

Memorandum of Administrative Arrangement

Between

«Agency» (“Participating Agency”)

and

The Department for Infrastructure and Transport (“the Department”)

for participation in the

Across Government Facilities Management Arrangements

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Government of South Australia
Department for Infrastructure
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1) Introduction

a) The Parties

This Memorandum of Administrative Arrangement (**MoAA**) is made between:

- i. the Participating Agency; and
- ii. the Department for Infrastructure and Transport ('the Department').

b) Background

The Across Government Facilities Management Arrangements (AGFMA) are an inter-agency mechanism through which the South Australian Government takes a systematic approach to fulfilling its obligations and commitments to the maintenance, management and improvement of Government's building assets. The AGFMA enable the Government to establish asset standards and maintenance requirements, identify the scope and extent of work that needs to be performed, procure the performance of the works at a fair price, ensure that work is completed to the required standards, periodically inspect and assess asset condition, maintain the required public records, and appropriately manage risk and provide assurance across the asset management lifecycle.

In December 2014 following a competitive tender process, Cabinet approved the award of a contract to private sector service provider Spotless Facility Services Pty Ltd (Spotless) for a term of up to nine-years, commencing 1 July 2015 to provide management services that enable the administration of certain aspects of the AGFMA. The December 2014 Cabinet Approval also extended to:

- i. the objectives of the AGFMA, including the effective and efficient operation of government's building asset portfolio, which facilitates and supports the achievement of government priorities;
- ii. the model for service provision, including the fee model, in nominated regions of the State by Facilities Management Service Providers (**FMSP**) which are centrally managed by the Department's AGFMA Directorate;
- iii. the governance arrangements from 1 July 2015; and
- iv. the role of the Department as the Contract Administrator under the AGFMA.

The initial expiry date of the Spotless contract is 30 November 2021 with extension options allowing a potential maximum term through to 30 June 2024. In June 2020 Cabinet approved the staged implementation of the Future AGFMA operating model and the conduct of a competitive procurement process to secure one or more FSMP's to meet the whole of the State's requirements for facilities management services in accordance with the AGFMA.

c) Nature and purpose of this MoAA

This MoAA provides a framework which depicts the current AGFMA model and is a means to address a range of recommendations of external reviews which identified a lack of clearly defined roles and responsibilities and that an agreement between the Department's AGFMA Directorate and Participating Agencies be developed and executed in order to clarify roles and responsibilities under the AGFMA.

Prior to commencement of the Future AGFMA Operating Model, execution of a Variation to the MoAA will be coordinated by the Department.

The purpose of this MoAA is to describe the roles and responsibilities of the Parties in the delivery of the AGFMA, for internal (to Government) use between the parties, with the primary aim of supporting:

- i. the maintenance of buildings and facilities to appropriate legislative and technical standards so that risk is managed, they are safe and fit for use, and fulfil their function effectively;
- ii. value for money and certainty of time, cost and quality outcomes;
- iii. flexibility to accommodate changing needs and to optimise the Participating Agency's ability to manage its Designated Locations, including all assets, which may consist of building fabric, plant and equipment; and
- iv. facilities management services are delivered in a manner that achieves the objectives of Government policies including asset management, energy efficiency, ecologically sustainable development, WH&S and training strategies.

The Parties acknowledge that this MoAA reflects an administrative arrangement between administrative units or instrumentalities of the Crown in right of the State of South Australia, and is not intended to create legal relations. Notwithstanding this, the Parties acknowledge their intent to conduct themselves in full accordance with this agreement.

2) Interpretation

a) Definitions

For the purposes of the MoAA, the terms referred in this document are defined to have the following meaning:

Agency Representative means the representative of a Participating Agency at a particular Designated Location(s).

AGFMA means the Across Government Facilities Management Arrangements.

AGFMA Contract Leakage Guide Note means the advisory note which documents the process for managing contract leakage under the AGFMA as published by the Department on the AGFMA website, as varied from time-to-time.

AGFMA Directorate means the Department's business unit which is responsible for policy and contract management functions for the AGFMA.

