



## **PART 1 – REQUEST FOR TENDER**

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### **PRE-QUALIFIED SUPPLIER'S PANEL**

**Provision of Rapid Response Civil Maintenance Services 2023/24**

**CONTRACT NO.: T2324.24**

**REQUEST FOR TENDER**

PART 1 – PREAMBLE			
Banana Shire Council invites tenders from suitably qualified tenderers for appointment as a prequalified supplier of the <b>Provision of Rapid Response Civil Maintenance Services</b> as described in “Part 2 – General Information & Scope of Work”.			
PART 2 – GENERAL INFORMATION AND SCOPE OF WORK.			
1.	Contract details:	Request For Tender Pre-qualified Supplier Panel T2324.24 Provision of Rapid Response Civil Maintenance Services 2023/24	
2.	Communications by Tenderers:	Communications regarding the Procurement Process must be submitted to <a href="mailto:enquiries@banana.qld.gov.au">enquiries@banana.qld.gov.au</a> no later than 5 calendar days prior to the time stated in Item 4	
3.	Briefing or site inspection:	Details	Maximum attendees
		N/A	n/a
		Mandatory	RSVP
		<input type="checkbox"/> Yes	RSVP to <a href="mailto:enquiries@banana.qld.gov.au">enquiries@banana.qld.gov.au</a>
		<input checked="" type="checkbox"/> No	
		n/a	
4.	Submission of Tender	Tenders must be submitted electronically only at <a href="mailto:tenders@banana.qld.gov.au">tenders@banana.qld.gov.au</a> by no later than <b>10<sup>th</sup> January 2024</b> <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)	
		Relevant Experience	20%
		Technical Skills	15%
		Resources / Availability	20%
		Local Content	5%
Price	40%		
6.	Tenders to be valid for:	90 calendar days after the time stated in Item 4 above (as extended if at all, pursuant to the Procurement Process Conditions)	
7.	Complaints:	Complaints regarding Procurement Process to be directed to: <a href="mailto:enquires@banana.qld.gov.au">enquires@banana.qld.gov.au</a>	

**REQUEST FOR TENDER****PART 3 – PROCUREMENT PROCESS**

8. 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 Part 3 - Procurement Process.
  - available for viewing or download from [www.banana.qld.gov.au](http://www.banana.qld.gov.au)

**PART 4 – CONTRACT**

9.  The contract shall be substantially in the form attached to or provided with this request for tender and identified as "Part 4 – Contract"; file attached.
- The contract shall comprise the documents identified in clause 4 of the Principal's standard terms and conditions which can be found at
  - The contract shall comprise the documents identified in clause 4 of the Principal's standard terms and conditions which are attached to or provided with this request for tender and identified as
  - The contract shall be made in accordance with the terms and conditions of Local Buy contract.
  - The Tenderer must request a copy of the form of contract from the Principal.
- Note: Where this request for tender is for appointment to a register of pre-qualified suppliers or as a preferred supplier then a contract will not be formed between the Principal and a successful tenderer, and a successful tenderer will not be required to enter into a contract with the Principal, unless and until that tenderer is subsequently engaged to provide works, goods and/or services pursuant to that appointment.*

**PART 5 – RESPONSE SCHEDULES**

10. 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 "Part 5 – Response Schedules"; file attached

**PART 6 – RESPONSE SCHEDULES**

11. The Tender must be submitted in the form provided in the pricing table attached to, or provided with this request for tender and identified as "Part 6 – Pricing Table"; file attached



## **PART 2 – GENERAL INFORMATION & SCOPE OF WORK**

**PRE-QUALIFIED SUPPLIER'S PANEL**  
**Provision of Rapid Response Civil Maintenance Services**  
**2023/24**

**CONTRACT NO.: T2324.24**

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## **PROJECT OVERVIEW:**

### **1. INTERPRETATION AND DEFINITIONS**

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1.1 The Scope comprises the following documents:

- (a) Part 2 General Information & Scope;
- (b) Part 4 Contract.

1.2 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.

1.3 In this Scope:

- (a) **Council** means Banana Shire Council;
- (b) **Principal** means The Representative of Banana Shire Council;
- (c) **Pre-Qualified Supplier** means The legal entity making this tender submission
- (d) **Sub-Consultant** means any third-party entity engaged by the Pre-Qualified Supplier

Reference is also made to Clause 11 of the tender document – “**Part 3 Procurement Process**”.

### **2. APPROVALS AND LAW**

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2.1 The Supplier must identify and notify the Principal of any/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 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 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 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 to the Supplier to perform the Services.

2.4 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.

2.5 The Supplier must, and warrants and represents that it will, perform the Services so that the Site, at all times during the Term, complies with all Approvals & other applicable laws.

2.6 The Pre-Qualified 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 Pre-Qualified Supplier has breached an obligation under clauses 2, 2.2 or 2.3. Unless otherwise directed by the Principal, the Pre-Qualified Supplier must take immediate steps to remedy such a breach at its own expense.

### 3. PROCUREMENT SERVICES

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3.1 Where the Services require the Pre-Qualified Supplier to manage, conduct or otherwise participate in a Procurement Process for the engagement of a sub-contractor or other supplier, then the Pre-Qualified Supplier must, and must ensure that its Personnel, to the extent that it is within the control of the Pre-Qualified 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 this request for tender and all associated documentation issued to with this tender.
- (d) any probity plan or conflict of interest requirements outlined in this tender documentation.
- (e) principles of probity; and
- (f) Good Industry Practice,

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

### 3.2 Security of Payments:

If the Pre-Qualified Supplier engages an approved sub-consultant in the course of completing the required scope of works - the Pre-Qualified Supplier:

- (a) is required to prepare and issue any payment schedules in response to any payment claims made by the Sub-Consultant pursuant to the Building Industry Fairness (Security of Payment) Act 2017 (Qld);
- (b) must take all reasonable steps to identify all documents which may constitute such payment claims and immediately provide a copy of such documents to the Principal;
- (c) if requested by the Principal, promptly give to the Principal a copy of the payment claim and any other information or documentation required by the Principal in connection with the payment claim;
- (d) must provide such other assistance as the Principal may reasonably require in connection with the payment claim and any related proceedings whether under the Act or otherwise.

### 4. BIOSECURITY MANAGEMENT

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#### 4.1 (Definitions) In this clause:

- (a) a **biosecurity risk** is the risk that exists when dealing with:
  - (i) any pest, disease, or contaminant (including plants, seeds, spores, eggs, vertebrate and invertebrate pest); or
  - (ii) something that could carry a pest, disease, or contaminant (eg. animals, plants, soil, equipment, and water - known as 'carriers').
- (b) a potential **biosecurity risk** is a biosecurity risk that does not currently occur at the site but which has the capacity to occur at the site. It may be present but not visible or may be introduced during the performance of the Pre-Qualified Supplier's contractual obligations. It includes risks associated with carriers and the movement and sourcing of materials, vehicles, and machinery; and the disturbance, import or export of soils.
- (c) a known **biosecurity risk** is a biosecurity risk that is currently recorded within the footprint or proximity of the site which is:
  - (i) identified within biosecurity plans or programs active for the area.
  - (ii) identified during the performance of the Pre-Qualified Supplier's contractual obligations; or
  - (iii) otherwise identified by the Principal.

**GENERAL INFORMATION & SCOPE OF WORK**

- 4.2 **Preparation of a plan** – If required by the Principal, the Supplier shall prepare a biosecurity risk management plan (BRMP) to ensure reasonable and practical steps are taken to address any biosecurity risks and that the Supplier meets its general biosecurity obligations (as that term is used in the Biosecurity Act 2014 (Qld)). The primary purpose of the BRMP is to address both potential biosecurity risks and known biosecurity risks.
- 4.3 **Training** - The Supplier shall ensure that all relevant Personnel are trained to be aware of biosecurity risks.
- 4.4 **Notice of breach or risk** - If at any time during the performance of the Pre-Qualified Supplier's obligations, a breach of the BRMP, or a significant biosecurity risk is identified, then the Pre-Qualified Supplier must immediately contact the Principal for direction.

**5. PRINCIPAL SUPPLIED INFORMATION AND OTHER INVESTIGATIONS**

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- 5.1 **Definitions** - In this clause "Principal Supplied Plant & Equipment" means any plant and/or Equipment 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 plant &/or equipment is made available before or after the date of the Contract.
- 5.2 **Acknowledgement and agreement by Supplier** - The Supplier acknowledges & 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 any Principal Supplied plant &/or equipment is adequate or complete; and
  - (ii) as to the physical condition, suitability, or other characteristics of the Site.
- (b) the Supplier:
- (i) has carefully, thoroughly and critically reviewed, examined, investigated, inspected and checked any Principal Supplied Information and has undertaken all other necessary enquiries and investigations to satisfy itself of the suitability of the site to enable the Pre-Qualified 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 the Services or compliance with the Pre-Qualified Supplier's other obligations under the Contract;
  - (ii) 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) 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 agreed Services in accordance with the Contract and comply with its other obligations under the Contract for the agreed price submitted (as adjusted pursuant to the Contract); and
- 5.3 The Principal shall not be liable upon any Claim by the Pre-Qualified Supplier in connection with the Principal Supplied plant & Equipment or the physical condition, suitability or other characteristics of the nominated project site.
- 5.4 The Principal proposes to supply all materials for this tender. The Contractor is to supply plant, equipment and all necessary labour necessary to fulfil the agreed scope of work.

**6. PRE-QUALIFIED SUPPLIER'S PERSONNEL**

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- 6.1 **Minimum Personnel levels** - The Pre-Qualified Supplier must always ensure that during the Term of the Contract, that the minimum number of each type of Personnel identified in the Contract are available to 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 Supplier's 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 own expense.



- 6.2 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 best practice and safe work practices.
  - (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 Pre-Qualified 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).
- 6.3 Police check** - If the Principal directs, the Pre-Qualified Supplier is to obtain a police check on a nominated person, then the Pre-Qualified Supplier must not permit any Personnel to perform any part of the agreed Services or to have access to any area of the project site within 5 business days following the **Pre-Qualified** Supplier providing the Principal with a written copy of a criminal history check produced by the Queensland Police Service for the nominated person. If the criminal history check contains any untoward entries, the Principal may, in its absolute discretion, notify the **Pre-Qualified** Supplier that the nominated person is not permitted to perform any of the agreed Services. Alternatively, Council may place conditions upon the nominated person's role in performing the nominated Services.

