



# **REQUEST FOR TENDER**

Water Utilities

Panel of Prequalified Suppliers for  
Reactive Electrical Maintenance and After-Hours Support

Contract No.: 2021T208C

## CONDITIONS OF TENDER

<b>Request for Tender (RFT)</b>	Panel of Prequalified Suppliers for Reactive Maintenance and After-Hours Support
<b>Tender Closing Date</b>	2:00 pm Wednesday 14 July 2021
<b>RFT Number:</b>	2021T208C

**PREPARED BY**

Marvin Pacheco  
Acting Manager, Water Utilities

*Marvin pacheco*

\_\_\_\_\_  
Signature

01/07/2021

\_\_\_\_\_  
Date

**DOCUMENT CHANGE HISTORY**

Version	Author	Issue Purpose	Date
A	Robyn Letts	Review	18/10/2019
B	Janice Wilson	Review	30/06/2021

**APPROVALS**

This document is authorised for release once all signatures have been obtained.

In signing this approval:

- » I agree that the document meets requirements and has been checked against the approved requirements.

Alisa Priddle



01/07/2021

**Checking Officer**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*Marvin pacheco*

Marvin Pacheco

01/07/2021

**Approving Manager**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

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## **PART 1 – PREAMBLE**

The Central Highlands region is in Central Queensland, Australia. The region encompasses an area of around 60 000 square kilometres, making it just short of the size of Tasmania.

It is home to around 30 000 people who live in the thirteen unique communities of Arcadia Valley, Bauhinia, Blackwater, Bluff, Capella, Comet, Dingo, Duaringa, Emerald, Rolleston, Sapphire Gemfields, Springsure and Tieri.

Our region is rich in minerals and agriculture, thriving on irrigation sourced from water storage on the Nogoa and Comet rivers. We claim the largest sapphire-producing fields in the Southern Hemisphere.

Central Highlands Regional Council (Council) is seeking a Panel of Prequalified Suppliers (Panel) to provide reactive electrical maintenance services including labour, materials, parts, equipment and supervision to carry out works on all of its water treatment plants (WTP), wastewater treatment plants (WWTP), water pump stations, sewer pump stations and associated infrastructure. This may include after-hours and on-call support.

This Contract is for a period of one (1) year from the commencement date with an option to extend for one (1) year, and an option for an additional extension of one (1) year after that. Extension of the Contract will be purely at the discretion of Council.

Council requires the provision of electrical and refrigeration trade services from Suppliers who provide quality services and materials which provide a value of money deliverable to maintain Council facilities, infrastructure and plant.

Council reserves the right to accept one or more Tenderers, for the whole or part of its requirements. If for any reason Council is unable to satisfy its requirements by use of a successful Tenderer, it reserves the right to deal with additional suppliers.

## PART 2 – TENDER INFORMATION

<b>Council:</b>	Central Highlands Regional Council	
<b>Project Name:</b>	Panel of Prequalified Suppliers for Reactive Electrical Maintenance and After-Hours Support	
<b>Services:</b>	Electrical maintenance services as described in more detail in Schedule 2 – Scope of Supply	
<b>Sites:</b>	All Council WTPs, WWTPs, water pump stations, sewer pump stations and associated infrastructure.	
<b>Proposed Timetable:</b>	<b>Action</b>	<b>Time / Date</b>
	Request for Tenders Released	02 July 2021
	Site Visit (if any)	N/A
	Tender Closing Time	2:00 pm 14 July 2021
	Proposed Contract Award Date	02 August 2021
<b>Evaluation Criteria:</b>	<b>Criteria</b>	<b>Weighting (%)</b>
	Key Personnel and Relevant Technical Experience	25%
	Tenderer's Resources	10%
	Understanding of Council's Requirements	5%
	Development of Competitive Local Business	5%
	Price	55%
<b>Tender Responses:</b>	Tenders must be lodged electronically by email to: <a href="mailto:tender@chrc.qld.gov.au">tender@chrc.qld.gov.au</a> , subject line: 2021T208C.	
<b>Tender Format:</b>	<p>Tenders must consist of:</p> <ul style="list-style-type: none"> <li>• 1 x complete Tender in a single PDF document; and</li> <li>• 1 x set of the Response Schedules in the format provided by the Tenderer.</li> </ul> <p>Response Schedules shall be completed by entering responses in the areas provided and by providing attachments if requested (e.g. providing copies of certificates). Any other information provided by the Tenderer may not be considered.</p>	
<b>Maximum Page Limit</b>	<p>Tenderers should complete the provided Response Schedules as briefly and concisely as possible. The Council will contact Tenderers during the evaluation period if additional information is required.</p> <p>Page limits for individual sections are noted in the Response Schedules.</p>	
<b>Tender Validity Period:</b>	90 days from the Tender Closing Time	
<b>Procurement Administrator:</b>	Alisa Priddle	

<b>Council's Complaints Manager:</b>	<b>Name:</b>	Denis Glacken
	<b>Telephone:</b>	1300 242 686
	<b>Email:</b>	<a href="mailto:enquiries@chrc.qld.gov.au">enquiries@chrc.qld.gov.au</a>

# **PART 3 – CONDITIONS OF TENDERING**

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## PART 3 – CONDITIONS OF TENDERING

### 1. CONDUCT OF THE PROCUREMENT PROCESS

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#### 1.1 (General) The Principal:

- (a) **(conduct of Procurement Process)** may conduct the Procurement Process in any manner which it sees fit, but will endeavour to do so in a manner which is consistent with this Request for Tender and the Sound Contracting Principles;
- (b) **(Principal's rights at any time)** may, without limiting clause 1.1(a), at any time:
  - (i) modify or depart from the procedures set out in the Tender Documents;
  - (ii) extend or reduce any timeframes or dates provided for in the Tender Documents;
  - (iii) amend, add to or delete any part of the Tender Documents;
  - (iv) suspend, terminate or alter the Procurement Process at any time;
  - (v) request any one or more Tenderers to attend inspections of the Site or other meetings, and/or undertake any other enquiries or activities which the Principal reasonably considers to be relevant to the Procurement Process;
  - (vi) change the Evaluation Criteria (including weightings);
- (c) **(accuracy, adequacy and completeness)** gives no warranty and makes no representation that the Tender Documents or any other information provided to the Tenderer in connection with the Procurement Process is accurate, adequate or complete.

#### 1.2 (Principal's Representative) Any right or obligation of the Principal under or in relation to these Tender Documents may be exercised or carried out by the Procurement Administrator.

#### 1.3 (Communications during the Procurement Process) All communications in connection with the Procurement Process shall be conducted through the Council Procurement team email [tender@chrc.qld.gov.au](mailto:tender@chrc.qld.gov.au), unless otherwise expressly permitted by the Principal or these Conditions of Tendering. The Tenderer must not rely upon any information (including information provided at a tender briefing or site inspection) unless it is confirmed through the Procurement team. The Principal:

- (a) will not respond to any request for information received 24 hours prior to the tender Closing Time; and
- (b) may notify any or all Tenderers of a request for further information made by a Tenderer and the Principal's response to it without identifying the submitting Tenderer or may keep a request for information confidential and respond only to the Tenderer if it considers that it is appropriate to do so.

#### 1.4 (Tender briefings and site inspection) The Tenderer must attend any tender briefing and/or site inspection identified in the Tender Information, unless the Tender Information provides that attendance is optional. The Tenderer must notify the Procurement Administrator that it intends to attend the tender briefing or site inspection at least three days prior to the date of the tender briefing or site inspection and may only bring a maximum of the number of Personnel noted in the Tender Information. The Tenderer must inform itself of risks to health and safety arising from attendance at the tender 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.

- 1.5 **(Complaints in relation to the Procurement Process)** The Tenderer must make any complaint in relation to the Procurement Process or the Request for Tender immediately upon the cause of the complaint arising or upon the Tenderer becoming aware of the cause. The complaint must be made in writing to the Principal's Complaints Manager and must contain adequate detail to allow the Principal's Complaints Manager to properly investigate the complaint.
- 1.6 **(Conduct of Tenderers)** The Tenderer must not, and must ensure that its Personnel do not engage in any Improper Conduct. The Tenderer must immediately notify the Principal in the event that it becomes aware that it, or any of its Personnel have engaged in Improper Conduct. The Tenderer must at all times during the Procurement Process comply, and ensure that its personnel comply, with any applicable law to the Procurement Process.
- 1.7 **(No liability)** Neither the Principal nor its Personnel shall be liable upon any Claim for any Specified Loss in connection with the Procurement Process.

