



Shire of Dardanup

Executive  
Directorate

# APPENDICES

Item 12.1.1 – 12.1.1

## ORDINARY COUNCIL MEETING

To Be Held

Wednesday, 24<sup>th</sup> July 2024

Commencing at 5.00pm

At

Shire of Dardanup  
ADMINISTRATION CENTRE EATON  
1 Council Drive - EATON

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# MEMORANDUM OF UNDERSTANDING

Between:

**CITY OF BUNBURY**

**SHIRE OF CAPEL**

**SHIRE OF COLLIE**

**SHIRE OF DARDANUP**

**SHIRE OF DONNYBROOK-BALINGUP**

**SHIRE OF HARVEY**

as

**THE BUNBURY-GEOGRAPHE GROUP OF COUNCILS**



July 2024

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# MEMORANDUM

THIS MEMORANDUM OF UNDERSTANDING

dated ..... 2024, between the  
(Participants) being:

**CITY OF BUNBURY**

and

**SHIRE OF CAPEL**

and

**SHIRE OF COLLIE**

and

**SHIRE OF DARDANUP**

and

**SHIRE OF DONNYBROOK-BALINGUP**

and

**SHIRE OF HARVEY**

## OPERATIVE SECTION

### 1. NAME

The name of the collective local governments participating in this memorandum of understanding shall be the Bunbury Geographe Group of Councils.

### 2. REGION

The Bunbury Geographe Group of Councils is established for the sub-region.

### 3. PURPOSE

The purpose that the Bunbury Geographe Group of Councils is established are to:

- a) Undertake the activities defined as Continuing Projects and Services in accordance with Clause 6.
- b) Provide a means for the Participants, through voluntary participation and the integration and sharing of resources, where the requirements of clause 7 are met, to:
  - i) Assess the possibilities and methodology of facilitating a range of services and facilities on a regional basis including, without limitation, the services and facilities described in Schedule 2 Part 1.
  - ii) Promote, initiate, undertake, manage and facilitate the services and facilities described in Schedule 2 Part 1.
  - iii) Promote productive effectiveness and financial benefit to the Participants where there are common and shared community of interest linkages.
  - iv) Assess the possibilities and methodology of facilitating economic and community development for the benefit of the Region, including, without limitation, the matters described in Schedule 2 Part 2; and
  - v) Promote, initiate, undertake, manage and facilitate the matters described in Schedule 2 Part 2.

**4. OBJECTIVES**

The objectives of the Bunbury Geographe Group of Councils shall be:

- a) To work in co-operation and collaboration where relevant with the Participants to achieve benefits for the respective communities in the Bunbury Geographe sub-region.
- b) To ensure that the management and administration of the Bunbury Geographe Group of Councils is successful in providing efficient, effective and quality services and facilities.
- c) To ensure that the financial management of the Bunbury Geographe Group of Councils is competent, efficient and accountable and that the financial viability of the Bunbury Geographe Group of Councils is enhanced by pursuing partnering opportunities in relation to all activities of the Bunbury Geographe Group of Councils.
- d) To support and share in the development and expertise inherent in each of the Participants, to enable local government to enhance its service delivery to the community.
- e) To maintain a co-operative, political and executive framework which enables the Participants individually and collectively to promote and market the role and benefits of local government and to serve the community.
- f) To develop and implement the strategic plan adopted by the Bunbury Geographe Group of Councils from time to time.
- g) in carrying out the Purposes, to avoid any adverse impacts on the services and facilities provided by the Participants to their respective communities; and
- h) Avoid duplication of effort by other regional entities.

## 5. DEFINITIONS

In this Memorandum of Understanding unless the context requires otherwise.

**“Act”** means the Local Government Act 1995.

**“Continuing Projects and Services”** means the activities described in Schedule 1 from time to time.

**“Former Act”** means the Local Government Act 1960.

**“Minister”** means the Minister of the Crown to whom the administration of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister.

**“New Project or Service”** means any activity for a Regional Purpose other than Continuing Projects and Services.

**“Operative Date”** means the date agreed to by the Councils and Common Seal affixed.

**“Participants”** means the member local governments being City of Bunbury, Shire of Capel, Shire of Collie, Shire of Dardanup, Shire of Donnybrook Balingup & Shire of Harvey.

