



REQUEST FOR TENDER

Theodore Construction Grader and Water Truck Hire (2023 – 2025)

Contract No.: T2324.11

Request for Tender



PART 1 – PREAMBLE				
Banana Shire Council invites tenders from suitably qualified tenderers for the wet hire of a Grader (with final trim operator) and Water Truck to work with the Theodore Construction Crew on their Capital Works projects as described in more detail in Part 5 – Scope. The contract will be for a preferred supplier arrangement for a single contractor or two separate contractors over a period of 2 years with a possible 1-year extension.				
PART 2 – GENERAL INFORMATION / GENERAL SPECIFICATION				
1. Contract details:	T2324.01 Theodore Construction Grader and Water Truck Hire (2023 – 2025).			
2. Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to enquiries@banana.qld.gov.au no later than five (5) calendar days prior to the time stated in Item 4			
3. Briefing or site inspection:	Details	Maximum attendees	Mandatory	RSVP
	1. Tender Briefing, to be held on the 26 th October 2023 8.00am 62 Valentines Plains Road, Biloela Qld 4715 – A team's link will be made available for those who cannot attend in person	n/a	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	RSVP to enquiries@banana.qld.gov.au by the 25 th October 2023 11.00am
4. Submission of Tender:	Tenders must be submitted electronically only at tenders@banana.qld.gov.au no later than 11:00am on 10 th of November 2023 <i>Note// Adequate time must be allowed for the Tender and all supporting documents to be uploaded or received by this time.</i>			
5. Evaluation Criteria:	Evaluation Criteria			Weighting (%) (Optional)
	Price			40
	Compliance with Specifications Required			30
	Previous Experience			10
	Quality, Environmental, Safety and Other Management Processes			10
	Local Content			10
6. Tenders should not be longer than:	N/A			
7. Tenders to be valid for:	90 calendar days after the time stated in Item 4 (as extended if at all, pursuant to the Procurement Process Conditions)			
8. Complaints:	Complaints regarding Procurement Process to be directed to: enquiries@banana.qld.gov.au			
PART 3 – PROCUREMENT PROCESS CONDITIONS				
The Procurement Process is governed by, and this Request for Tender is to be read in conjunction with, the Procurement Process Conditions attached to or provided with this Request for Tender and identified as T2324.11 Theodore Construction Grader and Water Truck Hire (2023 – 2025) – Procurement Process Conditions.				

PART 4 – CONTRACT

The contract shall be substantially in the form attached to or provided with this Request for Tender and identified as **T2324.11 Theodore Construction Grader and Water Truck Hire (2023 – 2025) – Contract**.

PART 5 – SCOPE

The Scope is described in the document(s) attached to or provided with this Request for Tender and identified as **T2324.11 Theodore Construction Grader and Water Truck Hire (2023 – 2025) – Technical Specifications**.

PART 6 – RESPONSE SCHEDULES

The Tender must be submitted in the form provided in the response schedules attached to or provided with this Request for Tender and identified as **T2324.11 Theodore Construction Grader and Water Truck Hire (2023 – 2025) – Reponse Schedules** and **T2324.11 Theodore Construction Grader and Water Truck Hire (2023 – 2025) – Appendix A – Pricing Schedule**



GENERAL SPECIFICATION

Theodore Construction Grader and Water Truck Hire (2023 – 2025)

CONTRACT NO.: T2324.11

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1. THE SPECIFICATION

- 1.1 **(Documents comprising this Specification)** The Specification comprises the following documents:
- (a) This General Specification;
 - (b) other documents to the extent that they are incorporated (whether physically or by reference) into the Specification, namely:
 - (i) relevant Australian Standards;
 - (ii) Principal's Policies and Procedures;
 - (iii) Capricorn Municipal Development Guidelines;
 - (iv) TMR Standard Specifications.
- 1.2 **(Precedence of documents comprising Specification)** The documents comprising the Specification shall be taken to be mutually explanatory. If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1 then the documents will take precedence in the order set out in clause 1.1, with the document listed at 1.1(a) being the highest in the order.
- 1.3 **(Documents incorporated by reference into Specification)** The Contractor is deemed to have obtained copies of, read, understood, and allowed for compliance with the Specification (including any documents which are incorporated into it by reference only).

2. DEFINITIONS

- 2.1 **(Definitions)** Capitalised terms used in the Specification have the meanings assigned to them in the General Conditions of Contract (if any) unless the context otherwise requires. Terms which are separately defined in a specific clause have the meanings assigned in those clauses. Otherwise, in the Specification:
- (a) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations, and permissions from any Authority and any related fees and charges;
 - (b) **Authority** means any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality, or any other person having jurisdiction over the project;
 - (c) **Contractor Documents** means those records, reports, designs, specifications, certificates, plans (including management plans), procedures, manuals and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Contractor (and all information advice, designs, calculations and recommendations in those documents) (but does not include those that are incomplete at the time at which the Principal exercises its rights under subclause 39.4 of the General Conditions of Contract or the Contractor exercises its rights under subclause 39.9 of the General Conditions of Contract);
 - (d) **General Conditions of Contract** means the General Conditions of Contract referred to in the formal instrument of agreement to which this General Specification is attached;
 - (e) **Good Industry Practice** means:
 - (i) the standard of skill, care, and diligence; and
 - (ii) the practices, methods, techniques, and acts,

of a skilled, competent, and experienced contractor engaged in the business of carrying out Work similar to the WUC;

- (f) **Policies and Procedures** means the policies, procedures, codes, plans, guidelines, and the like provided or made available by or on behalf of the Principal to the Contractor from time to time, including those published on the Principal's website;
- (g) **Principal** has the same meaning as given to the term "Principal" or "Purchaser" in the General Conditions of Contract (as the case may be):
- (h) **Program** has the same meaning as given to the term "construction program" or "program" in the General Conditions of Contract (as the case may be):
- (i) **Specification** means this document and all attachments to it which forms part of the Contract;

3. CONTRACTOR WARRANTIES

3.1 **(Ability)** The Contractor must ensure, and warrants and represents that the Contractor and, to the extent applicable to them, its Personnel:

- (a) have the experience, skills, expertise, and resources;
- (b) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances, or other authorisations,

which are required for the Contractor to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances, or other authorisations at all times until the Contractor has completed its obligations under the Contract.

3.2 **(Standard)** The Contractor must, and warrants and represents that it will, and to the extent applicable to them will ensure that its Personnel, carry out WUC and Contractor's other obligations in connection with the Contract in accordance with Good Industry Practice.

3.3 **(Methodology)** The *Contractor*:

- (a) warrants and represents that the methodology for carrying out and completing *WUC* stated in the *Contract* is suitable, appropriate and adequate; and
- (b) must, and warrants and represents that it will, carry out and complete *WUC* in accordance with that methodology (if any) unless otherwise directed by the *Superintendent* or permitted or required under the *Contract*.

3.4 **(Equipment)** The Contractor warrants and represents that the Equipment and all materials comprising the Equipment shall, at the time at which the Equipment is Delivered:

- (a) be new, free from defects, and of merchantable quality;
- (b) comply in all respects with the Contract including as to quality, quantity, performance, functionality, and description;
- (c) conform to any sample goods approved by the Principal or Superintendent;
- (d) comply with any applicable requirement, code, guideline, policy, drawing, or specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Equipment and any applicable Legislative Requirements; and
- (e) be fit for:

- (i) the purpose of the construction of the extension of the boat ramps at Theodore and Moura and the construction of the approach to the Theodore boat ramp; and
- (ii) any other purpose stated in or to be reasonably inferred from the Contract.

3.5 **(Investigations)** The Contractor warrants and represents that the Contractor has:

- (a) carefully reviewed the Contract and all other information provided by the Principal to the Contractor for the purpose of WUC, and is satisfied that the Contract and other information is appropriate and adequate to enable the Contractor to comply with its obligations under the Contract;
- (b) inspected the Site;
- (c) familiarised itself with factors that could affect the ability of the Contractor to carry out WUC for the Contract Sum, including weather conditions and the availability of temporary access, temporary lighting, power, telephone services, water supply, waste disposal facilities and local labour.

3.6 **(Construction Plant)** The Contractor warrants and represents that all Construction Plant utilised in carrying out WUC shall be in good working condition, suitable and appropriate for the Work for which it is used, and compliant with all applicable Legislative Requirements.

3.7 **(Contractor Documents)** The Contractor warrants and represents that all Contractor Documents will:

- (a) comply with the requirements of the Contract and applicable law;
- (b) be consistent with or exceed applicable industry standards;
- (c) be of a standard and quality expected of a consultant using Good Industry Practice;
- (d) be fit for:
 - (i) the purpose of the construction of the extension of the boat ramps at Theodore and Moura and the construction of the approach to the Theodore boat ramp; and
 - (ii) any other purpose stated in or to be reasonably inferred from the Contract.

3.8 **(Code of Conduct)** In this clause, Code of Conduct means the Principal's code of conduct which is available on the Principal's website. The Code of Conduct identifies the standards and behaviours expected from all workers, including contractors, in delivering services to the local community. The Contractor must:

- (a) communicate the Code of Conduct to all of the Contractor's Personnel;
- (b) comply with, and ensure that its Personnel comply with, all requirements of the Code of Conduct, including all standards contained within the Code of Conduct; and
- (c) if directed to do so by the Superintendent, obtain and provide to the Superintendent a signed form from all Personnel engaged by the Contractor to perform any part of WUC which states that the person has read, understood and agrees to comply with the Code of Conduct.

4. CONTRACT MANAGEMENT

4.1 **(Contractor's Superintendence)** The Contractor shall provide all superintendence necessary for the proper fulfilment of the Contractor's obligations under the Contract, including, unless the Superintendent directs otherwise, a competent site manager and site foreman approved by the Superintendent (with such approval not to be unreasonably withheld). Unless otherwise agreed

by the Superintendent, the site manager shall be the Contractor's representative under clause 22 of the General Conditions of Contract.

- 4.2 **(Requests for review and information)** The Superintendent will endeavor to provide a response and/or Direction in relation to a written request for information from the Contractor within 5 Business Days of receipt of such request. The response time will be dependent on the complex nature and or quantity of clarifications per information request submitted. The Contractor is encouraged to make recommendations and or suggestions for the Superintendent's consideration when submitting such requests.
- 4.3 **(Design drawings)** The Contractor is deemed to have allowed for the time permitted by subclause 8.3 of the General Conditions for examination of the design drawings included in the Appendices of this tender. The Contractor must review and incorporate any comments received from the Principal or the Principal's nominated Personnel in relation to the design drawings. Unless otherwise directed, the Contractor is not required to (and must not) resubmit revised design drawings to the Principal or its Personnel.
- 4.4 **(Direction by Principal or Superintendent)** The Principal shall not be bound by any verbal advice given or information furnished by any Personnel of the Principal or Superintendent in respect of the Contract. The Contractor must not accept instructions from any person other than the Superintendent and/or the Superintendent's Representative. The Contractor acknowledges and agrees that its obligations and liabilities in connection with the Contract are not affected by any:
- (a) receipt or review of, or comment or Direction on, a document submitted by the Contractor;
 - (b) failure by the Principal or Superintendent to review, comment on, or give a Direction on any document submitted by the Contractor; or
 - (c) failure by the Superintendent to give its approval pursuant to clause 8.3.

Before relying on the receipt, review, or comment by the Superintendent, or Principal, or complying with a Direction in relation to a document, the Contractor must notify the Superintendent in writing, if doing so will affect a warranty, representation or obligation of the Contractor under the Contract.

5. PRINCIPAL SUPPLIED INFORMATION

- 5.1 **(Definitions)** In this clause, Principal Supplied Information means any information relating to the Contract which either:
- (a) does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Contractor; or
 - (b) does form part of the Contract, but which is expressly identified as Principal Supplied Information or otherwise as information on which the Contractor should not or must not rely,
- and includes information in any form and information which is made available before or after the Date Of Acceptance Of Tender.
- 5.2 **(No warranty or representation by Principal)** The Principal gives no warranty and makes no representation that the Principal Supplied Information is accurate, adequate, or complete.
- 5.3 **(No reliance)** The Contractor:
- (a) acknowledges and agrees that the Contractor has not relied; and
 - (b) must not rely on the Principal Supplied Information,

unless and until the Contractor has independently verified the adequacy, accuracy, and completeness of that information.

6. PRINCIPAL SUPPLIED MATERIALS

6.1 **(Definitions)** In this clause, 'Principal Supplied Materials' means materials which the Principal is required under the Contract to supply, or which the Principal otherwise agrees in writing to supply, to the Contractor free of charge for use in WUC.

6.2 **(Principal's obligation to provide)** The Principal must:

- (a) deliver Principal Supplied Materials to the Site; or
- (b) make the Principal Supplied Materials available at the location (if any) stated in the Contract,

at the time at which the Program required the materials to be provided or made available, or such other time as the Principal agrees in writing.

6.3 **(Inspection by Contractor)** Upon any Principal Supplied Materials being delivered or made available, the Contractor must immediately inspect the materials and ensure that the specified quantity has been delivered and that the materials are in a condition which complies with the requirements of the Specification.

6.4 **(Notice of deficiencies)** If, within 5 Business Days of the materials being delivered or made available, the Contractor does not notify the Superintendent in writing of any deficiencies, then it shall be deemed that the specified quantity of Principal Supplied Materials has been delivered or made available to the Contractor in a condition that complies with the Specification.

6.5 **(Risk)** Any Principal Supplied Materials which, after it is delivered or made available to the Contractor, is lost, destroyed, contaminated, or altered in any way such that the materials no longer comply with the Specification, shall be immediately removed, disposed of, and replaced by the Contractor, at the Contractor's expense, with material which complies with the Specification, unless the Superintendent expressly directs otherwise. The Contractor must notify the Superintendent in writing of any lost, destroyed, contaminated, or altered materials within 5 Business Days of becoming aware of such events.

6.6 **(Excess)** Unless otherwise directed by the Superintendent, the Contractor must return any excess Principal Supplied Materials to the Principal at the place required by the Superintendent.

6.7 **(Ownership)** Principal Supplied Materials, other than destroyed, contaminated or altered material which is disposed of by the Contractor pursuant to clause 6.5 shall, notwithstanding anything else in this clause 6, remain the property of the Principal at all times.

7. APPROVALS AND OTHER LAW

7.1 **(Approvals obtained by the Principal)** The Principal has obtained the following Approvals:

- (a) Water extraction permits – various locations

The Contractor must comply with those Approvals to the extent that they are applicable to WUC.

7.2 **(Identifying, obtaining and maintaining Approvals)** The Contractor must identify and notify the Principal of all Approvals which are necessary for the proper performance of WUC (other than Approvals which the Principal has advised the Contractor it has already obtained). The Contractor must obtain and maintain all such Approvals until the end of the last Defects Liability Period to expire. The cost of obtaining and maintaining all such Approvals shall be borne by the Contractor.

7.3 **(Final certificates)** The Contractor must:

- (a) obtain all final certificates; and
 - (b) provide a list of all inspections and forms required for the final certificate before commencing any WUC.
- 7.4 **(Compliance)** The Contractor must ensure that its Personnel comply with all Approvals and other laws which are in anyway applicable to WUC, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes, or duties.
- 7.5 **(Obtaining or granting of Approvals by Principal)** The Principal gives no warranty and makes no representation that:
- (a) it will be able to obtain, or obtain within any particular time; or
 - (b) where the Principal is the relevant Authority, that it will grant,
- any Approvals required for the Contractor to perform WUC.
- 7.6 **(Timing)** The Contractor is deemed to have allowed a reasonable time in its Program for all required Approvals to be applied for and obtained.
- 7.7 **(No fetter)** Nothing in the Contract shall be taken to fetter the power, rights, or authority of the Principal as an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld), or any other law.

8. SITE

- 8.1 **(Location)** The Sites are identified in **Appendix A**.
- 8.2 **(Requirements of possession)** The Contractor's attention is drawn to clause 24 of the General Conditions of Contract. The following documentation and information must be provided to the Superintendent as a requirement of the Principal giving access to or possession of the Site and within the earlier of:
- (a) 20 Business Days after the Date Of Acceptance Of Tender; and
 - (b) 5 Business Days prior to any scheduled pre-start meeting.

Item	Description	Relevant clause
A.	Work health and safety documentation (including, if applicable, evidence of payment of fees and lodgement of notice appointing Contractor as principal contractor)	Clause 11A of the General Conditions of Contract
B.	Evidence of insurance	Clause 19 of the General Conditions of Contract

- 8.3 **(Site specific induction)** The Contractor must ensure that:
- (a) each of the Contractor's Personnel working on or visiting the Site receives a site-specific induction;
- 8.4 **(Site specific requirements)** The Contractor must comply with the reasonable requirements of the Principal in relation to the Contractor's access to or conduct on the Site.

- 8.5 **(Locations within Site)** The Contractor must ensure that all plants, equipment, materials, temporary workshops, stores, and offices are kept within the confines of the Site at locations approved by the Superintendent.
- 8.6 **(Unauthorised entry to site)** The Contractor must use all reasonable endeavours to prevent any unauthorised entry to the Site.
- 8.7 **(Signage)** No signage is to be placed on the Site or the perimeter (other than safety signage) without the prior written consent of the Superintendent.
- 8.8 **(Deliveries)** The Contractor is responsible for delivery and unloading of all goods, equipment and other materials they require for the completion of their obligations under this contract (including any such materials used by subcontractors), providing space for the storage of the materials, handling the materials, and checking that the materials comply with the requirements of the Contract.
- 8.9 **(Interference)** The Contractor must use all reasonable endeavours to minimise interference with existing amenities, whether natural or man-made, and the amount of noise caused by the carrying out of WUC.
- 8.10 **(Services)** Except to the extent that the Contract expressly provides otherwise, the Contractor must, at its expense, connect and otherwise provide all required services, including water, sewerage, drainage, electricity, and communications, and obtain all required Approvals for connection.
- 8.11 **(Public utilities and other assets)** Without limiting the Contractor's obligations under clause 15 of the General Conditions of Contract, the Contractor must use all reasonable endeavours to identify, locate, and prevent damage to overhead public utility lines, surface drainage works, underground pipes, conduits, and cables in the vicinity of The Works. If the Contractor or any of its Personnel damage any such assets, then:
- (a) the Contractor must immediately report such damage to the owner of the asset and the Superintendent; and
 - (b) comply with the requirements of the owner of the asset (including by paying for any required repairs or renewals).

The Contractor must notify the Superintendent immediately if the Contractor considers that it is necessary to alter the location or level of any existing assets to conform with the requirements of the Contract. If directed to do so by the Superintendent, the Contractor must arrange for the relocation Work to be carried out by the appropriate Authority. Subject to clause 25 of the General Conditions of Contract, the Contractor shall bear the cost of such relocation.

- 8.12 **(Other property)** The Contractor must:
- (a) arrange for any other land (in addition to land made available by the Principal) required by the Contractor to carry out WUC, whether for the storage of materials, plant, or equipment, or for any other purposes;
 - (b) obtain the Principal's permission in writing to enter any private property (as that term is defined in the *Local Government Act 2009* (Qld) ('Private Property')) before entering the Private Property for the purpose of carrying out WUC or fulfilling any other obligation of the Contractor under the Contract;
 - (c) comply with all Legislative Requirements, including the *Local Government Act 2009* (Qld) in relation to entering Private Property;
 - (d) not unreasonably obstruct, destroy, or damage any Private Property, other land or other property, and ensure that all roadways, drains, watercourses, buildings, fences, gardens, walls, concrete surfaces and paths, grass and trees, and other property are left in a condition equivalent or better than that in which the property was found, unless

the Contractor provides written evidence that the owner of the property agrees otherwise;

- (e) take over control of any approval, permit, or license that the Principal has in place, in relation to the Site or other land made available by the Principal, prior to commencing any WUC on the Site or using or occupying the other land.

The Contractor must ensure that all Personnel of the Contractor that enter Private Property in connection with WUC:

- (i) have all appropriate qualifications, skills, and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
- (ii) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Contractor's Personnel are authorised as local government workers (as that term is defined in the *Local Government Act 2009* (Qld)) ('Local Government Worker') by the Principal; and
- (iii) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).

9. QUALITY MANAGEMENT SYSTEM

9.1 **(Quality management system)** The Contractor must comply with the requirements of the Principal's quality management system which accords with the requirements of ISO 9001 for WUC. The Contractor must ensure that all of the Contractor's Personnel comply with the system.

9.2 **(Inspections)** The Principal and the Superintendent may carry out inspections of the Site at any time. During inspections, the Contractor shall provide the Principal and the Superintendent with all documents, access and assistance reasonably requested by either.

10. REPORTS, MEETINGS AND RECORD KEEPING

10.1 **(Progress reports)** The Contractor must:

- (a) keep the Principal fully informed of the progress and performance of WUC;
- (b) at the times stated in the Contract and when otherwise reasonably required by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract; and
- (c) comply with any recommendations or directions given by the Principal in relation to the performance of the Contractor's obligations under the Contract (but such compliance will not release or discharge the Contractor from any liability or obligation under the Contract).

10.2 **(Meetings - General)** The Contractor must, if requested by the Principal, meet and discuss the performance of the Contractor and/or any other matter concerning the Principal in connection with the Contract.

10.3 **(Meetings – Specific)** The Contractor personnel must attend attend the following meetings:

Item	Meeting description	Topics for discussion	Time for meetings	Required attendees
(a)	Daily Pre-start meeting	Discussion of the schedule and safety	Prior to commencement of works on site	Contractor staff performing WUC

		requirements of the site/s for the day		
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10.4 **(Record of compliance)** The Superintendent may direct the Contractor to provide reasonable evidence of its compliance with the requirements of the Contract, within the time reasonably required by the Superintendent. The Superintendent and the Principal shall be entitled to rely on any failure by the Contractor to provide reasonable evidence of compliance, with a particular requirement of the Contract as *prima facie* evidence that the Contractor has not complied with that requirement.

