



BOARD ADVISORY SERVICES

# Proposal to facilitate a Representation Review for the Corporation of the City of Marion



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Ms Kathy Jarrett  
Manager, Governance  
Corporation of the City of Marion  
PO Box 21  
Oaklands Park SA 5046

23 February 2009

Dear Kathy,

In response to our discussions we are pleased to submit to you the attached proposal to facilitate a Representation Review (Review) at the Corporation of the City of Marion (City of Marion) in accordance with the Local Government Act 1999.

We are currently working with the City of Marion to review its Audit Committee performance using a combination of Leblanc and KPMG tools. The Representation Review provides an opportunity to seamlessly integrate both projects into an overall program for Excellence in Governance. Shey Newitt and I will again deliver the engagement, with specialist governance input provided by Dr Richard Leblanc, and specialist demographics input provided by an additional team member from KPMG's Property Advisory Services and the guidance of demographer Bernard Salt.

The proposal provides the following detail:

- Our understanding of the City of Marion's requirements;
- How we will meet your requirements;
- Our approach to the Representation Review;
- Our credentials, recent client work and industry experience;
- The experience and expertise of the team members chosen specifically for the Review;
- Independence issues and our relationship as the City of Marion's external auditors; and
- General information about our fees and timing.

Should you wish to proceed with the Representation Review, we will issue an engagement letter, including KPMG's Standard Terms and Conditions of business (which are included in Appendix One to this proposal) and an acknowledgement copy for your signature and return.

If you have any further questions, please contact me on (03) 9288 5790 or at [markjones@kpmg.com.au](mailto:markjones@kpmg.com.au).

Yours faithfully,

Mark Jones  
Partner

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This proposal is made by KPMG, an Australian partnership and a member firm of the KPMG network of independent firms affiliated with KPMG International, a Swiss cooperative, and is in all respects subject to the negotiation, agreement, and signing of a specific engagement letter or contract and obtaining approval under KPMG's internal risk assessment procedures, including independence and conflict of interest checks. Should the internal risk assessment not grant approval to enter into an agreement to complete this engagement, KPMG reserves the right to withdraw this proposal.

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# Your requirements

The City of Marion is required by the Local Government Act 1999, to conduct a Representation Review at least every eight years. The last review was conducted in 2002, and the State Electoral Office has advised that the next review must be completed by October 2009. It is a statutory requirement to conduct the Review, but the project is also consistent with the City of Marion's vision for Excellence in Governance, and comes at a time when the City of Marion is focussing its efforts on leadership, accountability, and governance within the Council and its committees.

The City of Marion wishes to engage an experienced consultant to assist in facilitating a review of its representation under the requirements of the Local Government Act 1999, having a close regard for the principles of good governance and the factors that drive effective decision making.

## **Key outcomes**

According to your request for proposal, the key outcomes sought from the Representation Review include:

1. The identification of a structure and composition for Council that:
  - Aligns with Council's vision for Excellence in Governance;
  - Will meet future community requirements and take into account the principles set out in the Local Government Act 1999;
2. Compliance with the legislative requirements for the conduct of the Review.

## Timing

The Council also wishes the Representation Review to be completed and forwarded to the State Electoral Commissioner for certification by October 2009. The timeline for the Review is reasonably tight and is under the recommended 34 weeks according to the *Guidelines for Councils*. Some activities, such as the community consultation, have a mandatory timeframe.

Activity	Suggested timeframe - City of Marion RFP	Recommended timeframe – Guidelines for Councils
1 Consideration of current structure and future options	By week 2 (1 week)	By week 4 (3 weeks)
2 Preparation and Council endorsement of Representation Options Paper	By week 7 (3 weeks)	By week 9 (5 weeks)
3 Preparation of Representation Review Paper and submit to Council	Weeks 15-17 (3 weeks)	Weeks 18-22 (4 weeks)
4 Finalise Representation Review Report	By week 27 (2 weeks)	By week 34 (6 weeks)

To complete the review by 26 August, it will be essential to conduct the remaining key activities quickly and efficiently. This approach has the benefit of achieving momentum throughout the Review process and ensuring efficient engagement with Council and stakeholders.

You therefore require a dedicated team that has the capacity to work intensely on the project for periods of time, that already has an understanding of the City of Marion's governance structure, and that can hit the ground running.

## Qualified person

The Local Government Act 1999 requires a consultant to satisfy the criteria for a 'qualified person', someone who is qualified to:

1. Write a paper on the alternatives that could be considered for the Council composition and structure; and
2. Address any representation and governance issues that may arise from the review.

The City of Marion also wishes to work with a team that understands contemporary approaches to corporate governance and has experience and understanding of the Local Government context, including legislative requirements, and the diverse stakeholder environment.