## **7. MEETINGS**

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- 7.1 If nominated - the Supplier must undertake a site inspection of the project site in conjunction with Council's Director Infrastructure Services (DIS).
- 7.2 When reasonably required by the Principal, the **Pre-Qualified** Supplier is to meet in good faith to discuss the any constraints, delays and/or any other matter concerning the Principal in connection with the Contract including:
- (a) Timely delivery of the project scope of work identified in the Contract.
  - (b) The promotion of safer and quieter work practices.
  - (c) Improvements to efficiency of the **Pre-Qualified** Supplier's obligations under the Contract.
  - (d) Attention to any complaint or criticism raised by the community or stakeholder.
- 7.3 The Supplier is to comply with any reasonable recommendations or directions given by the Principal in relation to the performance of the **Pre-Qualified** Supplier's obligations under the Contract. Such compliance will not release or discharge the **Pre-Qualified** Supplier from any liability or obligation under the Contract.

## **SCOPE OF WORK**

### **1. INTRODUCTION**

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Council is undertaking an expansive Capital Works Infrastructure programme throughout the 2023/24 financial year. It is proposed that the rapid response maintenance team will be required to undertake a variety of emergency and operational civil maintenance works including:

- Urban road rehabilitation works.
- Stormwater drainage repairs – gully pits, pipes and culverts.
- Repair of damage to roads and waterways as a consequence of erosion and scour impacts.
- Floodway crossing replacement works.
- Kerb & channel restoration works.
- Rural road gravel re-sheeting works.
- Various road safety maintenance works.
- Bridge and associated infrastructure repairs.
- Parklands and open public space restoration works.
- Inspections and reporting of asset damage across the Shire.

Typically, a rapid response maintenance crew will be asked to promptly mobilize during major incidents or attend to a project site that has been identified by Council as being a potential safety risk to the Community and Road Users. The rapid response crew will focus on a variety of reactive field-based projects that have been identified by Council's DIS. The crew will respond to high risk/high priority issues or defects relating to Council's road infrastructure as and when they arise, and within timeframes agreed with Council's DIS.

Accordingly, Council seeks to engage a suitably qualified Pre-Qualified Supplier who can deliver this service and to assist in the essential maintenance of critical infrastructure amenities across the LGA. Council is looking for the Pre-Qualified Supplier to typically provide the following:

- (a) A Supplier who can provide the crew and plant with suitable experience to deliver the nominated emergency works.
- (b) Prompt response and mobilization to emergency project sites.
- (c) Availability of plant and equipment suitable for emergency maintenance repairs of Council's Road infrastructure.
- (d) Provision of suitable and qualified personnel and machinery operators to undertake the proposed emergency maintenance works as identified and directed by Council.

### **2. PROJECT & CONSTRUCTION MANAGEMENT SUPPORT SERVICES**

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The proposed Scope of Works Under this Contract (WUC) will entail delivery of Rapid Response Civil Maintenance Services across the emergency project sites anywhere within the Banana Shire Council local government area.

The types of critical services that may be requested by Council's Infrastructure Team may include (but not limited to) the following:

- Undertake ongoing visual inspections, monitoring and reporting of all Council's infrastructure across the LGA. This will require the Contractor to undertake ongoing inspections and reporting of asset damage across the Shire.
- Ensuring availability of plant, equipment and personnel to attend to emergency road works as they are identified.
- Onsite coordination of requested works in a timely and cost efficient manner.
- On site inspection/s &/or photographic record of nominated project works.
- Liaison with Council's DIS or his representative, in developing the proposed scope of work for each nominated work site.
- Reporting and direction of project progress and delivery.
- Accounting and invoicing of the Contractor works.
- Compliance with Council's procurement policies and requirements where appropriate.
- Compliance with all statutory Work Safe regulations and requirements.
- Delivery of all necessary QA processes and obligations.

It will be the responsibility of the DIS to set priorities on any project works to be undertaken by the Rapid Response Civil Maintenance Crew. Whilst the primary focus of the Rapid Response Civil Maintenance Crew will be asset preservation and conservation.

Tenderers are to note that once the Pre-Qualified Supplier is established - Council will issue a site-specific brief and a site-specific scope of works to the Pre-Qualified Supplier Firm – as a basis to establish a fixed price submission for each emergency job commissioned. This fixed price will be based on the rates nominated in the request for tender.

Once the Pre-Qualified Supplier is established – the Supplier will be subject to Council's current Procurement Policy and direction from Council's Director Infrastructure Services.

### **3. NATURE OF TENDER**

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This RFT is to be considered a Schedule of Rates Contract. The submitted tender shall be based on a Schedule of Rates (included in Part 6 Pricing Schedule of this tender). Inclusion on the Pre-Qualified tenderer will be assessed using the following criteria:

- Relevant Experience.
- Capabilities.
- Resources / Availability.
- Local Content.
- Price.

### **4. TENDER CRITERIA**

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#### **4.1 Relevant Experience**

Council will be assessing each Tenderer to this RFT for prior involvement and experience in the maintenance of civil works for public infrastructure projects – particularly within the local government sector. Prior involvement and demonstrated proficiencies in the maintenance of public infrastructure projects will be a critical measure in assessing the suitability of each tenderer. Prior experience in the maintenance of civil infrastructure services for Queensland Regional Councils would also be highly regarded.

#### **4.2 Capabilities**

Each Tenderer will be assessed based on the available skill sets offered within that Firm, to undertake civil maintenance works across Council. The type of skills that are being sought for each job from the Tenderer, may include:

- Demonstrated ability to visually assess and critique potentially damaged infrastructure and to report to Council's DIS on those findings.
- Demonstrated skills in the operation of required plant and equipment.
- Ability to operate and maintain a wide range of road building machinery in a safe and efficient manner.
- Good knowledge of worksite traffic management regulations.
- Ability to prepare and finish concreting works.
- To understand and comply with Council's Safe Operating procedures (SOPS) and Safe Work Method Statements (SWMS).
- Assist other Works operations when directed by Council's DIS.
- Acceptance of quality and timeliness of all works undertaken.
- Ability to work independently and take direction and instructions from Council's DIS.
- Good knowledge of OH&S procedures.
- Quality standard of oral and written communication skills.
- Being polite and courteous to the general and motoring public when carrying out maintenance works.
- Respectfully participating and engaging within Council's Works environment.

Tenderers are advised that all personnel working on Council projects are to be suitably trained, qualified and supervised - in compliance with appropriate regulations and legislation.

#### **4.3 Resources / Availability**

The Tenderer is to clearly nominate, in their submission, the resources that they propose to utilize throughout the duration of the Agreement. These resources are to include both people and plant resources. A short resume of critical personnel is to be provided in the Tenderer's submission. The resume is to include qualifications, tickets held, experience and capabilities.

It is a critical requirement that Council have access to a Rapid Response Emergency Maintenance crew as and when required to ensure community and road user safety is not unnecessarily impacted.

Council's expectation is that the Pre-Qualified Supplier would be available to undertake any nominated emergency maintenance works within the Shire in a realistic timeframe, pending sufficient notice being given by Council.

The Tenderer is to clearly nominate, in their submission, the minimum amount of notice that they would require to mobilise a Rapid Response Maintenance Crew to commence work once all the necessary preliminary works have been established. This will also be a measure that Council will use in assessing each Tenderer's suitability for appointment to the role.

#### **4.4 Local Content**

Council encourages local suppliers to register their business as the Pre-Qualified Supplier. For the purposes of this RFT, a local supplier is deemed to be operating a Business within the confines of Central Queensland. Council will provide an incentive to those Tenderers working within that area.

Also refer to Part 3 Procurement Process Clause 9.3

#### **4.5 Principal Supplied Inputs**

Council proposes to supply all inputs to this tender apart from plant, machinery, operators and personnel. In particular, Council proposes to separately supply the following inputs for each project undertaken at the sole discretion of Council's DIS.

- Geotechnical testing and pavement designs (if required).
- Survey and set out (if required).
- Any designs or certification required (if required).
- Environmental and cultural assessments (if required).
- All road base gravel.
- All 3<sup>rd</sup> party traffic control engagement.
- Asphalt and bitumen seal.
- Gully pits, pipes and culverts.
- Concrete products.
- Road-side furniture and signage.
- Road line marking and delineation.
- Safety fencing and guideposts.
- Landscape supplies.
- As-Built surveys (if requested).

The Pre-Qualified Supplier will be required to supply all necessary plant, equipment and competent man-power to operate this machinery. The Pre-Qualified Supplier will be required to provide all necessary inputs to successfully operate these items in association with the delivery of this Tender -eg. fuel, transportation, etc.

### **5. LAPSING OF OFFER**

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Offers for Pre-Qualified Supplier shall remain valid for a period of one month (30 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.

### **6. TERM OF CONTRACT**

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The initial term of the Pre-Qualified Supplier will be 12 months. Renewal of the Pre-Qualified Supplier will be reviewed annually by Council Officers. At this time, the incumbent Supplier will be assessed for performance, value for money and quality of work.

Appointment to the Role will commence on receipt of the Acceptance of Tender from Council.

If the successful Tenderer's business is sold or transferred to another entity during the term of the contract, the Pre-Qualified Supplier status **cannot** be transferred with the sale.

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**7. DISBURSEMENTS**

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If a third-party Sub-Contractor is to be engaged by the Pre-Qualified Supplier – that engagement must be approved by Council's DIS prior to engagement of the Sub-Contractor. Council will reimburse such amounts payable to the Sub-Contractor at the rate of Cost + 5%. Payment of any approved Sub-Contractor costs will be paid directly to the Pre-Qualified Supplier only.

If it is identified that the Pre-Qualified Supplier will incur any other disbursements whilst undertaking the agreed project scope of works – approval from Council's DIS must be sought prior to incurring any unplanned costs or expenses eg. Accommodation, flights, car hire, hire of any additional plant or equipment etc.

**8. PRICING**

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All prices/rates are to be quoted as GST excl. and cover all costs associated with the supply of the nominated maintenance services. **Prices/Rates are to be fixed and guaranteed for the duration of the contract.**

Details of all pricing is to be documented in **Part 6 – Pricing Table** attached to this Tender.

**9. SUB-CONTRACTOR SERVICES**

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The Tenderer is **not** to sub-contract any of the prescribed maintenance services to a third party without express approval from Council's Director Infrastructure Services.

If some or all the Maintenance services are to be sub-contracted to a third-party firm (if approved) – this does not negate the Tenderer's responsibilities or obligations under the Contract in any way.

The quality and scheduling of Maintenance Works, work safe liabilities and duty of care obligations undertaken by any Pre-Qualified Supplier's Sub-Consultant must initially lie with the Pre-Qualified Supplier Firm and not with Council. All invoices due for payment for the services of a Pre-Qualified Supplier's Sub-Consultant is to be initially paid for by the Pre-Qualified Supplier prior to Council considering reimbursement of the cost.