**“Population”** means at any relevant time in relation to a Participant, the estimated resident population of that Participant as set out in Table 1 (Estimated Resident Population in Statistical Local Areas) of the statistics last published by the Australian Bureau of Statistics titled “Estimated Resident Population by Age and Sex in Statistical Local Areas” or any substitute for those statistics accepted by the Government of the Commonwealth of Australia from time to time as a measure of resident population provided that if at any time the statistics are discontinued or suspended or if in the opinion of the Bunbury Geographe Group of Councils its method of computation is substantially altered there shall be substituted therefor such alternative method of establishing resident populations of the Participant as the Bunbury Geographe Group of Councils may resolve;

**“Project Participant”** in relation to a New Project or Service, means a Participant which is participating in that New Project or Service under clause 7.

**“Project Plan”** means a plan prepared in accordance with clause 7.

**“Sub- Region”** means the districts of the Participants.

**“Purpose”** means any regional purpose referred to in clause 4.



## **6. CONTINUING PROJECTS AND SERVICES**

### **6.1 Contributions towards continuing Projects and Services**

In the case of Continuing Projects and Services, the contribution of each Participant towards the operating and capital expenditure relating to those Continuing Projects and Services shall be determined by the Bunbury Geographe Group of Councils after consultation with the Participants. The contributions so determined shall be as disclosed in the municipal fund budget of the Bunbury Geographe Group of Councils for each financial year and shall be payable in the manner determined by the Bunbury Geographe Group of Councils.

### **6.2 Winding up of Continuing Projects and Services**

The Bunbury Geographe Group of Councils Council may resolve to wind up any of the Continuing Projects and Services.

### **6.3 Division of Assets**

- 1) Subject to subclause (2), if any of the Continuing Projects and Services is to be wound up and there remains, after satisfaction of all debts and liabilities, any property and assets then the property and assets shall be realised and the proceeds along with any surplus funds shall be divided among the Participants in the same proportions as the Population of each Participant bears to the total of the Populations of all Participants.
- 2) Subclause (1) shall not apply where all Participants advise the Bunbury Geographe Group of Councils that a realisation of the property and assets is not necessary.

### **6.4 Division of Liabilities**

If any of the Continuing Projects and Services is to be wound up and there remains any liability or debt in excess of the realised property and assets then the liability or debt is to be met by the Participants in the same proportions as the Population of each Participant bears to the total of the Populations of all Participants.

### **6.5 Withdrawal**

A Participant may, at any time between 1 July and 31 December in any year, give to the Bunbury Geographe Group of Councils notice and reasons of its intention to withdraw from any of the Continuing Projects and Services.

## **(Appendix ORD: 12.1.1A)**

### 6.6 When withdrawal to take effect

The withdrawal of a Participant under clause 9.1 shall take effect from the end of the financial year following the giving of the notice of withdrawal under clause 9.1.

### 6.7 Entitlement of Liability of withdrawing Participant

Subject to clause 9.3 as soon as practicable following the end of the second financial year after the withdrawal of a Participant takes effect under clause 9.2, the Bunbury Geographe Group of Councils shall:

- a) distribute to the Participant an amount equal to the proceeds and any surplus funds which would have been payable if the Continuing Project and Service was wound up on the date on which the withdrawal took effect; or
- b) be entitled to recover from the Participant an amount equal to the liability or debt which would be payable by the Participant if the Continuing Service and Project was wound up on the date on which the withdrawal took effect, as the case may be.

### 6.8 Participant may be required to pay distribution

If the Bunbury Geographe Group of Councils is unable to meet the distribution referred to in clause 9.4 from funds on hand, then, unless the Bunbury Geographe Group of Councils Council decides otherwise, the Participants (other than the Participant which has withdrawn) shall pay the distribution.