# Meeting your requirements

## **Key outcomes**

To achieve the required outcomes your consultant must bring together an understanding of contemporary corporate governance, particularly public sector governance, and an understanding of the future needs of local communities and demographics, within the context of the legislative requirements for conducting the Representation Review.

The team chosen for this engagement combines corporate governance expertise with demographic capabilities. Mark Jones and Shey Newitt from KPMG's Board Advisory Services will provide in-depth knowledge of contemporary corporate governance practices in the public sector and more broadly. We will combine the principles set out in the Local Government Act 1999, with the principles of good governance to examine the current Council structure and evaluate alternative options. We will also draw on the expertise of Dr Richard Leblanc in this project. We have scheduled a conference call with Dr Leblanc to discuss the application of good governance principles to the Local Government sector.

Mark and Shey will be assisted by James Paul from KPMG's Property Advisory Services. James has extensive experience in analysing demographic information for Local and State Governments to present a projection of community profiles and needs. James will also overlay his experience in conducting successful community consultations and will draw on the expertise of Bernard Salt, a KPMG partner leading the Property Advisory Services group and a well-known demographer.

## **Timing**

Completing the Representation Review within the suggested timeline is important to meet legislative requirements, and also to maintain momentum throughout the process. Our approach involves a number of intense periods of activity, the most substantial being in the first two weeks of the project. We will ensure that the relevant team members are on hand, in Adelaide, and focused on the City of Marion, for those periods. Time has already been set aside to attend the subsequent Council meetings and workshops. Also, Shey Newitt and Mark Jones have worked recently with the City of Marion to facilitate an evaluation of its Audit Committee. Our familiarity with the City of Marion's senior administration, governance framework, philosophy and strategic objectives will provide a significant advantage in terms of project efficiency.

## Qualified person

The Local Government Act 1999 requires that the Representation Review be conducted by a qualified person. Our Board Advisory Services team has extensive experience in providing corporate governance advice to the public sector that deal with issues of representation, community engagement, and governance structures. The City of Marion also requires proficiency in a number of related areas. These areas, and details of our expertise, are contained in the table below.

Skill/knowledge requirement	Our credentials
Knowledge of contemporary approaches to governance such as the Tricker model and Richard Leblanc work	<p>KPMG is a premium distributor of the Leblanc diagnostics and has worked closely with Dr Richard Leblanc to develop both the Board and Audit Committee surveys. Board Advisory Services has had over four years experience using the Leblanc model and diagnostic tools, and will involve Dr Leblanc on this engagement.</p> <p>KPMG's Board Advisory Services is known for its corporate governance thought leadership. Mark Jones is a regular speaker on contemporary approaches to governance, and Shey Newitt has a PhD in corporate governance from the University of Melbourne, and is well versed in governance models and codes.</p>
Ability to interpret the requirements of the Local Government Act	Our team has experience working within the legislative requirements of the Local Government Act 1999, with a range of Local Government clients, including the City of Marion and the Brisbane City Council.
Understanding and determining various options, and knowledge of advantages and disadvantages from all perspectives	Board Advisory Services has conducted governance reviews for a number of not-for-profit and Government clients. We understand the challenge of being accountable to a wide range of stakeholders, with different needs and motivators. KPMG's work with residential communities, including demographic profiling and input into the Strategic Plan for Metropolitan Adelaide, involved extensive community consultation, and we understand the importance of hearing and incorporating divergent stakeholder views.
Knowledge of the role and functions of Local Government	Through our work with Local Governments we have developed a keen understanding of how the role and function of Local Government has changed over time and the different approaches to accountability that have resulted.
Knowledge of the general implications for representation and governance and the various options for composition and structure	We have provided advice to Government entities and member organisations on board, committee, and Council composition, and the impact of various appointment and voting processes. We understand that the Council representation structure should strive to achieve strong community representation, as well as a capable, responsible and effective decision-making body.

# Our approach

In accordance with your request for proposal and the requirements of the Local Government Act 1999, our approach for the Representation Review would consist of the following steps:

1. Project kick-off;
2. Evaluating the current representation structure;
3. Preparing a Representation Options Paper;
4. Leading a program of community consultation;
5. Preparing a report for Council consideration on the outcomes of the community consultation;
6. Workshopping the report with Council and preparing a Representation Review Report;
7. Leading a second round of community consultation; and
8. Finalising the Representation Review Report for adoption by Council and submission to the State Electoral Role Office.

The following provides an overview of each activity:

## 1. Project kick-off

Because of the tight timeframe it is important to kick-off the project immediately. We would begin the project with a conference call with Kathy Jarrett, Manager Governance, to discuss the project and gain her input regarding the tools and methodologies used to evaluate the current representation structure. Once in Adelaide we would meet with the City of Marion project team. The objective of the meeting would be to introduce those who have not met, and agree on the project plan, responsibilities and timing. By this time we would also wish to have received demographic profiling and future population projections from the City of Marion for use in evaluating the current representation structure.