**10. STANDARDS AND SPECIFICATIONS**

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All emergency maintenance works must be undertaken in accordance with the following requirements & standards:

- CMDG Guidelines and Specifications.
- QLD DTMR standards and guidelines.
- Austroads standards and guidelines.
- IPWEA Lower Order Road Design Standards (LORDS)

Where no reference is made to a specific design standard – the Queensland Transport and Main Roads (TMR) specifications and guidelines are to be the minimum requirements applied. Copies of TMR specifications are not included in this document.

**11. REPORTING AND COMMUNICATION**

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The Tenderer is advised that Council's Director Infrastructure Services will lead all reporting and communication requirements for every site-specific project that will be issued. The Tenderer is to liaise directly with Council's Director Infrastructure Services on the Scope of Work, Progress, Delays, Variations, and Invoicing.

**Hold Points (if required)**

A Hold Point is defined as a position in the progress of the project's activities, beyond which further work shall **not** proceed without mandatory verification by Council's DIS. If the Contractor proceeds beyond this point without the Hold Point's being verified - Council's DIS may not authorise payment for any subsequent Emergency Maintenance services being undertaken beyond the specified hold point. All hold points will be detailed in the site-specific project brief that will be issued by Council's DIS.

**12. TRAVEL & FLOAT**

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Travel and float costs will be accommodated by Council at the agreed rate nominated in Part 6 – Pricing Schedule.

**13. ACCOMMODATION**

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If accommodation expenses are to be considered by Council, they will be capped to a maximum amount of \$180 per room / day unless approved by Council's DIS.

**14. PAYMENT FOR SERVICES**

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Payment for services rendered will only be paid to the Pre-Qualified Supplier. Payment of invoices will be paid monthly or on completion of the agreed scope of work only. **Council will only allow payment of approved maintenance works on a retrospective basis.** Advance payment to the Pre-Qualified Supplier for any agreed services will not be approved.

**15. WORKPLACE, HEALTH AND SAFETY**

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The Pre-Qualified Supplier must conform to all of Council's WHS requirements – with particular attention to the following requirements:

- Council's online induction process **must** be undertaken by **all personnel** that will be involved in the Emergency Maintenance work. A hyperlink to the online induction site will be forwarded to each participant of the project prior to any work being undertaken.
- A risk assessment for the proposed Emergency Maintenance work must be developed and approved by Council's WHS personnel before any site-based works can commence.
- Council has a mandatory policy of not allowing less than two (2) personnel within a field party. This particularly relates to project sites that are remote & without mobile phone reception. Exception to this rule can be granted by Council's Director Infrastructure on a project-by-project basis for any project that is undertaken within towns or built-up areas.
- Supply evidence of the Company's Safety Management System – outlining policies, procedures, and risk management processes.



## **PART 3 - PROCUREMENT PROCESS**

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### **PRE-QUALIFIED SUPPLIER'S PANEL**

**Provision of Rapid Response Civil Maintenance Services 2023/24**

**CONTRACT NO.: T2324.24**

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# Procurement Process Conditions

## 1. GENERAL

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- 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. 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.

# Procurement Process Conditions

## 2. BRIEFINGS AND SITE INSPECTIONS

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- 2.1 **(Attendance)** The Respondent must attend any briefing or a site inspection which is identified in the General Information as mandatory. These will be detailed in the site-specific project brief that will be issued following establishment of the Preferred Panel. 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

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- 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)

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- 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.

## Procurement Process Conditions

- 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

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- 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.

# Procurement Process Conditions

## **6. RESPONDENT'S FURTHER WARRANTIES AND REPRESENTATIONS (RFT & 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.

# Procurement Process Conditions

## 7. LODGEMENT AND OPENING OF RESPONSES

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- 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

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- 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.

## Procurement Process Conditions

- 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 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. ACCEPTANCE (RFT AND RFQ ONLY)

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- 9.1 **(Application of clause)** This clause 9 only applies in respect of an RFT or an RFQ.
- 9.2 **(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 is 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 relevancy to the Procurement Process.
- 9.3 **(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.
- 9.4 **(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.
- 9.5 **(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 Pre-Approved Supplier, the Respondent will not be considered to be appointed as a Pre-qualified Supplier or Pre-Approved 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.

## Procurement Process Conditions

- 9.6 **(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.
- 9.7 **(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.
- 9.8 **(Arrangement with other local governments)** The Respondent acknowledges that if, pursuant to the Procurement Process, the Respondent is selected to be a Pre-Approved 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 Pre-Approved Supplier or Pre-qualified Supplier of those goods and/or services.

### 10. DOCUMENTS AND INFORMATION

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- 10.1 **(Ownership)** The Procurement Documents remain the property of the Principal. The Response will become the property of the Principal upon lodgement.
- 10.2 **(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 10.2. 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.
- 10.3 **(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 10.2 and the Principal's exercise of the rights so granted will not infringe the Intellectual Property Rights of a third party.
- 10.4 **(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 10.4. Subject to clause 10.8(b), the Respondent must return any and all Confidential Information when requested to do so by the Principal.
- 10.5 **(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.
- 10.6 **(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.

## Procurement Process Conditions

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).

10.7 **(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.

10.8 **(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 carry out its functions properly as a Local Government.



## Procurement Process Conditions

- (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.

- 10.9 **(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.

### 11. DEFINITIONS

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- 11.1 **(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 Biloela (Queensland);
  - (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 10.4;
  - (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);

## Procurement Process Conditions

- (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 Pre-Approved 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) **Evaluation Criteria** means:
- (i) for an RFT, the evaluation criteria (if any) set out in the Project Management and Technical Specifications; and
  - (ii) for an RFQ, the evaluation criteria (if any) set out in the RFQ;
- (n) **General Information** means Part 2 – Project Management and Technical Specifications of the RFQ or RFT (as the case may be);
- (o) **GST** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (p) **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);
- (q) **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;
- (r) **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;

## Procurement Process Conditions

- (s) **Local Government** has the same meaning as in the *Local Government Act 2009* (Qld);
- (t) **Local Government Meeting** has the same meaning as in the *Local Government Act 2009* (Qld);
- (u) **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;
- (v) **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;
- (w) **Non-Conforming Response** means a Response which is not a Conforming Response or an Alternative Response;
- (x) **Non-Local Supplier** means a supplier (including a Respondent) that is not a Local Supplier;
- (y) **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;
- (z) **Preamble** means Part 1 – Preamble of the RFT or RFQ (as the case may be);
- (aa) **Pre-Approved Supplier** means a supplier that has been selected as a Pre-Approved Supplier pursuant to section 233 of the *Local Government Regulation 2012* (Qld);
- (bb) **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);
- (cc) **Price** means:
  - (i) where the Procurement Process is for appointment as a Pre-Approved Supplier or Pre-qualified Supplier, the rates, sums or prices stated in the Response;
  - (ii) otherwise, subject to clause 4.4, the total price stated in the Response;
- (dd) **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;
- (ee) **Principal or Purchaser** means Banana Shire Council;
- (ff) **Procurement Documents** means:
  - (i) the 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;
- (gg) **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;

## Procurement Process Conditions

- (hh) **Procurement Process Conditions** means these procurement process conditions;
- (ii) **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;
- (jj) **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 Pre-Approved Supplier or Pre-qualified Supplier of goods and/or services, as if that local government had itself selected the Respondent to be a Pre-Approved Supplier or Pre-qualified Supplier of those goods and/or services.
- (kk) **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;
- (ll) **Response** means, where these Procurement Process Conditions are incorporated into an:
- (i) EOI;
  - (ii) RFT, a Tender; or
  - (iii) RFQ, a Quotation;
- (mm) **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;
- (nn) **Response Form** means in respect of an 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;
- (oo) **Response Schedules** means the schedules identified in Part 5 – Response Schedules of the RFT or RFQ (as the case may be);
- (pp) **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;
- (qq) **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);
- (rr) **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);
- (ss) **Scope** means the scope described in Part 2 – Technical Specifications 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.
- (tt) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);
- (uu) **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;

## Procurement Process Conditions

- (vv) **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;
- (ww) **Tender Box** means the website, email address or physical location at which the General Information states that Responses are to be submitted;
- (xx) **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.

### 12. GENERAL PROVISIONS

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- 12.1 **(Interpretation of Procurement Documents)** The Procurement Documents must be read and construed together and are intended to be mutually explanatory.
- 12.2 **(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.
- 12.3 **(Headings)** Clause headings are for reference purposes only and must not be used in interpretation.
- 12.4 **(No limitation)** The words 'include', 'includes' and 'including' shall be read as if followed by 'without limitation'.
- 12.5 **(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.
- 12.6 **(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.
- 12.7 **(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.
- 12.8 **(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.
- 12.9 **(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.

## Procurement Process Conditions

- 12.10 **(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.
- 12.11 **(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.
- 12.12 **(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.
- 12.13 **(No waiver)** No waiver by the Principal of a provision of these Procurement Process Conditions is binding unless made in writing.
- 12.14 **(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).



## **PART 4 - GENERAL CONDITIONS OF CONTRACT**

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### **PRE-QUALIFIED SUPPLIER'S PANEL**

**Provision of Rapid Response Civil Maintenance Services 2023/24**

**CONTRACT NO.: T2324.24**

**REFERENCE SCHEDULE**

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**SCHEDULE1 – STATUTORY DECLARATION**





GENERAL INFORMATION & SCOPE OF WORK

Item	Details																	
1. Contract Term (Clause 4) <ul style="list-style-type: none"> <li data-bbox="277 360 608 427">(a) Contract Term Start Date:</li> <li data-bbox="277 439 608 506">(b) Contract Term End Date:</li> <li data-bbox="277 517 608 557">(c) Extension Periods:</li> </ul>	<ul style="list-style-type: none"> <li data-bbox="608 360 1493 427">1 February 2024</li> <li data-bbox="608 439 1493 506">31 January 2025</li> <li data-bbox="608 517 1493 557">12 months</li> </ul>																	
2. Exclusivity (Clause 7)	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 9) <ul style="list-style-type: none"> <li data-bbox="277 819 608 860">(a) Name:</li> <li data-bbox="277 871 608 911">(b) Address:</li> <li data-bbox="277 922 608 963">(c) Telephone:</li> <li data-bbox="277 974 608 1014">(d) Email:</li> </ul>																		
4. Pre-qualified Supplier's Representative (Clause 10) <ul style="list-style-type: none"> <li data-bbox="277 1133 608 1173">(a) Name:</li> <li data-bbox="277 1184 608 1225">(b) Address:</li> <li data-bbox="277 1236 608 1276">(c) Telephone:</li> <li data-bbox="277 1288 608 1328">(d) Email:</li> </ul>																		
5. Key Personnel (Clause 12.2)	<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 60%;">Name</th> <th style="width: 20%;">Role</th> <th style="width: 20%;">Period <i>(If nothing stated, for the duration of the Contract Term)</i></th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table> Time for Meetings (Clause 15) <p style="text-align: center;"><i>As agreed with the Principal</i></p> <p style="text-align: center;"><i>Nothing stated, as reasonably required by the Principal.</i></p>			Name	Role	Period <i>(If nothing stated, for the duration of the Contract Term)</i>												
Name	Role	Period <i>(If nothing stated, for the duration of the Contract Term)</i>																
6. Invoices: (Clause 18)	As per further agreements with the individual Pre-qualified Supplier.																	