## **7. NEW PROJECTS OR SERVICES**

### 7.1 Requirements

The Bunbury Geographe Group of Councils shall only undertake a New Project or Service to the mutual benefit of two or more participants, in accordance with this clause and provided that:

- a) the Bunbury Geographe Group of Councils is satisfied that any services and facilities that it will provide:
  - i) integrate and co-ordinate, so far as practicable, with any provided by the Commonwealth, State or any public body.
  - ii) within the district of a Participant, do not duplicate, to an extent that the Participant consider inappropriate, services or facilities provided

## (Appendix ORD: 12.1.1A)

by the Commonwealth, the State or any other body or person, whether public or private; and

- iii) are managed efficiently and effectively
- b) the requirements for the preparation of a business plan under section 3.59 of the Act, if applicable, are complied with.

### 7.2 Project Plan to be prepared

Where the Bunbury Geographe Group of Councils is considering a proposed New Project or Service it shall prepare a Project Plan.

### 7.3 Contents of Project Plan

A Project Plan shall include:

- a) a clear definition of the proposed New Project or Service.
- b)
  - i) details of the expected costs and benefits for the Participants.and
  - ii) details of impact on existing resources should the project proceed and provision for the management of these impacts.
- c) the proportion (and the basis of its calculation) in which the Project Participants will make contributions towards:
  - i) the acquisition of any asset of a capital nature required for the New Project or Service; and
  - ii) the operating expenditure, including administrative expenses, relating to the New Project or Service.
- d) the manner of payment of the contributions referred to in point c);
- e) the proportional entitlement or liability, as the case may be (and the basis of its calculation) of the Project Participants in the event that the New Project or Service is wound up.
- f) the manner of payment of the entitlement or liability referred to in point e).

## **(Appendix ORD: 12.1.1A)**

- g) the procedure for the giving of notice by a Project Participant wishing to withdraw from the New Project or Service including the period of notice.
- h) the proportional entitlement or liability, as the case may be (and the basis of its calculation), of a Project Participant when the withdrawal of that Project Participant from the New Project or Service takes effect.
- i) the manner of payment of the entitlement or liability referred to in paragraph h).
- j) the amount, if any, of interest payable where contributions are not made on the due date for payment; and
- k) the entitlement, if any, of a Participant which is not a Project Participant to join a New Project or Service and the procedure to be followed including the period of notice to be given by that Participant.

### **7.4 Participants to be given Project Plan**

Upon completion of the Project Plan the Bunbury Geographe Group of Councils shall give a copy of the Project Plan to each of the Participants.

### **7.5 Election to Participate in New Project**

Each participant shall, within a reasonable period determined by the Bunbury Geographe Group of Councils, elect whether to participate in the New Project or Service by giving notice of its election to the Bunbury Geographe Group of Councils.

### **7.6 Project Participants**

The Participants which elect to participate in a New Project or Service are the Project Participants in respect of that New Project or Service.

### **7.7 Review of Project Plan**

- 1) As soon as practicable after the period referred to in clause 7.5, the Bunbury Geographe Group of Councils shall:
  - a) review the Project Plan and its viability having regard to the number of Participants who have elected to participate.

## **(Appendix ORD: 12.1.1A)**

- b) decide whether to proceed with the New Project or Service; and
  - c) give notice to each of the Project Participants of its decision.
- 2) Where the number of Participants which have elected to participate is less than the number, if any, specified in the Project Plan or less than all of the Participants where no number is specified, then the Bunbury Geographe Group of Councils will give the Participants an opportunity to withdraw their election before the Bunbury Geographe Group of Councils decides to proceed under clause 7.1(b).

### **7.8 Project Participants to be Bound**

Where the Bunbury Geographe Group of Councils decides to proceed with a New Project or Service and gives notice of its decision to each of the Project Participants in accordance with clause 7.1, then each of the Project Participants shall be bound by the terms of the Project Plan as if those terms were set out in this Agreement.

### **7.9 Winding up of a New Project or Service**

The participating Councils may resolve to wind up a New Project or Service.

### **7.10 Division of Assets**

- 1) Subject to subclause 2), if a New Project or Service is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the New Project or Service then the property and assets shall be realised and the proceeds along with any surplus funds shall be divided among the Project Participants in the proportions referred to in the Project Plan.
- 2) Subclause 1) shall not apply where the Project Participants advise the Bunbury Geographe Group of Councils that a realisation of the property and assets is not necessary.