Annual Fee means the fee payable by Participating Agencies to the Department, which is a cost recovery mechanism to enable the Department to deliver the Across Government Facilities Management Arrangements.

AWP Manual means the Agency Works Procedure Manual as published by the Department on the AGFMA website, as varied from time-to-time.

Cabinet Approval (or Cabinet Approved) means the decisions of Cabinet in late 2014 in relation to AGFMA that are referred to in Section 1(b) of this document.

Confidential Information means information disclosed by or on behalf of a Party to this MoAA that:

- i. is by its nature confidential or by the circumstances in which it is disclosed is confidential; or
- ii. is designated by the disclosing Party as confidential or identified in terms connoting its confidentiality, but does not include:
 - a. this MoAA;
 - b. information which is or becomes public knowledge.

Contract Administrator means the Executive Director, Across Government Services (the Department for Infrastructure and Transport) or any administrative successor, who is the Minister's Representative for the FM Services Contract with Spotless Facilities Services Pty Ltd; and for the purposes of this MoAA, also means the Service Framework Administrator for the FM Services Framework with DIT-FS.

Department means the Department for Infrastructure and Transport.

Designated Location means the sites, land and other places at which the FMSPs provide the services for the purposes of the AGFMA.

Execution Date means the date to which the MoAA is signed by the Parties.

FAMIS means the Facilities Asset Management Information System and is a program designed for initiating and processing requests for work.

FMGG means the Facilities Management Governance Group, established as a governance and strategic committee overseeing the AGFMA.

FM Services means facilities management services provided by FMSPs under the AGFMA.

FM Services Fee means the management fee payable to the FM Service Provider and is recovered monthly from the Participating Agencies.

FMSP means the Facilities Management Service Providers which are the in-house Government service provider, DIT Facilities Services; and the private sector service provider, Spotless Facility Services Pty Ltd (Spotless).

ISO 55000 means the international standard for management of assets of any kind.

Key Documentation means the documents published by the Department on the AGFMA website, such as policies, guide notes and manuals, which support objectives of the Cabinet Approval.

Key Participants means the Participating Agencies, the FMSPs, the FMGG and the Contract Administrator.

Participating Agencies means those agencies participating in, and who procure facilities management services under the AGFMA, and which includes the Participating Agency under this MoAA.

Parties means the Department and the Participating Agency.

PC114 means the Premier and Cabinet Circular for Government Real Property Management, as varied from time to time.

Reimbursable Services means FM Services that are defined in the AWP Manual and are financially recovered from the Participating Agencies.

SAMIS means the Strategic Asset Management Information Systems and provides a repository of data that identifies and physically describes assets.

Work, Health and Safety Framework means the safety documentation provided by the Contract Administrator, as varied from time to time.

3) Term

- a) At the commencement of the term of this MoAA, this MoAA will determine the arrangements between the Parties and will supersede the 'FM Services Arrangements Service Level Guidelines (SLG) July 2015 to June 2024'.
- b) The **Term** of this MoAA commences on the Execution Date and will expire on execution of a new MoAA unless terminated earlier by the Parties or Government.

4) Roles and Responsibilities of Parties

a) Shared Role of Parties

The Parties agree to:

- i. collaborate to efficiently deliver the AGFMA in compliance with the Cabinet Approval and in accordance with Key Documentation;
- ii. ensure, as concurrent duty holders, compliance at all times with obligations of the *Work Health and Safety Act 2012*, Regulations made under that Act and any other relevant instruments or standards;
- iii. actively participate in the delivery of a quality assurance audit framework that seeks assurance that FM Services and systems are effective and maintained, and that consultation is taking place and is effective;
- iv. adopt objectives of the South Australian Government Building Safety Excellence in the Public Sector strategy; and
- v. ensure compliance with any other relevant legislative requirements, as varied from time to time.
- vi. should any dispute arise in relation to the application of this MOAA, manage that dispute in accordance with the dispute resolution process/es as referred to in the AWP Manual.

b) Role of Participating Agency

As the asset owner or occupier in control of the Designated Location and purchaser of FM Services, the Participating Agency shall:

- i. assign, and maintain during the Term, an Agency Representative with appropriate knowledge and experience to competently manage the relationship with Key Participants in order to support the objectives, and enable performance, of the AGFMA;
- ii. participate in FMGG activities in accordance with the FMGG Terms of Reference in **Appendix B**.