GENERAL INFORMATION & SCOPE OF WORK

Item	Details
<p>(a) Invoices may be submitted on:</p> <p>(b) Invoices should be emailed to:</p> <p>(c) Other requirements for invoices:</p>	<p><i>If nothing stated, on the 21st day of each month for Services provided up to the 21st of that month.</i></p> <p>accounts.payable@banana.qld.gov.au</p> <p>A valid purchase order number <b>MUST</b> be recorded on all purchase orders submitted to Council for payment.</p>
<p>7. Applicable policies, guidelines, procedures and codes of the Principal (Clause 19.1)</p>	<ul style="list-style-type: none"> <li>• Workplace Health &amp; Safety</li> <li>• Code of Conduct</li> <li>• Conflict of Interest</li> <li>• Local Govt. Act &amp; assoc. regulatory legislation.</li> <li>• All statutory legislation and policies applicable to QLD Local Government.</li> </ul>
<p>8. Liability Limit (Clause 23)</p> <p>(a) The Principal's liability is limited to:</p> <p>(b) The Pre-qualified Supplier's liability is limited to:</p>	<p>Nil</p> <p><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></p> <p>\$20,000,000</p> <p><i>If nothing stated, the Pre-qualified Supplier's liability is not limited.</i></p>
<p>9. The Pre-qualified Supplier must affect the following insurances: (Clause 24)</p>	<p><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</p> <p><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</p> <p><input checked="" type="checkbox"/> Third party and comprehensive motor vehicle insurance for each vehicle used by the Pre-qualified Supplier in performing its obligations under the Contract</p> <p><input checked="" type="checkbox"/> Plant and equipment insurance for each item of plant for the full replacement value of the plant</p> <p><input checked="" type="checkbox"/> Workers' compensation insurance in respect of the Pre-qualified Supplier's Personnel as required by law</p> <p><i>If not selected, the Pre-qualified Supplier is not required to effect the insurance.</i></p>
<p>10. Intellectual Property (Clause 26)</p> <p>(a) Project IP, the alternative applying:</p> <p>(b) Moral Rights consent</p>	<p><input checked="" type="checkbox"/> Alternative 1 – Project IP vests in the Principal</p> <p><input type="checkbox"/> Alternative 2 – Project IP vests in the Pre-qualified Supplier</p> <p><i>If nothing stated, Alternative 1 applies.</i></p> <p><input checked="" type="checkbox"/> Moral Rights consent is required</p> <p><input type="checkbox"/> Moral Rights consent is not required</p> <p><i>If nothing selected, a Moral Rights consent is required.</i></p>

## Parties:

**Banana Shire Council** of 62 Valentine Plains Road Biloela in the State of Queensland **(Principal)**

[Insert Pre-qualified Supplier's Name] of [Insert Pre-qualified Supplier's address].  
**(Pre-qualified Supplier)**

## Background:

- A. The Pre-qualified 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 Pre-qualified Supplier's offer.
- C. The Parties wish to enter the Contract to record the Contract Terms on which the Pre-qualified Supplier will provide the nominated Services to the Principal during the Contract Term.

## The Parties agree:

### 1. DEFINITIONS

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In the Contract, unless inconsistent with the context or subject matter:

- 1.1 **Affected Party** has the meaning given in clause 28.1;
- 1.2 **Applicable Standards** means the standards, plans, requirements, codes, guidelines, policies, standard drawings or standard specifications included or incorporated by reference into the Contract or a Project Brief, or, if none is included or incorporated, any Australian standards applicable to the Goods, as current at the Time for Project Brief Commencement.
- 1.3 **Approvals** means certificates, licences, accreditations, clearances, authorisations, consents, permits, approvals, Contract Terminations and permissions from any Authority and any related fees and charges.
- 1.4 **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 (including a stock exchange) having jurisdiction over the Contract or the obligations to be performed under the Contract.
- 1.5 **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.
- 1.6 **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.
- 1.7 **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 Pre-qualified Supplier for an extension of time, Variation or other adjustment to the Price);
- 1.8 **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;

- 1.9 **Conflict of Interest** means any actual, potential, or perceived conflict between the interests of the **Pre-qualified Supplier** and the **Pre-qualified Supplier's** obligations under the Contract.
- 1.10 **Contract** means the documents identified in clause 2.1;
- 1.11 **Discloser and Disclosee** have the meanings given in clause 1.8;
- 1.12 **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.
  - (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.
- 1.13 **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.
- State-wide or nationwide industrial action that is not limited to or primarily directed at the Pre-qualified Supplier or otherwise caused by or contributed to by the Pre-qualified Supplier and which affects an essential portion of the Pre-qualified 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 Pre-qualified Supplier (as the case may be) or the expenditure of a reasonable sum of money.
- 1.14 **General Conditions means these general conditions.**
- 1.15 **Good Industry Practice means:**
- (i) the standard of skill, care and diligence; and
  - (ii) practices, methods, techniques, and acts,  
of a skilled and competent Pre-qualified Supplier engaged in the business of providing goods, services, or work like the Services.
- 1.16 **Goods** means any plant, equipment, materials, parts, consumables, or other goods provided, or to be provided by the Pre-qualified 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 specifically mentioned in the Contract.

- 1.17 **GST** means GST as that Contract Term is defined in the GST Law, and any interest, penalties, fines or expenses relating to such GST.
- 1.18 **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.
- 1.19 **HVNL** means the Heavy Vehicle National Law (Queensland) and the regulations made under that law, as may be amended, or replaced from time to time
- 1.20 **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 8.3;
  - (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).
- 1.21 **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 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.
- 1.22 **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.
- 1.23 **Key Personnel** means the Personnel (if any) nominated as key personnel in the Reference Schedule.
- 1.24 **Liability Limit** means:
- (i) in respect of the Principal, the sum of:
    - A. the amount specified in item 8(a) of the Reference Schedule; and
    - B. **the amount of any excess payable under a policy of insurance required to be affected and maintained by the Principal under the Contract.**
  - (ii) in respect of the Pre-qualified Supplier, the sum of:
    - A. the amount specified in item 8(b) of the Reference Schedule; and

- B. the amount of any excess payable under a policy of insurance required to be affected and maintained by the Pre-qualified Supplier under the Contract.
- 1.25 **Local Government Worker** has the same meaning as in the *Local Government Act 2009* (Qld);
- 1.26 **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (Cth);
- 1.27 **Moral Rights** has the meaning given in the *Copyright Act 1968* (Cth);
- 1.28 **National Police Certificate** means a hard copy or digital national police certificate issued by the Queensland Police Service.
- 1.29 **Notifiable Incident** has the meaning given in the WHS Act and the WHS Regulation.
- 1.30 **Party or Parties** means one or both Principal and the Pre-qualified Supplier as the context requires.
- 1.31 **Payment Period** means:
- (i) if the Contract is a 'building contract' as that Contract 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.
- 1.32 **Personal Information** has the meaning given in the *Information Privacy Act 2009* (Qld);
- 1.33 **Personnel** includes the officers, employees, agents, representatives, consultants, subconsultants, Pre-qualified 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 Pre-qualified Supplier;
- 1.34 **Price** means the amount payable for the provision of Professional Services as determined in accordance with **Part 2 – Technical Specifications.**
- 1.35 **Principal** means the entity identified as the Principal on page 5 of the Contract;
- 1.36 **Principal's Representative** means the person identified in the Reference Schedule or otherwise notified to the Pre-qualified Supplier pursuant to clause 9.1 and includes, except where the context requires otherwise, a person authorised as a delegate of the Principal's Representative pursuant to clause 9.3;
- 1.37 **Procurement Process** means the procurement process undertaken by the Principal pursuant to which the Parties have entered into the Contract;
- 1.38 **Project IP** means the Intellectual Property Rights in the Pre-qualified Supplier Documents and all other materials, documents or data created in the performance of the Pre-qualified Supplier's obligations under the Contract.
- 1.39 **Qualifying Cause of Delay** means:
- (i) an act or omission of the Principal or the Principal's Personnel.
  - (ii) Force Majeure; or
  - (iii) any other cause of delay identified elsewhere in the Contract or Project Brief as entitling the Pre-qualified Supplier to an extension of the Time for Project Brief Completion.
- 1.40 **Reference Schedule** means the schedule of that name included in the Contract.
- 1.41 **Regulator** has the meaning given in the WHS Act and WHS Regulation.
- 1.42 **Scope** means the documents describing the Principal's requirements for the Services, Goods or Works which are provided at **Part 2 – Technical Specifications;**
- 1.43 **Services** means the services to be provided or the work to be carried out by the Pre-qualified Supplier as described in **Part 2 – Technical Specifications** (including the supply of professional services and the provision of Pre-qualified Supplier Documents) and any services

or work not specifically mentioned in **Part 2 – Technical Specifications** but that is obviously and indispensably necessary for the performance of the services or work that is mentioned.