11. PAYMENT CLAIMS

11.1 **(Additional documentation)** In addition to the requirements stated in the General Conditions of Contract, the Contractor must provide the following documentation with each claim for payment submitted under the Contract:

- (a) Evidence of the completion of the works being claimed (including copies of all signed daily work sheets);
- (b) Full breakdown (as per the supplied day labour rates) of any variation claims with a copy of the written instruction from the principal for the undertaking of the additional works.

12. ENVIRONMENTAL PROTECTION

12.1 **(Environmental Management Plan)** The Contractor must comply with all requirements of the Principal's Environmental Management Plan (EMP) for the WUC. The Contractor must ensure that all of the Contractor's Personnel comply, with the EMP at all times until during completion of WUC.

12.2 **(Protection of Fauna)** The Contractor must:

- (a) use all reasonable endeavours to minimise disruption to any fauna at or in the vicinity of the Site;
- (b) ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site:
 - (i) is appropriately trained in relation to the protection of fauna prior to carrying out any part of WUC;
 - (ii) aware of the potential for impacts on fauna and the need to minimise these impacts,

prior to that person carrying out any WUC; and

- (c) use all reasonable endeavours to ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site minimises disruption to any fauna in the vicinity of the Site; and
- (d) Comply with any Directions issued by the Superintendent to address any excessive or avoidable adverse impact on fauna at or in the vicinity of the Site.

12.3 **(Protection of Flora)** The Contractor must:

- (a) use all reasonable endeavours to minimise disruption to any flora at or in the vicinity of the Site;
- (b) ensure that each of the Contractor's Personnel and every other person carrying out WUC at the Site is appropriately trained in relation to the protection of fauna prior to that person carrying out any part of WUC;

- (c) use all reasonable endeavours to ensure that that each of the Contractor's Personnel and every other person carrying out WUC at the Site minimises disruption to existing flora at or in the vicinity of the Site;
- (d) make good any damage to flora caused by the Contractor or its Personnel, other than damage which is the unavoidable consequence of carrying out WUC; and
- (e) Comply with any Directions issued by the Superintendent to address any excessive or avoidable adverse impact on flora at or in the vicinity of the Site.

13. CULTURAL HERITAGE

13.1 (Definitions) In this clause:

- (a) **Aboriginal Cultural Heritage** has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld);
- (b) **Aboriginal Party** has the same meaning as in the *Aboriginal Cultural Heritage Act 2003* (Qld);
- (c) **Cultural Heritage** includes Aboriginal Cultural Heritage, Torres Strait Islander Cultural Heritage and Commonwealth Cultural Heritage;
- (d) **Commonwealth Cultural Heritage** means significant Aboriginal areas and objects under the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth);
- (e) **Torres Strait Islander Cultural Heritage** has the same meaning as in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld); and
- (f) **Torres Strait Islander Party** has the same meaning as in the *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

13.2 **(Cultural Heritage plan)** The Contractor must comply with any direction given by the Principal regarding the Cultural Heritage arrangements of the site. The Contractor must ensure that all of the Contractor's Personnel comply with the Principal's directions

13.3 **(Training)** The Contractor must ensure that each of Contractor's Personnel, and every other person carrying out WUC at the Site, is appropriately trained to be aware of Cultural Heritage prior to that person carrying out any part of WUC.

13.4 **(General Obligations)** Without limiting any other clause in this Contract, the Contractor must, and must ensure that its Personnel, in carrying out and completing WUC:

- (a) comply with its duty of care under section 23 of the *Aboriginal Cultural Heritage Act 2003* (Qld) and the *Torres Strait Islander Cultural Heritage Act 2003* (Qld) requiring the Contractor to take all reasonable and practicable measures not to harm or damage Aboriginal Cultural Heritage and Torres Strait Islander Cultural Heritage;
- (b) act diligently to protect the Cultural Heritage of the Site, the area surrounding the Site, and any other land used by the Contractor in connection with WUC;
- (c) comply with and discharge (and ensure that the Contractor's Personnel comply with and discharge) all obligations imposed on the Contractor under:
 - (i) the requirements of, the *Aboriginal Cultural Heritage Act 2003* (Qld), *Torres Strait Islander Cultural Heritage Act 2003* (Qld), and the *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth), and any other law relating to the protection of Cultural Heritage which is applicable to WUC;
 - (ii) a Cultural Heritage management plan (if any) approved pursuant to the *Aboriginal Cultural Heritage Act 2003* (Qld), or the *Torres Strait Islander Cultural Heritage Act 2003* (Qld), and applicable to WUC

- (iii) any consent, permission, or clearance provided by an Aboriginal Party or Torres Strait Islander Party;
 - (iv) any extent to which they are not inconsistent with the obligation in clause 13.4(c)(i), 13.4(c)(ii) or 13.4(c)(iii):
 - A. the Cultural Heritage plan prepared under clause 13.2;
 - B. directions of the Superintendent in relation to the protection of Cultural Heritage;
 - C. the Principal's Cultural Heritage management policies and plans; and
 - D. other standards, plans, requirements, codes, guidelines, policies, consents, and permissions relating to the protection of the Cultural Heritage which are applicable to WUC; and
 - (d) notify the Superintendent immediately of any communication with the Contractor by an Aboriginal Party or Torres Strait Islander Party (or a person claiming to be an Aboriginal Party or Torres Strait Islander Party) which may affect WUC.
- 13.5 **(Discovery of assets)** Without limiting anything else in this clause 13, if Cultural Heritage assets are encountered at the Site, the Contractor must immediately:
- (a) cease all Work in the area surrounding the asset;
 - (b) notify the Superintendent,
- and take appropriate actions as outlined in the Cultural Heritage plan or as otherwise directed by the Superintendent.

14. TRAFFIC MANAGEMENT

- 14.1 **(Traffic management plan)** The Contractor must comply with the requirements of the Principal's Traffic Management Plan for the WUC. The Contractor must ensure that all of the Contractor's Personnel have the training to comply, with the requirements of the Traffic Management Plan at all times.

15. HEAVY VEHICLE NATIONAL LAW

- 15.1 **(Meaning of terms)** Terms used in this clause which are defined in the Heavy Vehicle National Law (Queensland) (the 'National Law') have the same meaning as in that law.
- 15.2 **(General obligations)** The Contractor must ensure, so far as is reasonably practicable, the safety of the Contractor's transport activities. Without limiting this, the Contractor must, so far as is reasonably practicable:
- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
 - (b) ensure the party's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the National Law; or
 - (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
 - (iii) another person, including another party in the chain of responsibility, to contravene the National Law.
- 15.3 **(Notice)** The Contractor must immediately:

- (a) notify the Superintendent if the Contractor considers that anything in this Contract, or any act or omission of the Principal or its respective officers, employees, agents or representatives, has or is likely to, directly or indirectly, cause or encourage the Contractor or any Personnel of the Contractor:
 - (i) being the driver of a heavy vehicle to contravene the National Law; or
 - (ii) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
 - (iii) being another person, including another party in the chain of responsibility, to contravene the National Law; and
- (b) notify the Principal and the Superintendent in writing in the event that it, or any Personnel, is issued with any warning, request for information or production of documents, notice or fine in respect of any breach of chain of responsibility law in respect of WUC. The Contractor undertakes to provide the Principal and the Superintendent with a copy of any such warning, request, notice or fine, and any response or submissions made by it in relation to the same.

15.4 **(Chain of Responsibility)** In addition to its obligations under the chain of responsibility law, the Contractor must comply with the following chain of responsibility compliance assurance conditions, that:

- (a) the Principal has a policy of compliance for its chain of responsibility obligations under the National Law. The Contractor agrees that it complies with its obligations under the chain of responsibility laws, and has a policy of training and compliance that is subject to periodic review and assessment. The Contractor will require its subcontractors and agents to comply with chain of responsibility obligations in any supply chain arrangement or any arrangement whatsoever in connection with WUC;
- (b) the Principal is committed to taking all reasonable steps to ensure that any carriage of goods by road performed as part of WUC is performed safely and in accordance with the National Law and the chain of responsibility provisions it contains. The Principal will not comply with any instruction or requirement of the Contractor that might have the effect of contributing to a breach of the National Law, or preventing the Principal from taking all steps that it considers necessary to prevent any breach of the National Law;
- (c) upon becoming aware of any breach of mass, dimension, load restraint, fatigue, speed, or maintenance requirement, the Principal may report the breach to the relevant Authority and retain records of the breach; and
- (d) as a requirement of access to the Site, the Contractor must provide copies of any/all:
 - (i) chain of responsibility policy;
 - (ii) mass, dimension, or load restraint policy;
 - (iii) speed management policy;
 - (iv) fatigue management policy; and
 - (v) maintenance management policy,that is in place in respect of its business.



PROCUREMENT PROCESS CONDITIONS

Theodore Construction Grader and Water Truck Hire (2023 – 2025)

CONTRACT NO.: T2324.11

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1. GENERAL

- 1.1 **(Conduct of the Procurement Process)** The Principal will endeavour to conduct the Procurement Process in a manner which is consistent with these Procurement Process Conditions.
- 1.2 **(Rights of the Principal)** The Principal may do anything which it considers to be prudent or necessary for the proper conduct of the Procurement Process, including:
- (a) **(alteration of Procurement Documents)** amend, add to or delete any part of the Procurement Documents including:
 - (i) the procedures and timeframes provided in the Procurement Process Conditions;
 - (ii) the Evaluation Criteria (including weightings);
 - (iii) the Scope; and
 - (iv) where one is included in the Procurement Documents, the Contract;
 - (b) **(suspension or termination)** suspend or terminate the Procurement Process;
 - (c) **(attendances)** request any one or more Respondents to attend a briefing, site inspection or other meeting or to make a presentation of their Response in person at the Principal's office at no cost to the Principal;
 - (d) **(change or error in Procurement Documents)** request any one or more Respondents to change their Response to take account of a change in the Procurement Documents or any error in such documents;
 - (e) **(clarification or alteration)** request any one or more Respondents to clarify or alter any aspect of the Respondent's Response;
 - (f) **(additional information)** request additional information from one or more Respondents relating to a Response, the Procurement Process, the Respondent's compliance with the Procurement Process Conditions or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the Respondent's Response);
 - (g) **(negotiation)** negotiate amendments to any aspect of a Response with any one or more Respondents and suspend or terminate such negotiations at any time;
 - (h) **(revised Responses)** invite one or more Respondents to provide a revised Response or best and final offer; and/or
 - (i) **(shortlisting)** create a shortlist of one or more Respondents and exercise any of its rights only in respect of one or more of the shortlisted Respondents.
- 1.3 **(Conduct of Respondents)** The Respondent must not, and must ensure that its Personnel do not, engage in any Improper Conduct. The Respondent must immediately notify the Principal in the event that it becomes aware that it, or any of its Personnel, have engaged in Improper Conduct. Where appropriate, the Principal may report Improper Conduct by the Respondent to the appropriate Authority and provide that Authority with any relevant information related to that conduct.
- 1.4 **(Complaints in relation to the Procurement Process)** The Respondent must make any complaint in relation to the Procurement Process using the Communication Method immediately upon the cause of the complaint arising or upon the Respondent becoming aware of the cause.

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The complaint must be made in writing to the Complaints Manager and must contain adequate detail to allow the Complaints Manager to properly investigate the complaint.

- 1.5 **(No warranty)** The Principal gives no warranty and makes no representation that the Procurement Documents or any other information provided to the Respondent in connection with the Procurement Process is accurate, adequate or complete.
- 1.6 **(No liability)** Neither the Principal nor its Personnel shall be liable upon any Claim for any Specified Loss in connection with the Procurement Process.

2. BRIEFINGS AND SITE INSPECTIONS (RFT AND RFEOI ONLY)

- 2.1 **(Attendance)** The Respondent must attend any briefing or a site inspection which is identified in the General Information as mandatory. Respondents are encouraged to attend any briefing or site inspection which is not described as mandatory.
- 2.2 **(RSVP)** The Respondent must confirm that it intends to attend the briefing or site inspection to the email address and by the time and date stated in the General Information and may only bring a maximum of the number of Personnel stated in the General Information.
- 2.3 **(Safety)** The Respondent must inform itself of risks to health and safety arising from attendance at the briefing or site inspection and take all reasonable steps to ensure that such risks are eliminated or, if it is not possible to eliminate them, to minimise them so far as is practicable.
- 2.4 **(Obligation to inspect)** Where no site inspection is identified in the General Information, the Respondent must make its own arrangements to inspect the site prior to lodging its Response.

3. COMMUNICATIONS DURING PROCUREMENT PROCESS

- 3.1 **(Communication Method)** All communications by the Principal to the Respondent shall at first instance be made using the Communication Method. Except where expressly permitted by these Procurement Process Conditions, all communications by the Respondent to the Principal in connection with the Procurement Process shall at first instance be directed to the Principal using the Communication Method. No other communication method may be utilised by the Respondent unless expressly permitted by the Principal or where technical difficulties prevent the Respondent from utilising the Communication Method or the Principal expressly agrees to an alternative method.
- 3.2 **(Respondent's responsibility)** The Respondent must ensure that it is capable of receiving and does receive all communications to the Respondent in connection with the Procurement Process. Where the Communication Method is email, it is the Respondent's responsibility to ensure that it notifies the Principal of the correct email address for receiving communications. Where the Communication Method is through a website, the Respondent must ensure that it is properly registered with and capable of receiving communications through the website.
- 3.3 **(Confidentiality of communications)** The Principal may notify any or all Respondents of a request for further information made by a Respondent and the Principal's response to it without identifying the submitting Respondent or may keep a request for information confidential and respond only to the Respondent if it considers that it is appropriate to do so.
- 3.4 **(No reliance)** The Respondent must not rely upon any information (including information provided at a briefing or site inspection) unless it is confirmed by the Principal through the Communication Method.
- 3.5 **(Communication Closing Time)** The Principal will not respond to any request for information received after the Communication Closing Time.

4. THE RESPONSE (RFT AND RFQ ONLY)

- 4.1 **(Application of clause)** This clause 4 only applies in respect of an RFT or an RFQ.
- 4.2 **(Acceptance of Contract and Scope)** If one has not been provided, the Respondent must obtain a copy of the Contract from the Principal by requesting a copy through the Communication Method. Except to the extent that the Respondent has detailed a proposed alternative, amendment, qualification or departure in a Response, the Respondent will be taken to have unconditionally accepted and agreed to:
- (a) be bound by the terms and conditions of the Contract; and
 - (b) carry out and complete the whole of the obligations described in or to be reasonably inferred from the Procurement Documents.
- 4.3 **(Price)** The Price must be submitted exclusive of GST and in Australian dollars.
- 4.4 **(Discrepancy in Price)** Where the Response Form requires the Respondent to provide a Price and there is a discrepancy between the amount stated in the Response Form as the Respondent's Price and the sum total of the items in any Price Schedule then:
- (a) if the Contract provides that it is a lump sum contract, then the sum total of the items in the Price Schedule shall be the Respondent's Price; or
 - (b) if the Contract provides that it is a schedule of rates contract or a part lump sum and part schedule of rates contract, then the rate, price or lump sum of each item will prevail over the total shown, and the total shall be adjusted accordingly.
- 4.5 **(Response Validity Period)** The Respondent's Response will remain valid and open for acceptance by the Principal until the end of the Response Validity Period and thereafter until it is withdrawn in writing by the Respondent or the Procurement Process is finalised. The Principal may consent to the Respondent withdrawing its Response before the end of the Response Validity Period. The Principal may request an extension of the Response Validity Period at any time by giving written notice to the Respondent. If the Respondent does not agree to the requested extension then the Principal may exclude the Respondent's Response from assessment or further assessment as the case may be.
- 4.6 **(Alternative Responses)** If the Respondent wishes to submit an Alternative Response, then the Respondent is encouraged to:
- (a) also submit a Conforming Response; and
 - (b) submit the Alternative Response on a separate Response Form to the Conforming Response, clearly marked, "ALTERNATIVE RESPONSE" accompanied by a clear summary of all points of difference between the Alternative Response and the Conforming Response.

5. RESPONDENT'S GENERAL WARRANTIES AND REPRESENTATIONS

- 5.1 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
- (a) **(conduct of Respondent)** neither the Respondent nor any of its employees or agents has engaged in any Improper Conduct;
 - (b) **(authority)** the Response has been signed and lodged by a person with authority to do so on behalf of the Respondent;
 - (c) **(basis of Response)** the Respondent:

- (i) has received or obtained copies of all of the Procurement Documents and all information or documents referred to in the Procurement Documents; and
 - (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided or any representation made by or on behalf of the Principal in connection with the Procurement Process in preparing its Response;
- (d) **(accuracy of Response)** all information provided in or with the Response is accurate;
- (e) **(ability)** the Respondent and its relevant Personnel:
- (i) hold (and are compliant with all requirements of) all necessary competencies, licences (including if necessary, a licence under the *Queensland Building and Construction Commission Act 1991* (Qld)), accreditations, certifications, permits, clearances and other authorisations which will be required for the Respondent to carry out the Scope if it is ultimately engaged to carry out that Scope; and
 - (ii) are not excluded from submitting a tender under any applicable Queensland or Federal Government scheme, code or policy;
- (f) **(suitability etc. of works, goods or services)** where the Principal has stated in the Procurement Documents the purpose(s) for which the works, goods or services must be suitable, appropriate, adequate or fit, the works, goods or services shall be suitable, appropriate, adequate and fit for those purposes (but this warranty and representation will not apply to the extent (if any) that the Respondent has expressly excluded or limited it in the Respondent's Response);
- (g) **(Effect of implied warranties)** neither clause 5 nor clause 6 shall operate in any way to limit, exclude or otherwise restrict the operation of any warranty implied by law.

6. RESPONDENT'S FURTHER WARRANTIES AND REPRESENTATIONS (RFT AND RFQ ONLY)

- 6.1 **(Application of clause)** This clause 6 only applies in respect of an RFT or an RFQ.
- 6.2 **(Warranties and Representations)** By lodging a Response, the Respondent warrants and represents that:
- (a) **(investigations)** the Respondent has undertaken its own enquiries and investigations to satisfy itself of:
 - (i) the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price; and
 - (ii) the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful Respondent is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;
 - (b) **(ability)** the Respondent and its relevant Personnel:
 - (i) have and will maintain the necessary experience, expertise and skill to perform its obligations under the Contract in accordance with the requirements of the Contract in the event that its Response is accepted; and

- (ii) have and will maintain the resources necessary to comply with the timeframes for the performance of the Contract stated in the Procurement Documents (as amended if at all, pursuant to these Procurement Process Conditions);
- (c) **(price)** the Price, and all rates, sums and prices included in the Response allow for:
 - (i) all of the risks, contingencies and other circumstances which could have an effect on the Respondent's ability to carry out and complete the obligations it will have under the Contract if its Response is accepted for the Price, except to the extent that the Contract expressly allows an adjustment;
 - (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its Response is accepted, whether or not those items are expressly mentioned in the Contract; and
 - (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (d) **(competitive neutrality)** if the Respondent is required by law to comply with principles of competitive neutrality, the Respondent has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Procurement Process and the acceptance by the Principal of the Respondent's Response will not breach those principles;
- (e) **(notice)** the Respondent has notified the Principal in its Response of any:
 - (i) ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from the Procurement Documents;
 - (ii) any assumptions that it has made in determining its Price;
 - (iii) further information or investigations which it considers that it requires to enable it to give the warranties and make the representations in this clause 6,

and otherwise gives all warranties and makes all representations which the Contract requires to be given or made by the successful Respondent. The Respondent acknowledges that the Principal will rely on these warranties and representations in entering into a contract with the successful Respondent.

7. LODGEMENT AND OPENING OF RESPONSES

7.1 **(Method of lodgement)** A Response must be lodged:

- (a) if the Tender Box is a website, by uploading it to the Tender Box;
- (b) if the Tender Box is an email address, by sending it as an attachment to an email to the Tender Box; or
- (c) if the Tender Box is a physical address, by delivering it to the Tender Box.

The Principal may direct or allow the Response to be lodged by an alternative method.

7.2 **(Time of lodgement)** A document forming part of a Response shall be deemed to have been lodged:

- (a) where the Tender Box is a website, at the time that the document is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the Respondent;

- (b) where the Tender Box is an email address, at the time that an email attaching the document is successfully delivered to the Tender Box, as indicated on the email system on which the Tender Box is hosted;
- (c) where the Tender Box is a physical address, at the time that the document is physically received at the Tender Box; or
- (d) where the Response is lodged by an alternative method allowed by the Principal, when it is received by the Principal by that method.

7.3 **(Response opening)** Responses will not be opened publicly and the Respondent will not be permitted to attend the opening of Responses.

8. ASSESSMENT OF RESPONSES

8.1 **(Evaluation Criteria)** In determining which Response(s) are most advantageous to the Principal, each Response evaluated in accordance with these Procurement Process Conditions will be assessed, but not necessarily exclusively, against the Evaluation Criteria (if any).

8.2 **(Considerations)** In assessing Responses, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:

- (a) information contained in the Response or any amendment to or clarification of a Response;
- (b) information provided at a meeting with or presentation by the Respondent;
- (c) outcomes from discussions with a Respondent's referees (if any);
- (d) information obtained pursuant to clause 8.5;
- (e) the Respondent's past performance under other contracts with the Principal or third parties; and
- (f) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate Responses or any advisor to such persons.