## 2. DOCUMENTS AND INFORMATION

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- 2.1 **(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.
- 2.2 **(Confidentiality)** Each party shall keep confidential the documents and information provided by the other party in connection with the Procurement Process which are of their nature confidential.
- 2.3 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with the Procurement Process may be used, copied or disclosed as required by any law and otherwise:
- (a) by the Principal, as the Principal considers to be reasonably necessary to properly conduct the Procurement Process and/or to properly carry out its functions as a local government authority;
  - (b) by the Contractor, as is reasonably necessary to enable the Tenderer to:
    - (i) prepare the Tender;
    - (ii) obtain legal, accounting or other professional advice;
    - (iii) comply with the Tenderer's corporate governance requirements.
- 2.4 **(Media)** The Tenderer 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.

## 3. THE TENDER

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- 3.1 **(Acceptance of Contract and Scope)** Except to the extent that the Tenderer has detailed a proposed alternative, amendment, qualification or departure in a Tender, the Tenderer 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 Services described in or to be reasonably inferred from the Tender Documents.
- 3.2 **(Alternative Tender)** An Alternative Tender may be rejected or evaluated at the Principal's discretion. In

exercising this discretion, the Principal may take into account any matter which it considers relevant, including the nature and extent of the alternatives, qualifications, amendments or departures. Alternative Tenders should clearly detail the proposed alternatives, amendments, qualifications or departures and the reasons for proposing them.

- 3.3 (Non-Conforming Tender)** A Non-Conforming Tender may be rejected or evaluated at the Principal's discretion. In exercising this discretion, the Principal may take into account any matter which it considers to be relevant, including the nature and extent of the non-conformances and whether any Conforming Tender has been lodged by another Tenderer. The Principal is not required to notify the Tenderer if it considers a Tender lodged by it to be a Non-Conforming Tender.
- 3.4 (Late Tender)** A Late Tender may be rejected or evaluated at the Principal's discretion. In exercising this discretion the Principal may take into account the time at which the Tender is received, the reason the Tender is late and whether any other Tender has been received by the Tender Closing Time.
- 3.5 (Fee)** The Fee must be submitted exclusive of GST. Where there is any discrepancy between the amount stated in the Form of Tender as the Tenderer's Fee and the sum total of the items in any Fee Schedule then:
- (a) if the Contract provides that the fees are fixed, then the sum of the items in the Fee Schedule shall be the Tenderer's Fee; or
  - (b) if the Contract states that the Services are to be undertaken on the basis of rates, then the rate price or sum shown shall prevail over the total shown and the total shall be adjusted accordingly.
- 3.6 (Tender Validity Period)** The Tenderer's Tender will remain valid and open for acceptance by the Principal until the end of the Tender Validity Period, unless the Principal consents to the Tenderer earlier withdrawing its Tender. The Principal may request an extension of the Tender Validity Period at any time by giving written notice to the Tenderer. If the Tenderer does not agree to the requested extension then Principal may exclude the Tenderer's Tender from assessment or further assessment as the case may be.

#### **4. TENDERER'S WARRANTIES AND REPRESENTATIONS**

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- 4.1 (Warranties and Representations)** By lodging a Tender, the Tenderer warrants and represents that:
- (a) **(authority)** the Tender has been signed and lodged by a person with authority to do so on behalf of the Tenderer;
  - (b) **(basis of tender)** the Tenderer:
    - (i) has received or obtained copies of all the Tender Documents and all information or documents referred to in the Tender Documents;
    - (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 Tender;
    - (iii) has undertaken its own enquiries and investigations to satisfy itself of the nature and extent of the Services, its contractual obligations and all other risks, contingencies and circumstances which could have an impact on its ability to carry out and complete the Services for the Fee;
  - (c) **(accuracy of tender)** all information provided in or with the Tender is accurate;
  - (d) **(ability)** the Tenderer 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 Tenderer to carry out its obligations under the Contract in the event that its Tender is accepted; and
  - (ii) 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 Tender is accepted;
  - (iii) have the resources necessary to commence the Services by the time (if any) stated in the Tender Information (as amended) if at all, pursuant to these Conditions of Tender and to complete the Services by the time (if any) stated in the Tender Information or the Contract;
- (e) **(Fee)** the Fee, and all rates, sums and prices included in the Tender allow for:
- (i) all the risks, contingencies and other circumstances which could have an effect on the Tenderer's ability to carry out and complete the Services for the Fee, 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 Services, 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;
- (f) **(notice)** the Tenderer has notified the Principal in its Tender of any:
- (i) ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from the Tender Documents;
  - (ii) any assumptions that it has made in determining its Fee;
  - (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 4;

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

## 5. **LODGEMENT OF TENDER**

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- 5.1 (Tender Lodgement)** A Tender must be lodged by emailing to [tender@chrc.qld.gov.au](mailto:tender@chrc.qld.gov.au) . The Principal may, on request by a Tenderer, allow the Tender to be lodged by an alternative method.
- 5.2 (Time of Lodgement)** A document forming part of a Tender shall be deemed to have been lodged at the time that the document is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the Tenderer or where the Tender is lodged by an alternative method allowed by the Principal, when it is received by the Principal by that method.
- 5.3 (Tender opening)** Tenders will not be opened publicly and the Tenderer will not be permitted to attend the opening of Tenders.

## 6. ASSESSMENT OF TENDER

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- 6.1 (Rights after Tender Closing Time)** The Principal may, at any time after Tenders have been received, take any steps which it considers to be prudent or necessary to assist in determining which Tender is most advantageous to it including:
- (a) **(change in Tender Documents)** request any one or more Tenderers to change their Tender to take account of a change in the Tender Documents or any error in the Tender Documents;
  - (b) **(meeting)** request a meeting with any one or more Tenderers to obtain additional information;
  - (c) **(clarification or alteration)** request any one or more Tenderers to clarify and alter any aspect of a Tenderer's Tender and may, at its discretion, advise any or all the Tenderers of such clarification or alteration;
  - (d) **(negotiation)** negotiate amendments to any aspect of the Tender or the Tender Documents with any one or more Tenderers, and suspend or terminate such negotiations at any time;
  - (e) **(presentation)** request any one or more Tenderers to provide a presentation of their Tender in person at the Principal's office at no cost to the Principal; and
  - (f) **(additional information)** request additional information from one or more Tenderers;
  - (g) **(other actions)** do anything else which the Principal considers is reasonably necessary for the proper conduct of the Procurement Process and to ensure that it accepts the Tender most advantageous to the Principal having regard to the Sound Contracting Principles.
- 6.2 (Evaluation Criteria)** In determining which Tender is most advantageous to the Principal, each Tender evaluated in accordance with these Conditions of Tendering will be assessed, but not necessarily exclusively, against the Evaluation Criteria.
- 6.3 (Considerations)** In assessing Tenders, 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 Tender, any amendment to or clarification of a Tender or provided at a meeting with or presentation by the Tenderer;
  - (b) outcomes from discussions with Tenderer's referees (if any);
  - (c) the Tenderer's past performance under other contracts with the Principal or third parties; and
  - (d) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate Tenders or any advisor to such persons.
- 6.4 (Uncertainties)** The Principal may ignore any part of a Tender which is ambiguous, uncertain, unclear or illegible without seeking clarification from the Tenderer and may assess the balance of the Tender.
- 6.5 (Failure to comply)** If the Tenderer fails to comply with these Conditions of Tendering or with any request made by or on behalf of the Principal pursuant to the Conditions of Tendering within the time required, the Principal may, at its discretion, reject the Tender.
- 6.6 (Unsatisfactory score)** The Principal may at its discretion reject a Tender which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the Tender is satisfactory.

- 6.7 **(Unacceptably low bid)** The Principal may, at its discretion, reject a Tender if the Principal reasonably believes that the Tenderer cannot comply with the obligations which it will have under the Contract in the event that its Tender is successful for the tendered Fee.
- 6.8 **(Other information or assistance)** The Principal may seek information or assistance from any person (including third parties) where the Principal considers in its absolute discretion it is necessary to do so in order to properly evaluate any aspect of the Tender. The Principal may notify the Tenderer of a third party appointed by the Principal to provide such assistance to the Principal, and the Tenderer must cooperate with and provide all information and assistance reasonably requested by such third party. The Principal may exclude from assessment or reject a Tender if the Tenderer does not provide such cooperation, information and/or other assistance.