- 1.44 **Site** means the site or sites made available by the Principal to the Pre-qualified Supplier for the purpose of the Pre-qualified Supplier carrying out its obligations under the Contract.
- 1.45 **Substantial Breach** includes:
- (i) in respect of the Pre-qualified Supplier:
    - A. a material breach of the Contract including:
      - I a material breach of clause 11.1;
      - II the Pre-qualified Supplier or any of the Pre-qualified 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 18.6;
      - IV failing to effect and maintain the insurance policies required under clause 24;
      - 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 Pre-qualified 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.
    - 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 Pre-qualified Supplier within 20 Business Days after the due date for the making of the payment in clause 18.6 or 18.7 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.
- 1.46 **Pre-qualified Supplier** means the person or entity identified as the Pre-qualified Supplier on page 5 of Part 5 - Contract.
- 1.47 **Pre-qualified 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 Pre-qualified 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.
- 1.48 **Pre-qualified Supplier’s Representative** means the person identified as the Pre-qualified Supplier’s representative in the Reference Schedule or as otherwise approved by the Principal pursuant to clause 10.2;
- 1.49 **Contract Term** means the period the Contract is pursuant to clause 4.1;
- 1.50 **Contract Term End Date** means the date described as such in the Reference Schedule as extended (if at all) pursuant to the Contract.
- 1.51 **Contract Term Start Date** means the time stated in the Reference Schedule by which the Pre-qualified Supplier is required to commence performing its obligations under the Contract (or where no time is stated, promptly after the date of the Contract);
- 1.52 **Time for Project Brief Commencement** means the time stated in a Project Brief by which the Pre-qualified Supplier is required to commence performing its obligations under the Project Brief

- (or where no time is stated, as directed by the Principal) as extended (if at all) by agreement between the Parties;
- 1.53 **Time for Project Brief Completion** means the time (if any) stated in a Project Brief by which the Pre-qualified Supplier is required to achieve Project Brief Completion as extended (if at all) pursuant to the Contract.
- 1.54 **Variation** means any material increase, decrease, or change to the Services described in a Project Brief or the Pre-qualified Supplier's obligations under the Contract.
- 1.55 **Warranty Period** for Goods means the longer of:
- (i) the period stated in Contract or where no period is stated, 12 months after Project Brief Completion; and
  - (ii) such further period required under or implied by any applicable law.
- 1.56 **WHS** means work, health and safety.
- 1.57 **WHS Act** means *Work Health and Safety Act 2011* (Qld) as amended or replaced from time to time.
- 1.58 **WHS Regulation** means the *Work Health and Safety Regulation 2011* (Qld) as amended or replaced from time to time.
- 1.59 **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.
- 1.60 **Site Specific Brief** means, unless the Parties expressly agree otherwise:
- (i) where a written request or order for Services is issued by the Principal, the written document(s) issued by the Principal to the Pre-qualified Supplier which:
    - A. detail the Principal's requirements for the provision of Services by the Pre-qualified Supplier for a specific project site; and
    - B. either requests the Pre-qualified Supplier to provide, or accept the Pre-qualified Supplier's offer to provide those Services to the Principal,including all documents attached to or incorporated by reference into those written documents and which may include a request for quotation, quotation, scope, specifications, drawings, product description, price list or other documents; and
  - (ii) where an oral request or order for Services is made by the Principal, means the information provided by the Principal orally, and the information contained in any documents to which the Pre-qualified Supplier's attention is directed by the Principal;
- 1.61 **Project Brief Completion** means that stage in the performance of the Pre-qualified Supplier's obligations under the Contract at which:
- (i) each and every part of the Services has been carried out and completed in accordance with the Contract and the relevant Project Brief, except for minor omissions which do not reasonably affect the benefit to the Principal of the Services or prevent the Principal from using the Pre-qualified Supplier Documents for the purpose or purposes stated in or to be reasonably inferred from the Contract or the Project Brief;
  - (ii) all Pre-qualified Supplier Documents have been updated and provided to the Principal in accordance with the Contract and the relevant Project Brief;
  - (iii) other obligations of the Pre-qualified Supplier which are stated in the Contract or the relevant Project Brief to be a requirement of Project Brief Completion, or which are otherwise required to be undertaken prior to Project Brief Completion have been completed.
  - (iv) where the Pre-qualified Supplier has been directed to do so, a properly executed statutory declaration in the form in Schedule 2;



- 1.62 **Workplace** has the meaning given in the WHS Act and the WHS Regulation; and
- 1.63 **Works** means any work which by the Contract, is to be handed over to the Principal.

## 2. CONTRACT

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- 2.1 The Contract comprises of:
- (a) Part 2 Project Management & Technical Specifications.
  - (b) Part 4 Contract – Engineering & Cadastral Surveying
  - (c) Part 5 Response Schedules; and
  - (d) Part 6 Pricing Schedule.
- 2.2 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 Pre-qualified Supplier and the Principal (whether oral or in writing).
- 2.3 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 Where any obligation described in the Contract has been carried out by the Principal or the Pre-qualified 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

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- 3.1 Subject to clause 6.1, the Pre-qualified Supplier must, at the Pre-qualified Supplier's expense:
- (a) provide any Services described in the site-specific project brief issued during the Contract Term of the contract; and
  - (b) perform the Pre-qualified Supplier's other obligations under the Contract and all tasks issued pursuant to it,
- in accordance with the Contract and all directions of the Principal issued pursuant to it.
- 3.2 Subject to the Contract, the Principal must pay the Pre-qualified Supplier the Price for Professional Surveying Services provided in accordance with the Contract and the site-specific Project brief issued pursuant to it.

## 4. PROJECT CONTRACT TERM

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- 4.1 Subject to clause 4.1(a), the Contract Term shall commence on the Contract Term Start Date and end on the Contract Term End Date, unless the Contract is earlier Terminated.
- (a) The Principal may, in its absolute discretion, extend the Contract Term End Date on the same Contract Terms as the original Contract, by giving written notice to this effect to the Pre-qualified Supplier at any time prior to the Contract Term End Date.
  - (b) The Parties may mutually agree to extend for further periods beyond any approved initial contract extension.
- 4.2 The Contract shall remain in force until the later of the expiration of the Contract Term and the time at which all obligations of the Parties pursuant to it have been satisfied, unless the Contract is earlier Contract Terminated.

## 5. APPOINTMENT AS PRE-QUALIFIED SUPPLIER

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- 5.1 The tenderer's appointment as a Pre-qualified Supplier or pre-qualified Pre-qualified Supplier pursuant to the *Local Government Regulation 2012* (Qld) entitles the Principal to engage the Pre-qualified Supplier during the Contract Term of that appointment without first seeking quotes or tenders but does not give rise to any obligation on the Principal to do so.
- 5.2 The Pre-qualified Supplier is not an exclusive Pre-qualified Supplier to the Principal of Survey Services during the Contract Term. The Principal shall not be liable upon any Claim by the Pre-qualified Supplier in connection with the Principal ordering a greater or lesser quantity or value of Survey Services from the Pre-qualified Supplier than the Pre-qualified Supplier anticipated or desired, or for the Principal engaging other Pre-qualified Suppliers to supply similar or the same survey services.

- 5.3 The Principal may, during the Contract Term, select other Pre-qualified Suppliers to become Pre-qualified Suppliers or pre-qualified Pre-qualified Suppliers of the same or similar services to the Survey Services pursuant to the *Local Government Regulation 2012* (Qld).

## **6. ENGAGEMENT OF PRE-QUALIFIED SUPPLIER**

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- 6.1 At any time during the Contract Term, the Principal may but shall not be obliged to, issue a Project Brief to the Pre-qualified Supplier for the provision of Survey Services. The Pre-qualified Supplier must promptly, after receiving the Project Brief, notify the Principal as to whether or not it accepts the Project Brief. The Pre-qualified Supplier must accept a Project Brief which is consistent with the Contract unless it cannot reasonably comply with or resource the Project Brief. The Principal may withdraw a Project Brief at any time prior to the Pre-qualified Supplier notifying the Principal in writing that the Project Brief is accepted.
- 6.2 The Principal's acceptance of a Project Brief under clause 6.1 does not create a separate contract. Subject to clause 6.3, any services of the same or a similar type to the Services provided by the Pre-qualified Supplier to the Principal during the Contract Term shall be taken to have been provided pursuant to this Contract.
- 6.3 Nothing in this Contract shall be taken to prevent the Parties from entering into one or more separate contracts, on different Contract Terms to this Contract, for the provision by the Pre-qualified Supplier of services of the same or a similar type to the Services during the Contract Term.

## **7. EXCLUSIVITY**

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- 7.1 The Tenderer is to be aware that this Contract is not exclusive, the Pre-qualified Supplier is not the exclusive Pre-qualified Supplier of the Services, or of services of the same or a similar type to the Services, during the Contract Term. The Principal may engage other Pre-qualified Suppliers to provide services of the same or a similar type to the Services during the Term of this Contract.
- 7.2 The Principal shall not be liable upon any Claim by the Pre-qualified Supplier in connection with the Principal engaging other Pre-qualified Suppliers to supply similar or the same services as the Services pursuant to this contract.

## **8. RELATIONSHIP OF THE PARTIES & CONFLICT OF INTEREST**

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- 8.1 The Pre-qualified Supplier is an independent contractor of the Principal. The Contract does not create any partnership, joint venture or employment relationship. The Pre-qualified 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 coordinating the manner in which it complies with its obligations under the Contract. The Pre-qualified Supplier must provide such materials, equipment, knowledge and Personnel as the Pre-qualified Supplier deems necessary to comply with its obligations and under the Contract.
- 8.2 The Pre-qualified Supplier must not represent itself or allow anyone else to represent that the approved Pre-qualified Supplier is a partner, joint ventures, officer or employee of the Principal. Except to the extent expressly contemplated in the Contract, the Pre-qualified Supplier must not represent itself or allow anyone else to represent that the Pre-qualified Supplier is an agent of the Principal.
- 8.3 The Pre-qualified Supplier warrants and represents that as at the date of the Contract, the Pre-qualified Supplier is not aware of any Conflict of Interest. The Pre-qualified 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.

## **9. PRINCIPAL'S REPRESENTATIVE**

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- 9.1 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.
- 9.2 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 Pre-qualified Supplier's performance of the Services. For the purposes of this Contract the Principal's Representative will be Council's Manager of Technical Services or Director of Infrastructure.
- 9.3 The Principal's Representative may, by giving written notice to the Pre-qualified 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 9.2. Subject to clause 9.5, no other person is permitted to exercise any right or function of the Principal. The Pre-qualified Supplier must notify the Principal immediately if it receives a purported direction in connection with the Contract from any other person that has not been authorised by the Principal. The Principal shall not be liable upon any Claim relating to a direction given to the Pre-qualified Supplier by any unauthorised person.

- 9.4 The Pre-qualified Supplier must, and must ensure that its Personnel, comply with all directions given to them by the Principal's Representative, within the time specified in the direction, or where no time is stated, as soon as is reasonably practicable.
- 9.5 The Principal may notify the Pre-qualified Supplier of a change in the Principal's Representative at any time.

## **10. PRE-QUALIFIED SUPPLIER'S REPRESENTATIVE**

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- 10.1 The Pre-qualified Supplier's Representative is appointed by the Pre-qualified Supplier to manage the Pre-qualified Supplier's performance of the Contract. Matters which are in the knowledge of the Pre-qualified Supplier's Representative are deemed to be within the knowledge of the Pre-qualified Supplier.
- 10.2 The Pre-qualified Supplier may seek the approval of the Principal to change the Pre-qualified Supplier's Representative. The Pre-qualified 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 Pre-qualified 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 Pre-qualified Supplier shall promptly nominate another representative.