8.3 **(Uncertainties)** The Principal may ignore any part of a Response which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Respondent and may assess the balance of the Response.

8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any Response including:

- (a) a Non-Conforming Response, an Alternative Response or a Late Response;
- (b) a Response, in respect of which the Principal reasonably believes that the Respondent has:
 - (i) failed to comply with these Procurement Process Conditions or any request made by or on behalf of the Principal pursuant to them within the time required; or
 - (ii) breached a warranty given or representation made pursuant to these Procurement Process Conditions or that a warranty, declaration or representation in the Respondent's Response is false or misleading in any material respect;

- (c) a Response in respect of which the Principal reasonably believes that the Respondent cannot reasonably comply with the obligations which it will have under the Contract (in the event that its Response is successful) for the Price; or
- (d) a Response which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the Response is satisfactory;

8.5 **(Other information or assistance)** The Principal may undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a Response (including verifying any warranty, representation or declaration made or given in the Response or pursuant to these Procurement Process Conditions) or any other matter which it considers relevant to the conduct of the Procurement Process. The Respondent must cooperate with such investigations and provide all information and assistance reasonably requested by or on behalf of the Principal in connection with the investigation.

9. SHORTLISTING (RFEOI ONLY)

- 9.1 **(Application of clause)** This clause 9 only applies in respect of an RFEOI.
- 9.2 **(Shortlisting)** The Principal intends, but is not bound, to create a shortlist of Respondents and invite tenders from the shortlisted Respondents.
- 9.3 **(No obligation)** The Principal is not bound to shortlist or invite a tender from any Respondent, including the Respondents with the highest scores against the Evaluation Criteria. The Principal may shortlist and invite tenders from as many or as few Respondents as the Principal sees fit and may choose not to shortlist any Responses or invite any tenders.
- 9.4 **(Local preference)** The Principal may shortlist an EOI that is from a Local Supplier in preference to comparable EOIs from Non-Local Suppliers even if the EOIs from the Non-Local Suppliers have been assessed as more favourable in terms of one or more Evaluation Criteria.
- 9.5 **(RFT)** A Respondent shall not be entitled to submit a tender unless and until the Principal expressly invites the Respondent to submit a tender in writing.
- 9.6 **(Unsuccessful Respondents)** Unsuccessful Respondents will be notified after the Procurement Process is concluded. The Principal may provide feedback to unsuccessful Respondents if requested to do so, but such feedback may be general in nature, will be limited to the Respondent's EOI only and may be postponed until after any related Request for Tender process is finalised.

10. ACCEPTANCE (RFT AND RFQ ONLY)

- 10.1 **(Application of clause)** This clause 10 only applies in respect of an RFT or an RFQ.
- 10.2 **(Ability to accept)** The Principal is not bound to accept the Response with the lowest Price or the Response with the highest score against the Evaluation Criteria, or any Response. The Principal will, if it accepts a Response, accept the Response(s) which it reasonably believes are the most advantageous to it having regard to the Sound Contracting Principles and the requirements of the *Local Government Regulation 2012* (Qld) to the extent that they are applicable and relevant to the Procurement Process.
- 10.3 **(Local preference)** The Principal may accept a Response lodged by a Local Supplier in preference to comparable Responses from Non-Local Suppliers even if the Responses from the Non-Local Suppliers have been assessed as more favourable in terms of one or more Evaluation Criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptable standard which is generally comparable to that of the Non-Local Suppliers.

- 10.4 **(Acceptance of more than one Response and acceptance of part of a Response)** The Principal may accept a Response in whole or in part. Without limiting this, where the Scope comprises distinct portions of works, goods or services, the Principal may accept a Response from one or more Respondents in relation to different portions of the works, goods or services as if those portions had been the subject of separate Procurement Processes.
- 10.5 **(No contract or appointment until formal acceptance)** Unless and until the Principal expressly notifies the Respondent in writing that the Respondent's Response (as amended by any post-Response negotiation, if any) has been successful or the parties execute a contract:
- (a) no binding contract for the provision of any work, services and/or goods by the Respondent will exist between the parties; and
 - (b) in respect of an RFT for appointment as a Pre-qualified Supplier or Preferred Supplier, the Respondent will not be considered to be appointed as a Pre-qualified Supplier or Preferred Supplier.

For clarity, a statement published by the Principal but not specifically notified to the Respondent (including a record of a council resolution) to the effect that a Response has been accepted or a contract has been awarded does not, of itself, constitute an acceptance of the Response or notice that the Response has been successful or constitute a rejection of any other Response.

- 10.6 **(Form of Contract)** Unless the RFT or RFQ stated that the Respondent would not be required to enter into a contract until it is separately engaged by the Principal to provide works, goods or services, if a Response is accepted, the successful Respondent will be required to enter into a contract in the form of the Contract, as amended by agreement between the parties.
- 10.7 **(Unsuccessful Respondents)** Unsuccessful Respondents will be notified after a Response has been accepted. The Principal may, at its discretion, notify unsuccessful Respondents of the name of, and Price submitted by, the successful Respondent. The Principal may provide feedback to unsuccessful Respondents if requested to do so, but such feedback may be general in nature and will be limited to the Respondent's Response only.
- 10.8 **(Arrangement with other local governments)** The Respondent acknowledges that if, pursuant to the Procurement Process, the Respondent is selected to be a Preferred Supplier or Pre-qualified Supplier for goods and/or services then any Related Local Government may make a contract with the Respondent for the supply of those goods and/or services, as if that Related Local Government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.

11. DOCUMENTS AND INFORMATION

- 11.1 **(Ownership)** The Procurement Documents remain the property of the Principal. The Response will become the property of the Principal upon lodgement.
- 11.2 **(Intellectual Property Rights)** Intellectual Property Rights in documents and information provided on behalf of a party in connection with the Procurement Process remain, as between the parties, with the party on whose behalf they were provided. The Principal and the Respondent grant each other a perpetual, non-exclusive, royalty free licence to do the things contemplated by clause 11.8. The licence so granted by the Respondent is irrevocable. The licence granted by the Principal may be revoked at any time on the giving of written notice.
- 11.3 **(Warranty and representation)** The Respondent warrants and represents that:
- (a) it owns or has a right to use the Intellectual Property Rights in its Response for the purpose of lodging a Response and undertaking the obligations which it will have under a contract with the Principal in the event that the Respondent's Response is accepted; and

- (b) it has the right and authority to grant the licence in clause 11.2 and the Principal's exercise of the rights so granted will not infringe the Intellectual Property Rights of a third party.
- 11.4 **(Confidentiality)** Except to the extent otherwise provided in these Procurement Process Conditions, each party shall keep Confidential Information of the other party confidential. The Respondent must inform each of its Personnel and any other person to whom Confidential Information of the Principal is disclosed of the Respondent's obligations under this clause 11.4. Subject to clause 11.8(b), the Respondent must return any and all Confidential Information when requested to do so by the Principal.
- 11.5 **(Information Privacy Act)** If the Respondent collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in connection with the Procurement Process, the Respondent must comply with Parts 1 and 3 of Chapter 2 of that Act as if the Respondent was the Principal. The Principal collects and uses personal information and non-personal information in the Response so that it can properly conduct the Procurement Process and otherwise carry out its functions as a Local Government. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information in the Respondent's Response will be accessible by employees of the Principal and third party personnel engaged to assist the Principal in conducting the Procurement Process or otherwise carrying out the functions of the Principal. Information in the Response may also be disclosed as required by the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld) as described below.
- 11.6 **(Local Government Regulation)** The *Local Government Regulation 2012* (Qld) provides that the Principal must, as soon as possible after entering into a contractual arrangement worth \$200,000 or more (exclusive of GST) publish relevant details of the contract (including the person with whom the Principal has entered into the contractual arrangement, the value of the contractual arrangement and the purpose of the contractual arrangement) on the Principal's website and display those details in a conspicuous place in the Principal's public office. The relevant details must be published or displayed in this manner for a period of at least 12 months.
- The *Local Government Regulation 2012* (Qld) may also require the Principal to make documentation and information contained in, or provided by the Respondent in connection with, a Response (including documentation and information identified by the Respondent as confidential) publicly available where that documentation or information is:
- (a) discussed in a Local Government Meeting;
 - (b) included in a report or other document that:
 - (i) relates to an item on the agenda for a Local Government Meeting and is made available to Councillors or committee members for the purposes of the meeting;
 - (ii) is directly relevant to a matter considered or voted on at a Local Government Meeting; or
 - (iii) is presented at a Local Government Meeting for the consideration or information of the Local Government or committee; or
 - (c) otherwise required to be disclosed pursuant to a provision of the *Local Government Act 2009* (Qld) or the *Local Government Regulation 2012* (Qld).
- 11.7 **(Right to Information)** The *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal). The Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest. Information or documentation contained in or provided by the Respondent in connection with a Response is potentially subject to disclosure to third parties, including documentation and information

identified by the Respondent as confidential. Any application for disclosure will be assessed in accordance with the terms of the Act. Notwithstanding any other provision of the Procurement Documents or a Response, if a Response is accepted, the Principal may publish on a Queensland Government website or by any other means, contract information including:

- (a) the name and address of the Principal and the successful Respondent;
- (b) a description of the goods and/or services to be provided or works to be carried out pursuant to the contract;
- (c) the date of award of the contract (including the relevant stages if the contract involves more than one stage);
- (d) the contract value (including the value for each stage if the contract involves more than one stage and advice as to whether any non-price criteria were used in the evaluation of Responses);
- (e) the procurement method used; and
- (f) for contracts with a value over \$10 million, the contract, or summary information in respect of the contract, between the Principal and the Respondent.

11.8 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with the Procurement Process (including documentation and information identified by the Respondent as confidential) may be used, copied, modified or disclosed as required by any law and otherwise:

- (a) by the Principal, as the Principal considers to be reasonably necessary to:
 - (i) properly conduct the Procurement Process;
 - (ii) exercise the rights granted to it in these Procurement Process Conditions;
 - (iii) obtain legal, accounting or other professional advice in connection with the Response;
 - (iv) report any actual or suspected Improper Conduct to the appropriate Authority; and/or;
 - (v) to otherwise properly carry out its functions as a Local Government;
- (b) by the Respondent, as is reasonably necessary to enable the Respondent to:
 - (i) prepare the Response;
 - (ii) obtain legal, accounting or other professional advice in connection with the Response; or
 - (iii) comply with the Respondent's corporate governance requirements.

If the Respondent is required by law to disclose Confidential Information of the Principal, the Respondent must notify the Principal of this prior to making such disclosure and must only disclose the minimum amount of information required to meet its obligation to disclose.

11.9 **(Media)** The Respondent must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether verbal or written, in connection with the Procurement Process in any media without the prior approval of the Principal.

12. DEFINITIONS

12.1 **(Definitions)** In these Procurement Process Conditions, unless the context otherwise requires:

- (a) **Addenda and Addendum** means any communication issued to Respondents in accordance with these Procurement Process Conditions which is identified as an Addendum;
- (b) **Alternative Response** means a Response which is otherwise a Conforming Response but which in the opinion of the Principal, contains significant alternatives, qualifications or amendments to or departures from the Contract or the Scope;
- (c) **Authority** means a local government, the State of Queensland, the Commonwealth or other any Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality having jurisdiction over the project;
- (d) **Business Day** means a day that is not a Saturday, Sunday or public holiday at Theodore;
- (e) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including at law (including a breach of an express or implied term of contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law, pursuant to any other principle of law, in connection with the Procurement Process;
- (f) **Communication Closing Time** means the time identified in the General Information as the time by which communications by Respondents must be submitted;
- (g) **Communication Method** means submitting an enquiry through the website forum or sending an email to the email address nominated for communications by Respondents in the General Information;
- (h) **Complaints Manager** means the person identified in the General Information as the person to whom complaints regarding the Procurement Process should be directed;
- (i) **Confidential Information** means documents and information provided or made available by or on behalf of one party to the other party in connection with the Procurement Process which are of their nature confidential (including copies of such documents and information) but not including documents and information which are in the public domain other than through a breach of clause 11.4;
- (j) **Conforming Response** means a Response which, in the opinion of the Principal:
 - (i) is substantially in the form and contains substantially all of the documentation, information, acknowledgements, warranties, declarations and undertakings required by the Response Schedules;
 - (ii) contains no significant alternatives, qualifications or amendments to or departures from the Contract or the Scope; and
 - (iii) in respect of Tenders or EOIs only, does not substantially exceed the Maximum Page Limit (if any);
- (k) **Contract** means:
 - (i) a contract which may be entered into between the Principal and a Respondent pursuant to an RFT or RFQ and which will be in the form referenced in Part 4 –

Contract of the RFT or RFQ, as amended (if at all) by the express written agreement of the Principal; and

- (ii) where an RFT is for appointment as a Preferred Supplier or Pre-qualified Supplier, also includes a contract which may be entered into during the term of the appointment unless the context requires otherwise;
- (l) **Councillor** has the same meaning as in the *Local Government Act 2009* (Qld);
- (m) **EOI (Expression of Interest)** means a Response lodged by a Respondent in response to an RFEOI and includes all documents and information lodged with or as part of the expression of interest;
- (n) **Evaluation Criteria** means:
 - (i) for an RFT or an RFEOI, the evaluation criteria (if any) set out in the General Information; and
 - (ii) for an RFQ, the evaluation criteria (if any) set out in the RFQ;
- (o) **General Information** means Part 2 – General Information of the RFQ, RFT or RFEOI (as the case may be);
- (p) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (q) **Improper Conduct** means:
 - (i) engaging in any activity or obtaining any interest which results in or is likely to result in any actual, potential or perceived conflict between the interests of the Respondent and the Respondent's obligations to the Principal in connection with the Procurement Process;
 - (ii) engaging in misleading or deceptive conduct in connection with the Procurement Process;
 - (iii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other Respondent, or any other person in connection with the Procurement Process;
 - (iv) canvassing, attempting to improperly influence, offering any inducement to or accepting or inviting improper assistance from any Councillor or other Personnel (or former Personnel) of the Principal in connection with the Procurement Process;
 - (v) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the Respondent's Response;
 - (vi) breaching any law in connection with the Procurement Process;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld);
- (r) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks),

registered designs, circuit layouts and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;

- (s) **Late Response** means any Response that is not received in the Tender Box (or otherwise received by the Principal by an alternative method permitted under the Procurement Process Conditions) by the Response Closing Time;
- (t) **Local Government** has the same meaning as in the *Local Government Act 2009* (Qld);
- (u) **Local Government Meeting** has the same meaning as in the *Local Government Act 2009* (Qld);
- (v) **Local Supplier:**
 - (i) where the Principal's procurement policy provides a meaning of local supplier, has the meaning given in the Principal's procurement policy, a copy of which can be obtained from the Principal upon request; or
 - (ii) where the Principal does not have a procurement policy, or the procurement policy does not provide a meaning of local supplier, means a supplier that:
 - A. is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal as determined under the *Local Government Regulation 2012* (Qld); or
 - B. has its principal place of business within that local government area; or
 - C. otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area;
- (w) **Maximum Page Limit** means the number of pages which may be lodged as, with or in relation to the Response (including, unless otherwise indicated, all attachments, annexures, supplements, parts, schedules or appendices), which the General Information states a Response should not be longer than;
- (x) **Non-Conforming Response** means a Response which is not a Conforming Response or an Alternative Response;
- (y) **Non-Local Supplier** means a supplier (including a Respondent) that is not a Local Supplier;
- (z) **Personnel** includes the officers, employees, agents, representatives, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable;
- (aa) **Preamble** means Part 1 – Preamble of the RFEOI, RFT or RFQ (as the case may be);
- (bb) **Preferred Supplier** means a supplier that has been selected as a preferred supplier pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (cc) **Pre-qualified Supplier** means a supplier that has been selected as a pre-qualified supplier pursuant to section 232 of the *Local Government Regulation 2012* (Qld);
- (dd) **Price** means:
 - (i) where the Procurement Process is for appointment as a Preferred Supplier or Pre-qualified Supplier, the rates, sums or prices stated in the Response;

Procurement Process Conditions



- (ii) otherwise, subject to clause 4.4, the total price stated in the Response;
- (ee) **Price Schedule** means a Response Schedule which provides a breakdown of the Price, and which may include rates, lump sums, prices, provisional sums, estimated quantities and other information;
- (ff) **Principal** or **Purchaser** means Banana Shire Council;
- (gg) **Procurement Documents** means:
 - (i) the RFEOI, RFT or RFQ (as the case may be); and
 - (ii) any Addenda issued pursuant to these Procurement Process Conditions,and includes all documents included in or incorporated by reference into these documents;
- (hh) **Procurement Process** means the process by which the Principal intends to, or does, invite, assess and where applicable, accept or reject Responses in respect of the Scope;
- (ii) **Procurement Process Conditions** means these procurement process conditions;
- (jj) **Quotation** means a Response lodged by a Respondent in response to an RFQ and includes all documents and information lodged with or as part of the quotation;
- (kk) **Related Local Government** means a local government that has entered into an arrangement with the Principal, as contemplated in section 235(f) of the *Local Government Regulation 2012* (Qld), to the effect that the local government may make a contract with a supplier that has been selected by the Principal to be a Preferred Supplier or Pre-qualified Supplier of goods and/or services, as if that local government had itself selected the Respondent to be a Preferred Supplier or Pre-qualified Supplier of those goods and/or services.
- (ll) **Respondent** means:
 - (i) any person who lodges a Response; and
 - (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,and includes a Tenderer;
- (mm) **Response** means, where these Procurement Process Conditions are incorporated into an:
 - (i) RFEOI, an EOI;
 - (ii) RFT, a Tender; or
 - (iii) RFQ, a Quotation;
- (nn) **Response Closing Time** means the time identified in the General Information as the time by which Responses must be submitted as varied (if at all) pursuant to these Procurement Process Conditions;
- (oo) **Response Form** means in respect of an:

- (i) RFEOI, the document identified as the EOI form in the Response Schedules;
- (ii) RFT or RFQ:
 - A. the document identified as the tender form or the quotation form (as the case may be) in the Response Schedules; or
 - B. otherwise where there is no document identified as the tender form or quotation form, any document (other than a Price Schedule) which states the total price offered by the Respondent in the Response;
- (pp) **Response Schedules** means the schedules identified in Part 5 – Response Schedules of the RFEOI or Part 6 – Response Schedules of the RFT or RFQ (as the case may be);
- (qq) **Response Validity Period** means the period stated in the General Information as the time for which Responses are to be valid as extended (if at all) pursuant to clause 4.5;
- (rr) **RFEOI (or Request for Expressions of Interest)** means the request for expressions of interest issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions and the Scope);
- (ss) **RFQ (or Request for Quotation)** means the request for quotations issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (tt) **RFT (or Request for Tender)** means the request for tenders issued by the Principal and all documents included in or incorporated by reference into it (including these Procurement Process Conditions, the Contract and the Scope);
- (uu) **Scope** means the scope described in Part 4 – Scope of the RFEOI or Part 5 – Scope of the RFT or RFQ (as the case may be) and all documents incorporated into it (whether physically or by reference), and includes any amendments provided for in an Addendum;
- (vv) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);
- (ww) **Specified Loss** means:
 - (i) any loss of, or loss of anticipated, profit, income, revenue, saving, production; business, contract or opportunity; increase in financing or operating costs; liability for loss or damage suffered by third parties; legal costs (on a solicitor and client basis); fines levied; loss of reputation or embarrassment and the cost of abating or reducing such; any other financial or economic loss; and
 - (ii) any indirect, special or consequential loss, damage, cost, expense or penalty not expressly referred to in the preceding paragraph, howsoever arising;
- (xx) **Tender** means a Response lodged by a Tenderer in response to an RFT and includes all documents and information lodged with or as part of the tender;
- (yy) **Tender Box** means the website, email address or physical location at which the General Information states that Responses are to be submitted;
- (zz) **Tenderer** means:
 - (i) any person who lodges a Tender; and

- (ii) to the extent to which the term can apply to any other person who obtains a copy of any of the Procurement Documents during the Procurement Process, also includes such other persons,

and words or terms not defined in these Procurement Process Conditions but defined in a Contract have the same meaning as in the Contract, except where the context otherwise requires.

13. GENERAL PROVISIONS

- 13.1 **(Interpretation of Procurement Documents)** The Procurement Documents must be read and construed together and are intended to be mutually explanatory.
- 13.2 **(Joint and several obligations)** An obligation of two or more parties binds them jointly and each of them severally and an obligation incurred in favour of two or more parties is enforceable by them severally.
- 13.3 **(Headings)** Clause headings are for reference purposes only and must not be used in interpretation.
- 13.4 **(No limitation)** The words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 13.5 **(Grammatical Forms)** Where any word or phrase is given a defined meaning, any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.
- 13.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Procurement Documents expires on a day which is not a Business Day, the period will expire at the end of the next Business Day.
- 13.7 **(Discretion)** Unless expressly provided otherwise:
 - (a) any right of the Principal pursuant to these Procurement Process Conditions may be exercised; and
 - (b) any consent of the Principal required under these Procurement Process Conditions may be given, withheld or given subject to conditions,in the absolute discretion of the Principal without giving reasons and without reference to the Respondent unless, and then only to the extent that the Procurement Process Conditions provide otherwise.
- 13.8 **(Law)** A reference to 'law' includes:
 - (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
 - (b) certificates, licences, accreditations, clearances, authorisations, approvals, consents, and permits and any related fees and charges,

which are applicable to the Procurement Documents, the Procurement Process or the Contract or which are otherwise in force at any place where an obligation under the Contract is to be carried out.