## 2. Evaluating the current representation structure

We would begin the engagement by evaluating the current representation structure, including the size and composition of the Council, the ward structure, and the effectiveness with which the current Council represents the community.

The first step in this process would be to develop a framework against which to evaluate the current structure. The framework would include the key principles set out in the Local Government Act 1999. We would also consider future community requirements. We would work with the City of Marion to analyse demographic data and future projections to define the key community needs of the future, having regard also to similar work with other Local Councils. In keeping with the City of Marion's vision for Excellence in Governance, we would also consider better practice governance arrangements in Local Government, and the broader principles of good governance and effective decision-making. We understand that the City of Marion is looking to undertake an evaluation of the Council's performance. We would incorporate the results of this evaluation either at this stage, or if not yet available, later in the project.

Using the framework as a basis for the evaluation, we would then conduct individual interviews with Elected Members and selected members of the City of Marion's Administration, including the CEO, Mark Searle, and Manager Governance, Kathy Jarrett. We would also facilitate a whole-of-Council workshop around the key themes, to share ideas and gain consensus. The interviews and workshop would discuss the appropriateness of the current structure, as well as the effectiveness of alternative options available to the Council, in terms of Council features, composition and structure.

This is an important stage of the Representation Review as it will shape the remainder of the process. This stage requires collaboration between the KPMG project team and team and the City of Marion project team, and will also require effective consultation to ensure all Elected Members' views are heard and incorporated. We anticipate that this will involve at least one week of intense activity, and we will be based in Adelaide during this time.

### 3. Preparing a Representation Options Paper

We would present our findings from the evaluation in a Representations Options Paper. According to the Local Government Act 1999, the Representation Options Paper would examine the advantages and disadvantages of the various options that are available to the Council, including the current structure, and in particular:

- a) As the Council is currently comprised of thirteen members, examining the question of whether the number of members should be reduced, having regard to contemporary approaches to governing body size and decision making effectiveness;
- b) As the area of the council is currently divided into four wards, examining the question of whether the division of the area into wards should be abolished; and
- c) Any such other relevant issues that emerge from the findings and outcomes of the evaluation of the current representation structure.

The Representation Options Paper will form the basis of community consultation, and should therefore be accessible to the broader community. We would ensure that the report follows the format of the Model Representation Options Paper, is written in plain English, and contains appropriate explanation of any obscure/technical terms.

The Representation Options Paper will be submitted to the Council in draft one week before we present and workshop the paper at the Elected Member forum on 31 March. Following any feedback from the Council we would then finalise the Representation Options Paper, for final approval on 7 April.

### 4. Leading a program of community consultation

One of the key principles set out in the Local Government Act 1999 is that community members should be able to participate effectively in decisions about local matters. We will lead a program of community consultation according to the process set out in the Local Government Act 1999. We would expect the City of Marion to assist with preparing and arranging publication of Public Notice #1. KPMG will then carefully consider all the written submissions, and will summarise the key issues to emerge from the process.

## 5. Preparing a report for Council consideration on the outcomes of the community consultation

At the conclusion of the public consultation we will prepare a report that provides information on the public consultation and the issues arising from the submissions made as part of the process. As far as possible, we will align our summary report with the evaluation framework agreed upon at the outset.

## 6. Workshopping the report with Council and preparing a Representation Review Report

We will conduct a workshop with Council members at the SCC meeting on 2 June, to debate and discuss the different representation structure options, taking into account community comment and submissions. If the recommended option includes retaining the ward structure in some form, we will lead a discussion around the number and general configuration of wards, and detailed consideration of ward boundaries and their consideration.

As an outcome of the Council workshop we will prepare, on behalf of Council, a Representation Review Report that follows the format for the Model Representation Review Report, and specifically sets out:

- a) All options, issues and proposals Council has discussed and considered along the way;
- b) Consultation outcomes and Council's response to these;
- c) Council's analysis and rationale for not adopting a proposal arising out of the Representation Options Paper or public consultation processes: and
- d) The proposed option that Council considered should be implemented and how the proposed structure meets the principles and matters set out in the Local Government Act.

The Representation Review Report would be submitted in draft on 18 June for Council consideration. Following feedback from Council we would then present the final report to the Council for approval at the 23 June General Council meeting.

## 7. Leading a second round of community consultation

The second round of community consultation will invite written submissions in response to the Representation Review Report. We would expect the City of Marion to provide assistance to prepare and arrange publication of Public Notice #2. KPMG would review written submissions and provide a summary report to Council by 31 July. The Local Government Act 1999 also provides the opportunity for people who have made a written submission to be heard personally or by a representative. In the case that there is sufficient community interest to hold a Council Hearing, our attendance at the hearing would be considered an optional extra.

