

Dated 30 November 1995

**Floodplain Management
Services Agreement**

**The Hon. Geoffrey Coleman, MP,
Minister for Natural Resources
("Minister")
Melbourne Water Corporation
("Melbourne Water")**

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Floodplain Management Services Agreement

Date:

November 1995

Parties:

**The Hon. Geoffrey Coleman, MP, Minister for Natural Resources
("Minister")
Melbourne Water Corporation ("Melbourne Water")**

Recitals:

- A. The Minister has the functions and powers of an Authority for the purposes of floodplain management under Division 4 of Part 10 of the Water Act 1989 ("**Water Act**") in relation to any area except the waterway management districts under the management of other Authorities to which Division 4 of Part 10 of the Water Act applies by order of the Minister.
- B. By Order-in-Council made under section 8A of the State Owned Enterprises Act 1992, the functions of Melbourne Water under the Melbourne and Metropolitan Board of Works Act 1958 ("**MMBW Act**") were altered to include acting as a delegate of the Minister in carrying out the Minister's functions as an Authority under Division 4 of Part 10 of the Water Act 1989 in relation to floodplain management.
- C. At the request of the Minister, Melbourne Water has agreed to provide certain services in relation to floodplain management to the Minister on the terms and conditions of this agreement.
- D. To enable Melbourne Water to provide the services referred to in Recital C, the Minister has agreed to delegate to Melbourne Water under the power given to the Minister in section 306 of the Water Act, the functions, powers and duties of the Minister as an Authority under Division 4 of Part 10 of the Water Act.

Operative provisions:

1 Interpretation

- 1.1 The following words have these meanings in this agreement unless the contrary intention appears:

Floodplain Management Services means all services required for the Minister to carry out the floodplain management functions of the Minister as an Authority under Division 4 of Part 10 of the Water Act except in relation to the declaration of building lines.

Melbourne Water means Melbourne Water Corporation.

MMBW Act means the Melbourne and Metropolitan Board of Works Act 1958.

Minister means the Minister administering Division 4 of Part 10 of the Act.

Water Act means the Water Act 1989.

Water Industry Act means the Water Industry Act 1994.

1.2 In this agreement, unless the contrary intention appears:

- (a) a reference to this agreement, or to any other instrument, includes any variation or replacement of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) a reference to a person or body corporate includes a reference to the successors or substitutes of that person or body;
- (d) the singular includes the plural and vice versa;
- (e) a reference to a clause is a reference to a clause of this agreement; and
- (f) any capitalised term not defined in this deed has the meaning (if any) given in the Water Act.

1.3 Headings are inserted for convenience and do not affect the interpretation of this agreement.

2 Floodplain Management Services

- 2.1 At the request of the Minister, Melbourne Water agrees to provide Floodplain Management Services to the Minister in relation to the area in which Melbourne Water is empowered to carry out drainage functions under the MMBW Act or a drainage licence granted to it under the Water Industry Act, on the terms and conditions of this agreement.
- 2.2 The Minister and Melbourne Water agree that this Agreement has effect as from 1 January 1995.
- 2.3 For the purposes of enabling Melbourne Water to carry out the Floodplain Management Services the Minister delegates to Melbourne Water each of the functions, powers and duties (except the function and power to declare building lines) of an Authority under Division 4 of Part 10 of the Water Act that are given to Minister under section 201 of the Water Act.
- 2.4 In consideration of Melbourne Water agreeing to carry out the Floodplain Management Services, the Minister:

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- (a) agrees to inform Melbourne Water if he or any officer on his behalf exercises any function, power or duty of the Minister as an Authority under Division 4 of Part 10 of the Water Act; and
 - (b) confirms and ratifies any acts by Melbourne Water or its officers from 1 January 1995 to the date of this agreement in purported exercise of the functions and powers of an Authority under Division 4 of Part 10 of the Water Act as if those acts were carried out on behalf of the Minister with his authority but not acts which involve negligence or which would otherwise be outside the scope of the authority of an agent engaged to exercise those functions and powers.

3 Directions by Minister

- 3.1 The Minister may give to Melbourne Water written directions in relation to the performance of the Floodplain Management Services.
- 3.2 Melbourne Water agrees to comply with any reasonable directions by the Minister under clause 3.1.

4 Termination

- 4.1 Subject to clauses 4.2 and 4.4, either party to this agreement may terminate the agreement.
- 4.2 A party wishing to terminate the agreement must give 60 days notice in writing to the other party.
- 4.3 If a notice is given under clause 4.2, the termination takes effect on the expiry of the period referred to in the notice.
- 4.4 This agreement revokes automatically if Melbourne Water no longer has any drainage functions under either the MMBW Act or a drainage licence granted under the Water Industry Act.

5 Notices

- 5.1 A notice, approval, consent, certificate or other communication in connection with this agreement:
 - (a) must be in writing;
 - (b) must be marked for the attention of the person referred to below;
 - (c) must be left at the address of the addressee, or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in

this clause or if the addressee notifies another address or facsimile number then to that address or facsimile number.

The address and facsimile number of each party is:

Melbourne Water Corporation

Address: 625 Little Collins Street, Melbourne, 3000

Facsimile: 9615 4500

Attention: Corporate Secretary

The Minister for Natural Resources

Department of Conservation and Natural Resources

Address: 232 Victoria Parade, East Melbourne, 3002

Facsimile: 9412 4039

Attention: Legal Officer, Catchment and Management Division

5.2 A notice, approval, consent, certificate or other communication takes effect from the time it is received unless a later time is specified in it.

5.3 A letter or facsimile is taken to be received:

- (a) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and
- (b) in the case of facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient.

6 Assignment

A party may not assign its rights under this agreement without the consent of the other parties.

7 Waiver and variation

A provision of or a right created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied except in writing signed by the parties.

8 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other

jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

EXECUTED as an agreement

Execution page

SIGNED by THE HON. GEOFFREY
COLEMAN, MP, in the presence of:

[Signature]
.....
Signature of witness

DAVID HELPS
.....
Name of witness (block letters)

5/232 Victoria Pde E. Melb.
.....
Address of witness

Public Servant.
.....
Occupation of witness

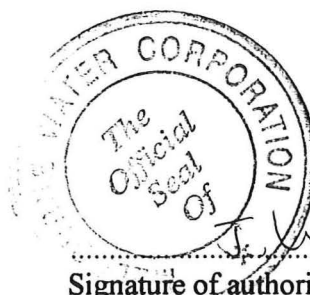
[Signature]
.....
Signature of Minister

THE OFFICIAL SEAL of
MELBOURNE WATER
CORPORATION was affixed in the
presence of and the sealing is attested by:

[Signature]
.....
Signature of authorised person

Managing Director
.....
Office held

J E MORGAN
.....
Name of authorised person (block letters)



[Signature]
.....
Signature of authorised person

Corporate Secretary
.....
Office held

J. J. WHYBROW
.....
Name of authorised person (block letters)