Procurement Process Conditions



- 13.9 **(Governing Law)** The Procurement Process is governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Principal and the Respondent submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 13.10 **(Contra proferentem)** The *contra proferentem* rule and other rules of construction will not apply to disadvantage a party whether that party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.
- 13.11 **(Rights Cumulative)** The rights and remedies of the Principal and the Respondent provided in the Procurement Process Conditions are cumulative on each other and on any rights or remedies conferred at law or in equity.
- 13.12 **(Severance)** If a provision of the Procurement Process Conditions is void or unenforceable it must be severed and the provisions that are not void or unenforceable are unaffected by the severance.
- 13.13 **(No waiver)** No waiver by the Principal of a provision of these Procurement Process Conditions is binding unless made in writing.
- 13.14 **(Other references)** A reference to:
- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
 - (b) the Respondent or the Principal includes their respective heirs, executors, successors and permitted assigns;
 - (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
 - (d) a monetary amount is a reference to an Australian currency amount; and
 - (e) a measurement or quantity is a reference to an Australian legal unit of measurement as defined under the *National Measurement Act 1960* (Cth).



CONTRACT

Theodore Construction Grader and Water Truck Hire 2023 - 2025

CONTRACT NO: T2324.11

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SCHEDULE 1 – SCOPE AND PRICE

SCHEDULE 2 – SUPPLIER'S STATUTORY DECLARATION

Reference Schedule

Item	Details		
1. Term (Clause 4)			
(a) Term Start Date:	On Execution of Contract <i>If nothing stated, as reasonably directed by the Principal</i>		
(b) Term End Date:	24 months <i>If nothing stated, as reasonably directed by the Principal</i>		
(c) Extension Periods:	12 months		
2. Exclusivity (Clause 5) The Contract is:	<input type="checkbox"/> Exclusive <input checked="" type="checkbox"/> Not exclusive <i>If nothing selected, the Contract is not exclusive</i>		
3. Principal's Representative (Clause 7)			
(a) Name:	Leesa Millar		
(b) Address:	62 Valentine Plains Road Biloela QLD 4715		
(c) Telephone:	(07) 49 929 500		
(d) Email:	enquiries@banana.qld.gov.au		
4. Supplier's Representative (Clause 8)			
(a) Name:			
(b) Address:			
(c) Telephone:			
(d) Email:			
5. Key Personnel (Clause 10.2)	Name	Role	Period <i>(If nothing stated, until End Date)</i>

Item		Details
6.	Site (Clause 12)	NIL
	(a) Additional pre-conditions to access to the Site	
	(b) Site specific requirements	NIL
7.	Time for Meetings (Clause 13)	N/A <i>If nothing stated, as reasonably required by the Principal.</i>
8.	Timing (Clause 14) Working hours	6am – 6pm <i>If nothing stated, as reasonably directed by the Principal</i>
9.	Invoices: (Clause 16)	21 st day of each month for Services to be provided by the end of that month <i>If nothing stated, on the 21st day of each month for Services provided up to the 21st of that month.</i>
	(a) Invoices may be submitted on:	
	(b) Invoices should be emailed to:	
	(c) Other requirements for invoices:	
10.	Applicable policies, guidelines, procedures and codes of the Principal (Clause 17.1)	Can be found at www.banana.qld.gov.au
11.	Liability Limit (Clause 22)	<i>If nothing stated, the Principal's liability is limited to an amount equal to the Price paid in the 12 months preceding the relevant Claim.</i>
	(a) The Principal's liability is limited to:	
	(b) The Supplier's liability is limited to:	<i>If nothing stated, the Supplier's liability is not limited.</i>
12.	The Supplier must effect the following insurances: (Clause 23)	<input checked="" type="checkbox"/> Public and product liability insurance in the amount of at least \$20,000,000 in respect of any one occurrence and for an unlimited number of claims <input type="checkbox"/> Professional indemnity insurance in the amount of at least \$5,000,000 in respect of any one occurrence and for an unlimited number of claims <input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Supplier in performing its obligations under the Contract

Item	Details
	<input checked="" type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant <input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Supplier's Personnel as required by law <hr/> <i>If not selected, the Supplier is not required to effect the insurance.</i>
13. Intellectual Property (Clause 26) (a) Project IP, the alternative applying	<input checked="" type="checkbox"/> Alternative 1 – Project IP vests in the Principal <input type="checkbox"/> Alternative 2 – Project IP vests in the Supplier <hr/> <i>If nothing stated, Alternative 1 applies.</i>
(b) Moral Rights consent	<input checked="" type="checkbox"/> Moral Rights consent is required <input type="checkbox"/> Moral Rights consent is not required <hr/> <i>If nothing selected, a Moral Rights consent is required.</i>

Parties:

Banana Shire Council of 62 Valentine Plains Road Biloela in the State of Queensland.

(Principal)

[Insert Supplier's Name] ACN [Insert ACN] ABN [Insert ABN] of [Insert Supplier's address].

(Supplier)

Background:

- A. The Supplier has offered to provide the Services to the Principal and has made the representations and given the warranties stated in this Contract to the Principal in connection with its offer.
- B. In reliance on those representations and warranties, the Principal has accepted the Supplier's offer.
- C. The Parties wish to enter into the Contract to record the terms on which the Supplier will provide the Services to the Principal during the Term.

The Parties agree:

1. DEFINITIONS

- 1.1 In the Contract, unless inconsistent with the context or subject matter:
 - (a) **Affected Party** has the meaning given in clause 29.1;
 - (b) **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, determinations and permissions from any Authority and any related fees and charges;
 - (c) **Authority** means a local government, the State of Queensland, the Commonwealth or any other Federal, State, or local government authority, administrative or judicial body or tribunal, department, commission, agency, government owned corporation, statutory body or instrumentality having jurisdiction over the Contract or the obligations to be performed under the Contract;
 - (d) **Background IP** of a Party means all Intellectual Property Rights which are made available by a Party for the purpose of the provision of the Services in connection with the Contract which are in existence at the date of the Contract or brought into existence after the date of the Contract other than in connection with the Contract;
 - (e) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made in connection with the Contract;
 - (f) **Claim** includes any claim, action, demand, proceeding, suit, defence or set-off, however arising including under the Contract, at law (including a breach of the Contract), under statute, in equity, in tort (including for negligence), in quasi-contract, for unjust enrichment and to the extent permitted by law pursuant to any other principle of law (including without limitation any claim by the Supplier for a Variation or other adjustment to the Price);
 - (g) **Confidential Information** means the Contract and all documents and information provided or made available by one Party (**Discloser**) to the other (**Disclosee**), or which comes to the knowledge of a Party in connection with the Contract which are of their nature confidential or which the Discloser has identified to the Disclosee as being confidential, but does not include documents and information which are in the public domain other than through a breach of clause 25.1;

General Conditions



- (h) **Conflict of Interest** means any actual, potential or perceived conflict between the interests of the Supplier and the Supplier's obligations under the Contract;
- (i) **Contract** means the documents identified in clause 2.1;
- (j) **Discloser and Disclosee** have the meanings given in clause 1.1(g);
- (a) **End Date** means the date described as such in the Reference Schedule as extended (if at all) pursuant to clause 4.2;
- (b) **Exceptional Circumstances** means disclosure:
 - (i) for the purpose of complying with the Disclosee's obligations or exercising the Disclosee's rights in connection with the Contract;
 - (ii) with the Discloser's prior consent;
 - (iii) to a professional adviser, banker, financier or auditor if that person is obliged to keep the information disclosed confidential and to whom it is necessary to disclose the information;
 - (iv) to the extent necessary to comply with the Disclosee's reasonable corporate governance or insurance requirements;
 - (v) to any of its Personnel who are bound to keep the information confidential and to whom it is necessary to disclose the information;
 - (vi) to comply with the law or a requirement of an Authority (including a stock exchange);
 - (vii) to the extent necessary to enforce its rights or defend a Claim in connection with the Contract;
 - (viii) by the Principal for the purposes of enabling the Principal to properly discharge its functions as a local government authority; and
 - (ix) to the extent otherwise expressly permitted by the Contract;
- (c) **Force Majeure** means:
 - (i) an act of God, earthquake, lightning, cyclone, tsunami, flooding, fire emanating from outside the Site, explosion, landslide, drought or meteor, but excluding any other weather conditions regardless of severity;
 - (ii) war (declared or undeclared), invasion, act of a foreign enemy, hostilities between nations, civil insurrection or militarily usurped power;
 - (iii) act of public enemy, sabotage, malicious damage, terrorism or civil unrest;
 - (iv) embargo;
 - (v) illness declared by the World Health Organisation to be a pandemic;
 - (vi) State-wide or nationwide industrial action that is not limited to or primarily directed at the Supplier or otherwise caused by or contributed to by the Supplier and which affects an essential portion of the Supplier's obligations under the Contract;

which:

- A. is beyond the immediate or reasonable control of the Affected Party;

- B. is not directly or indirectly caused or contributed to by the Affected Party or the Affected Party's Personnel;
 - C. cannot reasonably be avoided, remedied or overcome by the Affected Party by a standard of care and diligence expected of a prudent and competent local government or supplier (as the case may be) or the expenditure of a reasonable sum of money;
- (d) **General Conditions** means these general conditions;
- (e) **Good Industry Practice** means:
- (i) the standard of skill, care and diligence; and
 - (ii) practices, methods, techniques and acts,
of a skilled and competent supplier engaged in the business of providing goods, services or work similar to the Services;
- (f) **Goods** means any plant, equipment, materials, parts, consumables or other goods provided, or to be provided by the Supplier in connection with the Services and includes Goods which are required for the proper performance of the Services in accordance with the Contract, whether or not specifically mentioned in the Contract;
- (g) **GST** means GST as that term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST;
- (h) **GST Law** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and/or associated Commonwealth legislation, regulations and publicly available rulings;
- (i) **Improper Conduct** means:
- (i) engaging in misleading or deceptive conduct in relation to the Procurement Process or the Contract;
 - (ii) engaging in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the Procurement Process;
 - (iii) failing to disclose a Conflict of Interest in breach of clause 6.3;
 - (iv) attempting to improperly influence any Personnel of the Principal, or violate any applicable law regarding the offering of inducements in connection with the Procurement Process or the Contract;
 - (v) accepting or inviting improper assistance of employees or former employees of the Principal in preparing its tender or any Claim against the Principal in connection with the Contract;
 - (vi) using any information improperly obtained, or obtained in breach of any obligation of confidentiality in connection with the Procurement Process or the Contract;
 - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence; or
 - (viii) engaging in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (j) **Insolvency Event** in respect of a Party, means the Party:

- (i) becomes insolvent or bankrupt, or being a company goes into liquidation, or takes or has instituted against it any action or proceedings which has as an object or may result in bankruptcy or liquidation; or
 - (ii) enters into a debt agreement, a deed of assignment or a deed of arrangement under the *Bankruptcy Act 1966* (Cth), or, being a company, enters into a deed of company arrangement with its creditors, or an administrator or controller is appointed; or
 - (iii) has a receiver or a receiver and manager appointed or a mortgagee goes into possession of any of its assets;
- (k) **Intellectual Property Rights** means copyright, patents and all rights in relation to inventions, registered and unregistered trademarks (including service marks), registered designs, drawings, circuit layouts and all other rights resulting from intellectual activity in the construction, project management, industrial, scientific, literary or artistic fields, whether foreign or domestic and includes Moral Rights;
- (l) **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule;
- (m) **Liability Limit** means:
- (i) in respect of the Principal, the sum of:
 - A. the amount specified in item 11(a) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Principal under the Contract;
 - (ii) in respect of the Supplier, the sum of:
 - A. the amount specified in item 11(b) of the Reference Schedule; and
 - B. the amount of any excess payable under a policy of insurance required to be effected and maintained by the Supplier under the Contract;
- (n) **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- (o) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- (p) **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- (q) **National Law** means the Heavy Vehicle National Law (Queensland);
- (r) **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service;
- (s) **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation;
- (t) **Party or Parties** means one or both of the Principal and the Supplier as the context requires;
- (u) **Payment Period** means:
- (i) if the Contract is a 'building contract' as that term is defined in the *Queensland Building and Construction Commission Act 1991* (Qld), the period ending 15 Business Days after receipt by the Principal of the claim;

- (ii) otherwise, the period ending 25 Business Days after receipt by the Principal of the claim;
- (v) **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- (w) **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, suppliers, contractors and subcontractors of a Party and any other person or entity for whom that Party is vicariously liable but in respect of the Principal, does not include the Supplier;
- (x) **Price** means the amount payable for the provision of Services as determined in accordance with Schedule 1;
- (y) **Principal** means the entity identified as the Principal on page 6 of the Contract;
- (z) **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Supplier pursuant to clause 7.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 7.3;
- (aa) **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- (bb) **Project IP** means the Intellectual Property Rights in the Supplier Documents and all other materials, documents or data created in the performance of the Supplier's obligations under the Contract;
- (cc) **Reference Schedule** means the schedule of that name included in the Contract;
- (dd) **Regulator** has the meaning given in the WHS Act and WHS Regulation;
- (ee) **Scope** means the documents and information contained in, or incorporated by reference into, Schedule 1 which detail the Principal's requirements for the provision of the Services by the Supplier;
- (ff) **Services** means the services to be provided or the work to be carried out by the Supplier as described in Schedule 1 (including the supply, use or installation of any Goods, the construction of any Works and the provision of Supplier Documents) and any services or work not specifically mentioned in Schedule 1 but that is obviously and indispensably necessary for the performance of the services or work that is mentioned;
- (gg) **Site** means the site or sites made available by the Principal to the Supplier for the purpose of the Supplier carrying out its obligations under the Contract;
- (hh) **Start Date** means the time stated in the Reference Schedule by which the Supplier is required to commence performing its obligations under the Contract (or where no time is stated, as directed by the Principal);
- (ii) **Substantial Breach** includes:
 - (i) in respect of the Supplier:
 - A. a material breach of the Contract including:
 - I a material breach of clause 9.1;
 - II the Supplier or any of the Supplier's Personnel engaging in:
 - (1) any Improper Conduct in connection with the Contract;
or

- (2) otherwise engaging in any Improper Conduct (whether or not in connection with the Contract) in a manner which, in the Principal's opinion, causes harm to the Principal's reputation;
 - III failing to make a payment to the Principal within 20 Business Days after the due date for the making of the payment in clause 16.6;
 - IV failing to effect and maintain the insurance policies required under clause 23;
 - V failing to comply with a direction given or purportedly given under clause 27;
 - VI a warranty given or representation made in or pursuant to this Contract is found to be incorrect, false or misleading in any material respect;
 - VII a material breach of a law in connection with the Contract;
 - B. the consistent or repeated breach of the Contract by the Supplier, even though those breaches would not otherwise constitute a substantial breach of the Contract and even though those breaches may be promptly remedied by the defaulting Party; or
 - C. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (ii) in respect of the Principal:
 - A. failing to make payment to the Supplier within 20 Business Days after the due date for the making of the payment in clause 16.6 or 16.7 as the case may be;
 - B. otherwise committing a material breach of the Contract; or
 - C. anything else which the Contract elsewhere provides is a substantial breach of the Contract;
- (jj) **Supplier** means the person or entity identified as the Supplier on page 6 of the Contract;
- (kk) **Supplier Documents** means those records, reports, designs, specifications, certificates, plans and other documents, whether electronic documents or hard copy format, required by the Contract to be handed over to the Principal by the Supplier (including any WHS documentation and management plans required by the Contract) and all information advice, procedures, undertakings designs, calculations and recommendations in those documents;
- (ll) **Supplier's Representative** means the person identified as the Supplier's representative in the Reference Schedule or as otherwise approved by the Principal pursuant to clause 8.2;
- (mm) **Term** means the period determined in accordance with clause 4;
- (nn) **Variation** means any material increase, decrease or change to the Services or the Supplier's obligations under the Contract;

- (oo) **Warranty Period** for Goods means the longer of:
 - (i) the period stated in Contract or where no period is stated, 12 months after the Goods are supplied; and
 - (ii) such further period required under or implied by any applicable law, which period may continue after the End Date;
- (pp) **WHS** means work, health and safety;
- (qq) **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time;
- (rr) **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time;
- (ss) **Wilful Misconduct** means an intentional act or omission by or on behalf of a Party committed with reckless disregard for its foreseeable and potentially harmful consequences in circumstances where the breaching Party knows or ought to know that those consequences would likely result from the act or omission but which is not due to an honest mistake oversight, error of judgement, accident or negligence;
- (tt) **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and
- (uu) **Works** means any work which by the Contract, is to be handed over to the Principal.

2. CONTRACT

- 2.1 **(Documents comprising Contract)** The Contract comprises:
 - (a) the Reference Schedule;
 - (b) these General Conditions;
 - (c) Schedule 1 – Scope and Price; and
 - (d) Schedule 2 – Supplier’s Statutory Declaration.
- 2.2 **(Final agreement)** The Contract constitutes the entire, final and concluded agreement between the Parties as to its subject matter. It supersedes all prior representations, agreements, statements and understandings between the Supplier and the Principal (whether oral or in writing).
- 2.3 **(Order of precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 2.1, then the documents will take precedence in the order set out in clause 2.1 with the document described in clause 2.1(a) being the highest in the order.
- 2.4 **(Early Services)** Where any obligation described in the Contract has been carried out by the Principal or the Supplier prior to the date on which the Contract is executed, that obligation shall be taken to have been carried out pursuant to, and the carrying out of that obligation shall be governed by, the Contract as if the obligation had been carried out after the Contract was executed.

3. PERFORMANCE AND PAYMENT

- 3.1 **(Performance)** The Supplier must, at the Supplier’s expense:
 - (a) provide the Services; and
 - (b) perform the Supplier’s other obligations under the Contract,

in accordance with the Contract and all directions of the Principal issued pursuant to it.

- 3.2 **(Payment)** Subject to the Contract, the Principal must pay the Supplier the Price for Services provided in accordance with the Contract.

4. TERM

- 4.1 **(Term)** Subject to clause 4.2, the Term shall commence on the Start Date and end on the End Date, unless the Contract is earlier terminated.
- 4.2 **(Extension of Term)** The Principal may, in its absolute discretion, extend the End Date by the periods stated in the Reference Schedule on the same terms as the Contract, by giving written notice to this effect to the Supplier at any time prior to the End Date. For clarity:
- (a) the Principal may extend by a period shorter than that provided in the Reference Schedule; and
 - (b) the Parties may agree to extend for further periods in addition to those contemplated in the Reference Schedule.
- 4.3 **(Continuation of obligations)** The Contract shall remain in force until the later of the expiration of the Term and the time at which all obligations of the Parties pursuant to it have been satisfied, unless the Contract is earlier terminated.

5. EXCLUSIVITY

- 5.1 **(Alternative 1 – Not exclusive)** If the Reference Schedule provides that the Contract is not exclusive, the Supplier is not the exclusive supplier of the Services, or of services of the same or a similar type to the Services, during the Term. The Principal may engage other suppliers to provide services of the same or a similar type to the Services during the Term.
- 5.2 **(Alternative 2 – Exclusive)** If the Reference Schedule provides that the Contract is exclusive, then subject to this clause 5.2, the Supplier is the exclusive supplier of the Services at the Site during the Term. During the Term, the Principal may:
- (a) itself provide, or engage other contractors to provide, the Services or services of the same or a similar type to the Services:
 - (i) during any period for which the Supplier is, for any reason, unable or unwilling to properly perform the Services in accordance with the Contract; and
 - (ii) otherwise where expressly or impliedly permitted by the Contract; and
 - (b) undertake any procurement process or other activities necessary or prudent for the appointment of a supplier to supply similar or the same services as the Services after the expiry or termination of the Contract.
- 5.3 **(No liability)** The Principal shall not be liable upon any Claim by the Supplier in connection with the Principal engaging other suppliers to supply similar or the same services as the Services consistently with this clause 5.

6. RELATIONSHIP OF THE PARTIES

- 6.1 **(Relationship)** The Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship. The Supplier is solely responsible for payments required to be made to its Personnel for the performance of services in connection with the Contract and solely responsible for determining the manner in which it complies with its obligations under the Contract. The Supplier must provide such materials, equipment, knowledge and Personnel as the Supplier deems necessary to comply with its obligations and under the Contract.

- 6.2 **(Representations)** The Supplier must not represent itself or allow anyone else to represent that the Supplier is a partner, joint venturer, officer or employee of the Principal. Except to the extent expressly contemplated in the Contract, the Supplier must not represent itself or allow anyone else to represent that the Supplier is an agent of the Principal.
- 6.3 **(Conflict of Interest)** The Supplier warrants and represents that as at the date of the Contract, the Supplier is not aware of any Conflict of Interest. The Supplier must not, and must ensure that its Personnel do not, engage in any activity or obtain any interest which does, or is likely to, result in a Conflict of Interest during the Contract and must immediately notify the Principal in the event that a Conflict of Interest that has not previously been disclosed arises or is likely to arise.

7. PRINCIPAL'S REPRESENTATIVE

- 7.1 **(The Principal's Representative)** The Principal's Representative is appointed as the Principal's agent to exercise any of the Principal's rights or functions under the Contract. The Principal's Representative is not an independent certifier or valuer.
- 7.2 **(Rights and powers of the Principal's Representative)** The Principal's Representative may exercise any rights and powers granted to the Principal under this Contract. The Principal's Representative may give a direction in respect of any matter relating to this Contract, including the protection of people, property and the environment and the Supplier's performance of the Services.
- 7.3 **(Authorised delegates)** The Principal's Representative may, by giving written notice to the Supplier setting out the rights and powers which may be exercised, authorise another person to exercise all or some of the rights and powers under clause 7.2. Subject to clause 7.5, no other person is permitted to exercise any right or function of the Principal. The Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any other person. The Principal shall not be liable upon any Claim relating to a direction given to the Supplier by any other person.
- 7.4 **(Compliance)** The Supplier must, and must ensure that its Personnel, comply with all directions given by the Principal's Representative within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.
- 7.5 **(Change)** The Principal may notify the Supplier of a change in the Principal's Representative at any time.