## 8. Finalising the Representation Review Report for adoption by Council and submission to the State Electoral Role Office

Following the community consultation, KPMG will prepare a draft Representation Review Report. The Report will include information about the submissions made and a recommend response. The report will also contain evidence of the extent to which:

- a) The principles and matters contained in Sections 26 and 22(2) influenced the determination of the proposed composition and structure;
- b) The ‘one vote one value’ principle specified in Section 33(2) is observed;
- c) Other evidence, including:
  - Copies, and dates of placement, of public notices;
  - A summary of all written submissions and a list of those who took the opportunity to appear before the Council or Council committee;
  - A copy of all written submissions;
  - Detailed maps showing the present and proposed boundaries of the area, including ward boundaries if relevant; and
  - All Council resolutions that are relevant to the review.

The Representation Review Report will conform to the format of the Model Representation Review Report.

KPMG will submit the report in draft form to the Council for review on 20 August. We would then present the final Representation Review Report for Council approval at the 25 August Council meeting.

The services provided in connection with this engagement comprise an advisory engagement, which is not subject to assurance or other standards issued by the Australian Auditing and Assurance Standards Board.

# Our credentials

Our Board Advisory Services team has been providing governance advice for over 15 years. We have assisted clients to improve board effectiveness, strengthen governance structures, and restructure their entire governance framework. Many of our clients operate in the public sector, and require governance structures that take into account the complex accountability requirements and need for stakeholder engagement and participation.

KPMG has an in-depth understanding of all levels of Government, strong working relationships and extensive networks throughout key Government departments. We understand the role and function of Local Government and the need for the Local Government sector to work together and adopt a leadership role, to be community driven, pursue community sustainability, demonstrate efficiencies and effectiveness and engage all levels of Government in the change process.

The team chosen specifically for this engagement has a demonstrated ability to manage and deliver governance and demographics projects to all levels of Government. Examples of recent public sector engagements conducted by KPMG's Board Advisory Services practice and Property Advisory Services practice include:

- Municipal Association of Victoria;
- City of Marion;
- City of Livingstone;
- City of Monash;
- City of Hume;
- City of Greater Geelong;
- Shire of Gippsland;
- Department of Regional and Economic Development (SA);
- Department of Trade and Economic Development (SA);
- Department of Innovation and Industry Development (Vic);
- Department Premier and Cabinet (Vic);
- Department of Transport (Vic);
- VicUrban;
- Power and Water Corporation (NT);
- CityWest Water (Vic);
- South-East Water (NSW);
- WorkCover (Vic);
- Transport Accident Commission (Vic);
- Treasury Corporation Victoria;
- Queensland Treasury; and
- National Blood Authority.

### **Case study 1: Financial Governance Review**

**Client:** Australian not-for-profit organisation

**Project:** Review of financial governance structures

**Timing:** June 2009 to November 2008

**Project:** The project investigated the complex stakeholder relationship between a major not-for-profit organisation, its subsidiary organisation, and the Commonwealth Government. Areas of focus included reporting relationships, information exchange, delegations of authority, performance management, and ethical decision-making. Our recommendations were aimed at achieving: increased transparency, alignment with the key values and governing principles, and greater accountability to stakeholders.

### **Case study 2: Baby Boomer Study**

**Client:** The City of Monash in Victoria.

**Project:** City of Monash Baby Boomer Study

**Timing:** Nov 2008 to June 2009

**Project:** The City of Monash has engaged KPMG to undertake a landmark study which aims to identify and promote at a national level the requirements for Local Government to facilitate the provision of services for the baby Boomer generation as they enter retirement. At completion this project will have involved three distinct stages; detailed demographic profiling of the Monash residents, comprehensive community/key stakeholder consultation, and report and media delivery. The outcome of this report will aid in the identification and management of baby-boomer expectations regarding Local Government service provision. It will also provide a platform to address these issues at a national level.

### **Case Study 3 – Demographic Analysis**

**Client:** Department of Planning and Local Government

**Project:** 30-Year Plan for Greater Adelaide

**Timing:** Sep 2008 to June 2009

**Project:** KPMG is currently working in conjunction with the South Australian Department of Planning and Local Government to formulate a 30-Year Strategic Plan for Greater Adelaide. There is an extensive volume of demographic data required in the formulation of a 30-year metropolitan strategic planning document. As part of this project KPMG has been charged with establishing a strong evidence base from which to determine the specific demographic implications for the 30-Year Plan in regard to infrastructure, sustainability, housing and the economy.

## Client service team

One of the key requirements of a successful Representation Review at the City of Marion is that it be conducted by a team that is qualified to carry out the review according to the Local Government Act 1999, and has an in-depth understanding of, and experience in, applying principles and models of corporate governance to the Local Government context. The team chosen for this engagement satisfies these conditions. It includes Mark Jones, Partner, Dr Shey Newitt, Manager, and James Paul, Manager.