## 7. ACCEPTANCE OF TENDERS

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- 7.1 **(Ability to accept)** The Principal is not bound to accept the Tender with the lowest Fee or the Tender with the highest score against the Evaluation Criteria, or any Tender. The Principal will, if it accepts a Tender, accept the Tender which it reasonably believes is the most advantageous to it having regard to the Sound Contracting Principles.
- 7.2 **(Local Preference)** The Principal may accept a Tender lodged by a Local Supplier in preference to comparable Tenders from Non-Local Suppliers even if the Tenders 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.
- 7.3 **(No contract until formal acceptance)** No binding contract for the performance of the Services by the Tenderer will exist between the parties unless and until the Principal expressly advises the Tenderer in writing that the Tenderer's Tender (as amended by any post-tender negotiation, if any) is accepted.
- 7.4 **(Form of Contract)** If a Tender is accepted, the successful Tenderer will be required to enter into a contract in the form of the Contract, as amended by agreement between the parties.
- 7.5 **(Unsuccessful Tenderers)** Unsuccessful Tenderers will be notified after a Tender has been accepted. The Principal may, at its discretion, notify unsuccessful Tenderers of the name of, and Fee submitted by, the successful Tenderer. The Principal may provide feedback to unsuccessful Tenderers if requested to do so, but such feedback may be general in nature and will be limited to the Tenderer's Tender only.

## 8. DEFINITIONS

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- 8.1 **(Definitions)** In these Conditions of Tendering, unless the context otherwise requires:
- (a) **Alternative Tender** means a Tender which is otherwise a Conforming Tender but which in the opinion of the Principal, contains significant alternatives, qualifications or amendments to or departures from the Contract or the Scope;
  - (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday at the Site;
  - (c) **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;

- (d) **Complaints Manager** means the person identified as such in the Tender Information;
- (e) **Conditions of Tendering** means the conditions of tendering contained in this Part 3 – Conditions of Tendering of the Request for Tender;
- (f) **Conforming Tender** means a Tender which, in the opinion of the Principal:
  - (i) is substantially in the form and contains substantially all of the information and documentation required by the Response Schedules;
  - (ii) is substantially in accordance with the Tender Format;
  - (iii) does not substantially exceed the Maximum Page Limit (if any); and
  - (iv) contains no significant alternatives, qualifications or amendments to or departures from the Contract or the Scope;
- (g) **Contract** means a contract which may be entered into between the Principal and a Tenderer for the carrying out of the Services, and which will be in the form contained in Part 4 – the Contract, as amended (if at all) by the express written agreement of the Principal;
- (h) **Councillor** has the same meaning as in the *Local Government Act 2009* (Qld);
- (i) **Evaluation Criteria** means the evaluation criteria set out in the Tender Information;
- (j) **Fee** means the fee shown in the Tender;
- (k) **Fee Schedule** means a Response Schedule which provides a breakdown of the Fee, and which may include rates, lump sums, prices, provisional sums, estimated quantities and other information;
- (l) **Form of Tender** means the form of that name included in the Response Schedules;
- (m) **Forum** means the online forum accessible through the Tender Box;
- (n) **Forum Closing Time** means the forum time identified as such in the Tender Information;
- (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 Tenderer and the Tenderer'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 Tenderer, 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 Tenderer's Tender;
  - (vi) breaching any law in connection with the Procurement Process; or
  - (vii) engaging in aggressive, threatening, abusive, offensive or other inappropriate behaviour or committing a criminal offence;
- (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 Tender** means any Tender that is not received in the Tender Box (or otherwise received by the Principal by an alternative method permitted under the Conditions of Tendering) by the Tender Closing Time;
  - (s) **Local Supplier** has the meaning given in the Principal's procurement policy as published at the date on which this Tender was advertised;
  - (t) **Maximum Page Limit** means the maximum number of pages which may be lodged as, with or in relation to the Tender (including, unless otherwise indicated all attachments, annexures, supplements, parts, schedules or appendices), as stated in the Tender Information;
  - (u) **Non-Conforming Tender** means a Tender which is not a Conforming Tender or an Alternative Tender;
  - (v) **Non-Local Supplier** means a supplier (including a Tenderer) that is not a Local Supplier;
  - (w) **Personnel** includes the officers, employees, agents, representatives, agents, contractors and consultants of a party and any other person or entity for whom that party is vicariously liable;
  - (x) **Preamble** means Part 1 – Preamble;
  - (y) **Principal** means the party identified as such in the Tender Information;
  - (z) **Procurement Administrator** means the person identified as such in the Tender Information;
  - (aa) **Procurement Process** means the process pursuant to which the Request for Tenders is issued, an indicative outline of which is included in the proposed timetable in the Tender Information;
  - (bb) **Response Schedules** means the schedules in Part 6 – Response Schedules which are to be lodged in accordance with the Tender Documents, including the Form of Tender;
  - (cc) **Request for Tender** means this request for tender (including Parts 1 to 6) and all documents included in or incorporated by reference into it;
  - (dd) **Services** means the services identified in the Tender Information as more particularly described in the Scope;
  - (ee) **Scope** means Part 5 – Scope of the Tender Documents and all documents incorporated into it (whether physically or by reference), and includes any amendments provided for in a Tender Addendum;
  - (ff) **Site** means the site or sites identified in the Tender Information;

- (gg) **Sound Contracting Principles** has the meaning given in section 104(3) of the *Local Government Act 2009* (Qld);
- (hh) **Specified Loss** means:
- (i) any loss or anticipated loss of 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 Principal 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;
- (ii) **Tender** means the tender lodged by a Tenderer in response to this Request for Tender and includes all documents and information lodged with or as part of the tender;
- (jj) **Tender Addendum** means any communication issued to Tenderers in accordance with these Conditions of Tendering which is identified as a Tender Addendum;
- (kk) **Tender Box** means the website identified as the Tender Box in the Tender Information;
- (ll) **Tender Closing Time** means the closing time detailed in the Tender Information as varied (if at all) pursuant to these Conditions of Tendering;
- (mm) **Tender Documents** means:
- (i) this Request for Tender; and
  - (ii) any Tender Addenda issued pursuant to these Conditions of Tendering,
- and includes all documents included in or incorporated by reference into these documents;
- (nn) **Tender Format** means the format described in the Tender Information;
- (oo) **Tender Information** means the information contained in Part 2 – Tender Information of this Request for Tender;
- (pp) **Tender Validity Period** means the period of time identified as such in the Tender Information as extended (if at all) pursuant to clause 3.6;
- (qq) **Tenderer** means:
- (i) any person who submits 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 Tender Documents during the Procurement Process, also includes such other persons;

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

## 9. GENERAL PROVISIONS

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- 9.1 **(Interpretation of Tender Documents)** The Tender Documents must be read and construed together and are intended to be mutually explanatory.

- 9.2 (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.
- 9.3 (Headings)** Clause headings are for reference purposes only and must not be used in interpretation.
- 9.4 (No limitation)** The words 'include', 'includes' or 'including' shall be read as if followed by 'without limitation'. Where the Conditions of Tendering provide that the Principal 'may' do something, the Principal is not obliged to do that thing and is not prevented from doing any other thing.
- 9.5 (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.
- 9.6 (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 Tender Documents expires on a day which is not a Business Day, the period will expire at the end of the next Business Day.
- 9.7 (Discretion)** Unless, and then only to the extent that the Conditions of Tendering expressly provide otherwise, any right of the Principal pursuant to these Conditions of Tendering may be exercised, and any consent of the Principal required under these Conditions of Tendering may be given, withheld or given subject to conditions, at the absolute discretion of the Principal.
- 9.8 (Law)** A reference to 'law' includes:
- (a) legislation (including subordinate legislation), local laws, by-laws, orders, ordinances, awards, requirements and proclamations of a local government authority, the State of Queensland, the Commonwealth or other Authority having jurisdiction and any related fees and charges; and
  - (b) certificates, licenses, accreditations, clearances, authorisations, approvals, consents, and permits and any related fees and charges,
- which are applicable to the Services, the Tender Documents, the Procurement Process or which are otherwise in force at any place where the Services are to be carried out.
- 9.9 (Governing Law)** The Request for Tender and Procurement Process are governed by the laws of Queensland and the Commonwealth of Australia which are in force in Queensland. The Principal and the Tenderer submit to the jurisdiction of the Courts of Queensland, relevant Federal Courts and Courts competent to hear appeals from them.
- 9.10 (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.
- 9.11 (Rights Cumulative)** The rights and remedies of the Principal and the Tenderer provided in the Conditions of Tendering are cumulative on each other and on any rights or remedies conferred at law or in equity.
- 9.12 (Severance)** If a provision of the Conditions of Tendering is void or unenforceable it must be severed and the provisions that are not void or unenforceable are unaffected by the severance.
- 9.13 (No waiver)** No waiver by the Principal of a provision of these Conditions of Tendering is binding unless made in writing.
- 9.14 (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 Tenderer 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 – THE CONTRACT

## GOODS AND/OR SERVICES CONTRACT

### Background

- A Council requires the Supply.
- B The Contractor has represented to Council that it has the expertise, capacity and willingness to provide such Supply to Council.
- C Council has agreed to engage the Contractor as an independent contractor to carry out the Supply set out in the Contract and the Contractor agrees to accept such appointment on the following terms and conditions.

