractor acknowledges that this Agreement cannot be signed without the consent of the Principal.
 5. All payments due to the Contractor by the Principal under this Agreement shall be made in the manner as set out in the Schedule.
 6. This Agreement shall continue in force until the date of the termination has set out herein.

7. The parties agree that the Principal may determine this Agreement at any time and without prior notice should any of the plant and equipment provided under this Agreement is found to be unsuitable and not the reasonable satisfaction of the Council Engineer.
8. The address of each part as referred to in the Schedule hereto shall be the address of that party for service of notices or other communications hereunder which may be affected by personal delivery, by post, facsimile or email to the other and the date of service shall be deemed to be the date of service except in the case of post where the date of service will be the day after the day of posting.
9. (a) The Contactor shall at this on expense, unsure and keep insured by policies of insurance during the period of hire:-
 - i) The plant and equipment against damage to it or loss by theft, whether the same shall be caused by acts or defaults of the Principal or its servants or otherwise howsoever.
 - ii) Against any personal injury to a third party or it's parties or damage to any property whatsoever caused by the use of the plant an equipment when driven or operated by the Contractor or it's employee, servants or agents or caused by any person driving or operating such plant and equipment whether employed by the Contractor or not. Such policy or insurance shall be for an amount not less than the amount referred to in the Schedule.
- (b) Policies of insurance referred to in Clause 9 (a) (i) and (iii) shall be in the name of the Contractor and shall extent to include the interest and liabilities of the Principal.
- (c) All insurance policies referred to in this Clause shall be produced to and approved by the Council Engineer before the commencement of the hiring. Such policies and evidence of their currency shall be produced for inspection by the Council Engineer at any time on the request of the Council Engineer.
- (d) Where an injury is occasioned to any third party or parties or damage to any property whatsoever is caused by the use of the plant and equipment when driven or operated by the Contractor or it's employees, servants or agents or caused by any person driving or operating in the same whether employed by the Contractor or not, the Contractor shall, in accordance with the terms and conditions of the insurance policy required in connection with Clause 9 (a) (ii) hereto, forthwith lodge the necessary claim, notification or other document as the case may be with the insurer under such policy in order to make a claim under such policy.
- (e) No hire rate shall be payable by the Principal whilst the plant and equipment is rendered idle by damage or theft referred to in sub-clause (a) (i) of this Clause.

10. The Contractor shall if required by the Principal or by law fit all suitable and efficient lights and other devices to the plant and equipment at his own expenses when the plant and equipment being used under this Agreement is required for work outside daylight hours.
11. All payments under this Agreement will be made once each calendar month and shall commence from and include the days on which the plant and equipment is put into operation on the site of the works carried out by the Principal and shall continue until termination of the Agreement.
12. No payment will be made by the principal unless the invoice by the Principal to the Contractor without the receipt of a record of certification for hours worked or as otherwise specified by the Principal.
13. No payment will be made by the Principal unless the invoice of the Contractor includes and is in the form of a Tax Invoice as is required by the Australian Taxation Office to comply with the relevant legislation for the payment of Goods and Services Tax.
14. All payments due by the Principal to the Contractor under this Agreement shall be based on the submitted hourly rates accepted by the Principal and will be computed on the number of hours of operation of the Contractor's plant and equipment exclusive of lunch, tea breaks, stoppages for wet weather and maintenance and travelling time to and from the work site nominated by the Principal to the Contractor.
15. The parties acknowledge that the Contractor shall bear the cost of transportation of its plant and equipment to and from the nominated work site unless otherwise agreed upon and confirmed in writing by the parties.
16. The Principal shall not be liable for any payments for hire at any time during the term of this Agreement when the plant and equipment used is rendered idle due to the breakdown or for any other reason within the Contractor's control or supervision.
17. Notwithstanding the provisions of the preceding clause if the idle period for the plant and equipment for minor adjustments is less than one third (1/3) of an hour per day or shift there shall be no variation made to the applicable hire rate payable by the Principal to the Contractor under this Agreement.
18. The parties note that the hiring of plant and equipment pursuant to this Agreement shall be for periods carrying from half day to three (3) months and whenever possible the Principal shall give prior notice to the Contractor as to the extent of the such period during the term of this Agreement.

19. In the event of the Contractor failing to carry out any or all of the terms and conditions of this Agreement as directed by the Principal whereby the Contractor is in breach of this Agreement, the Principal may without notice remedy any such breach and any costs or expenses uncured by the Principal in attending to the same shall be recoverable by the Principal against the Contractor as a liquidated debt or alternatively if appropriate the Principal shall be entitled to deduct such sum(s) from any amounts(s) help by the Principal shall be entitled to recover the same against the Contractor in any Court of competent jurisdiction.
20. The Contractor shall furnish such records relating to the operation of the pant and equipment as may be requested by the Council Engineer or his nominee.
21. Notwithstanding any other provision in this Agreement to the contract either party shall be entitled to give one (1) month's written notice to the other to terminate this Agreement without ascribing any reason for the same whereupon at the expiration of the said time the Agreement shall be at an end.
22. The parties acknowledge that this Agreement shall only create the relationship of Principal and independent Contractor between them that is not their intention to create any other form of relationship, particularly the relationship of employer/employee of partner within the meaning of all relevant legislation and regulations applicable to the same.
23. This Agreement shall be governed by the laws of New South Wales and each of the parties shall submit to the jurisdiction of the Courts of the said State.
24. Unless the contrary is expressly provided words importing the masculine gender shall be deemed to include the female and neuter gender and words importing the singular shall be deemed and taken to include the plural the singular.
25. Unless the contrary is expressly provided whenever the term here after explained in the present Clause occur in any part of the Agreement they shall be held to mean and shall read as follows:-

*"Contractor" shall mean **the Contractor** referred to in the Schedule, its principals, servants, agents, employees and assigns.*

*"Principal shall mean **Oberon Council** constituted under the Local Government Act 1993 (as amended).*

*"Council Engineer" shall mean the **Director of Engineering** of Oberon Council or his nominee.*

EXECUTED AS AN AGREEMENT

SCHEDULE

1. DATE OF THIS AGREEMENT:

2. ADDRESS OF THE PRINCIPAL:

The address of the Principal is:

PO Box 84 137 – 139 Oberon Street
Oberon NSW 2787

ABN: 94 134 081 318

Telephone: 02 6329 8100

Facsimile: 02 6329 8142

Email: council@oberon.nsw.gov.au

3. CONTRACTOR'S FULL NAME AND ADDRESS

Full Name:

Registered Business Address:

ABN: _____

PostalAddress:_____

Telephone: _____

Facsimile: _____

Email:_____

4. DESCRIPTION OF WORKS

Hire of plant and equipment on an "as required" basis during the period
undermentioned:-

5. PERIOD OF HIRE

_____ TO _____

6. PLANT AND EQUIPMENT TO BE SUPPLIED BY CONTRACTOR

7. CONTRACTOR'S REMUNERATION:

The Contractor's remuneration shall be calculated as follows:

- Contractor's remuneration will be determined from Council's Daily Plant Hire Dockets endorsed by a Council officer.
- It is the Contractor's responsibility to ensure the Office Copy of these dockets is submitted each month to facilitate payment.
- Rates are as indicated in the attached spreadsheet and are inclusive of GST unless otherwise stated.

8. AMOUNT OF PUBLIC LIABILITY INSURANCE COVER

\$20 million per claim.

Address of Witness