### Mark Jones – Partner, Board Advisory Services

Mark is the National Practice Leader for Board Advisory Services and is the Risk Partner for Risk Advisory Services in the Aspac region. Mark specialises in the provision of governance, internal audit and risk management services.

Mark's key clients include major companies and organisations across Australia. He has undertaken a number of key governance assignments, recently including a governance review for a major Australian company icon, an Australian top 25 company's Audit Committee and two prestigious National Sporting Organisations.

In 2005 Mark undertook a global governance study tour to better understand the emerging trends in governance frameworks and practices. He has co-authored a number of governance related articles for local and global media.

Mark is also responsible for KPMG's distribution agreement with Leblanc Diagnostics Australia Pty Limited and has a close working relationship with Dr Richard Leblanc.

Mark is a director of the Brain Research Institute Pty Ltd, a medical research organisation focused on brain diseases and disorders. He is also an alternate director and audit committee chairman for Florey Neuroscience Institutes, chairman of the Children's Craniofacial Foundation of Australasia Limited and a member of the Audit and Risk Management Committee of the Melbourne Girls Grammar School.





### Dr Shey Newitt – Manager, Board Advisory Services

She brings a wealth of corporate governance expertise to our Board Advisory Services practice. She has participated in and managed a number of board performance evaluations and governance reviews, and is responsible for our practice in South Australia. She is also responsible for our service which helps clients benchmark their structures and processes against corporate governance regulation and compliance requirements in Australia and globally. She has recently been involved in a major project to restructure KPMG’s governance structure, globally and in the Asia-Pacific region.

She has a PhD in corporate governance from the University of Melbourne. She worked closely with some of Australia’s largest listed companies to explore how Boards can improve their strategic contribution. She has published and presented her findings to audiences across Australia.

She is a non-executive director of an Australian arts charity, and is a member of KPMG’s climate change task force.



### James Paul – Manager, Property Advisory Services

James joined KPMG as a graduate in January 2004. He has travelled extensively throughout Australia providing site location and demographic advice to many of Australia’s largest property owners, developers and government agencies on various matters including demographic trends, market assessment, development feasibility, location strategy, economic impact assessments and master-planning new residential communities.

James has developed expertise in population, housing and demographic trend analysis which is sought by clients on issues relating to strategic planning, geographic positioning, trade areas and consumer market profiles. James has an extensive knowledge of demographic data sets.

James also has skills in Geographic Information Systems (GIS) technology, as well as data extraction, analysis and interpretation, used to provide property, retail and demographic advice.

### External audit team support

Our Board Advisory Services team will also leverage from the knowledge of KPMG external audit staff that have had direct client-service experience with the City of Marion.

# Independence and conflicts of interest

KPMG is committed to maintaining our independence both in fact and in perception. We have pre-empted potential issues of independence and consistently worked to implement and maintain an extensive system of quality controls over our Board Advisory Services to maintain independence and prevent conflicts of interest.

## **Managing potential conflicts**

Following discussions with City of Marion during the proposal process and implementation of our mandatory conflict checking processes, we believe that providing the services included in this proposal does not represent a conflict of interest that would affect our relationship as external auditors to the City of Marion.

We would, however, request the City of Marion also consider these circumstances, and confirm that it does not believe a potential conflict of interest to exist.

KPMG has strict processes in place that quickly identify and resolve conflict issues. Specific steps we take to prevent conflicts include:

- conducting exhaustive conflict checks before we accept new engagements
- assigning dedicated client service teams which are strictly excluded from working on engagements that may, or may appear to, create real or potential conflicts of interest
- securing our IT infrastructure to restrict the movement of client information across client teams
- requiring all KPMG partners and professionals to sign an annual declaration of compliance with our independence policies
- advising clients immediately of any situation where a real or potential conflict may exist.

We will also apply additional safeguards in this engagement to ensure that your external audit partner, Grant Drabsch, is informed of our work and the outcome of our findings.

Our commitment to the City of Marion is simple. We will not undertake services that are incompatible with our role as City of Marion's External Auditor, or that could compromise our independence in any way.

# Fees and timing

We propose a total fee of **\$59,500** for the Representation Review, exclusive of Goods and Services Tax (“GST”) and any out-of-pocket expenses (“OOPs”). The fee reflects the calibre of the team chosen for the engagement.