### Agreed terms

#### 1 Definitions and Interpretation

##### 1.1 Definitions

In the Contract:

**Business Day** means a day that is not:

- (a) a public holiday in Emerald, Queensland; or
- (b) Saturday, Sunday or 27, 28, 29, 30 or 31 December.

**Change of Control** means, for a corporation, a change in:

- (a) Control of the composition of the board of directors of the corporation;
- (b) Control of more than half the voting rights attaching to shares of the corporation; or
- (c) Control of more than half the issued shares of the corporation (not counting shares that carry no right to participate beyond a specified amount in the distribution of either profit or capital).

**Claim** includes any claim (whether known or unknown, actual or contingent, fixed or unascertained), demand, action, proceeding or suit, for:

- (a) the payment of money (including damages) or any liability;
- (b) an adjustment to the Price (including amounts in the Pricing Schedule); or
- (c) delay, disruption, acceleration or other time-based claim,

whether arising by way of indemnity, under contract, in equity, for restitution, under statute (to the maximum extent possible), in tort (including negligence) or otherwise, that is made under or in relation to:

- (d) the Contract or the Supply; or
- (e) the conduct of, or relationship between, the Contractor and Council, before or after the Contract came into force.

**Claim Preconditions** has the meaning given in clause 18.3.

**Commencement Date** means the commencement date specified in 0.

**Completion** means the stage when:

- (a) all applicable Goods have been Delivered to the appropriate location at the Site and installed and commissioned at the Site, as applicable, in accordance with the Contract and have been accepted by Council in accordance with clause 9.7;
- (b) all applicable Services have been completed in accordance with the Contract;
- (c) any documents or other information relating to the Completion of the Supply or any other obligations of the Contractor which the Contract requires or which Council requires have been provided to Council; and
- (d) all applicable conditions required by the Contract to be satisfied before Completion have been satisfied,

as relevant for any Completion Date or Key Supply Date (as the case may be).

**Completion Date** means the date specified in 0 (if any) or the Request for Supply (if applicable) by which the Supply must achieve Completion as may be adjusted in accordance with the Contract.

**Confidential Information** means the terms of the Contract and any information of a party:

- (a) which the party indicates or has indicated is confidential;
- (b) which by its nature might reasonably be understood to be confidential or to have been disclosed to the other party in confidence; or
- (c) which is commercially valuable or would be of commercial value to a competitor of the party to whom it belongs,

as well as:

- (d) all notes and other records prepared by Council or anybody else, based on or incorporating information referred to in sub-clauses (a) to (c) above; and
- (e) all copies of the information, notes and other records referred to in sub-clauses (a) to (d) above;

but excludes information that:

- (f) was rightfully in the possession of the other party and not subject to an obligation of confidentiality on that party before the date of the Contract;
- (g) is or, after the date of the Contract, becomes available in the public domain (other than as a result of a breach of the Contract); or
- (h) is required to be disclosed by Legislative Requirements.

**Contract** means this Contract comprising the documents referred to in clause 2.1 together with any other documents which are incorporated by reference.

**Contractor** means the entity making the Supply as stated in Schedule 1.

**Contractor's Program** has the meaning given in clause 7.1.

**Contractor's Representative** means the person named in 0 or any replacement notified by the Contractor to Council from time to time under clause 14.2.

**Contract Term** means, subject to earlier termination of the Contract in accordance with clause 29 or otherwise at law:

- (a) the term specified in the Schedule 1 (if any); and
- (b) any extension of that term under clause 6.1(c).

**Control** means an ability to control and includes control that can be exercised as a result of, by means of, or by the revocation or breach of:

- (a) a trust;
- (b) an agreement;
- (c) a practice; or
- (d) or any combination of (a), (b) or (c),

whether or not the arrangement is enforceable and regardless of whether the ability to control is express or implied, formal or informal or exercisable alone or jointly with someone else.

**Council's Representative** means the person named in Schedule 1 or any replacement notified by Council in writing to the Contractor from time to time under clause 14.1.

**Council Supplied Information** means any information in any form supplied or made available to the Contractor by or on

behalf of Council, before or after the date the Contract came into force, except any document forming part of the Contract.

**Defect** means any part of the Supply which does not comply strictly with the requirements of the Contract or is otherwise unsatisfactory to Council and includes any omissions.

**Defects Liability Period** means the period stated in Schedule 1 and which commences on:

- (a) if Schedule 1 or a Request for Supply sets out a Completion Date, the date that Completion of the Supply is achieved by the Contractor (as determined by Council's Representative acting reasonably); or
- (b) if Schedule 1 states that the Contractor is to perform the Supply for a Contract Term or a Request for Supply sets out a term for the carrying out of the Supply, the later of the expiry of the Contract Term or the terms set out in the Request for Supply.

**Delivery** means the transfer of possession of the Goods to Council, including at the Site or any other delivery address notified by Council to the Contractor in writing.

**Excusable Delay** means any of the following, to the extent that they cause the Contractor an actual delay in the performance of the Supply:

- (a) a breach of contract or negligent or unlawful act or omission by Council or its Personnel;
- (b) a suspension of the Supply, or a Variation, that was neither caused nor contributed to by the breach of contract or unlawful or negligent act or omission of the Contractor or its Personnel;
- (c) a fire, natural disaster, or an accident that causes personal injury or loss of or damage to property, to the extent it could not be avoided or overcome by the Contractor and its Personnel taking reasonable actions in accordance with Industry Practice; or
- (d) an unreasonable and unexpected delay by a Government Agency to take any necessary action that was not caused by the default or failure to apply Industry Practice by the Contractor or its Personnel.

**Goods** means the goods (if any) specified in Schedule 1 or the Request for Supply (if applicable) to be supplied.

**Government Agency** means any of the following, excluding Council:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

**GST Act** means *A New Tax System (Goods and Supply Tax) Act 1999* (Cth).

**Heavy Vehicle** has the meaning given in the *Heavy Vehicle National Law 2012* (Qld).

**Heavy Vehicle Law** means:

- (a) the *Heavy Vehicle National Law Act 2012* (Qld) and its subordinate legislation including the *Heavy Vehicle National Law Regulation 2014* (Qld); and
- (b) all other Legislative Requirements relating to Heavy Vehicles.

**Heavy Vehicle Safety Requirements** means any Heavy Vehicle Law and all the requirements of:

- (a) the Contract;
- (b) Policies and Plans;
- (c) Industry Practice; and
- (d) the Contractor's management plans,

relating to the operation of Heavy Vehicles.

**Industry Practice** means:

- (a) that degree of care, skill, judgment and foresight that would be expected of a skilled, competent and

experienced contractor qualified and regularly engaged in the business of supplying goods or services of a similar nature to the kind required by the Contract; and

- (b) compliance with all standards of Standards Australia Ltd (except to the extent that the Contract prescribes a contrary standard) applicable to the Supply, the best practices, methods and procedures applicable in the industry to which the Supply relate, and all relevant professional codes of conduct.