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- iii. ensure that all staff engaged in the delivery of the AGFMA are aware of, understand and are able to access and use the:
 - a. AGFMA suite of documents prepared and published by the Department, in particular this MoAA and the AWP Manual; and
 - b. asset management information and work systems (FAMIS and SAMIS) provided by the Department; and
 - c. any other relevant documents that may be issued by the Department from time to time;
- iv. whilst adhering to its own work health and safety system/s, incorporate and adopt the principles of the Work, Health and Safety Framework in the management and performance of their responsibilities under this MoAA and the AGFMA more broadly;
- v. ensure that appropriate induction processes and work, health and safety systems are in place for FMSPs and sub-contractors who are required to access its Designated Locations in accordance with any relevant laws and Government requirements;
- vi. as a concurrent duty holder, ensure that all aspects of its WHS systems that are relevant to its roles and responsibilities in relation to the AGFMA are established and maintained in a manner that fulfils their obligations under the *Work Health Safety Act 2012*;
- vii. ensure asset data, including asset hierarchy, is accurate and maintained to support asset management planning in accordance with the requirements of the AGFMA;
- viii. develop, maintain and administer its own Strategic Asset Management Plan and align it to relevant sources such as the Premier and Cabinet Circular PC114, the ISO 55000 standards suite, the 20-Year State Infrastructure Strategy and to the Strategic Asset Management Framework as published on the AGFMA website by the Department, as varied from time to time;
- ix. when requesting Facilities Management services to be carried out by an FMSP, ensure adherence to instructions outlined in the AWP Manual, South Australian Government procurement policies and guidelines, and any relevant legislation;
- x. with regard to the relationship with a FMSP, ensure:
 - a. appropriate communication mechanisms are made available to the FMSP;
 - b. appropriate access to Designated Locations is provided to enable delivery of facility management services; and
 - c. requests for Reimbursable Services are made via the on-line system FAMIS or the Department's hotline call centre; and

Notwithstanding the terms in clause 4b (i to x), Participating Agencies understand that the provision of AGFMA services at the Designated Locations does not affect the Participating Agency's liabilities and responsibilities for the Designated Locations.

c) Role of the Contract Administrator

As the Contract Administrator for the AGFMA, the Department (through its AGFMA Directorate) must:

- i. assign, and maintain during the Term, a representative who is suitably qualified and experienced to lead the relationship between FMSPs and the Participating Agencies;
- ii. administer the AGFMA through the provision of FM Services in accordance with the objectives of the AGFMA as approved by Cabinet;
- iii. establish appropriate mechanisms to support Participating Agencies and Agency Representatives to fulfil their roles under the AGFMA, including but not limited to:
 - a. providing or making available the Work, Health and Safety Framework, policies, procedures, forms and templates relevant to the AGFMA; and
 - b. developing and publishing a suite of documents related to AGFMA, such as the AWP Manual and other supporting documents as varied from time to time;
 - c. providing up to date and easily accessible information on the AGFMA website; and
 - d. providing advice to Participating Agencies to meet compliance and support maintenance of Government assets;
- iv. manage the performance of FMSPs in accordance with their contractual or other obligations;
- v. maintain information systems and databases required for effective administration of the AGFMA, including providing training to approved Participating Agency staff;
- vi. provide a hotline call centre and the on-line system FAMIS for registration and actioning of requests for Reimbursable Services;
- vii. provide the online asset management information system SAMIS and FAMIS to:
 - a. support Agency Asset Managers with a range of tools to make informed strategic asset management decisions; and
 - b. support Agencies with a variety of tools and information as they progress to alignment with ISO 55000, asset management maturity and competency; and
- viii. provide administrative and executive support to the FMGG.

5) Contract Leakage

In accordance with the Cabinet Approval, Participating Agencies are obliged to procure certain facilities management works and services through the AGFMA and in accordance with its terms. The mandated services are prescribed by the AWP Manual. Contract leakage is a term given to describe where a service provider, other than the contracted FMSP, is engaged by the Participating Agency to provide a service of the same category as the FMSP. For example, this might occur where a Participating Agency procures maintenance works outside of the AGFMA.