The breakdown in the fees, according to the major steps in the Representation Review, is as follows:

<b>1. Project kick-off</b>	\$1,562
<b>2. Evaluating the current Representation structure</b>	\$18,546
<b>3. Preparing a Representation Options Paper</b>	\$16,688
<b>4. Leading a program of community consultation</b>	\$1,000
<b>5. Preparing a report for Council consideration on the outcomes of the community consultation</b>	\$913
<b>6. Workshopping the report with Council and preparing a Representation Review Report</b>	\$12,518
<b>7. Leading a second round of community consultation</b>	\$1,903
<b>8. Finalising the Representation Review Report</b>	\$6,370
<b>TOTAL</b>	<b>\$59,500</b>

The fees are indicative only, and are based on the assumption that community submissions will be minimal, according to the City of Marion’s past experience with community consultation. As agreed, the final fee will be amended according to the volume of submissions, any significant amount of rework to the reports, and if attendance is required at a Council Hearing.

Out-of-pocket expenses will be charged at cost and we will seek to recover expenses incurred during the performance of the work related to staff travel, such as airfares and accommodation. We will endeavour to keep out-of-pocket expenses to a minimum. The first two stages of the Representation Review will be conducted in Adelaide, and we will attend five Council meetings in Adelaide, but the remainder of the project can be conducted from our Melbourne office.

Fees and expenses will be billed progressively throughout the engagement. We would typically bill in three stages, for example:

- An initial payment of 25 percent of the total fee (exclusive of GST) is payable upon commencement of the engagement;
- 50 percent on completion of the Representation Options Report; and
- 25 percent on completion of the Representation Review Report.

This proposal is subject to the negotiation, agreement and signing of a specific engagement letter, incorporating KPMG's Standard Terms and Conditions of Business.

We would commence the assignment with the kick-off phone meeting with Kathy Jarrett, Manager Governance, on 24 February. The timeline for the project would follow that set out in the request for proposal, to be completed in August 25, 2009.

The timing of the engagement is subject to the availability of Council members and the scheduling of workshops and presentations. It is also based on the assumption that the City of Marion will perform its responsibilities within the agreed timeframe. We understand that the entire Representation Review must, however, be completed and submitted to the Electoral Office by October 2009.

# Appendices

**Appendix One – KPMG Standard Terms and Conditions of Business**

## KPMG Terms and Conditions of Business

### 1 Introduction

- 1.1 KPMG have set out in this document our basic terms and conditions of business (the "Terms"), which, together with our Engagement letter (together called "this Agreement"), will apply to all work KPMG undertakes for you with respect to this engagement. If there is any conflict between these Terms and our Engagement letter, then the Engagement letter shall prevail.
- 1.2 For the purposes of the Terms, "KPMG" includes its partners, employees and all its related entities.

### 2 Our services

- 2.1 KPMG will provide the services set out in our Engagement Letter (the "Services") and will use all reasonable commercial efforts to provide the Services in an efficient and timely manner, using the necessary skill and expertise to an appropriate professional standard.

### 3 Your obligations

- 3.1 You agree to pay for the Services in accordance with this Agreement.
- 3.2 You will provide KPMG promptly with such information as may reasonably be required for the proper performance of the Services, including access to appropriate members of your staff, records, information, technology, systems and premises.
- 3.3 KPMG shall be entitled to rely upon the accuracy of all information provided by you, or by others on your behalf, without independently verifying it.
- 3.4 You shall retain responsibility for the use of, or reliance on, advice or recommendations supplied by us in the delivery of the services.
- 3.5 You undertake that, if anything occurs after information is provided by you to KPMG, to render such information untrue, unfair or misleading, you will promptly notify KPMG and, if required by KPMG, take all necessary steps to correct any announcement, communication or document issued which contains, refers to or is based upon, such information.
- 3.6 You acknowledge that information made available by you, or by others on your behalf, to, or which is otherwise known by, partners or staff of KPMG who are not engaged in the provision of the Services shall not be deemed to have been made available to the individuals within KPMG who are engaged in the provision of the Services.

### 4 Confidentiality

- 4.1 Both parties acknowledge that they may, in the course of the engagement, be exposed to or acquire information that is proprietary or confidential to the other party. Both parties agree to hold such information in strict confidence, and not to divulge such information except as may be required by law or judicial process, by any persons or bodies responsible for regulating that party's business (including any regulatory or accounting profession supervisory authorities in Australia or elsewhere), as required by a party's internal policies or as the party reasonably determines is necessary to protect its own legitimate interests.

### 5 Staff

- 5.1 You agree that during the provision of the Services, and for a period of six months thereafter, you will not make any offer of employment to any KPMG partner or employee involved in the provision of the Services, without our prior consent.

### 6 Benefit of advice

- 6.1 Unless otherwise specifically stated in the Engagement Letter, any advice or opinion relating to the Services is provided solely for your benefit and may not be disclosed in any way, including any publication on any electronic media, to any other party and is not to be relied upon by any other party.
- 6.2 During the supply of our services, we may supply oral, draft or interim advice, reports or presentations but in such circumstances our written advice or final written report shall take precedence. No reliance should be placed by you on any oral, draft or interim advice, reports or presentations. Where you wish to rely on oral advice or an oral presentation, you shall inform us and we will provide documentary confirmation of the advice.