8. SUPPLIER'S REPRESENTATIVE

- 8.1 **(Supplier's Representative)** The Supplier's Representative is appointed by the Supplier to manage the Supplier's performance of the Contract. Matters which are in the knowledge of the Supplier's Representative are deemed to be within the knowledge of the Supplier.
- 8.2 **(Change)** The Supplier may seek the approval of the Principal to change the Supplier's Representative. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal may refuse to approve a replacement person if the Principal reasonably believes that the person is inappropriate to take the role of Supplier's Representative or is of lesser skill, experience and competency to the person being replaced. If the Principal reasonably objects to the nominated representative, the Supplier shall promptly nominate another representative.

9. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS

- 9.1 **(Obligations, Warranties and Representations)** The Supplier:
- (a) **(ability)** must ensure, and warrants and represents that the Supplier and, to the extent applicable to them, its Personnel:
 - (i) have the experience, skills, expertise resources and judgement;

- (ii) hold all necessary competencies, licences, accreditations, qualifications, permits, clearances or other authorisations,

which are required for the Supplier to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances or other authorisations at all times until the Supplier's obligations under the Contract are at an end;

- (b) **(standard of Services)** must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice and so that the Services are fit for the purpose or purposes stated in the Contract;

- (c) **(workmanship)** where the Services require the carrying out and completion of any Works, must ensure that at the End Date those Works:

- (i) are free from defects; and

- (ii) comply in all respects with:

- A. the Contract;

- B. any approved design of the Works; and

- C. any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification included or incorporated by reference into the Contract or, if none is included or incorporated, any Australian standards applicable to the Works;

- (iii) are fit for the purpose or purposes stated in or to be reasonably inferred from the Contract,

and that any design prepared by the Supplier in relation to the Works is in accordance with the requirements of the Contract;

- (d) **(condition of Goods)** must ensure that all Goods used or supplied in the performance of the Services:

- (i) at the time at which they are used or supplied and for the duration of any applicable Warranty Period:

- A. are free from defects and of merchantable quality;

- B. comply in all respects with the Contract including as to quality, quantity, performance, functionality and description;

- C. conform to any sample goods approved by the Principal; and

- D. are fit for the purpose or purposes for which they are used or supplied;

- (ii) at the time at which they are used or supplied, comply with applicable law and where manufactured, are new; and

- (iii) when title passes, are free from all encumbrances and interests, except for an encumbrance or interest which arises by operation of a law and which cannot be excluded by agreement;

- (e) **(Supplier Documents)** must ensure that where the Supplier provides Supplier Documents under the Contract:

- (i) those Supplier Documents:

- A. comply with the requirements of the Contract and applicable law;
 - B. are of a standard and quality reasonably expected of a skilled and competent supplier, using Good Industry Practice;
 - C. are fit for the purpose for which they are provided; and
- (ii) except to the extent that they are prepared strictly in accordance with technical plans or drawings provided to the Supplier by the Principal:
- A. the Supplier Documents; and
 - B. the Principal's use of the Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract;

will not infringe Intellectual Property Rights

- (f) **(investigations)** warrants and represents that the Supplier has carefully reviewed the Contract (including the Scope and all other information contained in or incorporated by reference into the Contract) and is satisfied that the Scope and other information is appropriate and adequate to enable the Supplier to comply with its obligations under the Contract;
 - (g) **(legal capacity)** must ensure, and warrants and represents that the Supplier has the full power, authority and capacity to enter into the Contract and that the Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;
 - (h) **(Price)** warrants and represents that the rates and prices in the Contract include compliance with all of the Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.
- 9.2 **(Improper Conduct)** The Supplier warrants and represents that neither the Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Supplier must not engage in any Improper Conduct in connection with the Contract.
- 9.3 **(Notice of breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached a warranty given or representation made or obligation provided for, in clause 9.1 or 9.2.
- 9.4 **(Obligations, warranties and representations not affected)** The obligations, warranties and representations in clause 9.1 remain unaffected notwithstanding:
- (a) that the Scope was prepared by the Principal or the Principal's Personnel;
 - (b) any inspection, test, receipt, review, permission, approval or comment on, of or in relation to the Services by the Principal or the Principal's Personnel;
 - (c) any Variation or other direction by the Principal or the Principal's Personnel; or
 - (d) the adoption or incorporation into the Supplier Documents by the Supplier of any industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except that clauses 9.4(c) and 9.4(d) do not apply to the extent that the Supplier has, prior to acting or omitting to act in reliance on the direction or the affected Supplier Documents, given the Principal prior written notice expressly stating that the Variation, direction, adoption, or incorporation would affect a warranty or obligation and the warranty or obligation was affected in the manner so notified.

10. SUPPLIER'S PERSONNEL

- 10.1 **(General)** The Supplier must ensure that its Personnel involved in the performance of the Supplier's obligations under the Contract:
- (a) act, professionally and courteously in all dealings with the Principal, the Principal's Personnel and the general public in connection with the Contract;
 - (b) do not engage in any Improper Conduct;
 - (c) do not directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out or to the public generally;
 - (d) are familiar with and properly trained for their allocated role;
 - (e) perform their allocated role competently, safely and in accordance with Good Industry Practice and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations; and
 - (f) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).
- 10.2 **(Key Personnel)** The Supplier must ensure that only Key Personnel perform the roles identified in the Reference Schedule and that the nominated Key Personnel perform those roles for the period identified in the Reference Schedule. The Supplier may seek the approval of the Principal to change the identity or role of any Key Personnel or to engage additional persons as Key Personnel. The Supplier must provide any information reasonably required by the Principal in connection with such a request. The Principal cannot unreasonably refuse to approve a replacement or additional key person that is of equal or greater skill, experience and competency to the person nominated in the Contract as the key person for that role.
- 10.3 **(Local Government Worker)** The Supplier must ensure that when acting as a Local Government Worker, the Supplier's Personnel:
- (a) have all appropriate qualifications, skills and training to exercise a power or perform a responsibility under Chapter 5, Part 2, Division 2 of the *Local Government Act 2009* (Qld);
 - (b) do not exercise any power or perform a responsibility under Division 2, Chapter 5 of the *Local Government Act 2009* (Qld) unless the Personnel are authorised as Local Government Workers by the Principal; and
 - (c) comply with all obligations of a Local Government Worker imposed under the *Local Government Act 2009* (Qld).
- 10.4 **(Police checks)** If the Principal directs the Supplier to obtain a National Police Certificate in respect of any of the Supplier's Personnel then the Supplier must not permit those Personnel to perform any part of the Services or to have access to any Confidential Information of the Principal or the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of the National Police Certificate for those Personnel. If the National Police Certificate contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the person is not permitted to perform the Services or may otherwise place conditions upon that person's role in performing the Services. The Supplier must use its best endeavours to provide any additional information which the Principal may reasonably request in relation to a National Police Certificate.
- 10.5 **(Industrial relations)** The Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Supplier must promptly inform, and keep informed, the Principal in relation to any potential or actual industrial relations issues which could affect the

ability of the Supplier to comply with its obligations under the Contract.

10.6 **(Modern Slavery)** The Supplier:

- (a) must not engage in Modern Slavery and warrants and represents that it has not engaged in any Modern Slavery;
- (b) must take, and warrants and represents that it has taken, all reasonable steps to identify and eliminate Modern Slavery in the business and operations of its subcontractors, suppliers and consultants;
- (c) immediately notify the Principal in writing if it becomes aware of any Modern Slavery in the Supplier's business or operations or the business or operations of its subcontractors, suppliers or consultants.

10.7 **(Labour Hire)** The Supplier must not provide or utilise any labour hire services in connection with the Contract, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld).

10.8 **(Removal)** The Principal may at any time direct the Supplier to remove any of the Supplier's Personnel from the performance of the whole or part of the Supplier's obligations under the Contract if the Principal reasonably believes that the Supplier is in breach of any clauses 9.1(a), 9.2, 10.1, 10.3, 10.6 or 10.7 or if a National Police Certificate contains any entries in respect of that person, or that the person is otherwise responsible for a breach of the Contract by the Supplier.

11. SUBCONTRACTING, ASSIGNMENT AND NOVATION

11.1 **(By the Supplier)** The Supplier must not subcontract, assign or novate the whole or any part of its rights and/or obligations under the Contract unless it has first obtained the written consent of the Principal. Subcontracting of the Supplier's obligations shall not relieve the Supplier from any liability or obligation under the Contract. As between the Principal and the Supplier, the Supplier shall be responsible and liable to the Principal for the acts and omissions of the Supplier's Personnel in connection with the Contract as if they were the acts or omissions of the Supplier.

11.2 **(By the Principal)** The Principal may contract, assign or novate the whole or any part of its obligations under the Contract in its absolute discretion and without obtaining the consent of the Supplier.

11.3 **(Third party warranties)** The Supplier shall obtain and provide to the Principal, the warranties required by the Contract. Unless otherwise directed by the Principal, the Supplier shall also obtain a warranty from each subcontractor, supplier, retailer or manufacturer on terms commonly provided by those subcontractors, suppliers, retailers or manufacturers for their parts of the Services, in the name of both the Principal and the Supplier.

11.4 **(Subcontracts)** The Supplier must ensure that any subcontracts into which it enters place the same obligations, responsibilities and liabilities on the subcontractor that this Contract places on the Supplier to the extent that they are relevant to the services provided by the subcontractor.

12. SITE

12.1 **(Access for Supplier)** The Principal will give the Supplier sufficient, but non-exclusive, access to the Site to carry out the Supplier's obligations under the Contract. The Principal may refuse to give such access until the Supplier has given the Principal:

- (a) evidence of insurance required by clause 23.4;
- (b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Supplier to comply with its obligations under the Contract;

- (c) any other documents or information which the Contract requires to be given to the Principal before access to the Site shall be given, including those identified in the Reference Schedule; and
- (d) evidence that the Supplier has done all other things which the Contract requires to be done before access to the Site shall be given, including those identified in the Reference Schedule.

12.2 **(Access for Principal)** The Principal and its Personnel shall be entitled to access the Site and any other place where any obligation of the Supplier under the Contract is or is to be carried out on the giving of reasonable written notice, including to conduct tests, inspections or audit of the Supplier's compliance with the Contract or to carry out other services or work at the Site. The Supplier must cooperate, communicate and co-ordinate with the Principal and the Principal's Personnel in relation to the access by the Principal and the Principal's Personnel. The Principal must use reasonable endeavours to ensure none of the Principal's Personnel impedes the Supplier in the performance of the Services.

12.3 **(Site specific requirements)** The Supplier must comply with the reasonable requirements of the Principal in relation to the Supplier's access to or conduct on the Site, including those identified in the Reference Schedule.

13. MEETINGS

13.1 The Supplier must, at the times required by the Reference Schedule and when otherwise reasonably required by the Principal, meet and discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract.

14. TIMING

14.1 **(Timing)** Subject to the Contract, the Supplier must commence performing its obligations under the Contract by the Start Date and must perform those obligations:

- (a) within any working hours described in the Reference Schedule and/or elsewhere in the Contract;
- (b) with due expedition and without delay;
- (c) in accordance with any requirements of the Contract and any reasonable directions of the Principal as to the order and timing of the performance of those obligations (including any program or schedule included in the Contract or agreed between the Parties); and
- (d) until the end of the Term.

14.2 **(Delay or interruption)** The Supplier must promptly notify the Principal's Representative if it suspects, or becomes aware, that the performance of the whole or any part of the Services will be interrupted or delayed and must provide any further information reasonably requested by the Principal's Representative in relation to the delay or interruption.

14.3 **(No monetary compensation)** The Supplier shall not be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Supplier's obligations under the Contract however caused.

15. VARIATIONS

15.1 **(Direction for Variation)** The Principal may at any time prior to the End Date and for any reason direct a Variation by giving written notice to the Supplier. The Principal cannot direct a Variation which is outside the general scope of the Contract. The Supplier cannot carry out a Variation without a written direction to do so from the Principal.

15.2 **(Variation proposal)** The Principal may direct the Supplier to provide an estimate or quotation

for a Variation and/or a statement as to the impact of a Variation on the Services, including the cost and timing of the Services. The Principal may direct the Supplier to support the estimate, quotation or statement with documentary evidence and may direct the time within which the estimate, quotation or statement is to be provided. The Supplier must comply with such a direction at its expense.

- 15.3 **(Adjustment of Price)** Subject to clause 15.4, the effect of a Variation on the Supplier's entitlement to payment shall be determined using the following order of priority:
- (a) agreement between the Parties;
 - (b) applicable fees, rates or prices (if any) stated in Schedule 1; or
 - (c) by the Principal (acting reasonably).
- 15.4 **(No entitlement)** The Principal shall not be liable upon any Claim in connection with a direction for a Variation, unless:
- (a) the Principal's Representative has expressly stated in writing that the direction is a direction for a Variation; or
 - (b) within 10 Business Days of being given the direction, and where possible before the Supplier complies (in whole or part) with the direction the Supplier has, notified the Principal in writing that it considers that the direction constitutes a Variation.
- 15.5 **(Variations requested by the Supplier)** The Principal may approve a request for a Variation by the Supplier. Unless the Principal agrees otherwise in writing, a Variation approved under this clause 15.5 shall have no effect on the Supplier's entitlement to payment, timing of the Supplier's obligations or any other obligation of the Supplier under the Contract.
- 15.6 **(Omissions)** Where the Principal directs a Variation omitting or reducing any part of the Services then the Principal may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. The Supplier shall not be entitled to any monetary compensation in connection with an omission or reduction, and such omission or reduction shall not invalidate or constitute repudiation of the Contract.

16. INVOICES AND PAYMENT

- 16.1 **(Timing of invoices)** Subject to clause 16.11, the Supplier may submit invoices to the Principal for Services provided in accordance with the Contract at the times and for the Services stated in the Reference Schedule.
- 16.2 **(Requirements of invoices)** Each invoice must comply with the GST Law and all other requirements:
- (a) stated in the Reference Schedule; or
 - (b) which the Principal reasonably directs prior to the time for submission of the invoice.
- 16.3 **(Further supporting documentation)** The Principal may, acting reasonably, direct the Supplier to provide documentary evidence supporting the Supplier's entitlement to payment of the whole or part of the amount claimed. Until such evidence is provided the Principal may assess the claim on the basis that the supporting documentation does not exist.
- 16.4 **(Entitlement to payment)** The Supplier shall only be entitled to payment for Services which are provided in accordance with the requirements of the Contract (including the warranties given and representations made in the Contract).
- 16.5 **(Amount due)** The Principal may deduct from any amount claimed by the Supplier under or in connection with the Contract (including for a breach of the Contract):

General Conditions



- (a) any amount which the Contract entitles the Principal to deduct;
- (b) any other amount due and owing by the Supplier to the Principal; and
- (c) any amount which the Principal reasonably claims is or will become due and owing by the Supplier to the Principal (whether under the Contract or otherwise).

The balance remaining after such deductions shall be due by the Principal to the Supplier or by the Supplier to the Principal as the case may be and shall be certified as such by the Principal within 15 Business Days after the invoice is received.

- 16.6 **(Due date for payment)** Subject to the Contract, the Principal shall pay the amount due to the Supplier (if any) including any applicable GST before the end of the Payment Period. If an amount is due from the Supplier to the Principal, the Supplier must pay that amount including any applicable GST within 25 Business Days of receiving written notification to this effect from the Principal.
- 16.7 **(Disputed Invoice)** If the Principal disputes an invoice issued by the Supplier:
- (a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 16.5 and dispute the balance; and
 - (b) if the resolution of the dispute determines that the Principal must pay an amount to the Supplier, the Principal will pay that amount upon resolution of that dispute.
- 16.8 **(No admission)** Payments made by the Principal to the Supplier are made on account only and do not constitute an admission that the Supplier is entitled to the payment made or that the Services and/or the Supplier Documents the subject of the payment have been provided, or any other obligation has been carried out, in accordance with the Contract.
- 16.9 **(Sole entitlement)** Except to the extent expressly provided otherwise in the Contract payment of the Price shall be the Supplier's only entitlement to monetary compensation for the provision of the Services and compliance with the Supplier's other obligations under the Contract.
- 16.10 **(Liability for GST)** If GST is imposed on any supply made pursuant to the Contract, the amount payable for the supply is to be increased by the amount of that GST. Each Party agrees to do all things, including providing tax invoices and other documentation, that may be necessary or desirable to enable or assist the other Party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable pursuant to any supply made under or in connection with this Contract.
- 16.11 **(Recipient created tax invoices)** Where the Principal is the recipient of a taxable supply under this Contract the Principal may issue recipient created tax invoices or recipient created adjustment notes in respect of these supplies in accordance with the GST Law and direct the Supplier not to issue tax invoices or adjustment notes in respect of the same supplies.
- 16.12 **(Final invoice)** Where directed to do so by the Principal, as a pre-condition to entitlement to payment of its final invoice, the Supplier must provide to the Principal a statutory declaration in the form contained in Schedule 2, dated after all Services and Supplier Documents have been provided.

17. LAW AND POLICIES

- 17.1 **(Compliance)** The Supplier must, and must ensure that its Personnel involved in the performance of the Services, comply with:
- (a) all law, standards and codes of practice applicable to the Supplier, the Supplier's business or the Supplier's obligations under the Contract; and

- (b) any applicable policies, guidelines, procedures and codes of the Principal which are identified in the Contract or which are publicly available or otherwise made known to the Supplier from time to time.

17.2 (Change in law) If a law:

- (a) necessitates:
 - (i) a change to the Services;
 - (ii) a change in a fee or charge; or
 - (iii) the payment of a new fee or charge;
- (b) comes into effect after the date of the Contract and could not reasonably then have been anticipated by a competent contractor; and
- (c) causes the Supplier to incur more or less cost than otherwise would have been incurred,

then the Supplier may notify the Principal in writing of the law and the effect of it on the Supplier. After the notice is given, the Parties shall attempt to agree on a change to either the Services and/or the Price. If the Parties have not reached agreement within 45 Business Days after the notice is given, then either Party may give a notice of dispute pursuant to clause 31. Unless otherwise directed by the Principal, but notwithstanding the giving of a notice of dispute, the Supplier must continue to comply with its obligations under the Contract, including by making any payments or doing any things required to comply with the law.

18. WORK HEALTH AND SAFETY

18.1 (Relationship of obligations) The obligations in this clause 18 are in addition to, and not in substitution for any other obligation of the Supplier:

- (a) under the WHS Act and WHS Regulation; or
- (b) elsewhere in the Contract or at law relating to WHS.

Nothing in this clause 18 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Supplier's obligations under this clause 18.

18.2 (Primary obligations of Supplier and Personnel) The Supplier must itself, and must ensure that its Personnel engaged in performing the Supplier's obligations under the Contract:

- (a) comply with all law (including the WHS Act and the WHS Regulation) and codes of practice relating to WHS that are in any way applicable to this Contract;
- (b) discharge the duties and comply with all relevant duties, obligations, standards and requirements under the WHS Act and WHS Regulation which are or may become applicable in connection with the Contract including any direction relating to WHS issued by the Regulator or any other Authority;
- (c) at all times identify and take all reasonably practicable steps to ensure health and safety of all persons who may be affected by the performance of the Supplier's obligations under the Contract;
- (d) consult with and co-operate with the Principal in relation to matters of WHS that the Principal (acting reasonably) considers the Supplier cannot resolve to the standard imposed by the WHS Act and the WHS Regulation and to cooperate and coordinate with the Principal to ensure any issues are resolved to that standard;

- (e) except where the Supplier is the principal contractor for a Site under the WHS Regulation, (in which case this clause 18.2(e) does not apply), comply with:
 - (i) the reasonable requirements of any third party appointed by the Principal as principal contractor for the Site; or
 - (ii) if no third party has been so appointed for the Site, the WHS policies and procedures and other WHS requirements of the Principal which are in any way applicable to this Contract for that Site.

18.3 (Incident notification) The Supplier must:

- (a) report any Notifiable Incidents to the Regulator within the specified time frame as per the WHS Act and WHS Regulation;
- (b) if any of the Supplier's Personnel are involved in an accident or other health and safety incident or otherwise suffer an injury in connection with the performance of the Services:
 - (i) immediately notify the Principal of the accident, incident or injury; and
 - (ii) within 3 Business Days of the accident, incident or injury (or such longer period as the Principal may agree) provide a report giving complete details of the incident, including results of the investigations into the causes, and any recommendations or strategies identified for the preventions in the future; and
- (c) cooperate and assist (and procure its Personnel to cooperate and assist) the Principal with any investigation by the Principal into any accident, injury or other health and safety incident in connection with the Contract.