In the event where the Participating Agency does not comply with the requirements of the Cabinet Approval for the procurement of FM services, the Participating Agency must escalate the matter to the FMGG. The Agency Representative will be required to verify and advise the AGFMA Directorate on the reported contract leakage and action(s) taken to remediate the matter.

Periodic contract leakage reports on a six monthly basis will be provided to the Chief Executives of Participating Agencies where instances of contract leakage have been identified. Further information is provided in the AGFMA Contract Leakage Guide Note and the relevant clauses of the AWP Manual, as varied from time to time.

Participating Agencies are liable for risks associated with contract leakage, including, but not limited to:

- i. work, health and safety to members of the public, FMSPs, sub-contractors and Participating Agency employees;
- ii. integrity of data management;
- iii. increased costs to Participating Agencies;
- iv. fraud and corruption; and
- v. potential claims by the FMSP against the State.

6) Assurance and Audit

Without limiting the role of the Parties under clause 4(a)(iii), the Department will:

- i. conduct audits and assurance activities, per contractual or framework obligations, on FMSP operations and/or processes; and
- ii. conduct quarterly audits to monitor the KPI requirements of the Framework and Contract and the accuracy and timeliness of invoices issued by FMSPs.

7) Financial Arrangements

a) The Department is responsible for:

- i. management and oversight of financial arrangements for the AGFMA, including FMSP claims and payments, and recovery of Reimbursable Services from the Participating Agencies; and
- ii. charging the Annual Fee to Participating Agencies for management of the AGFMA.

b) The Participating Agency is responsible for:

- i. verifying that work has been carried out in accordance with requirements;
- ii. raising disputes in accordance with clause 4(a)(vi);
- iii. paying the costs incurred for the FM Services procured at its Designated Locations (including the annual contract management fee); and
- iv. as part of the annual process for developing its Service Delivery Plan(s), Agency Asset Scope Lists and Schedule of Designated Locations, use all best efforts to identify indicative asset management and maintenance costs; a process which will also support informing the Agency's annual budget process.

8) Other Matters

a) Confidentiality

In the course of the Parties performing the obligations under this MoAA, each Party may be provided with Confidential Information. The Parties agree that they will take necessary steps to maintain the confidentiality of Confidential Information.

However, nothing in this clause will prevent any use or disclosure of such information which is permitted or required by any relevant laws and conventions including but not limited to, disclosure:

- i. to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;
- ii. where required by law to do so; and
- iii. to any agency, authority, instrumentality, Minister or Officer of the State of South Australia to whom it is customary for the Party to disclose information such as the Confidential Information in the ordinary course of its duties and functions (whether or not legally obliged to do so).

Notwithstanding this, where reasonably practicable to do so there will be consultation with the affected Party prior to disclosing any Confidential Information related to it.

b) **Variation**

The Parties agree that:

- i. if the Department determines to vary this MoAA, the variation must be endorsed by the Executive Committee of Senior Management Council (or its successor); and
- ii. the Department will provide the Participating Agency, via the Chief Executive (or nominated delegate at clause 9) with notice of the Variation as soon as practicable.

c) **Contact Officers**

Communication between Parties in relation to matters associated with this MoAA should be between the Party Contacts listed in **Appendix A** of this MoAA.

9) Execution

EXECUTED AS A MEMORANDUM OF ADMINISTRATIVE ARRANGEMENT

Signed by
THE CHIEF EXECUTIVE (or Delegate) of
<Participating Agency>

Signature of the CE (or Delegate)

Date

In the presence of

Witness Signature

Date

Witness Name

Signed by
THE CHIEF EXECUTIVE of
DEPARTMENT FOR INFRASTRUCTURE
AND TRANSPORT

Signature of Authorised
Representative

Date

In the presence of

Witness Signature

Date

Witness Name

Appendix A - Contact Officers

- a) The Party Contacts for matters related to this MoAA are as follows:

The **Nominated Agency Contact** for managing all operational matters associated with this MoAA is

<.....> <Position Title>

E:

PH:

Postal:

- b) The **Representative of the Department** for managing all operational matters associated with this MoAA is Mr Simon Morony, Executive Director Across Government Services.