- 6.3 KPMG shall not be under any obligation in any circumstance to update any advice or report, oral or written, for events occurring after the advice or report has been issued in final form.

### 7 Electronic mail

- 7.1 If you ask us to transmit any document to you electronically, you agree to release us from any claim you may have as a result of any unauthorised copying, recording, reading or interference with that document after transmission, for any delay or non-delivery of any document and for any damage caused to your system or any files by the transmission (including by any computer virus).
- 7.2 You may not rely on electronically transmitted advice or opinion unless it is subsequently confirmed by fax or letter signed by a partner or authorised signatory of KPMG.

### 8 Fees, expenses and payment terms

- 8.1 The time based fees, if any, quoted in the Engagement Letter or as separately quoted in a fee letter will remain in force until 31 December or 30 June (whichever occurs first) and we may increase fees for work continuing past that date. We review our time based fees six monthly.
- 8.2 Out-of-pocket expenses incurred in connection with the engagement will be charged to you.
- 8.3 The consideration payable for any supply made or to be made under this Agreement is exclusive of any goods and services tax ("GST"). If GST is payable on any supply made or to be made under this Agreement, you agree that the consideration payable for any such supply shall be increased by an amount equal to the amount of GST payable by KPMG in respect of that supply.
- 8.4 Accounts are to be paid within 14 days of the billing date. If they are not paid by this date, we may charge you an additional amount for the Services equal to interest on the unpaid balances at a rate equal to 2% over the 180 Day Bank Bill Rate.
- 8.5 If we are required (pursuant to any order, subpoena, directive or other legal or regulatory process) to produce documents and/or information, answer enquiries, attend court or meetings or deal with any similar requests in relation to the Services for, or by, any judicial, regulatory, administrative or similar body or entity (including without limitation, any foreign regulator or similar), you shall reimburse us at standard billing rates for our professional time and expenses, including reasonable legal fees, incurred in dealing with those matters.

### 9 Problem resolution

- 9.1 If at any time you would like to discuss with us how the Services can be improved or if you have a complaint about them, you are invited to telephone the partner or director, as the case may be, identified in the Engagement Letter. We will investigate any complaint promptly and do what we can to resolve the difficulties.
- 9.2 If the problem cannot be resolved, the parties agree to enter into mediation, or some other form of alternative dispute resolution, before commencing legal proceedings.
- 9.3 In the event of a dispute, or where fees remain unpaid beyond the due date, we reserve the right to suspend provision of the Services until such time as the dispute is resolved or the fees are paid. Suspension of the Services will not affect your obligation to pay us for Services rendered to the date of suspension.

### 10 Termination of Agreement

- 10.1 Each of us may terminate this Agreement if:
- the other commits any material or persistent breach of its obligations under this Agreement (which, in the case of a breach capable of remedy, shall not have been remedied within 14 days of receipt by the party in breach of a notice identifying the breach and requiring its remedy); or
  - the other becomes insolvent; or
  - the Services are suspended under clause 9.3 for more than 10 normal working days.
- 10.2 Termination must be effected by written notice served on the other.

## KPMG Terms and Conditions of Business

10.3 Termination under this clause shall be without prejudice to any rights that may have accrued for either of us before termination and all sums due to us shall become payable in full when termination takes effect.

### 11 Limitation of liability

11.1 In this section, we set out, and you accept, the limitations which apply to our liability to you should you have reason to make a claim against us. The limitations and exclusions are accepted by both of us to be fair and reasonable, given the duties we are undertaking, the sums to which we are entitled and the availability (and cost) of insurance.

11.2 Nothing in these Terms excludes, restricts or modifies the application of the provisions of any statute (including the Trade Practices Act 1974) where to do so would contravene that statute or cause any part of these Terms to be void.

11.3 These Terms, and the Engagement Letter, are the only communications governing our relationship. Subject to clause 11.2, KPMG expressly excludes and will have no liability for any statements, representations, guarantees, conditions or warranties, including any which may be implied by statute, common law or custom or which arise from oral or written communications with you, which are not expressly contained in this Agreement. If any representations are of importance to you, you should ensure that they are expressly set out in the Engagement Letter before signature.

11.4 Without limiting clauses 11.2, 12.1 and 12.2, KPMG's liability in relation to the Services is limited under an Institute of Chartered Accountants in Australia Scheme approved under the relevant Australian States and Territories professional standards legislation, including, where applicable, the Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth) ("PSL Scheme"). A copy of the relevant PSL Scheme, is available from your KPMG representative or at <http://www.kpmg.com.au/default.aspx?tabid=41>.

