

Attachment A

**ROC 6.5 - 07 04 2014
Green Square Trunk Drain - Project
Agreement with Sydney Water**

Resolution of Council

7 APRIL 2014

ITEM 6.5 GREEN SQUARE TRUNK DRAIN - PROJECT AGREEMENT WITH SYDNEY WATER (\$121015)

It is resolved that:

- (A) Council approve the substantive terms of the Project Agreement between the City and Sydney Water Corporation for the Green Square Trunk Drain Project, as detailed in Attachment A and confidential Attachment C to the subject report;
- (B) authority be delegated to the Chief Executive Officer to finalise negotiations, execute and administer the Project Agreement, substantially on the same terms shown at Attachment A and confidential Attachment C to the subject report;
- (C) Council endorse proceeding with the delivery of the Green Square Trunk Stormwater Project via a competitive alliance procurement model;
- (D) Council not invite tenders in accordance with the tendering requirements set out in section 55 of the Local Government Act 1993 because a satisfactory result would not be achieved by inviting such tenders given the following extenuating circumstances:
 - (i) the tendering process for a competitive alliance contracting model involves a negotiation phase to arrive at a target cost. The target cost is not negotiated until after the shortlisted proponents have been selected. However, the tendering requirements prescribed by section 55 of the Local Government Act 1993, and the Local Government (General) Regulations 2005, do not allow for direct negotiations with shortlisted proponents; and
 - (ii) Council can achieve a commitment to a fair and accountable procurement process, that achieves value for money, has competitive tension, manages probity risks and is a public process by adopting the three stage tendering process detailed in Item (E);
- (E) Council endorse an alternative tendering process for the Project comprising a three stage process:

- (i) a request for proposal phase, resulting in a shortlisting of proponents (Stage 1);
- (ii) a competitive target cost negotiation phase with the shortlisted proponents (Stage 2); and
- (iii) selection of the alliance non-owner participant/s and execution of a project alliance agreement phase (Stage 3),

as detailed in confidential Attachment D to the subject report. This three stage process will be supported by a probity plan and an independent probity adviser;

- (F) authority be delegated to the Chief Executive Officer to approve the shortlist of proponents to proceed to Stage 2 of the tendering process for the Project;
- (G) Council note that the tendering process will be undertaken jointly by the City and Sydney Water and that:
 - (i) Stage 1 is scheduled to commence immediately; and
 - (ii) a report detailing the outcomes of Stage 3 of the tendering process will be presented to Council for approval in late 2014;
- (H) Council note the proposed finance and governance structure for the competitive alliance procurement model as detailed in confidential Attachment E to the subject report;
- (I) Council note that, to enable the Project to progress to its current status, external consultants have been engaged to prepare time-critical specialist studies and the review of environmental factors. As detailed in the Letter Agreement, shown at Attachment B to the subject report, the City is to pay an agreed proportion (the City's share is 53.79%) of these external consultant costs and Sydney Water's related internal costs;
- (J) Council note that, on execution of the Project Agreement, the City and Sydney Water will jointly engage relevant third party service providers to provide services to support the delivery of the Project;
- (K) authority be delegated to the Chief Executive Officer to negotiate and approve the engagement of third party service providers as required for the Project, and to make the necessary payments to them and to Sydney Water for the external consultant costs and its related internal costs, as described in Items (I) and (J) above; and
- (L) Attachments C, D and E to the subject report remain confidential in accordance with sections 10A(2)(c) and 10A(2)(d)(i) of the Local Government Act 1993 because they comprise:
 - (i) information that would, if disclosed, confer a commercial advantage on a person with whom the Council is conducting (or proposes to conduct) business; and
 - (ii) commercial information of a confidential nature that would, if disclosed, prejudice the commercial position of the person who supplied it.

Carried unanimously.