## **11. PRIMARY OBLIGATIONS, WARRANTIES AND REPRESENTATIONS**

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- 11.1 The Pre-qualified Supplier:
- (a) must ensure, and warrants and represents that the Pre-qualified 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 Pre-qualified Supplier to comply with its obligations under the Contract and will maintain such competencies, licences, accreditations, qualifications, permits, clearances, or other authorisations always until the Pre-qualified Supplier's obligations under the Contract are at an end.
- (b) must, and to the extent applicable to them must ensure that its Personnel, provide the Services and carry out the Pre-qualified Supplier's other obligations in connection with the Contract in accordance with Good Industry Practice so that the Services are fit for the purpose or purposes stated in the Contract.
- (c) where the Services require the carrying out and completion of any Works, must ensure that at the completion those Works:
- (i) any excavations and/or earthworks undertaken during survey field work is duly restored to a safe and acceptable condition; and
  - (ii) the services undertaken will comply in all respects with:
    - A. the Contract.
    - B. the Project Brief.
    - C. any approved design of the Works; and
    - D. Applicable Standards.
  - (iii) are fit for the purpose stated in or to be reasonably inferred from the Contract and/or the relevant Project Brief,
- and that any deliverables prepared by the Pre-qualified Supplier in relation to the survey works is in accordance with the requirements of the Contract.

- (d) must ensure that all deliverables supplied in the performance of the Services:
  - (i) at the time at which they are supplied and for the duration of any applicable Warranty Period:
    - A. conform to current best practice processes and requirements.
    - B. comply in all respects with the Contract and/or the relevant Project Brief in respect to quality, quantity, performance, functionality, and description.
    - C. conform to the Principal's expectations and approval; and
    - D. are fit for the purpose for which they are to be used or supplied.
  - (ii) at the time at which the Services are being supplied, comply with applicable law and Applicable Standards; and
- (e) must ensure that where the Pre-qualified Supplier provides the necessary deliverables under the requirements of the Contract:
  - (i) those Pre-qualified Supplier Documents:
    - A. comply with the requirements of the Contract, the relevant Project Brief and applicable law.
    - B. are of a standard and quality reasonably expected of a skilled and competent Pre-qualified 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 Pre-qualified Supplier by the Principal:
    - A. the Pre-qualified Supplier Documents; and
    - B. the Principal's use of the Pre-qualified Supplier Documents for a purpose stated in or to be reasonably inferred from the Contract or the relevant Project Brief,  
  
will not infringe Intellectual Property Rights.
- (f) warrants and represents that the Pre-qualified Supplier has carefully reviewed the Contract and will carefully review each Project Brief (including the Scope and all other information contained or referenced in the Project Brief) prior to acceptance of it to satisfy itself that the Scope and other information is appropriate and adequate to enable the Pre-qualified Supplier to comply with its obligations under the Contract.

#### 11.2 The Pre-qualified Supplier

- (a) must ensure, and warrants that the Pre-qualified Supplier has the full power, authority and capacity to enter into the Contract and that the Pre-qualified Supplier's obligations under the Contract are valid and binding on it, and enforceable against it;
- (b) warrants and represents that the rates in the Contract include compliance with all the Pre-qualified Supplier's other obligations under the Contract except, and then only to the extent, that the Contract provides otherwise.

11.3 The Pre-qualified Supplier warrants and represents that neither the Pre-qualified Supplier nor any of its Personnel engaged in any Improper Conduct in connection with the Procurement Process. The Pre-qualified Supplier must not engage in any Improper Conduct in connection with the Contract.

11.4 The Pre-qualified 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 Pre-qualified Supplier has breached a warranty given, representation made or obligation provided for, in clause 11.1 or 11.3.

11.5 The obligations, warranties and representations in clause 11.1 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 Pre-qualified Supplier's practices and/or deliverables of any industry standard or work carried out by others (including work carried out by or on behalf of the Principal),

except that clauses 11.5(c) and 11.5(d) do not apply to the extent that the Pre-qualified Supplier has, prior to acting or omitting to act in reliance on the direction or the industry standard/work by others, given the Principal 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.

## 12. PRE-QUALIFIED SUPPLIER'S PERSONNEL

- 12.1 The Pre-qualified Supplier must ensure that its Personnel involved in the performance of the Pre-qualified 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 Survey 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 safe work practices; and
  - (f) are not affected by alcohol or drugs whilst performing any part of the Pre-qualified 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).
- 12.2 The Pre-qualified Supplier must ensure that only Key Personnel perform the roles identified in the Scope of Work and that the nominated Key Personnel perform those roles for the period identified. The Pre-qualified 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 Pre-qualified 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.
- 12.3 The Pre-qualified Supplier must ensure that when acting and working on a Local Government project, the Pre-qualified Supplier's Personnel:
- (a) Must 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 Employee by the Principal; and
  - (c) comply with all statutory obligations of a Local Government Employee imposed under the *Local Government Act 2009* (Qld).
- 12.4 If the Principal directs the Pre-qualified Supplier to obtain a National Police Certificate in respect of any of the Pre-qualified Supplier's Personnel then the Pre-qualified 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 Pre-qualified 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 Pre-qualified 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 Pre-qualified Supplier must use its best endeavours to provide any additional information which the Principal may reasonably request in relation to a National Police Certificate.

- 12.5 The Pre-qualified Supplier remains solely responsible for the management of industrial relations relating to its Personnel. The Pre-qualified 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 Pre-qualified Supplier to comply with its obligations under the Contract.
- 12.6 The Pre-qualified 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, Pre-qualified Suppliers and consultants.
  - (c) immediately notify the Principal in writing if it becomes aware of any Modern Slavery in the Pre-qualified Supplier's business or operations or the business or operations of its subcontractors, suppliers or consultants.
- 12.7 The Pre-qualified Supplier must not provide or utilise any labour hire for any part of the Services, unless the provider of that labour hire is registered under the *Labour Hire Licensing Act 2017* (Qld)
- 12.8 The Principal may at any time direct the Pre-qualified Supplier to remove any of the Pre-qualified Supplier's Personnel from the performance of the whole or part of the Pre-qualified Supplier's obligations under the Contract if the Principal reasonably believes that the Pre-qualified Supplier is in breach of any clauses 11.1(a), 11.3, 12.1, 12.3, 12.6 or 12.7 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 Pre-qualified Supplier.

### **13. SUBCONTRACTING, ASSIGNMENT AND NOVATION**

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- 13.1 The Pre-qualified 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 Pre-qualified Supplier's obligations shall not relieve the Pre-qualified Supplier from any liability or obligation under the Contract. As between the Principal and the Pre-qualified Supplier, the Pre-qualified Supplier shall be responsible, and liable to the Principal, for the acts and omissions of the Pre-qualified Supplier's Personnel in connection with the Contract as if they were the acts or omissions of the Pre-qualified Supplier.
- 13.2 The Principal may contract, assign or novate the whole or any part of its rights and/or obligations under the Contract in its absolute discretion and without obtaining the consent of the Pre-qualified Supplier.
- 13.3 The Pre-qualified Supplier shall provide to the Principal, all warranties required by the Contract. Unless otherwise directed by the Principal, the Pre-qualified Supplier shall also obtain a warranty from each approved subcontractor or manufacturer commonly used by the Pre-qualified Supplier or manufacturer for their Services, in the name of both the Principal and the Pre-qualified Supplier.
- 13.4 The Pre-qualified 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 Pre-qualified Supplier to the extent that they relevant to the services provided by the subcontractor.

### **14. SITE**

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- 14.1 The Principal will give the Pre-qualified Supplier sufficient, but non-exclusive, access to the Site to carry out the Pre-qualified Supplier's obligations under the Contract. The Principal may refuse to give such access until the Pre-qualified Supplier has given the Principal:
- (a) evidence of insurance required by clause 24.3;
  - (b) copies of all competencies, licences, accreditations, qualifications, permits, clearances or other authorisations which are required for the Pre-qualified 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 Project Brief or elsewhere in the Contract; and
  - (d) evidence that the Pre-qualified 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 Project Brief or elsewhere in the Contract.
- 14.2 The Principal and its Personnel shall be entitled to access the Site and any other place where any obligation of the Pre-qualified Supplier, under the Contract, is or is to be carried out on the giving of

reasonable notice, including to conduct tests, inspections, or audit of the Pre-qualified Supplier's compliance with the Contract or to carry out other services or work at the Site. The Pre-qualified 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 Pre-qualified Supplier in the performance of the Services.

- 14.3 The Pre-qualified Supplier must comply with the reasonable requirements of the Principal in relation to the Pre-qualified Supplier's access to or conduct on the Site.
- 14.4 Access to the site by the Principal or the Principal's representative must always comply with the same workplace health and safety obligations imposed on the Sub-Contractor.

## 15. MEETINGS

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- 15.1 The Pre-qualified Supplier must reasonably meet in good faith and discuss the performance of the Pre-qualified Supplier and/or any other matter that may be concerning the Principal in connection with the Contract.

## 16. TIMING

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- 16.1 The Pre-qualified Supplier must commence performing its obligations described in a Project Brief, promptly after the Pre-qualified Supplier receives a purchase order from Council. It is expected that the Pre-qualified Supplier will commence work within the timelines nominated in the Contract or the Project Brief;
- 16.2 Execute the project works in accordance with the 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 a Project Brief or agreed between the Parties); and
- 16.3 The Pre-qualified 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.
- 16.4 If the Pre-qualified Supplier:
- (a) is delayed in reaching Project Brief Completion by the Time nominated in the Project Brief because of a Qualifying Cause of Delay; and
  - (b) the Pre-qualified Supplier gives the Principal a written claim for an extension of the Time for Project Brief completion within 10 Business Days of the delay first occurring,

then the Principal shall grant a reasonable extension of the Time for Project Brief completion. The Principal may at its absolute discretion, grant an extension of the Time for Project Brief completion for delay caused by any other cause of delay. The Pre-qualified Supplier must provide the Principal with all information reasonably directed by the Principal's Representative in connection with the delay.

- 16.5 If the Pre-qualified Supplier:
- (a) is entitled to an extension of the Time for Project Brief completion under clause 16.4 because of a delay caused by the Principal or the Principal's Personnel; and
  - (b) submits a written claim for delay costs within 10 Business Days of the cessation of the delay,
- then the Principal shall be liable for the direct costs which the Pre-qualified Supplier has reasonably, necessarily and not prematurely incurred by reason of that delay and which it cannot reasonably mitigate. The Pre-qualified Supplier shall not otherwise be entitled to any monetary compensation in connection with any delay or disruption to or prolongation of the Pre-qualified Supplier's obligations under the Contract or a Project Brief however caused.