11.5 Where a PSL Scheme does not apply, and subject to clauses 11.2 and 11.6, you agree that KPMG's liability for any loss or damage suffered by you (whether direct, indirect or consequential) in connection with the Services, including (without limitation) liability for any negligent act or omission or misrepresentation of KPMG, shall be limited to an amount equal to ten (10) times the reasonable charge for the Services, subject to a minimum amount of \$750,000 and a maximum amount of \$20 million. You agree to release KPMG from all claims arising in connection with the Services to the extent that KPMG's liability in respect of such claims would exceed that sum.

11.6 If KPMG is liable for a breach of any warranty implied by section 74 of the Trade Practices Act, 1974 in respect of Services not of a kind ordinarily acquired for personal, domestic or household use or consumption, KPMG's liability under that section is limited to the supplying of the Services again or the payment of the cost of having the Services supplied again, whichever KPMG, in its absolute discretion, elects.

11.7 To the extent permitted by law, you agree that to the extent that any loss or damage suffered by you is attributable to negligence, fault or lack of care on your part or on the part of any person for whom you are responsible, KPMG is not liable (in contract, tort or otherwise) for the loss or damage.

### 12 Indemnities

12.1 You agree to indemnify and hold harmless KPMG against any and all losses, claims, costs, expenses, actions, demands, damages, liabilities or any other proceedings, whatsoever incurred by KPMG in respect of any claim by a third party arising from or connected to any breach by you of your obligations under this Agreement.

12.2 KPMG shall not be liable for any losses, claims, expenses, actions, demands, damages, liabilities or any other proceedings arising out of reliance on any information provided by you or any of your representatives, which is false, misleading or incomplete. You agree to indemnify and hold harmless KPMG from any such liabilities we may have to you or any third party as a result of reliance by KPMG on any information provided by you or any of your representatives, which is false, misleading or incomplete.

12.3 In the event of any inconsistency between clauses 11 and 12, clause 12 shall prevail.

### 13 Privacy

13.1 KPMG is committed to complying with the Federal Privacy Act 1988 and National Privacy Principles when collecting, holding or disclosing personal and sensitive information concerning your shareholders, members, customers, employees and other individuals with whom you have dealings ('stakeholders'). Our Privacy Policy is available at [www.kpmg.com.au](http://www.kpmg.com.au).

13.2 If your stakeholders have not been made aware of the possible collection, holding, use or disclosure of their personal and sensitive information by KPMG as part of this engagement, you agree to inform KPMG so that should this be necessary, KPMG may take action to raise the awareness of your stakeholders about the same.

### 14 Force majeure

14.1 If the performance of this Agreement by a party, is prevented or restricted by reason of fire, storm, flood, earthquake, war, labour dispute, transportation embargo, law, order, or directive of any government in matters relating to this Agreement, or any other act or condition beyond the reasonable control of that party, then the party is excused from such performance to the extent of the same, but will use their best efforts to avoid or remove the causes of non-performance and to cure and complete performance with the utmost dispatch.

### 15 Governing law and jurisdiction

15.1 Unless otherwise specified in the Engagement Letter, this Agreement and all aspects of our engagement and our performance of the Services are governed by, and construed in accordance with, the laws applicable in the State or Territory of the KPMG office entering into this Agreement. Both you and we agree to irrevocably submit any disputes arising under this agreement to the exclusive jurisdiction of the Courts of that state.

### 16 Variation

16.1 No variation of this Agreement will be valid unless confirmed in writing by authorised signatories of both parties on or after the date of signature of the Engagement Letter.

### 17 Additional Terms Applicable to Engagements for SEC registered Audit Clients and their affiliates

Paragraphs 4.1 and 6.1 of these Terms and Conditions are deleted for all tax engagements for SEC registered audit clients and their affiliates and replaced with the following clause:

#### Reliance on Advice

You acknowledge and agree that any advice, recommendations, information or work product provided to you by KPMG in connection with this engagement is for your sole use. You agree that if you make such advice, recommendations, information or work product available to any third party, you will notify such third party, in writing, that KPMG's advice, recommendations, information and work product is for your sole benefit based on the specific facts and circumstances and the scope of KPMG's engagement with you and is not intended to be relied upon by any other person. In the event of a claim by any third party relating to our services under this engagement that arises out of a breach by you or any of your personnel of this paragraph, you agree to indemnify and hold harmless KPMG and our personnel from all such claims, liabilities, costs and expenses (including legal fees and disbursements).

#### Confidentiality

KPMG will treat as confidential all such information obtained from you in the course of performing our Tax services and will not use such information except in connection with the performance of our services, as may be required by law or judicial process, by any persons or bodies responsible for regulating either party's business (including any regulatory or accounting profession supervisory authorities in Australia or elsewhere), as required by a party's internal policies or as either party reasonably determines is necessary to protect its own legitimate interests.