**Insolvency Event** means any of the following events:

- (a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the *Corporations Act 2001* (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;
- (b) the party makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the party is insolvent;
- (c) the party stops or suspends payment of all or a class of its debts, or threatens to stop or suspend payment of all or a class of its debts;
- (d) the party or the party's property or undertaking becomes subject to a personal insolvency arrangement under part X of the *Bankruptcy Act 1966* (Cth) or a debt Contract under part IX of the *Bankruptcy Act 1966* (Cth);
- (e) the party is unable to pay its debts when they fall due or is unable to pay its debts within the meaning of the *Corporations Act 2001* (Cth), or is presumed to be insolvent under the *Corporations Act 2001* (Cth);
- (f) a party is seeking, or makes a statement, or conducts itself in a manner, from which it may reasonably be deduced that the person is seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the *Corporations Act 2001* (Cth);
- (g) the party ceases to carry on business;
- (h) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction; or
- (i) anything analogous to any event above.

**Intellectual Property Rights** means all industrial and intellectual property rights, both in Australia and throughout the world, and includes any copyright, Moral Right, patent, registered or unregistered trade mark, registered or unregistered design, registered or unregistered plant breeder's right, trade secret, know-how, right in relation to semiconductors and circuit layouts, trade or business or company name, indication or source or appellation of origin or other proprietary right, or right of registration of those rights.

**Key Personnel** means the key personnel (if any) listed in 0.

**Key Supply Date** means a key date for the completion of specified Services or Delivery of specified Goods as set out in 0 or the Request for Supply (if applicable).

**Legislative Requirements** includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations of the Commonwealth and the State applicable to the Supply;
- (b) certificates, licences, consents, permits, approvals, codes, standards and requirements of organisations having jurisdiction in connection with or recognised generally as authorities in respect of the carrying out of the Supply;
- (c) Australian Standards and any other relevant standards; and
- (d) fees and charges in connection with the foregoing.

**Moral Rights** means:

- (a) the right of integrity of authorship;
  - (b) the right of attribution of authorship; and
  - (c) the right not to have authorship falsely attributed,
- including those rights as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing before, on or after the commencement of the Contract.

**Personnel** means any officer, employee, agent or sub-contractor of a party but Council's Personnel do not include the Contractor or the Contractor's Personnel and the Contractor's Personnel do not include Council or Council's Personnel.

**Personal Information** means information or an opinion (including information or an opinion forming part of a database), whether recorded in a material form or not, about a natural person whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

**Policies and Plans** means any policy or plan of Council notified to the Contractor, referred to in the Contract or publicly available (including on any website), as amended or replaced from time to time by notice in writing to the Contractor.

**Price** means the sum payable for performance of the Supply that is:

- (a) to the extent Council accepted a lump sum, the lump sum as set out in 0 or the Pricing Schedule;
- (b) to the extent Council rates, the sum of the products ascertained by multiplying the rates by the corresponding quantities in the Pricing Schedule; and
- (c) where Council accepted a lump sum and rates, the aggregate of the paragraphs (a) and (b),

subject to any amounts not exceeding any Price Cap.

**Price Cap** means the amount in 0, as may be adjusted in accordance with clause 18.9.

**Privacy Act** means the *Privacy Act 1988* (Cth) and any ancillary rules, guidelines, orders, directions, directives, codes of conduct or other instruments made or issued under that legislation, as amended from time to time.

**Privacy Laws** means:

- (a) the Privacy Act;
- (b) the *Information Privacy Act 2009* (Qld);
- (c) the Australian Privacy Principles contained in schedule 1 of the Privacy Act; and
- (d) all other applicable Legislative Requirements, registered privacy codes, privacy policies and contractual terms in respect of the processing of Personal Information.

**Progressive or Periodic Supply** means a Taxable Supply that satisfies the requirements of section 156-5 GST Act.

**QA System** has the meaning given in clause 13.1(c).

**Pricing Schedule** means the rates and prices set out in **Error! Reference source not found.**

**Request for Supply** means a request issued by Council to the Contractor for the supply of Goods or Services in accordance with clause 6.3(c).

**Security Interest** has the meaning given in the *Personal Property Securities Act 2009* (Cth).

**Security of Payment Act** means the *Building Industry Fairness (Security of Payment) Act 2017* (Qld).

**Security of Payment Days** means a 'business day' as that term is defined in the Security of Payment Act.

**Services** means the services (if any) specified in Schedule 1 or the Request for Supply (if applicable) to be carried.

**Site** means the site or sites stated in Schedule 1 and any other site made available to the Contractor by Council for the purpose of carrying out the Supply.

**Standing Offer Arrangement** means the arrangement where the Contractor will carry out Supply upon the issue of a Request for Supply in accordance with clause 6.3.

**Supply** means the supply of:

- (a) the Services (if any) and any minor incidental services that can be reasonably inferred as forming part of the Services; and
- (b) the supply of the Goods (if any).

**Variation** has the meaning given in clause 21.1.

**WH&S Law** means:

- (a) the *Work Health and Safety Act 2011* (Qld), *Work Health and Safety Regulation 2011* (Qld) and all other Legislative Requirements relating to health and safety;
- (b) principles of law or equity established by Australian Courts relating to health and safety; and
- (c) requirements of persons exercising statutory powers concerning health and safety.

**WH&S Obligations** means WH&S Law and all requirements:

- (a) of the Contract;
- (b) of Policies and Plans;
- (c) of Industry Practice; and
- (d) communicated at any inductions that the Contractor or its Personnel undertake in connection with the Supply,

to the extent that they relate to health and safety.

## 1.2

### Interpretation

In the Contract, unless the context indicates otherwise:

- (a) a singular word includes the plural and vice versa;
- (b) a word which suggests one gender includes the other;
- (c) headings are for convenience only and are not to be used for interpretation;
- (d) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, the Contract, and references to the Contract include any of its schedules or annexures;
- (e) a reference to a party to the Contract or any other document or Contract includes the party's successors, permitted substitutes and permitted assigns;
- (f) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (g) a reference to a document or Contract (including a reference to the Contract) is to that document or Contract as amended, supplemented, varied or replaced;
- (h) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (i) if any day on or by which a person must do something under the Contract is not a Business Day, then the person must do it on or by the next Business Day;
- (j) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity;
- (k) the words 'include', 'included', 'including' or the equivalent are not words of limitation;
- (l) no provision of the Contract is to be construed against the interests of Council because Council prepared or relies on that provision; and
- (m) references to the Contractor include its Personnel.

## 1.3

### Contractor consisting of multiple parties

If the Contractor consists of more than one person:

- (a) an obligation of those persons is joint and several, and each of those persons agrees that it is

responsible for the acts and omissions of the other as if they were its own;

- (b) a right of those persons (including to payment) benefits them jointly, and a payment by Council to one of those persons will be deemed to be payment to all of them; and
- (c) the Contractor may not exercise any right under the Contract unless that right is exercised concurrently by all persons constituting the Contractor.

## **2 Contract, ambiguities and term**

### **2.1 Contract document**

The Contract comprises only of the following documents:

- (a) where applicable, the Request for Supply issued to the Contractor for the relevant Supply (but only to the extent that it applies to the Supply);
- (b) these terms and conditions;
- (c) 0 of the Contract;
- (d) Schedule 2 of the Contract;
- (e) the other schedules to the Contract; and
- (f) any documents stated in the schedules to form part of the Contract.

### **2.2 Resolving ambiguity**

- (a) Any ambiguity between the documents comprising the Contract will be resolved according to the descending order of precedence set out in clause 2.1.
- (b) If the applicable order of precedence in clause 2.1 cannot resolve the ambiguity, then Council will direct the interpretation to be followed and the Contractor must comply with that direction and will have no Claim against Council in connection with that direction.

## **3 Contractor's general warranties**

### **3.1 Contractor's warranties**

Without limiting any other obligation under the Contract, the Contractor agrees, and warrants to Council, that:

- (a) it has carefully reviewed the Supply described in 0 and **Error! Reference source not found.** before entering into the Contract, and it has and will maintain the necessary experience, and an appropriately qualified and trained workforce, to carry out such Supply until Completion of the Supply or expiry of the Contract Term (as applicable);
- (b) the Price is appropriate and sufficient for the carrying out the Supply and the performance of that Supply and, except to the extent expressly stated to the contrary in the Contract or in the Pricing Schedule, compensates the Contractor for all expenses it may suffer or incur in relation to the Contract (including profit);
- (c) it has made its own investigation and assessment of the work and risks involved in carrying out the Supply and it has reviewed and satisfied itself about any information that Council has made available (including Council Supplied Information) to it and that which is otherwise obtainable upon reasonable enquiries concerning the Supply and the Contract;
- (d) at the time of entering into the Contract, it does not have any conflict of interest that could be expected to affect the performance of its obligations under the Contract;
- (e) it did not, and will not, engage in any collusive behaviour, anti-competitive conduct or other similar conduct in contravention of Legislative Requirements relating to the Contract; and
- (f) it has the necessary authority and power to enter into the Contract and to perform the obligations under it.