## 17. VARIATIONS

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- 17.1 The Principal may, in respect of any Project Brief, at any time and for any reason, prior to the completion of the approved Scope of Work, direct a variation by giving written notice to the Pre-qualified Supplier. The Principal cannot direct a variation which is outside the general scope of the Contract. The Pre-qualified Supplier cannot carry out a variation without a written direction to do so from the Principal.
- 17.2 The Principal may direct the Pre-qualified Supplier to provide an estimate or quotation for a variation and/or a statement as to the impact of a variation of the Services (including the cost and timing of the

- Services). The Principal may direct the Pre-qualified 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 Pre-qualified Supplier must comply with such a direction at its own expense.
- 17.3 Subject to clause 17.4, the effect of a variation on the Pre-qualified 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 **Part 6 – Pricing Table**; or
  - (c) by the Principal (acting reasonably).
- 17.4 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 Pre-qualified Supplier complies (in whole or part) with the direction, the Pre-qualified Supplier has notified the Principal in writing that it considers that the direction constitutes a variation.
- 17.5 The Principal may approve a request for a Variation by the Pre-qualified Supplier. Unless the Principal agrees otherwise in writing, a variation approved under this clause 17.5 shall have no effect on the Pre-qualified Supplier's entitlement to payment, timing of the Pre-qualified Supplier's obligations or any other obligation of the Pre-qualified Supplier under the Contract.
- 17.6 Where the Principal directs a variation omitting or reducing any part of the Services described in a Project Brief, then the Principal may subsequently provide the omitted or reduced Services itself or engage others to do so on its behalf. The Pre-qualified 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.

## 18. INVOICES AND PAYMENT

- 18.1 The Pre-qualified Supplier may submit invoices to the Principal for Services provided in accordance with the Contract and the relevant Project Brief at the times and for the Services stated in the site-specific Project Brief. Unless otherwise directed, invoices should be submitted promptly and, in any event, no later than 5 Business Days after the agreed Scope of Work is Complete.
- 18.2 Each invoice must comply with the GST Law and all other requirements:
- (a) stated in the Contract or the relevant Project Brief; or
  - (b) which the Principal reasonably directs prior to the time for submission of the invoice.
- In addition – the Pre-qualified Supplier is to clearly nominate the purchase order number issued by Council at the commencement of each project.
- 18.3 The Principal may, acting reasonably, direct the Pre-qualified Supplier to provide documentary evidence supporting the Pre-qualified 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.
- 18.4 The Pre-qualified 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).
- 18.5 The Principal may deduct from any amount claimed by the Pre-qualified Supplier under or in connection with the Contract (including for a breach of the Contract):
- (a) any amount which the Contract entitles the Principal to deduct;
  - (b) any other amount due and owing by the Pre-qualified Supplier to the Principal; and
  - (c) any amount which the Principal reasonably claims is or will become due and owing by the Pre-qualified Supplier to the Principal (whether under the Contract or otherwise).
- The balance remaining after such deductions shall be due by the Principal to the Pre-qualified Supplier and shall be certified as such by the Principal within 15 Business Days after the invoice is received.
- 18.6 Subject to the Contract, the Principal shall pay the amount due to the Pre-qualified Supplier (if any) including any applicable GST before the end of the Payment Period.
- 18.7 If the Principal disputes an invoice issued by the Pre-qualified Supplier:
- (a) the Principal will pay the undisputed portion of the relevant invoice (if any) less any deductions provided for under clause 18.5 and dispute the balance; and



- (b) if the resolution of the dispute determines that the Principal must pay an amount to the Pre-qualified Supplier, the Principal will pay that amount upon resolution of that dispute.
- 18.8 Payments made by the Principal to the Pre-qualified Supplier are made on account only and do not constitute an admission that the Pre-qualified Supplier is entitled to the payment made or that the Services and/or the Pre-qualified Supplier deliverables for the subject payment have indeed been provided, or any other obligation has been carried out, in accordance with the Contract.
- 18.9 Except to the extent expressly provided otherwise in the Contract payment of the Price shall be the Pre-qualified Supplier's only entitlement to monetary compensation for the provision of the Services and compliance with the Pre-qualified Supplier's other obligations under the Contract and any Project Brief issued pursuant to it.
- 18.10 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.

## **19. LAW AND POLICIES**

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- 19.1 The Pre-qualified 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 Pre-qualified Supplier, the Pre-qualified Supplier's business or the Pre-qualified 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 the relevant Project Brief or which are publicly available or otherwise made known to the Pre-qualified Supplier from time to time.
- 19.2 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 relevant Project Brief and could not reasonably then have been anticipated by a competent Supplier; and
- (c) causes the Pre-qualified Supplier to incur additional cost than otherwise would have been incurred,

then the Pre-qualified Supplier may notify the Principal in writing of the law and the effect of it on the Pre-qualified 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 Pre-qualified Supplier must continue to comply with its obligations under the Contract and to comply with the law.

## **20. WORK HEALTH AND SAFETY**

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- 20.1 The obligations in this clause 20 are in addition to, and not in substitution for, any other obligation of the Pre-qualified Supplier:
- (a) under the Queensland WHS Act and WHS Regulation; or
- (b) elsewhere in this Contract, including the Project Brief or at law relating to WHS.
- Nothing in this clause 20 is intended to reduce or limit such other obligations and none of those other obligations shall be taken to reduce or limit the Pre-qualified Supplier's obligations under this clause 20.
- 20.2 The Pre-qualified Supplier must itself, and must ensure that its Personnel engaged in performing the Pre-qualified Supplier's obligations under the Contract:

- (a) comply with all law (including the QLD 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 Pre-qualified 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 Pre-qualified 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) The Pre-qualified Supplier must 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.

20.3 The Pre-qualified 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 Pre-qualified 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 into the accident, injury or other health and safety incident in connection with the Contract.

20.4 The Pre-qualified 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 (at its own cost) which:
  - (i) addresses all the specific WHS hazards and issues relevant to the Pre-qualified Supplier's obligations under the Contract which can be reasonably anticipated or ascertained at that time.
  - (ii) documents the system and implements control methods 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 20.4(c);
- (d) must, where directed to do so by the Principal:
  - (i) prior to commencing the Services, submit the Pre-qualified 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 Pre-qualified 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 Pre-qualified Supplier's obligations under the Contract requests the Pre-qualified 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 for approval; or
    - (ii) provide written confirmation that the WHS documentation is appropriate to manage the risks associated with the Pre-qualified Supplier's obligations under the Contract.
  - (f) is not entitled to make any Claim (whether for additional costs or expense) in connection with its obligations under this clause.
- 20.5 Unless otherwise directed by the Principal, the Pre-qualified Supplier must ensure that each of its Personnel working at the Site receives a site-specific induction and that each person visiting the Pre-qualified Supplier or its Personnel at that Site receives a site-specific induction or is accompanied by someone who has received such an induction.

## **21. PROTECTION OF PROPERTY AND THE ENVIRONMENT**

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- 21.1 The Pre-qualified Supplier must and must ensure that to the extent applicable to them, its Personnel:
- (a) perform the Pre-qualified Supplier's obligations under the Contract safely and in a manner that will prevent pollution, contamination or damage to property or the environment; and
  - (b) take all measures necessary to protect property and the environment in the performance of its obligations under the Contract.
- 21.2 The Pre-qualified Supplier must promptly rectify:
- (a) any damage to any property which is caused by the Pre-qualified Supplier or the Pre-qualified Supplier's Personnel in connection with the performance of its obligations under the Contract.
  - (b) any damage to any property, which occurs whilst the Pre-qualified Supplier is responsible for its care (whether due to any act or omission of the Pre-qualified Supplier).

The Pre-qualified 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.

## **22. INDEMNITY**

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- 22.1 To the extent permitted by law, the Pre-qualified 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 Pre-qualified Supplier deliverables);
    - (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 Pre-qualified Supplier or its Personnel and/or the breach of Contract by the Pre-qualified 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 Pre-qualified 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.

- 22.2 The Principal has informed its officers, employees and related bodies corporate and communicates acceptance on their behalf, of the Pre-qualified Supplier's undertaking to indemnify under clause 22.1.

### 23. LIMITATION OF LIABILITY

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- 23.1 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.

- 23.2 Clause 23.1 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 because 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; or

- (d) liability of the Pre-qualified Supplier which the Pre-qualified Supplier:

- (i) is entitled to recover under any insurance policy required to be affected under the Contract (up to the monetary limits for that insurance stated in the Contract) unless and then only to the extent that the Pre-qualified 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 affected under the Contract (up to the monetary limits for that insurance stated in the Contract) but for any act or omission of the Pre-qualified Supplier or the existence of this clause 23,

any amounts referred to in subclauses (a), (b), (c) and (d) shall not be included in any calculations on whether the relevant Party's Liability Limit in clause 23.1(a) has been reached.

### 24. INSURANCE

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- 24.1 The Pre-qualified Supplier must affect the insurances stated in **Part 1 – Request for Tender** and any other insurance which the Pre-qualified Supplier considers is necessary to protect its interests or which is required by law.
- 24.2 The insurance policies required under clause 24.2 must be maintained at all times from the Contract Term Start Date:
- (a) until 5pm on the later of:
    - (i) the Contract Term End Date; and
    - (ii) the date on which the Pre-qualified 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 24.2(a).
- 24.3 The Pre-qualified Supplier must ensure that any subcontractor, supplier, or consultant of the Pre-qualified 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.
- 24.4 If requested by the Principal, the Pre-qualified Supplier must provide the Principal with a copy of the relevant certificate of currency and other evidence reasonably required by the Principal of the Pre-

- qualified Supplier's compliance with this clause 24. The Principal may suspend the Contract or any Project Brief issued pursuant to it until such evidence is provided.
- 24.5 Nothing in this clause, nor the Pre-qualified Supplier's compliance or non-compliance with it, shall be taken to limit or reduce the Pre-qualified Supplier's liability under the Contract or at law.
- 24.6 The Pre-qualified 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 Pre-qualified Supplier under this clause 24:
    - (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.

## 25. HANDLING OF INFORMATION

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- 25.1 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 any other person, firm or company.
- 25.2 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 Pre-qualified Supplier)** If the Pre-qualified Supplier collects or has access to Personal Information as that Contract Term is defined in the *Information Privacy Act 2009* (Qld) in order to carry out its obligations under the Contract, the Pre-qualified 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 Pre-qualified Supplier was the Principal. Where the Principal consents to the Pre-qualified Supplier subcontracting the whole or part of the Pre-qualified Supplier's obligations under this Contract, the Pre-qualified 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 Contract 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 Pre-qualified 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 Pre-qualified 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 Contract Terms of the *Right to Information Act 2009* (Qld).