### **7.11 Division of Liabilities**

If a New Project or Service is to be wound up and there remains any liability or debt in excess of the realised property and the assets of the new Project or Service then the liability or debt is to be met by the Project Participants in the proportions referred to in the Project Plan.

## **(Appendix ORD: 12.1.1A)**

### **7.12 Indemnification by Project Participants of the Bunbury Geographe Group of Councils**

If a New Project or Service is wound up then the Project Participants shall indemnify the Bunbury Geographe Group of Councils (in the proportions referred to in the Project Plan) with respect to that liability or debt.

## **8. WINDING UP**

### **8.1 Winding Up by Council Resolution**

The Participants may, by agreement, wind up the Bunbury Geographe Group of Councils.

### **8.2 Procedure on Winding up**

If the Bunbury Geographe Group of Councils resolve to wind up the Bunbury Geographe Group of Councils, then:

- a) each New Project or Service is to be wound up separately in accordance with clauses 7.9, 7.10, 7.11 and 7.12.
- b) each of the Continuing Projects and Services are to be wound up separately in accordance with clauses 6.2 and 6.3 and 6.4; and
- c) any other undertakings and assets are to be wound up in accordance with clauses 6.3 and 6.4 as if they were Continuing Projects and Services.

## **9. WITHDRAWAL OF A PARTICIPANT**

### **9.1 Withdrawal**

A Participant may, at any time between 1 July and 31 December in any year, give to the Bunbury Geographe Group of Councils notice of its intention to withdraw from the Bunbury Geographe Group of Councils.

### **9.2 When withdrawal to take effect**

The withdrawal of a Participant shall take effect from the end of the financial year following the giving of the notice of withdrawal under clause 9.1.

### **9.3 Entitlement or Liability of withdrawing Participant**

## **(Appendix ORD: 12.1.1A)**

As soon as practicable following the end of the second financial year after the withdrawal of a Participant takes effect, the Bunbury Geographe Group of Councils shall:

- a) distribute to the Participant an amount equal to the proceeds and any surplus funds which would have been payable if the Bunbury Geographe Group of Councils was wound up; or
- b) be entitled to recover from the Participant an amount equal to the liability or debt which would be payable by the Participant if the Bunbury Geographe Group of Councils was wound up,

as the case may be.

### **9.4 Participants may be required to pay distribution**

If the Bunbury Geographe Group of Councils is unable to meet the distribution referred to in clause 9.3(a) from funds on hand then, unless the Bunbury Geographe Group of Councils decides otherwise, the Participants (other than the Participant which has withdrawn) shall pay the distribution in the proportions equal to their respective equities in the Bunbury Geographe Group of Councils.

## **10. BORROWINGS**

Part 6, Division 5, Subdivision 3 of the Act is to apply.

## **11. DISPUTE RESOLUTION**

### **11.1 Dispute**

In the event of any dispute or difference ('dispute') arising between the Participants and the Bunbury Geographe Group of Councils or any of them at any time as to the interpretation of this Memorandum of Understanding or as to any other matter or thing of whatsoever nature arising under or in connection with this Memorandum of Understanding, then a Participant or the Bunbury Geographe Group of Councils or the Participants (as the case may be) may give to the other participants and the Bunbury Geographe Group of Councils (as the case may be) notice in writing ('dispute notice') adequately identifying the matters the subject of the dispute and the giving of the dispute notice shall be a condition precedent to the commencement by any Participant or the Bunbury Geographe Group of Councils of proceedings (whether by way of litigation or arbitration) which regard to the dispute as identified in the dispute notice.

## 11.2 Arbitration

At the expiration of 35 days from the date of receipt of the dispute notice by the persons to whom it was sent, the person giving the dispute notice may notify the others in writing ('arbitration notice') that it requires the dispute to be referred to arbitration and the dispute (unless meanwhile settled) shall upon receipt of the arbitration notice by the recipients then be and is hereby referred to arbitration under and in accordance with the provisions of the Commercial Arbitration Act 1985.