### **3.2 Council's reliance**

The Contractor acknowledges that Council, in entering into the Contract, is relying on the warranties and representations made in this Contract, including clause 3.1.

## **4 Council Supplied Information**

### **4.1 Council Supplied Information provided for convenience only**

The Contractor acknowledges and agrees that:

- (a) any Council Supplied Information has been or will be provided only for the Contractor's convenience;
- (b) any Council Supplied Information has not been and will not be relied upon by the Contractor or its Personnel for any purpose (including entering into the Contract or performing its obligations under the Contract); and
- (c) it will, by its own independent investigations, verify the correctness and suitability of any aspect of any Council Supplied Information, before it relies on, or allows any of its Personnel to rely on, that Council Supplied Information in relation to the carrying out of any of the Supply,

except to the extent that the Council Supplied Information is stated in 0 or Request for Supply (if applicable) as being able to be relied upon by the Contractor.

### **4.2 Contractor to independently verify and Council not liable**

The Contractor acknowledges and agrees that:

- (a) Council does not:
  - (i) assume any responsibility or duty of care in respect of; or
  - (ii) warrant, guarantee or make any representation as to,

any aspect of Council Supplied Information; and

- (b) it will have no Claim against Council in relation to any error, omission or inadequacy of Council Supplied Information or in relation to Council's failure to provide any Council Supplied Information,

except to the extent that the Council Supplied Information is stated in 0 or a Request for Supply (if applicable) as being able to be relied upon by the Contractor.

## **5 Security**

### **5.1 Provision and recourse**

- (a) This clause 5 will only apply if 0 has been completed to confirm that security is required and clause 5 applies.
- (b) The Contractor must provide Council with security in the form of two unconditional undertakings (which must be in a form approved by Council), each equal to 50% of the percentage or amount specified in 0, and given by a financial institution approved by Council. The Contractor must provide such security to Council within five Business Days of the execution of the Contract or such other time as agreed in writing.
- (c) Council may have immediate recourse to the security to satisfy any claim which Council makes for any cost, loss, expense or damages which Council may incur or suffer as a consequence of any act or omission of the Contractor in connection with the Contract or the Supply.

### **5.2 Release**

Subject to any rights it may have under the Contract, Council must:

- (a) if 0 states that the Contractor is to perform the Supply for a Contract Term, and 0 states that no Defects Liability Period applies to the Contract, then within 20 Business Days of the expiry of the Contract Term, release any security held by Council as at the date of expiry of the Contract Term;

- (b) if 0 states that the Contractor is to perform the Supply for a Contract Term, and 0 states that a Defects Liability Period applies to the Contract, then:
  - (i) within 20 Business Days of the expiry of the Contract Term, release 50% of the security held by Council as at the date of expiry of the Contract Term; and
  - (ii) within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by Council as at the date of expiry of the Defects Liability Period;
- (c) if 0 sets out a Completion Date, and 0 states that no Defects Liability Period applies to the Contract, then within 20 Business Days of Completion being achieved by the Contractor (as determined by Council's Representative acting reasonably), release any security held by Council as at the date of Completion; and
- (d) if 0 sets out a Completion Date, and 0 states that a Defects Liability Period applies to the Contract, then:
  - (i) within 20 Business Days of Completion achieved by the Contractor (as determined by Council's Representative acting reasonably), release 50% of the security held by Council as at the date of Completion; and
  - (ii) within 20 Business Days of the expiry of the Defects Liability Period, release the remainder of any security held by Council as at the date of expiry of the Defects Liability Period.

## **6 Nature of Contract**

### **6.1 Supply for Contract Term**

- (a) If Schedule 1 sets out Supply for a Contract Term (Option 1 is marked 'Yes') then this clause 6.1 applies.
- (b) The Contractor must commence the Supply on the Commencement Date and, subject to clause 6.1(c), cease the Supply on the last day of the Contract Term.
- (c) Council, in its absolute discretion, may by notice in writing to the Contractor not later than 2 weeks before the last day of the Contract Term, extend the Contract Term once by the additional period set out in Schedule 1. The terms of the Contract will continue to apply during the extended period.

### **6.2 Supply required by a Completion Date**

- (a) If Schedule 1 sets out the Supply is required by a Completion Date (Option 2 is marked 'Yes') then this clause 6.2 applies.
- (b) The Contractor must commence the Supply on the Commencement Date and must achieve Completion of the Supply by the Completion Date.

### **6.3 Supply under a Standing Offer Arrangement**

- (a) If 0 sets out Supply under a Standing Offer Arrangement (Option 3 is marked 'Yes') then this clause 6.3 applies.
- (b) During the Contract Term, the Contractor offers to carry out the Supply as and when requested by Council and must remain ready, willing and able to do so.
- (c) If Council requires the Contractor to carry out a Supply at any time during the Contract Term, it may issue a Request for Supply to the Contractor.
- (d) Council, in its absolute discretion, may by notice in writing to the Contractor not later than 2 weeks before the last day of the Contract Term, extend the Contract Term once by the additional period set out in

Schedule 1. The terms of the Contract will continue to apply during the additional period.

- (e) On receipt of a Request for Supply under clause 6.3(c), the Contractor will be bound to carry out the Supply described in the Request for Supply and such Goods and Services required by the Request for Supply will become part of the Supply required under the Contract.
- (f) The Contractor must commence the Supply on the date for commencement of that Supply as stated in the relevant Request for Supply (or if no date is stated immediately upon receipt of the Request for Supply) and:
  - (i) if the Request for Supply sets out a Completion Date, achieve Completion of the relevant Supply by the Completion Date; or
  - (ii) if the Request for Supply sets out a term for carrying out the relevant Supply, cease the relevant Supply on the last day of the stated term.
- (g) Despite any other provision of the Contract, Council is not required to issue any Requests for Supply (or any minimum value or type of Request for Supply) to the Contractor at all during the Contract Term, and may itself perform or procure from other contractors, goods and services that are the same or similar to the Goods and Services during the Contract Term.
- (h) The Contractor agrees, and it is a condition of this Contract, that Council is not entering or granting an exclusive arrangement with the Contractor.
- (i) If a Request for Supply is issued prior to the expiration of the Contract Term and the Supply is not completed or the term for that relevant Supply extends beyond the expiry of the Contract Term, then the parties agree that this Contract will continue to apply to the Supply, despite any expiration of the Contract Term.

### **6.4 Key Supply Dates**

If Schedule 1 or a Request for Supply (as applicable) sets out that any part of the Supply has been allocated a Key Supply Date, then the Contractor must achieve Completion of the relevant part of the Supply by the applicable Key Supply Date.

### **6.5 Time for Performance**

- (a) The Contract will apply retrospectively to any Supply that the Contractor carried out in contemplation of the Contract before the Commencement Date.
- (b) At all times the Contractor must carry out the Supply expeditiously, efficiently and without delay.

## **7 Program and Delays**

### **7.1 Contractor's program**

- (a) If so directed by Council, the Contractor must, at its own cost, provide to Council:
  - (i) a program that sets out all of the Supply, or any portion of the Supply directed by Council, apportioned to their component activities to the degree of detail reasonably requested by Council, and showing the corresponding dates by which each of those activities are to be completed which must align with any Completion Date and Key Supply Dates (where applicable). If requested by Council, the program must show the logic links between all activities; and
  - (ii) a labour histogram that corresponds to the above program,
 which show the Completion of the Supply by the Completion Date, if any, (**Contractor's Program**).

- (b) Where applicable, the Contractor must ensure that the Contractor's Program:
  - (i) enables the Contractor to discharge its duties under Heavy Vehicle Law; and
  - (ii) allows for the use and operation of Heavy Vehicles associated with the Supply to comply with Heavy Vehicle Safety Requirements.
- (c) From time to time, Council may direct the Contractor to provide it with an updated version of the Contractor's Program if any aspect of it becomes inaccurate due to delays or other events, and the Contractor must do so at its own cost.