- 25.8 **(Media)** The Pre-qualified 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

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- 26.1 **(Background IP)** Background IP of a Party shall remain the exclusive property of that Party. The Principal grants the Pre-qualified 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 Pre-qualified Supplier's obligations under the Contract and for no other purpose. The Pre-qualified Supplier grants the Principal an irrevocable, royalty free, non-exclusive, non-transferable licence to use, copy reproduce, modify and adapt the Pre-qualified 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 Pre-qualified Supplier assigns all right, title and interest in the Project IP to the Principal; and
  - (c) the Principal grants the Pre-qualified Supplier a revocable, royalty free, non-exclusive, non-transferable licence to use the Project IP to the extent necessary to enable the Pre-qualified Supplier to comply with the Pre-qualified 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 Pre-qualified Supplier, Project IP vests in the Pre-qualified Supplier on creation and the Pre-qualified 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 Pre-qualified Supplier or any of its Personnel in the Background IP or the Project IP; and

- (b) the Pre-qualified 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 Pre-qualified Supplier Documents.
- 26.5 **(Warranty and representation by Pre-qualified Supplier)** The Pre-qualified 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 Pre-qualified 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 Pre-qualified 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

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- 27.1 **(Non-conformance)** Where any of part of the Services provided by the Pre-qualified Supplier does not conform strictly to the requirements of the Contract or the Pre-qualified Supplier fails to comply with any other obligation of the Pre-qualified Supplier under the Contract, the Principal may, in addition to or as an alternative to exercising its rights under clause 29 and 30, exercise the rights provided in clause 27.2.
- 27.2 **(Principal's rights)** Where permitted by clause 27.2, the Principal may:
- (a) direct the Pre-qualified Supplier to provide a detailed proposal as to how the Pre-qualified 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 Pre-qualified 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 Pre-qualified 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 Pre-qualified Supplier's expense and within the timeframes reasonably directed by the Principal.
- 27.3 **(Step-in rights)** Where the Pre-qualified 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 Pre-qualified 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 clause 27.2 or 27.3 shall be a debt due and owing by the Pre-qualified Supplier to the Principal.
- 27.5 A is directed due to any act or omission of the Pre-qualified Supplier or its Personnel (including a breach of the Contract by the Pre-qualified Supplier) then the Pre-qualified Supplier shall bear the costs of the suspension. Otherwise, the Principal shall be liable for the direct costs which the Pre-qualified Supplier demonstrates it has reasonably, necessarily and not prematurely incurred by reason of the suspension and which the Pre-qualified Supplier demonstrates it cannot reasonably mitigate.

## 28. FORCE MAJEURE

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- 28.1 **(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.

- 28.2 **(Suspension)** On the giving of a notice under clause 28.1, the obligations of the Affected Party detailed in the notice shall be suspended for the duration of the Force Majeure.
- 28.3 **(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.
- 28.4 **(Industrial relations)** Clause 28.3 does not require the settlement of strikes, lockouts or other labour difficulties by the Affected Party on Contract 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.
- 28.5 **(Principal's rights)** Where the Pre-qualified Supplier gives a notice under clause 28.1, the Principal may at its election:
- (a) itself perform, or engage others to perform the obligations which the Pre-qualified 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 Pre-qualified 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.
- 28.6 **(Contract Termination)** If Force Majeure extends for a period of greater than 20 consecutive Business Days then the Principal may Contract Terminate the Contract immediately by giving written notice to the Pre-qualified Supplier.

## 29. CANCELLATION OF PROJECT BRIEF

- 29.1 **(Cancellation of a Project Brief)** The Principal may cancel any Project Brief at any time, for any reason, at its convenience. Any Project Briefs which are on foot at the time at which the Contract is Contract Terminated by either party pursuant to clause 30 shall be deemed to be immediately cancelled pursuant to this clause 29.1, unless the Parties expressly agree otherwise.
- 29.2 **(Consequences of cancellation)** If a Project Brief is cancelled, then:
- (a) unless otherwise directed by the Principal, the Pre-qualified 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 cancellation of the relevant Project Brief;
  - (b) the Principal may carry out any obligation of the Pre-qualified Supplier which has not been carried out and completed as at the date of cancellation itself or engage others to do so on the Principal's behalf; and
  - (c) the Principal shall, subject to the Contract, pay the Pre-qualified Supplier:
    - (i) the amount which the Pre-qualified Supplier is entitled to be paid under the Contract for Services provided by the Pre-qualified Supplier in accordance with the Contract up to and including the date of cancellation; and
    - (ii) if the cancellation is solely due to the act or omission of the Principal, without any fault on behalf of the Pre-qualified Supplier, the amount of any other direct costs which the Pre-qualified Supplier cannot reasonably mitigate and which the Pre-qualified Supplier has reasonably, necessarily and not prematurely incurred:
      - A. prior to the cancellation in the expectation of completing its obligations under the Contract or the relevant Project Brief; or
      - B. as a direct consequence of cancellation,except that the total amount payable to the Pre-qualified Supplier in respect of the Project Brief shall not under any circumstances exceed the amount to which the Pre-qualified Supplier would have become entitled to be paid had the Project Brief not been cancelled and the Pre-qualified Supplier had completed its obligations under the Project Brief.



### 30. CONTRACT TERMINATION, DEFAULT AND INSOLVENCY

- 30.1 **(Contract Termination for convenience)** The Principal may at any time and for any reason in its absolute discretion Contract Terminate the Contract by giving 25 Business Days written notice to the Pre-qualified 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 30.2;
  - (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 Pre-qualified Supplier is subject to an Insolvency Event;
  - (b) the Pre-qualified 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 Pre-qualified Supplier under clause 30.2, the Pre-qualified 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 Pre-qualified Supplier:

- (i) cancel any Project Brief pursuant to clause 29.1;
- (ii) to the extent permitted by law, immediately Contract Terminate this Contract; or
- (iii) permanently or temporarily take the whole or any part of the obligations of the Pre-qualified Supplier remaining to be completed pursuant to any Project Brief (including the obligation to remedy the default) out of the hands of the Pre-qualified 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 Pre-qualified Supplier shall not be entitled to any further payment in respect of the obligations taken out of Pre-qualified Supplier’s hands;
  - B. the Pre-qualified Supplier must continue to perform any obligations under the Contract and the relevant Project Brief that were not taken out of the Pre-qualified Supplier’s hands;
  - C. the Principal or the third party so engaged may enter the Site and any relevant premises of the Pre-qualified Supplier and use all of the Pre-qualified Supplier’s plant, equipment and materials as may be necessary to perform the obligation;
  - D. the Principal may, on the giving of reasonable notice, require the Pre-qualified Supplier to resume the performance of the obligations of the Pre-qualified Supplier under the Contract and the relevant Project Brief which were taken out of the hands of the Pre-qualified Supplier if the Pre-qualified Supplier ceases to be subject to an Insolvency Event or the Principal is otherwise of the view that the Pre-qualified Supplier is capable of continuing to perform its obligations under the Contract and the relevant Project Brief 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 Pre-qualified Supplier performed the obligation then the difference shall be a debt due and owing by the Pre-qualified Supplier to the Principal and may be deducted from payments otherwise owing to the Pre-

qualified Supplier. Until such costs are incurred, the Principal may deduct the estimated costs from payments to the Pre-qualified Supplier.

30.4 **(Pre-qualified 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 Pre-qualified Supplier to the Principal under clause 30.2, the Principal fails to show reasonable cause why the Pre-qualified Supplier should not exercise a right under this clause 30.4,

the Pre-qualified 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, Contract Terminate the Contract by giving written notice to the Principal.

If the Pre-qualified Supplier suspends the whole or part of the Services under this clause 30.4, the Pre-qualified 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 Pre-qualified Supplier, then the Pre-qualified Supplier may Contract Terminate the Contract by giving written notice to the Principal.

30.5 **(Effect on other rights)** To the extent permitted by law, the Pre-qualified Supplier shall not be entitled to any monetary compensation in respect of:

- (a) the Contract Termination of the Contract by either Party.
- (b) the cancellation of a Project Brief; or
- (c) the Principal taking obligations out of the hands of the Pre-qualified Supplier,

other than as expressly provided in clause 29. Nothing in clauses 29 or 30 shall prejudice the Principal's right to claim and recover damages for breach of contract by the Pre-qualified Supplier.

## 31. DISPUTE RESOLUTION

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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 **Error! Reference source not found.**, 28, 29 and 30 continue to perform the Contract.

## 32. CLAIMS

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32.1 **(Claims pursuant to the Contract)** The Principal shall not be liable upon any Claim by the Pre-qualified Supplier for an extension of time, an adjustment to the Price (including due to a Variation) or other monetary compensation pursuant to the Contract unless the Pre-qualified 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 Pre-qualified Supplier in connection with the Contract unless the Pre-qualified 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

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- 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 Pre-qualified 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 or the relevant Project Brief 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 Contract 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

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- 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 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 **(Consideration)** In consideration for the Pre-qualified Supplier entering this Contract, the Principal agrees to pay the Pre-qualified Supplier the sum of \$10 on demand. In consideration for the Principal entering into this Contract, the Pre-qualified Supplier agrees to pay the Principal the sum of \$10 on demand.
- 34.10 **(Discrepancy or inconsistency)** Where there is a discrepancy or inconsistency between any obligation of the Pre-qualified Supplier under the Contract, the Pre-qualified 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 Pre-qualified Supplier must comply with the highest or most onerous requirement.
- 34.11 **(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 Pre-qualified 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.
- 34.12 **(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 email. For clarity, the Parties consent to the Contract being executed electronically using DocuSign or an equivalent electronic method to identify the Parties.

- 34.13 **(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 Pre-qualified 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.
- 34.14 **(Clauses to survive Contract Termination)** In addition to any other clauses which may be found to survive Contract Termination, clauses 22, 23, 24.2(b), 25, 26, 29.2, 30.5 and 32 survive the expiration or earlier Contract Termination of the Contract.

# Schedule 1 Statutory Declaration

**Oaths Act 1867**  
**STATUTORY DECLARATION**

QUEENSLAND TO WIT

I, [insert name of person signing] of [insert address] in the State of Queensland, do solemnly and sincerely declare that, in relation to the contract between Banana Shire Council and [insert Pre-qualified Supplier's name] (**Pre-qualified Supplier**), identified as contract no. [insert contract no.] (**Contract**) for the provision of [describe services] (**Services**) pursuant to Project Brief [insert Project Brief # or description] (**Project Brief**):

1. I hold the position of [insert position].
2. Having made all reasonable inquiries, I am in a position to know the facts contained herein. I am duly authorised by the Pre-qualified Supplier to make this declaration on its behalf.
3. The Services provided in respect of the Project Brief comply in all respects with the requirements of the Contract.
4. All other obligations to be performed in connection with the Project Brief have been performed in accordance with the Contract.
5. Each claim for payment which the Pre-qualified Supplier has submitted in connection with the Project Brief and all documentary evidence provided in support of such claims, is true and correct in every material respect.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the *Oaths Act 1867*.

Taken and declared at )  
this day of )  
before me: )

\_\_\_\_\_  
 Solicitor    Justice of the Peace  
 Commissioner for Declarations