## 11.3 Legal Representations

For the purposes of the Commercial Arbitration Act 1985, the Participants consent to each other and to the Bunbury Geographe Group of Councils being legally represented at any such arbitration.

# **12. INTERPRETATION**

## 12.1 Interpretation

In this Memorandum of Understanding unless the context requires otherwise:

- a) Words importing the singular include the plural and vice versa.
- b) Words importing any gender include the other genders.
- c) References to persons include corporations and bodies politic.
- d) References to a person include the legal personal representatives, successors and assigns of that person.
- e) A reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction).
- f) References to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties.
- g) References to writing include any mode of representing or reproducing words in tangible and permanently visible form, including electronic means.
- h) An obligation of two or more parties shall bind them jointly and severally.



## **(Appendix ORD: 12.1.1A)**

- i) If a word or phrase is defined cognate words and phrases have corresponding definitions.
- j) References to a person which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable.
- k) An obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally.
- l) Reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them.
- m) Reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month; and
- n) References to this Memorandum of Understanding include its schedules.

### 12.2 Time

- a) References to time are to local time in Perth, Western Australia; and
- b) Where time is to be reckoned from a day or event, such day or the day of such event shall be excluded.

## **13. REPRESENTATION**

### Chief Executive Officers

- significant and strategic matters

### Directorate – 1 (one) representative from each Local Government

- Resource Sharing (personnel)
- Resource Sharing (plant / equipment)
- Collaborative projects

# SCHEDULE 1

## CONTINUING PROJECTS AND SERVICES

'Continuing Projects and Services' means the following activities:

- a) *Waste Minimization*
  - *South West Regional Waste Group*
  
- b) Environmental Services
  - Declared pest / weed eradication (e.g. Blackberry Project)
  - Arum lilies – 4 Local Governments, One Weed
  - CHRMAP / Coastal Risk Mitigation
  
- c) Regional, Economic and Community Development
  - Bunbury Geographe Tourism Partnership
  - Bunbury Geographe Economic Alliance
  
- d) Others as identified, for example
  - Regional Recycling
  - Bunbury Harvey Regional Council / Subsidiary
  - Land Care
  
- e) Infrastructure Coordination
  - Strategic Logistic Infrastructure:
    - o Port
    - o Airport
    - o BORR
    - o Fast Rail
    - o Freight Rail
    - o Intermodal Terminal
  - Community Infrastructure:
    - o Sporting Facilities
    - o Community Facilities
  - Land, Housing and Accommodation
  - Water surety and supply
  
- f) Procurement Coordination
  - Aggregate contracted works and/or services to achieve optimal unit rates/economies of scale

## (Appendix ORD: 12.1.1A)

In this Schedule 1:

*'Environmental Services'* means the provision of technical and administrative support relating to assessment and management of environmental impacts, including, without limiting the generality of the foregoing, the provision of guidelines and standards for:

- i) Environmental Management Systems, including but not limited to:
  - a) Integrated Catchment Management.
  - b) protection of remnant vegetation.
  - c) native fauna.
  - d) surface water systems.
  - e) *Coast Care; and*
  - f) *Mosquito Control (CLAG).*

as assistance in promoting and co-ordinating community participation studies and programs on environmental matters.

*'Regional, Economic and Community Development'* means the following activities:

- i) regional employment opportunities.
- ii) regional economic development and promotion; and
- iii) other identified projects which include but are not limited to
  - HACC
  - Youth Officer
  - SBS Television.

## SCHEDULE 2

### PART 1 – SERVICES AND FACILITIES

As permitted by the Local Government Act 1995; as identified by the group.

- a) insurance services for the Participants.
- b) legal services for the Participants, for example, legal contracts and advice.
- c) regional operational services, for example:
  - i) plant pooling.
  - ii) depots.
  - iii) parks and gardens; and
  - iv) construction and maintenance of community infrastructure.
- d) administration and financial services, for example:
  - i) human resources; and
  - ii) information technology/systems.
- e) public relations.
- f) co-ordination of policy, strategy, and local planning activities.
- g) recreational and cultural services and facilities.
- h) regional library services; and
- i) infrastructure planning.