18.4 (Supplier's WHS systems) The Supplier:

- (a) warrants and represents that it has adequate WHS systems in place having regard to the nature of its obligations under the Contract and any hazards specific to any Workplace at which an obligation under the Contract is to be carried out;
- (b) must inform the Principal of all its WHS policies, procedures or measures implemented for the performance of its obligations under this Contract;
- (c) must prepare and adopt WHS documentation which:
 - (i) addresses all the specific WHS hazards and issues relevant to the Supplier's obligations under the Contract which can be reasonably anticipated or ascertained at that time;
 - (ii) documents the system and control methods to be implemented for the performance of its obligations under the Contract,

and must update such documentation as required from time to time to ensure that it complies with clause 18.4(c);

- (d) must, where directed to do so by the Principal:
 - (i) prior to commencing the Services, submit the Supplier's WHS documentation (including the documentation required elsewhere under the Contract) to the Principal for review; and
 - (ii) within the time directed by the Principal, submit to the Principal for review any other WHS documentation that the Principal directs it to prepare,

and if the Principal notifies the Supplier that all or part of the WHS documentation is not

suitable, at its cost amend and resubmit the relevant WHS documentation;

- (e) must, if the Principal at any time during the performance of the Supplier's obligations under the Contract requests the Supplier to review any of the WHS documentation, promptly and within the time required by the Principal, review any or all of the WHS documentation in accordance with the Principal's request and either:
 - (i) submit revised documentation to the Principal; or
 - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Supplier's obligations under the Contract; and
- (f) is not entitled to make any Claim (whether for additional costs or expense) in connection with its obligations under this clause.

18.5 **(Site specific induction)** Unless otherwise directed by the Principal, the Supplier must ensure that each of its Personnel working at the Site receives a site-specific induction and that each person visiting the Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

19. HEAVY VEHICLE NATIONAL LAW

19.1 **(Definitions)** Terms used in this clause which are defined in the National Law have the same meaning as in that law unless the context otherwise requires.

19.2 **(Primary obligation)** The Supplier must ensure that, so far as is reasonably practicable, the safety of the Supplier's transport activities. Without limiting this, the Supplier must, so far as is reasonably practicable:

- (a) eliminate public risks and, to the extent it is not reasonably practicable to eliminate public risks, minimise the public risks; and
- (b) ensure the Supplier's conduct does not directly or indirectly cause or encourage:
 - (i) the driver of the heavy vehicle to contravene the National Law; or
 - (ii) the driver of the heavy vehicle to exceed a speed limit applying to the driver; or
 - (iii) another person, including another party in the chain of responsibility, to contravene the National Law.

19.3 **(Notice)** The Supplier must immediately notify the Principal if the Supplier considers that anything in this Contract, or any act or omission of the Principal or its respective officers, employees, agents or representatives has or is likely to directly or indirectly cause or encourage the Supplier or any employee or subcontractor of the Supplier:

- (a) being the driver of a heavy vehicle to contravene the National Law; or
- (b) being the driver of a heavy vehicle to exceed a speed limit applying to the driver; or
- (c) being another person, including another party in the chain of responsibility, to contravene the National Law.

20. PROTECTION OF PROPERTY AND THE ENVIRONMENT

20.1 **(General)** The Supplier must and must ensure that to the extent applicable to them, its Personnel:

- (a) perform the Supplier's obligations under the Contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and

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- (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.

20.2 **(Rectification of damage)** The Supplier must promptly rectify:

- (a) any damage to any property which is caused by the Supplier or the Supplier's Personnel in connection with the performance of its obligations under the Contract; and
- (b) any damage to any property, which occurs whilst the Supplier is responsible for its care (whether or not due to any act or omission of the Supplier).

The Supplier shall be entitled to claim the cost which it reasonably and necessarily incurs in making good any such damage to the extent that the negligent act or omission or Wilful Misconduct of the Principal or the Principal's Personnel caused or contributed to the damage and/or the Principal failed to act reasonably to mitigate the damage.

21. INDEMNITY

21.1 **(Indemnity)** To the extent permitted by law, the Supplier shall indemnify and keep indemnified the Principal and the Principal's officers, employees and related bodies corporate against:

- (a) any of the following:
 - (i) loss of or damage to property of the Principal (including Supplier Documents);
 - (ii) Claims by any person against the Principal in respect of personal injury or death, or loss of or damage to property of any party; and
 - (iii) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal,

to the extent caused or contributed to by the negligence or Wilful Misconduct of the Supplier or its Personnel and/or the breach of Contract by the Supplier; and

- (b) Claims by any person against the Principal and any cost, expense, fine, penalty, damages or loss which may be imposed upon, suffered or incurred by the Principal resulting from an infringement or alleged infringement of Intellectual Property Rights in connection with the Services by the Supplier or its Personnel,

but the indemnity will be reduced to the extent that the act or omission of the Principal or the Principal's Personnel caused or contributed to the cost, expense, fine, penalty, loss, damage, injury or death and/or the Principal failed to act reasonably to mitigate the cost, expense, fine, penalty, loss or damage.

21.2 **(Acceptance of benefit)** The Principal has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the Supplier's undertaking to indemnify under clause 21.1.

22. LIMITATION OF LIABILITY

22.1 **(Limit of liability)** To the extent permitted by law:

- (a) the aggregate liability of each Party to the other in respect of any Claim in connection with the Contract will not exceed that Party's Liability Limit;
- (b) neither Party, shall be liable to the other for any loss of profits, loss of opportunity, loss of agreement or loss of business in connection with the Contract unless, and then only to the extent, that the Contract expressly provides for that liability.

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22.2 **(Exceptions)** Clause 22.1 does not apply to:

- (a) liability of the Principal to pay the Price;
- (b) liability of either Party in connection with personal injury, or death or damage to property;
- (c) liability of a Party arising as a result of:
 - (i) an infringement of confidentiality or Intellectual Property Rights;
 - (ii) a deliberate breach or abandonment of the Contract;
 - (iii) Wilful Misconduct;
 - (iv) a breach of any law; or
 - (v) fraud or other criminal conduct,by that Party;
- (d) liability of the Supplier which the Supplier:
 - (i) is entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Supplier uses all reasonable endeavours to, but does not actually, recover that liability; or
 - (ii) would have been entitled to recover under any insurance policy required to be effected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Supplier or the existence of this clause 22,

and amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in calculating whether the relevant Party's Liability Limit in clause 22.1(a) has been reached.

23. **INSURANCE**

- 23.1 **(Insurances to be effected and maintained)** The Supplier must effect the insurances stated in the Reference Schedule and any other insurance which the Supplier considers is necessary to protect its interests or which is required by law.
- 23.2 **(Period of insurance)** The insurance policies required under clause 23.1 must be maintained at all times from the Start Date:
- (a) until 5pm on the later of:
 - (i) the End Date; and
 - (ii) the date on which the Supplier's obligations under the Contract are complete; and
 - (b) in respect of professional indemnity insurance only, for a period of 7 years after the date in clause 23.2(a).
- 23.3 **(Subcontractors)** The Supplier must ensure that any subcontractor, supplier or consultant of the Supplier has equivalent insurances to the extent that they are applicable to the part of the Services to be carried out by the subcontractor, supplier or consultant.
- 23.4 **(Evidence of insurance)** If requested by the Principal, the Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by

the Principal of the Supplier's compliance with this clause 23.4. The Principal may suspend the Contract or withhold payment from the Supplier until such evidence is provided.

- 23.5 **(No implied limitation)** Nothing in this clause, nor the Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Supplier's liability under the Contract or at law.
- 23.6 **(Notification)** The Supplier must:
- (a) if any insurance policy required under the Contract is cancelled or the Principal's interest in respect of any of those policies is adversely affected, immediately notify the Principal's Representative of this;
 - (b) if any event occurs which may give rise to a claim involving the Principal under any policy of insurance to be effected by the Supplier under this clause 23:
 - (i) notify the Principal within 10 Business Days of that event; and
 - (ii) ensure the Principal is kept fully informed of any subsequent actions and developments concerning the relevant claim.

24. INSPECTIONS AND TESTS

- 24.1 **(Right to inspect and test)** The Principal may inspect and test, or engage a third party to inspect and test, any or all Services, Works, Goods and Supplier Documents provided to ensure that the Services, Works, Goods and the Supplier Documents comply with the Contract, including all warranties given and representations made by the Supplier in the Contract. Inspections or tests carried out by or on behalf of the Principal shall not relieve the Supplier of any obligation or liability under the Contract nor limit or waive any right of the Principal.
- 24.2 **(Cost)** If an inspection or test undertaken by or on behalf of the Principal reveals a failure by the Supplier to comply with the Contract, then the costs reasonably incurred by the Principal in undertaking the inspection or test shall be a debt due and payable by the Supplier to the Principal.

25. HANDLING OF INFORMATION

- 25.1 **(Obligation of confidence)** A Party must not use the other Party's Confidential Information for any purpose other than complying with its obligations or exercising its rights in connection with the Contract ("Permitted Purpose"). A Party may not disclose the other Party's Confidential Information to a third party other than in the Exceptional Circumstances. The Parties must take reasonable steps to prevent the unauthorised disclosure to or use by any other person, firm or company of the Confidential Information.
- 25.2 **(Breach of Confidence)** If a Party becomes aware of a suspected or actual breach of clause 25.1, that Party must immediately notify the other Party and take reasonable steps required to prevent, stop or mitigate the extent of the breach. The Parties acknowledge that damages will not be an adequate remedy for such a breach.
- 25.3 **(Return of Confidential Information)** Subject to this clause 25, the Disclosee of Confidential Information must return or destroy (at the Discloser's discretion) all Confidential Information and material containing Confidential Information when it is no longer required by the Disclosee for the Permitted Purpose or when otherwise directed by the Discloser. The Disclosee may, subject to its continuing obligation to comply with this clause 25, keep such copies as are required to comply with any law or to comply with its reasonable corporate governance requirements for so long as is necessary to satisfy those requirements.
- 25.4 **(Personnel)** The Parties must make every reasonable effort to ensure that only its Personnel that have a need to know any Confidential Information for the Permitted Purpose are permitted to access and use the other Party's Confidential Information and its Personnel are aware of and comply with the obligations of confidentiality in this clause 25.

- 25.5 **(Collection of information by the Supplier)** If the Supplier collects or has access to Personal Information as that term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Supplier must comply with Parts 1 and 3 of Chapter 2 of that Act in relation to the discharge of its obligations under this Contract as if the Supplier was the Principal. Where the Principal consents to the Supplier subcontracting the whole or part of the Supplier's obligations under this Contract, the Supplier must ensure that any subcontract with a subcontractor that will collect or have access to Personal Information contains a clause requiring the subcontractor to acknowledge and agree that it is a 'bound contracted service provider' as that term is defined in the *Information Privacy Act 2009* (Qld).
- 25.6 **(Collection of information by the Principal)** The Principal collects Personal Information and other information in connection with the Contract so that it can properly administer the Contract and otherwise carry out its functions as a local government authority. The Principal is authorised to collect this information under the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld) and other law. The information will be accessible by Personnel of the Principal engaged to assist the Principal in connection with the Contract or otherwise carrying out the functions of the Principal. Information may also be disclosed as otherwise permitted under the Contract or at law, including under the *Local Government Regulation 2012* (Qld) and the *Right to Information Act 2009* (Qld).
- 25.7 **(Right to Information)** The Supplier acknowledges that:
- (a) the *Right to Information Act 2009* (Qld) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including the Principal);
 - (b) the Act requires that documents be disclosed upon request, unless the documents are exempt or on balance, disclosure is contrary to public interest; and
 - (c) information provided by the Supplier in connection with the Contract is potentially subject to disclosure to third parties, including information marked as confidential.

The Principal will assess any application for disclosure in accordance with the terms of the *Right to Information Act 2009* (Qld).

- 25.8 **(Media)** The Supplier must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article or information whether oral or written, in connection with the Contract in any media without the prior approval of the Principal.

26. INTELLECTUAL PROPERTY

- 26.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Principal's Background IP strictly for the purpose of complying with the Supplier's obligations under the Contract and for no other purpose. The Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy reproduce, modify and adapt the Supplier's Background IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract. Each Party warrants and represents to the other that the use of the Party's Background IP will not infringe any Intellectual Property Rights of a third party.
- 26.2 **(Project IP - Alternative 1)** If the Reference Schedule provides that Project IP vests in the Principal, then:
- (a) Project IP vests on creation in and is the exclusive property of the Principal;
 - (b) to the extent (if any) that clause 26.2(a) does not vest Project IP in the Principal, the Supplier assigns all right, title and interest in the Project IP to the Principal; and

- (c) the Principal grants the Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Supplier to comply with the Supplier's obligations under the Contract and for no other purpose.
- 26.3 **(Project IP - Alternative 2)** If the Reference Schedule provides that Project IP vests in the Supplier, Project IP vests in the Supplier on creation and the Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy, reproduce, modify and adapt the Project IP for any purpose for which the Services are provided and for the purpose of complying with the Principal's obligations and exercising the Principal's rights in connection with the Contract.
- 26.4 **(Moral Rights consent)** If the Reference Schedule provides that a Moral Rights consent is required then:
- (a) the Principal may do anything which would, but for this clause, constitute an infringement of the Moral Rights of the Supplier or any of its Personnel in the Background IP or the Project IP; and
- (b) the Supplier must procure, and on request by the Principal provide to the Principal a copy of, a written consent to this effect from each of its Personnel that is the author of any Supplier Documents.
- 26.5 **(Warranty and representation by Supplier)** The Supplier warrants and represents that:
- (a) it has the necessary rights to exercise any Intellectual Property Rights that it uses to provide the Services, or to assign or license the Supplier's Background IP and Project IP in accordance with this clause 26;
- (b) it has not infringed and will not infringe any Intellectual Property Rights of a third party in connection with the performance of its obligations under the Contract; and
- (c) except to the extent that the infringement is caused by the Supplier's incorporation of the Principal's Background IP, the Project IP and the Principal's use of the Project IP for a purpose stated in or to be reasonably inferred from the Contract will not infringe the Intellectual Property Rights of a third party.

27. NON-CONFORMANCE

- 27.1 **(Non-conformance)** Where any part of the Services, Works, Goods or Supplier Documents provided by the Supplier does not conform strictly to the requirements of the Contract, or the Supplier fails to comply with any other obligation of the Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 30, exercise the rights provided in clause 27.2.
- 27.2 **(Principal's rights)** Where permitted by clause 27.1, the Principal may:
- (a) direct the Supplier to provide a detailed proposal as to how the Supplier proposes to rectify the non-conformance and the time within which such a proposal is to be provided; or
- (b) whether or not the Principal has given a direction under clause 27.2(a), direct the Supplier to:
- (i) rectify the non-conformance or failure, including by:
- A. performing or reperforming any non-conforming Services;
- B. removing, demolishing, repairing, replacing or reconstructing any non-conforming Works or Goods;
- C. replacing non-conforming Supplier Documents; and

- (ii) make good any damage to any property (including Works or Goods) to the extent caused by the non-conformance or the rectification,

at the Supplier's expense and within the timeframes reasonably directed by the Principal.

27.3 **(Step-in rights)** Where the Supplier fails to comply with a direction under clause 27.2(a) or 27.2(b), the Principal may:

- (a) after giving at least 5 Business Days written notice to the Supplier (except in the case of emergency, in which case no notice is required) take any of the steps contemplated by clause 27.2(b) itself or engage a third party to do so; or
- (b) accept the non-conformance or failure and adjust the Price as if the Principal had directed a Variation for the non-conformance or failure.

27.4 **(Costs)** The cost reasonably incurred by the Principal in connection with any action taken pursuant to clauses 27.2 or 27.3 shall be a debt due and owing by the Supplier to the Principal.

27.5 **(Timing)** The rights given to the Principal under clauses 27.2 and 27.3 may be exercised at any time up to 12 months after the later of:

- (a) the date on which the Services, Goods, Works or Supplier Documents were provided by the Supplier; and
- (b) the End Date.

27.6 **(Application of clause)** For clarity, this clause 27 shall apply to all Services, Works, Goods and Supplier Documents provided or to be provided, under the Contract, including Services, Works, Goods and Supplier Documents provided in compliance with a direction under clause 27.2(b).

28. **SUSPENSION**

28.1 **(Right to suspend)** The Principal may direct the Supplier to suspend the performance of the whole or part of the Supplier's obligations under the Contract at any time and for any reason and may direct the Supplier to recommence performing those obligations by giving written notice to the Supplier. The Supplier must not suspend the performance of its obligations under the Contract without the prior written consent of the Principal.

28.2 **(Costs of suspension)** If the suspension is directed due to any act or omission of the Supplier or its Personnel (including a breach of the Contract by the Supplier) then the Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Supplier demonstrates it cannot reasonably mitigate.

29. **FORCE MAJEURE**

29.1 **(Notification of Force Majeure)** If either Party is rendered unable wholly or in part by Force Majeure to carry out any of its obligations under the Contract (other than an obligation to make a payment of monies), that Party ('the Affected Party'), shall give to the other Party prompt written notice of such Force Majeure detailing the particulars of the Force Majeure and to the extent that it is ascertainable at the time of giving the notice, the extent to which it will be unable to perform or be delayed in performing its obligations.

29.2 **(Suspension)** On the giving of a notice under clause 29.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.

29.3 **(Mitigation)** The Affected Party shall use all reasonable diligence to mitigate the effect of the Force Majeure on its obligations as quickly as possible. The Affected Party must notify the other Party as soon as it is no longer affected by such Force Majeure.

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29.4 **(Industrial relations)** Clause 29.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on terms contrary to its wishes. The manner in which all such difficulties shall be handled shall be entirely within the discretion of the Affected Party.

29.5 **(Principal's rights)** Where the Supplier gives a notice under clause 29.1, the Principal may at its election:

(a) itself perform, or engage others to perform the obligations which the Supplier is unable to perform and may continue to perform such obligations until the later of the time that the Principal is reasonably satisfied that the Supplier is able to resume performance of those obligations and the time at which any interim arrangements put in place by the Principal are able to be reasonably brought to an end;

(b) take such other action as the Principal, acting reasonably, considers appropriate.

The cost incurred by the Principal in exercising these rights shall be borne by the Principal.

29.6 **(Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may terminate the Contract immediately by giving written notice to the Supplier.

30. TERMINATION, DEFAULT AND INSOLVENCY

30.1 **(Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion terminate the Contract by giving 25 Business Days written notice to the Supplier.

30.2 **(Notice to show cause)** If a Party ("the defaulting Party") commits a Substantial Breach of the Contract, then the other Party may give the defaulting Party a notice to show cause. The notice to show cause must state:

(a) that it is a notice to show cause under clause 30;

(b) the alleged Substantial Breach;

(c) that the defaulting Party is required to show cause in writing why the other Party should not exercise a right referred to in clause 30.3 or clause 30.4 (as the case may be);

(d) the date and time by which the defaulting Party must show cause (which must be a reasonable period taking into account the nature of the breach); and

(e) where applicable, the place at which cause must be shown.

30.3 **(Principal's rights)** If:

(a) the Supplier is subject to an Insolvency Event;

(b) the Supplier commits a Substantial Breach which is incapable of remedy; or

(c) by the time specified in the notice to show cause given by the Principal to the Supplier under clause 30.2, the Supplier fails to show reasonable cause why the Principal should not exercise a right under this clause 30.3,

the Principal may by giving written notice to the Supplier:

(i) to the extent permitted by law immediately terminate this Contract; or

(ii) permanently or temporarily take the whole or any part of the obligations of the Supplier under the Contract (including the obligation to remedy the default) out of the hands of the Supplier and may itself perform those obligations or engage a third party to do so on the Principal's behalf, in which case:

- A. the Supplier shall not be entitled to any further payment in respect of the obligations taken out of Supplier's hands;
- B. the Supplier must continue to perform any obligations under the Contract that were not taken out of the Supplier's hands;
- C. the Principal or the third party so engaged may enter the Site and any relevant premises of the Supplier and use all of the Supplier's plant, equipment, Goods and materials as may be necessary to perform the obligation;
- D. the Principal may, on the giving of reasonable notice, require the Supplier to resume the performance of the obligations of the Supplier under the Contract which were taken out of the hands of the Supplier if the Supplier ceases to be subject to an Insolvency Event or the Principal is otherwise of the view that the Supplier is capable of continuing to perform its obligations under the Contract in accordance with the Contract; and
- E. if the costs incurred by the Principal in performing the obligations or engaging a third party to do so are greater than the costs which would have been incurred had the Supplier performed the obligation then the difference shall be a debt due and owing by the Supplier to the Principal and may be deducted from payments otherwise owing to the Supplier. Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Supplier.

30.4 **(Supplier's rights)** If:

- (a) the Principal commits a Substantial Breach which is incapable of remedy; or
- (b) by the time specified in a notice to show cause given by the Supplier to the Principal under clause 30.2, the Principal fails to show reasonable cause why the Supplier should not exercise a right under this clause 30.4,

the Supplier may at its election:

- (i) suspend the whole or part of the Services (but only after ensuring that the Site is left in a secure and safe condition); or
- (ii) if the breach is not capable of remedy, terminate the Contract by giving written notice to the Principal.

If the Supplier suspends the whole or part of the Services under this clause 30.4, the Supplier shall lift the suspension if the Principal remedies the breach but if, within 45 Business Days after the suspension, the breach is not remedied and the Principal fails to make other arrangements to the reasonable satisfaction of the Supplier, then the Supplier may terminate the Contract by giving written notice to the Principal.

30.5 **(Consequences of termination)** If the Contract is terminated by either Party for any reason, then:

- (a) unless otherwise directed by the Principal, the Supplier must secure the Site in a safe and proper manner and remove all of its Personnel, plant and equipment from the Site within 5 Business Days of the date of termination;
- (b) the Principal may carry out any obligation of the Supplier which has not been carried out and completed as at the date of termination itself or engage others to do so on the Principal's behalf; and
- (c) the Principal shall, subject to the Contract, pay the Supplier:

- (i) the amount which the Supplier is entitled to be paid under the Contract for Services provided by the Supplier in accordance with the Contract up to and including the date of termination; and
- (ii) if the termination is solely due to the act or omission of the Principal, without any fault on behalf of the Supplier, the amount of any other direct costs which the Supplier demonstrates it cannot reasonably mitigate and which the Supplier has reasonably, necessarily and not prematurely incurred:
 - A. prior to the termination in the expectation of completing its obligations under the Contract; or
 - B. as a direct consequence of the termination,

except that the total amount payable to the Supplier under the Contract shall not under any circumstances exceed the amount to which the Supplier would have become entitled to be paid had the Contract not been terminated and the Supplier had completed those obligations itself.