E: Simon.morony@sa.gov.au

PH: 08 8343 2452

Postal: PO Box 1533, Adelaide SA 5001

Sample - Cabinet in Confidence

Appendix B – FMGG Terms of Reference

Facilities Management Governance Group Terms of Reference

CONTEXT

Across Government Facilities Management Arrangements (AGFMA) was approved by Cabinet in 1998 to reduce the government workforce and achieve cost efficiencies through economies of scale, packaging of the services and central management of service providers.

In 2015, the governance committee was renamed to the Facilities Management (FM) Governance Group (FMGG).

PURPOSE

The purpose of the FM Governance Group is to:

1. Contribute to the development of across government strategies and approaches relating to facilities management and asset management;
2. Consider matters put before it from a whole-of-government perspective;
3. Provide oversight of the:
 - a. Financial and technical performance of the FM Service Providers (currently DPTI Facilities Services and Spotless Facilities Services Pty Ltd [Spotless])
 - b. Work Health and Safety strategy, performance and issues relating to the delivery of the services
 - c. Services and outcomes of the AGFMA
4. Make recommendations to DPTI (the Contract Administrator) relating to the contract administration;
5. Measure and ensure value for money is achieved in the provision of facilities management services, and mechanisms for the FM Service Providers to reduce costs to AGFMA participating agencies;
6. Ensure Government policies are implemented through the FM Service Provider's performance or through the Facilities Management and Asset Management strategies and operations of the agencies;

FILE: FMGG – Terms of Reference
DOCUMENT: 14798729
TYPE: FINAL
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7. Identify and support benchmarking exercises to improve Facilities Management and Asset Management practice in Government or for the FM Services Provider performance; and
8. Provide advice to Government on the AGFMA and emerging risks and opportunities.

The FM Governance Group does not have authority to approve financial impacts on participating agencies. Any such approval must be secured by individual agencies in accordance with agency authorities and delegations.

MEMBERSHIP

The FM Governance Group will be chaired by the Executive Director, Across Government Services or in absence by proxy Manager, AGFMA.

All agencies participating in the AGFMA are to be invited to attend.

For agencies with an aggregate annual spend of >\$1m per annum through the arrangement membership is compulsory. For agencies with an aggregate annual spend <\$1m membership is optional.

Members will hold Executive positions and have control of resources relating to the facilities management and/or asset management function within their respective agencies.

Member proxies may be lower in classification but should be an appropriate manager or senior representative involved in asset/facilities management, with authority to represent the Agency.

Members and their proxies must attend an FMGG Governance induction process.

Observers and presenters can be invited to the meetings. Observers and presenters do not have voting rights and are not counted in the quorum.

GOVERNANCE

Agencies can submit Agenda items and Papers.

Papers submitted by agencies for consideration at meetings are to be submitted to the Executive Officer 14 working days prior to the scheduled meeting. Agenda items or Papers will be considered by the Chair for inclusion or otherwise in the meeting. The Chair may consider that the agenda item is included or referred to another forum or process.

Agenda and Papers will be issued 5 working days prior to the scheduled meeting.

Minutes of meetings shall be distributed to members within 10 working days of the meeting being held.

Items of Any Other Business are to be raised prior to the meeting, unless they are of the utmost urgency.

DECISION PROCESS

Where the FM Governance Group is required to make decisions, make recommendations to DPTI or provide advice to Government on the AGFMA, the following process shall be followed:

1. A quorum of 80% of members nominated by the Chief Executive of their agency (as opposed to proxy nominees) are to be present at the meeting in which the decision is to be made;
2. The decision shall be made by more than 50% of members voting to accept or reject the proposal/recommendation/advice; and
3. If 80% of Chief Executives nominees (as opposed to proxy nominees) are not present at a particular meeting then decisions may be made out of session via prompt e-mail response from Chief Executives to the FM Governance Group chairperson.

FREQUENCY OF MEETINGS

Meetings will be scheduled every three months.