**7.2 Contractor to notify of delays**

- (a) If the Contractor believes that anything, including any breach, act or omission of Council, may delay the progress of the Supply, the Contractor must notify Council with details of the estimated extent of the delay and the cause.
- (b) Within three Business Days of learning of an actual or likely delay to any Supply that has a Key Supply Date or Completion Date, the Contractor must notify Council in writing of the delay, its cause, its estimated duration, and any actions it is taking to avoid or overcome those effects. The Contractor must regularly update Council of all of those matters in writing if a likely delay eventuates or if an actual delay continues beyond its initially estimated duration.

**7.3 Extension of time**

- (a) This clause 7.3 will only apply to any Supply that has a Key Supply Date or Completion Date.
- (b) If:
  - (i) an Excusable Delay will delay the Contractor's completion of the Supply, or part of the Supply by the relevant Key Supply Date or Completion Date;
  - (ii) the Contractor has strictly complied with clause 7.2;
  - (iii) the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause that is not an Excusable Delay; and
  - (iv) the Contractor has, by notice in writing to Council, requested an extension of time to the affected Key Supply Date or Completion Date within five Business Days of the earlier of it first learning of the Excusable Delay or of when it should reasonably have first learnt of it,
 then Council must grant the Contractor by notice in writing a reasonable extension to all affected Key Supply Dates and the Completion Date (as applicable).
- (c) Council may grant the Contractor an extension to any Key Supply Date or Completion Date at any time, and from time to time, in its sole and unfettered discretion. This right is solely for Council's benefit and may be granted even if the Contractor is not eligible for an extension to a Key Supply Date or Completion Date.
- (d) Except to the extent that the Contract expressly provides to the contrary, the Contractor will have no other Claim in connection with the granting of any extension of time.

**7.4 Earlier completion**

- (a) Without limiting Council's rights under clause 7.6 where the Contractor has failed to, or will be unable to, complete the Supply by a relevant date, if Council directs the Contractor to do so, the Contractor must complete any part or all of the Supply on a date earlier than the applicable Key Supply Date or the Completion Date (as applicable) even when the

Contractor has not been delayed in carrying out the Supply.

- (b) The Contractor will not be entitled to any Claim as a result of Council's direction, unless the Contractor can reasonably demonstrate that incurring extra expense is unavoidable, in which case the Contractor's only Claim in connection with the direction is for payment of an amount valued in accordance with clause 21.3 which the Contractor must Claim as part of a payment claim under clause 18.

**7.5 Liquidated damages**

- (a) This clauses 7.5 will only apply if 0 or a Request for Services (if applicable):
  - (i) sets out a Completion Date or one or more Key Supply Dates; and
  - (ii) specifies a rate for liquidated damages to apply to the Completion Date or Key Supply Date.
- (b) If the Contractor fails to achieve Completion by the Completion Date or fails to complete a Supply by the relevant Key Supply Date (if applicable), the Contractor will be liable to Council for liquidated damages at the rate stated in 0 or the Request for Services (if any), for every day after the Completion Date or Key Supply Date (as applicable) up to and including the date that Completion is achieved or the relevant Supply is completed by the Contractor (as determined by Council's Representative acting reasonably) or the date that the Contract is terminated pursuant to clause 29, whichever is sooner.
- (c) Council and the Contractor agree that all liquidated damages which may be payable by the Contractor to Council pursuant to this clause 7.5:
  - (i) are a genuine pre-estimate of the damages likely to be suffered by Council if the Contractor does not achieve Completion by the relevant Completion Date or complete a Supply by the relevant Key Supply Date (as applicable);
  - (ii) do not limit Council's other rights under the Contract or at law for any other breach of the Contract; and
  - (iii) do not relieve the Contractor from any of its obligations or liabilities under the Contract, including its obligations to achieve Completion and meet any Key Supply Dates.
- (d) If the liquidated damages are for any reason found to be void or unenforceable, the Contractor indemnifies Council for damages at common law for the Contractor's failure to achieve Completion by the Completion Date or complete a Supply by the relevant Key Supply Date.

**7.6 Actions to rectify delays**

- (a) If the Contractor has failed to, or will be unable to, complete the Supply, or any relevant part of the Supply, by the applicable Key Supply Date or Completion Date (as applicable), then the Contractor must, if requested by Council, at its own cost promptly provide to Council a plan that sets out a range of reasonable actions that the Contractor has available to it to expedite the Supply achieving Completion as soon as possible, and the cost of each of those actions (**Recovery Plan**). The Contractor agrees that such actions may include engaging additional Personnel and other resources and expending funds.
- (b) The Contractor must immediately carry out any one or more actions from the Recovery Plan that Council directs, or any other reasonable action directed by Council. The Contractor will not be entitled to any

Claim in connection with carrying out any such action except to the extent that:

- (j) the action was required due to an Excusable Delay; and
- (ii) it can reasonably demonstrate that incurring extra expense is unavoidable,

in which case the Contractor's only Claim in connection with the direction is for payment of an amount valued in accordance with clause 21.3.

- (c) The Contractor will not be relieved of any liability under the Contract, and Council's remedies under any applicable contract or otherwise will not be prejudiced, as a result of the Contractor taking any actions directed under this clause 7.2.

## 8 Obligations of the Contractor

### 8.1 Contractor's warranty

Without limiting any other obligations of the Contractor, the Contractor warrants that:

- (a) the Supply will:
  - (i) comply with all applicable requirements of the Contract and Industry Practice (but only to the extent that Industry Practice is not inconsistent with any express requirements of the Contract);
  - (ii) comply with all applicable Legislative Requirements and Policies and Plans;
  - (iii) be fit for the purpose or purposes set out in, or reasonably inferred from, the Contract; and
  - (iv) be performed by appropriately qualified and experienced Personnel.

### 8.2 General obligations

The Contractor must:

- (a) maintain from the Commencement Date until Completion of all of the Supply or expiry of the Contract Term (as applicable) all accreditations and qualifications required:
  - (i) under Industry Practice and applicable Legislative Requirements to carry out Supply of the kind described in 0 and **Error! Reference source not found.**; and
  - (ii) under the Contract;
- (b) if it learns of anything that may affect, or has affected, the scope or suitability of the Supply, promptly notify Council of that as soon as possible, and to the extent possible include in the notice details of the relevant matter and its cause;
- (c) co-ordinate the performance of the Supply with Council and its Personnel and otherwise consult regularly with Council; and
- (d) carry out the Supply in such a way as to:
  - (i) prevent any harm to, or contamination of, the natural environment;
  - (ii) without limiting paragraph (i), comply with the requirements of the *Environmental Protection Act 1994* (Qld) and any other Legislative Requirements in connection with protection of the environment; and
  - (iii) avoid causing any damage, harm, interference, nuisance or disturbance that has not been agreed to in advance, to any persons.

### 8.3 Ethical obligations

- (a) The Contractor must:
  - (i) at all times act in the best interests of Council; and

- (ii) immediately disclose to Council any of its interests which may conflict with either the interests of Council or the Contractor's obligations under the Contract.

- (b) The Contractor acknowledges and agrees that while engaged under the Contract, it must comply with sections 199 and 200 of the *Local Government Act 2009* (Qld).

## 9 Safety obligations

### 9.1 General obligations

The Contractor must:

- (a) ensure that all of its Personnel attend any inductions required by:
  - (i) Council; or
  - (ii) any other person who has responsibility for health and safety under WH&S Law at any site where the Contractor's Personnel must attend to perform the Supply (**Site Safety Officer**);
- (b) carry out the Supply and all obligations under the Contract safely, so as to prevent harm to persons or property;
- (c) discharge its duties under the WH&S Law and Heavy Vehicle Safety Law;
- (d) at all times have documented safe work practices and procedures for the Supply;
- (e) ensure that there are processes in place to identify, assess and proactively control risks at the workplace at which the Supply is being undertaken;
- (f) carry out the Supply and all obligations under the Contract in accordance with:
  - (i) WH&S Obligations;
  - (ii) Heavy Vehicle Safety Requirements;
  - (iii) lawful directions of Council's Representative relating to health and safety; and
  - (iv) lawful directions of Council and any Site Safety Officer, to the extent those directions relate to issues of health and safety at the Site or the Heavy Vehicle Safety Requirements; and
- (g) consult, cooperate and coordinate with Council to ensure, so far as reasonably practicable, that the health and safety of persons is not put at risk by the performance of the Supply.