30.6 **(Effect on other rights)** To the extent permitted by law the Supplier shall not be entitled to any monetary compensation in respect of the termination of the Contract by either Party or the Principal taking obligations out of the hands of the Supplier other than as expressly provided in this clause 30. Nothing in this clause 30 shall prejudice the Principal's right to claim and recover damages for breach of contract by the Supplier.

31. DISPUTE RESOLUTION

31.1 **(Mandatory process)** Unless otherwise stated in this Contract, any dispute between the Parties must be resolved in accordance with this clause 31.

31.2 **(Notice of dispute)** If a Party considers that a dispute has arisen between the Parties in connection with this Contract, then the Party must give written notice to the other, setting out the particulars of the dispute and stating that the notice is given under this clause 31. Unless the Parties otherwise agree in writing, the notice shall be delivered by hand or registered post.

31.3 **(Initial conference)** If a Party gives written notice to the other of a dispute under the Contract, representatives of the Parties shall promptly confer to attempt to resolve the dispute.

31.4 **(Mediation)** If the dispute is not resolved within 10 Business Days after the giving of the notice (or such longer period as may be agreed by the Parties) a Party may by written notice to the other Party refer the dispute for mediation in accordance with the Mediation Rules of the Resolution Institute. The mediation must be conducted by a mediator to be appointed by agreement of the Parties or in default of agreement to be appointed by the President of the Queensland Law Society or his nominee at the request of a Party.

31.5 **(Legal proceedings)** If the dispute is not resolved within 20 Business Days after the appointment of the mediator any Party may take legal proceedings to resolve the dispute.

31.6 **(Urgent relief)** This clause 31 does not prevent any Party from taking any steps under any law out of which the Parties cannot contract or obtaining any injunctive, declaratory or other interlocutory relief from a Court which may be urgently required.

31.7 **(Obligation to continue)** Notwithstanding the existence of a dispute, the parties shall, subject to clauses 28 and 30 continue to perform the contract.

32. CLAIMS

32.1 **(Claims pursuant to the Contract)** The Principal shall not be liable upon any Claim by the Supplier for an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Supplier has complied with the requirements in the Contract for notifying the Principal of and making such a claim.

32.2 **(Other Claims)** The Principal shall not be liable upon any other Claim by the Supplier in connection with the Contract unless the Supplier has given the Principal written notice of its intention to make the Claim within 6 calendar months after the direction or other event on which the Claim is based was given or occurred.

33. INTERPRETATION

33.1 **(Headings)** Headings are for reference purposes only and must not be used in interpretation.

33.2 **(No limitation)** The words 'include', 'includes' and 'including' are not words of limitation. Where the Contract provides that the Principal 'may' do something the Principal is not obliged to do that thing and is not prevented from doing any other thing.

33.3 **(Grammatical forms)** Where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning. Words importing the singular number include the plural number and words importing the plural number include the singular number.

33.4 **(Law)** A reference to 'law' includes all:

- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of an Authority having jurisdiction and any related fees and charges; and
- (b) certificates, licences, accreditations, clearances, authorisations, Approvals, consents, and permits and any related fees and charges,

which are applicable to the Supplier or the Contract or which are otherwise in force at any place where an obligation under the Contract is carried out, as introduced, amended or replaced from time to time.

33.5 **(Other references)** A reference to:

- (a) a person includes any other legal entity and a reference to a legal entity includes a person;
- (b) a clause is to a clause in the Contract unless expressly stated otherwise;
- (c) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes email and facsimile;
- (d) a monetary amount is a reference to an Australian currency amount.

33.6 **(Time)** References to time are to local time in Queensland. Where time is to be reckoned from a day or event, the day or the day of the event must be excluded. If any time period specified in the Contract expires on a day which is not a Business Day, the period shall expire at the end of the next Business Day. A reference to a day, week or month means a calendar day, week or month.

33.7 **(Indemnities)** Each indemnity provided in the Contract is a continuing indemnity which survives the expiration or termination of the Contract. The Principal need not incur any expense or make any payment in order to rely on an indemnity.

33.8 **(Contra proferentem)** The contra proferentem rule and other rules of construction will not apply to disadvantage a Party whether that Party put the clause forward, was responsible for drafting all or part of it or would otherwise benefit from it.

33.9 **(Severance)** If a provision of the Contract is void or unenforceable it must be severed from the Contract and the provisions that are not void or unenforceable are unaffected by the severance.

34. GENERAL PROVISIONS

- 34.1 **(Costs)** Each party must pay its own costs and expenses incurred in negotiating, executing, stamping, registering and performance of the Contract.
- 34.2 **(Joint and several obligations)** To the extent permitted by law, if either Party consists of two or more persons the Contract binds such persons and their respective executors, administrators, successors and permitted assigns jointly and severally, and any obligation incurred in favour of that Party may be enforceable by each person comprising that Party severally;
- 34.3 **(Governing law)** The Contract is governed by the law of Queensland and the law of the Commonwealth of Australia in force in Queensland. The Parties submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 34.4 **(Binding on successor)** The Contract shall be for the benefit of and binding upon the Parties and their heirs, executors, successors and permitted assigns.
- 34.5 **(Further assurance)** The Parties must execute and deliver all documents and must do all things as are necessary for the complete performance of their respective obligations under the Contract.
- 34.6 **(Service of notices)** A notice or other communication shall be deemed to have been given and received upon the earlier of actual receipt, or delivery to a Party's representative at the address or email address stated in the Reference Schedule or as last notified in writing by the receiving Party, but a notice or communication sent only by email shall not be deemed to have been given and received if:
- (a) the sender receives a notification from the email system of the sender or the intended recipient which indicates that the email cannot be read by the intended recipient; or
 - (b) the intended recipient demonstrates that the notice or communication could not be legibly displayed by the intended recipient's email system at that time.
- 34.7 **(Waiver)** No waiver by a Party of a provision of the Contract is binding unless made in writing. Any waiver is limited to the particular instance and does not affect the subsequent enforceability of the provision.
- 34.8 **(Consent)** Any consent of the Principal under the Contract may be given, withheld or given subject to conditions at the absolute discretion of the Principal.
- 34.9 **(Discrepancy or inconsistency)** Where there is a discrepancy or inconsistency between any obligation of the Supplier under the Contract, the Supplier must notify the Principal in writing of the discrepancy or inconsistency. If the discrepancy or issue cannot be resolved using the order of precedence under clause 2.3 then unless otherwise directed by the Principal, the Supplier must comply with the highest or most onerous requirement.
- 34.10 **(Cumulative rights and obligations)** The rights and remedies of a Party provided in the Contract are in addition to the rights or remedies conferred on the Party elsewhere in the Contract, at law or in equity. Compliance with a clause of the Contract will not relieve the Supplier of any other obligation under the Contract, at law or in equity. The exercise by the Principal of a right provided in the Contract shall not invalidate or constitute a repudiation of the Contract.
- 34.11 **(Electronic execution)** The Contract may be executed in any number of counterparts and when executed communication of the fact of execution to the other Party may be made by sending evidence of execution by fax or email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.

General Conditions



- 34.12 **(Current versions)** Except to the extent otherwise provided in the Contract, where the Contract includes or incorporates by reference any standard, plan, requirement, code, guideline, policy, standard drawing or standard specification then the Supplier must comply with the version of that standard, plan, requirement, code, guideline, policy, standard drawing or standard specification which is current as at the date of the Contract, and the sums, rates or prices in the Contract shall be deemed to have allowed for compliance with that version.
- 34.13 **(Clauses to survive termination)** In addition to any other clauses which may be found to survive termination, clauses 21, 22, 23.2(b), 25, 26, 30.5, 30.6 and 32 survive the expiration or earlier termination of the Contract.

Schedule 1 - Scope and Price



[Scope and Price to be inserted into execution copy of Contract]

EXECUTION BY THE PRINCIPAL

SIGNED for and on behalf of Banana Shire Council by its duly authorised representative in the presence of:

.....
Signature of witness

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

Date: / /

.....
Signature of authorised representative

.....
Name of authorised representative

Date: / /

EXECUTION BY THE SUPPLIER (WHERE SIGNATORY IS A CORPORATION)

SIGNED for and on behalf of the Supplier in accordance with its Constitution and Section 127 of the *Corporations Act 2001* (Cth):

.....
Director

.....
Name (block letters)

Date: / /

.....
Director/Secretary

.....
Name (block letters)

Date: / /

EXECUTION BY SUPPLIER (WHERE SIGNATORY IS NOT A CORPORATION)

SIGNED for and on behalf of the Supplier by its authorised representative (who warrants and represents that it has the power to execute this Contract on behalf of the Supplier) in the presence of:

.....
Signature of witness

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

Date: / /

.....
Signature

.....
Name of authorised representative

Date: / /



SCOPE

Theodore Construction Grader and Water Truck Hire (2023-2025)

CONTRACT NO.: T2324.11

1. INTERPRETATION AND DEFINITIONS

- 1.1 **(Documents comprising this Scope)** The Scope comprises the following documents:
- (a) Technical Specifications
 - (b) Appendix A – Pricing Schedule.
- 1.2 **(Precedence)** If there is any ambiguity, inconsistency, conflict or discrepancy between any of the documents listed in clause 1.1, then the document which contains the higher standard or more onerous obligation will prevail. If that does not resolve the ambiguity, inconsistency, conflict or discrepancy then the documents will take precedence in the order set out in clause 1.1 with the document listed at 1.1(a) being the highest in the order.

2. APPROVALS AND OTHER LAW

- 2.1 **(Identifying, obtaining and maintaining Approvals)** The Supplier must identify and notify the Principal of all Approvals which are necessary for the proper performance of the Services (other than Approvals which the Principal has advised the Supplier it has already obtained). The Supplier must obtain and maintain all such Approvals until all of the Supplier's other obligations under the Contract are complete. The cost of obtaining and maintaining all such Approvals shall be borne by the Supplier.
- 2.2 **(Compliance)** The Supplier must and must ensure that its Personnel comply with all Approvals and other law which are in anyway applicable to the Services, including, unless the Contract expressly provides otherwise, by paying all fees, royalties, levies, charges, costs, expenses, taxes or duties.
- 2.3 **(Obtaining or granting of Approvals by Principal)** The Principal gives no warranty and makes no representation that:
- (a) it will be able to obtain, or obtain within any particular time; or
 - (b) where the Principal is the relevant Authority, that it will grant,
- any Approval required for the Supplier to perform the Services.
- 2.4 **(No fetter)** Nothing in the Contract shall be taken to fetter the power, rights or authority of the Principal as the sublessor under the *Land Act 1994* (Qld) or an Authority under the *Local Government Act 2009* (Qld), the *Local Government Regulation 2012* (Qld) or any other law.
- 2.5 **(Obligation to report breach)** The Supplier must notify the Principal immediately if it becomes aware of or reasonably suspects in the course of carrying out its obligations under the Contract, that the Supplier has breached an obligation under clauses 2.1, 2.2 or 2.3. Unless otherwise directed by the Principal, the Supplier must take immediate steps to remedy such a breach at its expense.

3. SERVICE LEVELS

- 3.1 In this clause
- (a) **Review Period** means the period stated in clause 3.9 below in which the performance of the Supplier against a Service Level is to be reviewed;
 - (b) **Service Levels** means the service level(s) or key performance indicator(s) (if any) described as such in clause 3.9 below.
- 3.2 **(Guarantee)** The Supplier must, and guarantees that it will, in providing the Services and carrying out its other obligations under the Contract, achieve or exceed all Service Levels in every Review Period.

- 3.3 **(Measuring performance)** The Principal will review the performance of the Supplier against the Service Levels at the times in clause 3.9 below, and otherwise on the giving of reasonable notice. The Principal may direct the Supplier to provide a written explanation for its performance against any Service Level.
- 3.4 **(Performance liquidated damages)** If the Supplier has failed to meet any Service Level, the Supplier shall be indebted to the Principal for performance liquidated damages calculated in accordance with clause 3.9.
- 3.5 **(Recovery of liquidated damages)** The Principal may deduct such performance liquidated damages from moneys otherwise owing to the Supplier to recover the performance liquidated damages. The Parties agree that the performance liquidated damages are an agreed genuine pre-estimate of the Principal's loss if the Supplier breaches its obligations under the Contract.
- 3.6 **(General damages)** If, for any reason, the Principal's entitlement to performance liquidated damages is found to be void, voidable or otherwise unenforceable (in whole or part), or the Principal is otherwise unable to recover the whole of the performance liquidated damages from the Supplier, the Supplier shall be liable to the Principal for any loss, damage, cost or expense suffered or incurred by the Principal as a result of the Supplier failing to achieve the Service Levels.
- 3.7 **(Review of Service Levels)** The representatives of the Parties may review the Service Levels from time to time and amend them in any way including by adding additional Service Levels, removing or amending Service Levels, amending the method of measuring performance or the consequence of achieving or failing to achieve a Service Level.
- 3.8 **(Substantial breach)** Failing to achieve or exceed:
- (a) the same Service Level for three consecutive Review Periods, even though the Supplier may have achieved or exceeded some or all of the other Service Levels for those same Review Periods; or
 - (b) any two Service Levels for two consecutive Review Periods,
- shall constitute a substantial breach of the Contract.

3.9 **(Service Levels)** The Service Levels are:

Service Levels			
Service Level	Requirement	Review Period	Performance Liquidated Damages
Maintenance of plant	Plant must be well maintained and in a condition suitable for the completion of the works.	Reviewed annually	Should the poor condition of the plant interfere with the continued operations of Council works no payment for hire during the period required for the repair of the plant will be made by Council and the cost of any damages caused

			by the plant will be paid by the contractor
Plant Operations	The plant operator will operate the plant with a level of skill suitable for this task required to be undertaken as part of this contract	Reviewed Monthly	Should the poor operation of the plant result in a delay the Council operations or be the direct cause to Council or other assets the cost for the repair of the damages will be paid by the contractor

4. PROCUREMENT SERVICES

4.1 Where the Services require the Supplier to manage, conduct or otherwise participate in a Procurement Process for the engagement of a contractor or other supplier by the Principal, then the Supplier must, and must ensure that its Personnel, to the extent that it is within the control of the Supplier or its Personnel ensure that the procurement process is conducted consistently with:

- (a) the Principal's procurement policy;
- (b) the *Local Government Act 2009* (Qld) and the *Local Government Regulation 2012* (Qld);
- (c) the requirements of the request for tender or request for quotation documentation issued to tenderers;
- (d) any probity plan or evaluation plan implemented for the Procurement Process;
- (e) principles of probity; and
- (f) Good Industry Practice,

with a view to ensuring that the selected contractor or supplier is the most advantageous to the Principal having regard to the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld).

5. QLEAVE

5.1 (**QLeave**) The Supplier must comply with obligations under the *Contract Cleaning Industry (Portable Long Service Leave) Act 2005* (Qld) including by paying all levies payable pursuant to that Act and registering with QLeave.

6. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS

6.1 (**Definitions**) In this clause "**Principal Supplied Information**" means any information relating to the Contract which does not form part of the Contract but which is or has been provided or made available by or on behalf of the Principal to the Supplier in any form, whether such information is made available before or after the date of the Contract.

6.2 **(Acknowledgement and agreement by Supplier)** The Supplier acknowledges and agrees that:

- (a) the Principal gives no warranty and makes no representation in respect of this Contract. Without limiting this, the Principal gives no warranty and makes no representation:
 - (i) that the Principal Supplied Information is accurate, adequate or complete; and
 - (ii) as to the physical condition, suitability or other characteristics of the Site;
- (b) the Supplier has not relied and will not rely on the Principal Supplied Information unless and until the Supplier has independently verified the adequacy, accuracy and completeness of that information;
- (c) the Supplier:
 - (i) has carefully, thoroughly and critically reviewed, examined, investigated, inspected and checked the Principal Supplied Information and the Site and undertaken all other necessary enquiries and investigations to satisfy itself of the suitability of the Site to enable the Supplier to comply with its obligations under this Contract and of any other logistical considerations, risks, contingencies and other circumstances which could have an effect on the cost of carrying out and completing Services or compliance with the Supplier's other obligations under the Contract;
 - (ii) the Supplier has made its own interpretations, deductions and conclusions from such enquiries and investigations and accepts full responsibility for those interpretations, deductions and conclusions; and
 - (iii) the Supplier, having undertaken those enquiries and investigations, accepts the risk of any inadequacy, inefficiency, deficiency or fault in the Site and that it can and will carry out and complete the Services in accordance with the Contract and comply with its other obligations under the Contract for the Price (as adjusted pursuant to the Contract); and

6.3 **(No liability)** The Principal shall not be liable upon any Claim by the Supplier in connection with the Principal Supplied Information or the physical condition, suitability or other characteristics of the Site.

7. **SUPPLIER'S PERSONNEL**

7.1 **(Minimum Personnel levels)** The Supplier must ensure that at all times during the Term, the minimum number of each type of Personnel identified in the Contract perform the roles identified in the Contract for the periods indicated in the Contract (**Minimum Personnel Levels**). The Minimum Personnel Levels must be maintained notwithstanding any planned or unplanned absences, personal breaks, attendance at training or performance of other duties by any Personnel. Provision of the Minimum Personnel Levels does not relieve the Supplier of any obligation under the Contract. If further Personnel are required in addition to the Minimum Personnel Levels for the Supplier to comply with its obligations under the Contract, then the Supplier must provide such additional Personnel at its expense.

7.2 **(Further requirements on Personnel)** In addition to any other requirement in the Contract, the Supplier must ensure that its Personnel:

- (a) are familiar with and properly trained for their allocated role;
- (b) perform their allocated role competently and safely and where the role involves the operation of plant or equipment, in accordance with all manufacturer's recommendations;

- (c) do not either directly or indirectly cause any unreasonable nuisance or interference to the owners, tenants or occupiers of properties on or adjacent to the places where the Services are to be carried out (including Personnel of the Principal) or to the public generally;
- (d) are not affected by alcohol or drugs whilst performing any part of the Supplier's obligations under the Contract (other than prescription medication which does not affect the ability of the person to perform the relevant obligations under the Contract).

7.3 **(Police checks)** If the Principal directs the Supplier to obtain police checks then the Supplier must not permit any Personnel to perform any part of the Services or to have access to any of the Site unless and until 5 Business Days after the Supplier has given the Principal a written copy of a criminal history check produced by the Queensland Police Service for that person. If the criminal history check contains any entries, the Principal may, in its absolute discretion, notify the Supplier that the person is not permitted to perform the Services or may otherwise place conditions upon that person's role in performing the Services.

8. MEETINGS

(Meetings) The Supplier must, when reasonably required by the Principal, meet and in good faith discuss the performance of the Supplier and/or any other matter concerning the Principal in connection with the Contract including:

- (a) the Supplier's performance of its obligations under this Contract, including the Service Level(s) (if any) identified in the Contract;
- (b) to promote safer and quieter work practices; and
- (c) improvements to efficiency of the Supplier's obligations under the Contract.

8.2 **(Recommendations or directions)** The Supplier shall comply with any recommendations or directions given by the Principal in relation to the performance of the Supplier's obligations under the Contract. Such compliance will not release or discharge the Supplier from any liability or obligation under the Contract.

9. SERVICE RECORDS AND AUDITING

9.1 **(Creation)** The Supplier must:

- (a) create and maintain the following:
 - (i) Daily record of works completed – including start and end time, break times and location of works (to be signed by Council Grader Operator or Project Supervisor);
- (b) create and maintain the records, reports and other documents required by the Contract and any other records, reports or documents reasonably required by the Principal in connection with the Contract,

(‘Service Records’).

9.2 **(Audit)** The Principal may at any time during the Term, on the giving of reasonable notice, audit the Supplier's compliance with the Contract or any obligation under it. The Supplier shall facilitate the audit by:

- (a) allowing the auditors to undertake any inspections or tests;
- (b) providing such assistance, information and access to the Site, systems and equipment and other cooperation;

- (c) providing to the auditor with copies of, facilitating the copying by the auditor of, the Services Records and all other records, information and documentation,

reasonably required by the auditor.

If the audit reveals any non-compliance by the Supplier with its obligations under the Contract, then the costs reasonably and necessarily incurred by the Principal in conducting the audit shall be a debt due and payable by the Supplier. Otherwise, the Principal shall bear the cost of the audit.