**PART 2 – ECONOMIC AND COMMUNITY DEVELOPMENT MATTERS**

The following matters:

- a) Marketing of the region.
- b) Development of the business sector in the region.
- c) Industrial, commercial and residential development.
- d) Services for the community, including aged and youth.
- e) Regional tourism; and
- f) Others as agreed from time to time.

## SCHEDULE 3

| CITY OF BUNBURY                        |   |
|--|---|
| <hr/> Cr Jaysen de San Miguel<br>Mayor | <hr/> Mr Alan Ferris<br>Chief Executive Officer |

| SHIRE OF CAPEL                              |  |
|---|--|
| <hr/> Cr Douglas Kitchen<br>Shire President | <hr/> Mr Gordon MacMile<br>Chief Executive Officer |

| SHIRE OF COLLIE                          |   |
|--|---|
| <hr/> Cr Ian Miffling<br>Shire President | <hr/> Mr Matt Young<br>Acting Chief Executive Officer |

| SHIRE OF DARDANUP                            |  |
|--|--|
| <hr/> Cr Tyrrell Gardiner<br>Shire President | <hr/> Mr Andre Schonfeldt<br>Chief Executive Officer |

| SHIRE OF DONNYBROOK-BALINGUP                   |  |
|--|--|
| <hr/> Cr Vivienne MacCarthy<br>Shire President | <hr/> Mr Tim Clynych<br>Acting Chief Executive Officer |

| SHIRE OF HARVEY                               |  |
|---|--|
| <hr/> Cr Michelle Campbell<br>Shire President | <hr/> Mr Mark Newman<br>Acting Chief Executive Officer |

*Dated this ..... day of ..... 2024*

## RISK ASSESSMENT TOOL

**OVERALL RISK EVENT:** Bunbury Geographe Group of Councils – 2024 Memorandum of Understanding

**RISK THEME PROFILE:**

6 - Community Engagement

**RISK ASSESSMENT CONTEXT:** Strategic

| CONSEQUENCE CATEGORY        | RISK EVENT  | PRIOR TO TREATMENT OR CONTROL     |                    |                      | RISK ACTION PLAN<br>(Treatment or controls proposed) | AFTER TREATMENT OR CONTROL |               |                      |
|-----------------------------|---|-----------------------------------|--------------------|----------------------|--|----------------------------|---------------|----------------------|
|                             |   | CONSEQUENCE                       | LIKELIHOOD         | INHERENT RISK RATING |  | CONSEQUENCE                | LIKELIHOOD    | RESIDUAL RISK RATING |
| <b>HEALTH</b>               | No risk event identified for this category.   | Not Required - No Risk Identified | N/A                | N/A                  | Not required.  | Not required.              | Not required. | Not required.        |
| <b>FINANCIAL IMPACT</b>     | Small financial contribution towards the Group of Councils                                | Insignificant (1)                 | Almost Certain (5) | Moderate (5 - 11)    | Not required.  | Not required.              | Not required. | Not required.        |
| <b>SERVICE INTERRUPTION</b> | No risk event identified for this category.   | Not Required - No Risk Identified | N/A                | N/A                  | Not required.  | Not required.              | Not required. | Not required.        |
| <b>LEGAL AND COMPLIANCE</b> | No risk event identified for this category.   | Not Required - No Risk Identified | N/A                | N/A                  | Not required.  | Not required.              | Not required. | Not required.        |
| <b>REPUTATIONAL</b>         | The cooperation between Shires stands to potential have an improved reputational outcome. | Insignificant (1)                 | Possible (3)       | Low (1 - 4)          | Not required.  | Not required.              | Not required. | Not required.        |
| <b>ENVIRONMENT</b>          | No risk event identified for this category.   | Not Required - No Risk Identified | N/A                | N/A                  | Not required.  | Not required.              | Not required. | Not required.        |
| <b>PROPERTY</b>             | No risk event identified for this category.   | Not Required - No Risk Identified | N/A                | N/A                  | Not required.  | Not required.              | Not required. | Not required.        |

**(Appendix ORD: 12.1.1B)**