10. PERSONAL PROPERTY SECURITIES

- 10.1 **(Definitions)** In this clause, PPS Act means the *Personal Property Securities Act 2009* (Cth). Terms used in this clause which are defined in the PPS Act have the meanings given in that Act.
- 10.2 **(Disclosure)** If this Contract contains a security interest, then each Party agrees for the purposes of section 275(6) of the PPS Act that it will not disclose information of the type referred to in section 275(1) of the PPS Act where a request is made under section 275(1) of the PPS Act in relation to this Contract or any part of it, except in circumstances where the Party is compelled by law (other than section 275(1) of the PPS Act) to make that disclosure.
- 10.3 **(Supplier's obligations)** If the Principal determines that any clause of this Contract, or a transaction contemplated by this Contract or in connection with the performance of its obligations under this Contract constitutes, or is likely to give rise to a security interest in respect of which the Principal is the security holder, then:
- (a) the Supplier must, within the time required by the Principal, provide all assistance and cooperation requested by the Principal that the Principal determines is reasonably required to:
- (i) register and maintain the registration of its security interest on the personal property securities register within any applicable time limits relevant to the effectiveness of the security interest;
 - (ii) ensure that the Principal's security interest is enforceable against third parties, perfected or otherwise effective;
 - (iii) ensure that the security interest has the appropriate priority required by the Principal (including where applicable as a purchase money security interest);
 - (iv) ensure that any security interest granted temporary perfection under the PPS Act is perfected by registration or other appropriate means prior to any applicable expiry of that temporary perfection; and
 - (v) enable the Principal to register financing statements or financing change statements under the PPS Act with respect to any such security interest;
 - (vi) the Supplier waives the right to receive notice of a verification statement in relation to the registration of that security interest;
 - (vii) the Supplier shall not register or permit to be registered any other security interest in respect of the personal property that comprises the collateral in respect of that security interest other than one that has been consented to or granted by the Principal
 - (viii) the Supplier shall not cause or allow any of the Supplier's personal property to become an accession to the Principal's personal property or cause or allow the Principal's personal property to become an Accession to the Supplier's personal property without the prior consent of the Principal, and

- (ix) the Supplier must immediately notify the Principal if any other person claims or attempts to enforce a security interest:
 - A. in the Principal's personal property, or
 - B. in the Supplier's personal property to the extent that that purported enforcement affects or has the potential to affect the Supplier's ability to carry out its obligations in accordance with the terms of the Contract.



TECHNICAL SPECIFICATION

Theodore Construction Grader and Water Truck Hire (2023-2025)

CONTRACT NO.: T2324.11

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TECHNICAL SPECIFICATION

1. INTRODUCTION

Banana Shire Council currently has three (3) road construction crews that undertake Capital projects on both Council and State controlled roads. Projects undertaken by these crews include Low Cost Seals, Gravel Resheeting, Insitu-Stabilisation (using cement or triple blend cement powder), Road Reconstruction and Pavement Widening

One of Council's construction crews, the Theodore Construction Crew, currently has a shortfall that requires the assistance of a Trimble Ready Grader and a Water Truck in order for them to complete the Capital projects to the standard required.

Council is looking for contractors to supply the **wet hire (with appropriately qualified Operators)** of a Trimble Ready Grader and a minimum 12,000 Litre Water Truck to work with the Theodore Construction Crew as required (it is expected that the requirements for the equipment would be 9 day fortnights for between 9 to 11 months a year).

All work undertaken as part of this contract would need to conform with Banana Shire Council's requirements for the individual projects and be completed in accordance with the Capricorn Municipal Development Guidelines (CMDG) and/or the Department of Transport and Main Roads Specifications as required.

2. AVAILABLE INFORMATION

The following information is available to help with your understanding of existing and intended scope of this project:

- Pricing Schedule (Appendix A).

The Contractor shall familiarise with the road network of the shire prior to submitting a tender.

3. SCOPE OF WORKS

The Works Under the Contract (WUC) are expected to be located within the Banana Shire Boundaries, with the majority of works to occur within a 50 to 100km radius of the **'home base' designated as Council's Theodore Depot located at 13524 Eidsvold Theodore Road (beside the Theodore Aerodrome).**

The scope of this tender is for the **wet hire (with Operator)** of a trimble ready grader and a water truck for use in the construction of Council and Department of Transport and Main Roads Capital Projects.

The scope of the works to be undertaken by the grader and water truck may be increased or decreased at any time. The hire of the grader and water truck can be awarded separately or as a single contract.

The scope of works includes but is not limited to:

- Provision of a water truck which meets the following requirements:
 - Minimum 12,000ltr capacity tank
 - 3inch pump system
 - Ring feeder attachment to allow for a connection to a reclaimer
 - Ability to draw from ground level water systems and standpipe arrangements

- Gravity feed and pressurized spray bars and centre magnum

The water is also to be fitted with a UHF radio, first aid kit and suitable fire extinguisher/s and is to be maintenance as per the manufacturer's requirements.

- Provision of a suitably licenced, qualified and experienced operator for the water truck. The operator must be in possession of the following:
 - Suitable Drivers Licence or other licences/certifications needed to operate their plant
 - Construction Blue/White Card

All operator licences/certifications are to be always available onsite and must be produced on demand.

- Provision of a grader which meets the following requirements:
 - Minimum 12 foot (preferably 14 foot) blade
 - Trimble ready system

The grader is also to be fitted with a UHF radio, first aid kit and suitable fire extinguisher/s and is to be maintenance as per the manufacturer's requirements.

- Provision of a suitably licenced, qualified and experienced operator for the grader who meets the following requirements:
 - Has all licences and/or certifications required to operate the grader
 - Has suitable qualifications and experience in the use of the trimble equipment when undertaking construction based on a design.
 - Has experience in completing insitu-stabilisation projects using cement powder.
 - Has experience in completing construction projects to the standards require by the Department of Transport and Main Roads
 - Is considered a final trim operator for works on sealed and unsealed roads.
 - Has a current Construction Blue/White Card

All operator licences/certifications are to be always available onsite and must be produced on demand.

- All costs associated with the insurance of the plant and operator (supplied by the Contractor and any Sub-Contractors employed by the Contractor), including but not limited to the obtaining and maintaining the following insurance:
 - Public Liability Insurance – not less than twenty million dollars (\$20,000,000)
 - Insurance policy/s pursuant to the Works Compensation and Rehabilitation Act 2003 and Regulations 2033 and any Act/s amending this Act.
 - Insurance policy/s pursuant to the Motot Accident Insurance Act 1994 and Regulations 2004

All excess payments associated with these insurance policies shall be borne solely by the Contractor.

- All costs associated with the provision of the operator with appropriate personal protective equipment (PPE). All PPE is to be worn and maintenance as per Council's requirements.
- All costs associated with ensuring that the following are present within the grader and/or water truck:
 - Applicable guarding, maintained in accordance with the manufacturer's requirements (or where not defined by the manufacturer, compliant with the associated Australian Standard), as applicable
 - A current Weed Declaration Certificate (to be obtained no more than 72 hours prior to mobilisation of the plant at the commencement of each hire period) stating that the vehicle is free from contamination.

All equipment is to be available for inspection on request to ensure compliance

- All costs associated with the cleaning of the grader and/or water truck and obtaining a Weed and Seed Declaration form before arriving to site and the cleaning of the grader and/or water truck on completion of work, prior to demobilization from site.
- All costs associated with the establishment and disestablishment of the grader and/or water truck to the 'home base' for each engagement of the plant by. The cost and/or arrangement for the movement of plant, travel and/or accommodation required due to the location of the works being undertaken is not included in the scope of works of this tender and will be negotiated as required between Council and the contractor.
- All costs associated with the travel to and from 'home base' by the operators each day.
- All cost associated with the compliance with the requirements of following Council Management Systems for the undertaking of the maintenance/capital works:
 - Construction Program
 - Quality Management Plan
 - Environmental Management Plan
 - Workplace Health and Safety Plan
 - Traffic Management Plan
- All costs associated with the maintenance of the grader and/or water truck (Please note no cost will apply to Council for the hire of the grader or water truck while maintenance is being undertaken payment shall only be made by Council for the period during which the Plant was capable of Operation). The tenderer must have procedures in place for any foreseeable breakdowns which may affect the contract and Council's operational needs.
- All costs associated with the supply of a replacement grader and/or water truck (or other approved arrangement) to be used during the maintenance/repair of the primary grader and/or water truck should the loss affect Council's Maintenance operations
- All costs associated with meals and accommodation (if required) for the operator outside of those agreed by Council due to the distance of works from the 'home base'.

- The upfront payment of any water charges that may be incurred from the use of Council's standpipes or the sourcing of water from any other approved location (if payment arrangement have not already been made by Council). These charges will be reimbursed by Council on submission and verification of the invoice and receipt of payment.
- The completion of all paperwork required to keep water extraction records.
- The supply of information, on request by Council, for the completion of all Quality, Safety and Environmental project records.
- Regular communication with the Council throughout the Project
- All costs incurred by the Contractor in complying with Commonwealth and State legislation and Local Government By-laws
- All costs associated with the hire of the grader and/or water truck with respect to security, interest, fees, charges, taxes, royalties, insurance and compensation
- Cooperation and coordination, using "best for project" mindset
- All overheads and profit, and
- All other expenses associated with the work not specifically listed above.

Tenderers are to note that Council, may at its sole and unfettered discretion, amend/modify the scope of works at any time during the contract.

If the scope of works is amended/modified, the Contractor is not entitled to any compensation.

4. CONTACTOR OBLIGATIONS

The contractor must with reference to the operator:

- a) Engage and retain Operators who are able to competently use the plant provided and meet the Principal's requirements with regard to experience and competency in the type of work to be undertaken;
- b) Satisfy themselves that the work that the Plant is to undertake is not beyond the capacity of the Plant and/or Operator;
- c) Require Operators, as directed, to undertake job specific induction;
- d) Require Operators to wear personal protective equipment such as safety helmets/broad brimmed hat, safety glasses, hearing protection and UPF 50+ Sun Protection, supplied by the Contractor, as required by the Principal. It is mandatory to wear safety footwear, a long sleeve high visibility shirt at all times while at work (including when operating plant);
- e) Enusre that the Operator/s comply at all times with the Principal's WH&S Procedures, Drug and Alcohol Policy (including the requirement for random

testing), and relevant Safe Operating Procedures including the requirement to complete a Daily Plant Checklist and as such, the Operator/Contractor must source and familiarize themselves with all required documentation, procedures and checklists;

- f) Ensure Operator/s of the Water Truck shall comply with WH&S Regulation s306D - Risk of fall of at least 3 m in housing construction work or at least 2 m in other construction work or construction work on roof with a slope over 26° i.e. when working on the top of water tanks which are 2.4m or more from ground level fall protection must be used;
- g) Direct the Operator, in matters except relating to the care of the Plant, to operate under the discipline of the Principal for the period of hire and as such, to operate the Plant in the manner directed by the Principal;
- h) Ensure a properly fitted seat belt is worn at all times unless the wearing of the belts endangers the Operator or others e.g. by restricting movement or vision;
- i) Ensure that the Principal is appraised at all times of the Operators engaged;
- j) Ensure that the Operator and additional Operators are available as required;
- k) Pay all wages and allowances due to the Operator and additional Operators, and insure them in accordance with the requirements of the Queensland "Workers' Compensation and Rehabilitation Act 2003";
- l) Ensure that the Operator's performance during the Period of Hire meets the standard under the Principal's Code of Conduct for employees;
- m) Ensure Operators keep records of all maintenance and repairs, including brakes and how often the plant is serviced. These records should be based on the Australian Standard 1418. (Inspectors from the Division of Workplace can at any time demand these records and if they are not available, they can stand a machine down). You will be required to produce the above mentioned records if your truck or item of plant is involved in an accident. Hence, it is essential that these records be kept and retained ready for inspection at any time. The records must also be available for the Principal to inspect upon request

The Contractor must with reference to plant:

- a) Deliver the Plant to the 'home base' (or other negotiated delivery location) in time for the Plant to begin operation at the commencement of hire in a clean, weed and seed free condition;
- b) Ensure that the Plant, as delivered, is appropriately registered and in good working order and, prior to job commencement, before the Plant is delivered on site, ensure it is in a safe condition and not a safety hazard to any person including members of the public;
- c) Ensure all wheeled self-propelled Plant is registered with Queensland Transport (e.g. Conditional Registration) and in a roadworthy condition;

- d) Ensure all trucks, trailers and dollies have a Certificate of Inspection issued by Queensland Transport or under a NHVR maintenance management system;
- e) Ensure Fire Extinguishers and First Aid Kits are carried on each Plant item
- f) Ensure all Plant is fitted with a minimum single yellow beacon lamp, which is to be activated at all times during Plant operation;
- g) Fit compliant Roll-Over Protective Structures (ROPS) on all self-propelled Plant. The ROPS shall comply with the relevant Australian Standard and shall have a clearly visible compliance plate;
- h) Have seat belts fit to all Plant;
- i) Fit all Plant with an operating audible and visible reversing signal to be audible for at least seven seconds (or such longer period as is prescribed in the relevant Australian Standards from time to time) after reversing starts and shall remain visible during the reversing procedure. If the reversing procedure takes less than seven seconds, the signal shall be audible throughout the reversing procedure;
- j) Allow the Plant to be operated under the direction of the Principal;
- k) Maintain the Plant in good working order throughout the period of hire;
- l) Carry out all servicing and maintenance of the Plant outside the standard working times nominated by the Principal. All plant, if serviced in the field, shall be serviced in accordance with environmentally acceptable procedures;
- m) Supply all attachments, accessories, tools, expendable items and other equipment necessary for the servicing, maintenance and continued operation of the Plant;
- n) Supply fuels, oils and greases for the operation of the Plant;
- o) Accept liability for any damage, which may occur to the Plant during the period of hire;
- p) Ensure that all plant has an operational engine hour meter installed. These hour meters may be read at random by the Principal;
- q) Ensure Operators keep records of all maintenance and repairs, including brakes and how often the plant is serviced. These records should be based on the Australian Standard 1418. (Inspectors from the Division of Workplace can at any time demand these records and if they are not available, they can stand a machine down). You will be required to produce the above mentioned records if your truck or item of plant is involved in an accident. Hence, it is essential that these records be kept and retained ready for inspection at any time). These records must also be available for the Principal to inspect upon request;
- r) Prior to entering into a contract or commencement of a Period of Hire, the Principal may instruct you to make available Plant for an inspection of essential Items such as suspension, tyres, braking system, and steering system to

ensure it does meet manufacturer's specifications. Non-compliant plant will not be hired;

- s) Ensure Operators complete a Plant machinery checklist (also known as Operator's Inspection Checklist – Mobile Equipment) and produced if required by a Supervisor or Project Manager. The inspection is to be completed outside the Operating Period;
- t) If there is non-compliance, the Plant is not to commence operation until the defect is rectified. The Principal must be notified immediately to make a determination about whether the Plant can be repaired in a timely manner or is defective.

5. NON-EXCLUSIVITY OF SERVICES

Under the agreement:-

- The agreement is not exclusive and Council may, at its sole discretion, engage another entity or use its own staff to provide the Service/s;
- Council is not obliged to procure any or any minimum number of service/s from the Contractor under this arrangement;
- Council reserves the right at its sole discretion, to call tenders or quotes for any other service/s.

6. Nature of Tender

This tender is to be considered a Schedule of Rates Contract under AS4902 - 2000. The submitted price shall be based on a Pricing Schedule (included in Appendix A of this document) and payment shall be made on the basis of:

- a unit rate for those Works Items which have a stated unit of measurement and a stated quantity; or
- a lump sum for those Works Items which do not have a stated unit of measurement and a stated quantity.

Unless stated otherwise in this Document, the Tender shall be for the whole of the Works specified in the Tender Documents and Notices to Contractor (if any) with all rates submitted fixed for the life of the contract.

7. LAPSING OF OFFER

Offers submitted under this tender shall remain valid for a period of three months (90 calendar days) after the closing time and date and may be accepted by Council at any time before the expiry of that period unless otherwise notified, in writing, by Council.

8. TERM OF CONTRACT

The initial term of this Contract shall begin on the issuing of the Letter of Acceptance by Council.

The contract will be valid for a minimum of two-year periods and with a possible of one year extension at the sole discretion of Council.

Council will enter into the discussions with the successful tenderer regarding the review of the approved hire rates, any reasonable changes to the rates will be considered. Once agreed, all rates will be locked as per contract.

No payment of hire shall be made for non-operating periods. Non-operating periods shall comprise:

- a) The periods of time outside the Principal's approved working time.
- b) The periods of time within the approved Principal working time during which the Plant is incapable of operation for reasons beyond the control of the Principal.
- c) Stand down periods, which occur within the standard working time such as lunch.
- d) The Principal's safety induction program or job specific induction.
- e) The periods in which the Contractor shall be carrying out all servicing, maintenance work and pre-start checks on plant.

If the Contractor's business is sold or transferred to another entity the submission cannot be transferred and will be null and void.

9. APPOINTMENT OF THE PRINCIPAL CONTRACTOR

The successful tenderer will not be considered Principal Contractor under the terms of this contract.

10. WORKING HOURS

Working hours will be generally between 6:00am and 6:00pm Monday to Friday with a nine (9) day fortnight. Any hours outside of these will be as per agreement between both parties.

Any downtime required due to the maintenance of Council equipment will be coordinated in advance where possible.

A working day will be based on an eight (8) hour productive day. All operators will be required to attend a daily pre-start meeting and site induction prior to performing any work on site.

Day docket is to be produced and signed by Council's Grader operator or Project Supervisor daily. The docket is to include a breakdown of the start, finish and break times of the works completed that day along with the location at which the works were performed. A copy of the signed day docket is to be included with any claims lodged, if the docket is not signed and dated by a Council Grader operator or Project Supervisor payment may be withheld until verification can be obtained.

11. PRICING

All rates are to be quoted as GST excl. **Rates are to be fixed and guaranteed for the financial year with negotiations, between Council and the Contractor, for the revision of rates to occur before the start of each financial year.**

12. LODGEMENT OF CLAIMS

Progress Claims are to be submitted by the Contractor by the 21st of each month.

Claims are to be made via the following process:

- A spreadsheet listing the quantity of works completed along with the associated signed daily docket is to be submitted to Council
- Council will then assess this information
- Council will forward a request for an invoice to be submitted for the approved claim amount by the Contractor
- Payment of the invoice will be made through Council's payment procedures on receipt of the invoice

All claim amounts/quantities (including any variations) are subject to approval by Council before payment is agreed.

A correctly rendered invoice must:

- Specify details of order in sufficient detail to enable Authorised Officer to assess; and
- Specify BSC Purchase Order number and Tender number; and
- Specify the respondent's Invoice number and Invoice date; and
- Specify the Contract Price payable by BSC and particulars of any GST payable in respect of the Contract Price; and
- Otherwise comply with the requirements of a Tax Invoice for the purposes of the GST Act.

13. PROJECT VARIATIONS

Council may, by written notice given to the Contractor, require the Contractor to vary the Works in nature, scope (extent and quantity) or timing.

The Contractor may be directed to:

- Increase, decrease or omit any part of the Works and / or
- Perform additional work.

Where the contractor is given a direction to vary the work under the contract which is not expressly identified in writing as a variation, the contractor must promptly, and where practicable before complying with the direction, give the Council Representative a written notice which identifies the direction and states that the contractor considers that the direction involves a variation. The approved variation number should be noted on the Invoice and be itemised.

All project variations must be approved by Council before a claim can be made. The Contractor is to include a breakdown of the proposed cost of any variation (based on the day labour rates submitted as part of this tender) as part of any variation submission.

14. TRAVEL TO AND FROM SITE

The Contractor is responsible for any costs related to daily travel to and from 'home base' including vehicle, plant, fuel, maintenance, accommodation and any other costs.

15. THIRD PARTY CLAIMS

The Contractor shall be responsible for any damage to any public or private property that occurs as a direct result of the works being performed by the Contractor.

The Contractor shall notify Council of all claims or allegations made against the Contractor or damage that has been inflicted by the Contractor in respect to personal injury and/or damage to property. Verbal notification is to be received by Council within two (2) hours of the incident and a written report, in the form of an email, is to be received by Council within twenty-four (24) hours of the incident. The written report should include the following details:

- Date and location of the incident
- Description and amount of the claim
- Alleged cause of the damage

16. DEALING WITH THE PUBLIC

Council requires the Contractor and all related employees to conduct themselves professionally and in a socially responsible manner and represent the Council and themselves in a professional, customer focused manner at all times.

The Contractor shall not conduct any work additional to the Contract as a result of requests from residents or other members of the public without written authority or direction from the BSC representative.

If a request is outside the Contractor's area of responsibility, the Contractor shall provide the customer with the contact details of the Councils Customer Service Department who will forward the customer enquiry to a Council representative.

17. TEMPORARY SERVICES

The Contractor shall provide and maintain temporary services (if required) necessary for the execution of the work under the Contract, install such services in accordance with the requirements of the relevant authorities and pay charges in connection with the installation and use of such services. Unless there is a specific reference to the provision of temporary services in the contract scope of works, the cost of providing temporary services shall be considered as being included in the cost of the scope of works, unless otherwise agreed in writing by the Principal.

Such services shall be made available to Sub-contractors. On completion, the Contractor shall disconnect temporary services and clear away all traces.

18. ADDITIONAL WORKS

Should during the course of the inspection of site or during construction the Contractor identifies complementary works outside the scope of the project they believe would be beneficial to Council, the contractor is to advise the Principal of these observations.

Contractors must provide an offer for the complementary scope as detailed on the Pricing Worksheet. Council will evaluate the offers for the complementary scope and determine if any will be included in the contract scope for award.

Council reserves the right to accept or reject any tender offer for complementary/betterment scope.

19. SALVAGED MATERIALS

Unless otherwise stated, all materials, plant equipment, fixtures and other items salvaged from the Site of the Works shall be the property of the Principal and shall not be removed from the site without the prior approval of the Principal. The Principal is to be immediately consulted when any find is made that is considered of relevant heritage value.

The Contractor is to obtain written approval from the Principal prior to removal from site of any material or material which is or may be suitable for use as fill on the site.

Material which is unsuitable for re-use should be transported and dumped in an approved dump area (for this project the approved dump area is the Industrial waste facility Trap Gully, all fees associated with the use of this facility are to be included in the rates submitted for this tender).

Approval for dumping of materials, not otherwise designated, should be obtained from the Principal.

Council operates a spoil permit system where residents can request approval to access spoil material. Disposal of spoil material to local residents is as by written direction and approval of the Principal. In these circumstances, The Contractor must be a willing participant in assisting with the management of this system

APPENDICIES

A. PRICING SCHEDULE