### 9.2 Safety audits

- (a) The Contractor must regularly conduct safety audits of its systems, procedures and work methods at its cost and retain copies of such audits.
- (b) Council may, on reasonable prior notice, from time to time direct the Contractor to carry out a safety audit or may itself or have others carry out a safety audit of the Contractor's, and any of its Personnel's, work practices.
- (c) Council must reimburse the Contractor for its direct costs reasonably incurred as a result of any audit under clause 9.2(b), but if the audit discloses any breaches of any of its obligations under this clause 9, then the Contractor will have no entitlement to Claim in connection with the audit.

### 9.3 Notification of incidents

- (a) The Contractor must:
  - (i) immediately notify Council in writing upon the occurrence of any health and safety incident which has a potential to be notifiable or reportable to a health and safety authority;

- (ii) immediately notify Council of any breach or potential breach of the WH&S Obligations or the Heavy Vehicle Safety Requirements; and
  - (iii) notify Council within 24 hours of any health and safety incident not being an incident referred to in clause 9.3(a)(i).
- (b) Within 48 hours after the occurrence of any health and safety incident (or such longer period as Council may, in its sole and unfettered discretion allow), the Contractor must provide Council with a report including:
- (i) a detailed chronology and description of events;
  - (ii) a root cause analysis; and
  - (iii) proposed remedial action.

## 1 Rights and Obligations Specific to Goods

### 9.4 Application

Clause 1 will only apply to the extent that the Supply includes Goods.

### 9.5 Warranty

The Contractor warrants that any Goods supplied will:

- (a) be new, except to the extent expressly stated otherwise in 0, **Error! Reference source not found.** or an applicable Request for Supply;
- (b) be of merchantable quality;
- (c) be free from Defects; and
- (d) to the extent it applies to the Goods, comply with the National Construction Code performance requirements.

### 9.6 Delivery

The Contractor must:

- (a) Deliver and unload the Goods at the location at the Site or as otherwise directed by Council's Representative;
- (b) if 0 or a Request for Supply (if applicable) states that a Completion Date applies, not Deliver the Goods earlier or later than the Completion Date, except:
  - (i) with the consent of Council; or
  - (ii) if the Contractor is required to install or commission the Goods;
- (c) if the carrier of the Goods is not the Contractor, without limiting the Contractor's obligations under clauses 9.1, 11 and 13.1, engage the carrier on terms that comply with all applicable Legislative Requirements (including, without limitation, the Heavy Vehicle Safety Law) and ensure that the carrier complies with Industry Practice;
- (d) at the time of dispatch of the Goods to the Site, notify Council of the Contract number, the Request for Supply number (if applicable) and the description and quantity of Goods dispatched;
- (e) package the Goods safely and securely so as to prevent damage during transit, and in all other respects in accordance with the carrier's requirements;
- (f) clearly label all Goods as the property of Council, so that it is visible to any person without having to remove any packaging; and
- (g) include a delivery docket with each package that details the description and quantity of Goods and the relevant Contract number and Request for Supply number (if applicable).

Any terms or conditions included in a delivery docket or other document provided by the Contractor or its Personnel, and

signed by or on behalf of Council at Delivery, will have no application to either the Contract or Council.

### 9.7 Acceptance

- (a) The Contractor maintains risk in the Goods until Council is deemed to have accepted the Goods, which will occur on the earlier of:
  - (i) the date Council gives written notice to the Contractor that the Goods have been accepted; or
  - (ii) 20 Business Days after the date the Goods are Delivered, provided that during that 20 Business Day period Council did not notify the Contractor that any of the Goods were Defective.
- (b) Acceptance of the Goods by Council under this clause 9.7 is merely a record that Delivery has occurred and does not constitute declaration, approval or acceptance from Council that the Goods are free of Defects, nor does it affect the Contractor's obligations or Council's rights under the Contract including, but not limited to, obligations and rights during the Defects Liability Period.

### 9.8 Title, risk and warranties

- (a) Risk in the Goods passes to Council upon acceptance by Council in accordance with clause 9.7. The Contractor indemnifies Council against any loss of or damage to the Goods from Delivery until the Goods are accepted by Council in accordance with clause 9.7.
- (b) Title in the Goods passes to Council on the earlier of Delivery or payment for the Goods. If, prior to Delivery, title to the Goods passes to Council, the Contractor must set the relevant Goods aside and clearly mark them as being the property of Council, in a manner reasonably required by Council.
- (c) If the Contractor is not the manufacturer, the Contractor must, at its own cost, obtain and provide Council with any warranties available for the relevant Goods from the relevant manufacturer (**Manufacturer Warranties**).
- (d) The Contractor must ensure that the Manufacturer Warranties are in favour of Council and fully assignable and are provided to Council no later than upon Completion of the Supply.
- (e) The Contractor must give Council's Representative, and any other person authorised in writing by Council, reasonable access to any premises or facilities occupied by the Contractor or its Personnel where the Goods are being manufactured or stored to inspect or test any Goods or other material related to the Goods.
- (f) Council's Representative, and any other person authorised in writing by Council, must, when attending the Contractor's premises or facilities, comply with all reasonable rules, directions and procedures as notified by the Contractor, including those relating to work health and safety that are in effect at the premises or facilities.
- (g) On completion of the inspections or tests, the Contractor must promptly rectify any Defects in the Goods identified in the inspection or tests.
- (h) Costs in connection with testing will be paid by Council except where the Contract otherwise provides or the test is required because of, or reveals a failure of, the Contractor to comply with the Contract.

## 10 Quality of Supply

### 10.1 Contractor's warranty

Without limiting any other obligations of the Contractor, the Contractor warrants that:

- (a) the Supply will:

- (i) comply with all applicable requirements of the Contract and Industry Practice (but only to the extent that Industry Practice is not inconsistent with any express requirements of the Contract);
- (ii) comply with all applicable Legislative Requirements;
- (iii) be fit for the purpose or purposes set out in, or reasonably inferred from, the Contract; and
- (iv) be performed by appropriately qualified and experienced Personnel.

**10.2 Compliance with demonstrated Supply**

Without limiting clause 9.4 (if applicable) and 10.1, if the Contractor:

- (a) provides or provided Council with a demonstration or sample of the Supply before Council entered into the Contract, then the Supply must correspond in nature and quality with the Supply demonstrated; or
- (b) showed Council a result achieved by the Supply or similar Supply before Council entered into the Contract, then the Supply must correspond in quality with the Supply that achieved that result.

**11 Site matters**

- (a) This clause 11 will apply to the extent that any Supply is carried out at or on any Site (including the Contractor's Delivery at a Site).
- (b) Council will give the Contractor sufficient access to the Site to reasonably enable the Contractor to perform that part of the Supply required to be performed on the Site. The Contractor may only use the Site for the purpose of performing that part of the Supply required to be performed on the Site.
- (c) The Contractor may not have exclusive access to the Site or any part of it and must coordinate that part of the Supply required to be performed on the Site with activities of Council, Council's Personnel and any other contractors (**Separate Operators**).
- (d) The Contractor must:
  - (i) permit the concurrent execution of work on the Site by any Separate Operators, and provide reasonable access for, and cooperate with such persons in the execution of that work to the extent necessary;
  - (ii) ensure that all of the Supply, the completion of which is necessary to allow any Separate Operators to commence work, has been completed,
 and will have no entitlement to Claim for doing so or for any impact of any interference caused to the Contractor or that part of the Supply required to be performed on the Site by any person on the Site (including Separate Operators).
- (e) The Contractor must avoid any disruptions or inconvenience to:
  - (i) the usual and safe operations of the Site; or
  - (ii) the users of the Site,
 except to the extent expressly permitted by the Contract.
- (f) The Contractor must:
  - (i) regularly remove from the Site all rubbish and debris arising from the performance of the Supply;
  - (ii) immediately remove from the Site any surplus plant and equipment belonging to the Contractor or its Personnel, that is used in performance of the Supply, but which is

not intended to be transferred to Council; and

- (ii) if performing Services at the Site, keep the relevant parts of the Site clean and secure at all times.

(g) Without limiting any other provision of the Contract, the Contractor must take all necessary steps to:

- (i) prevent damage to property on or near the Site (including existing utility services (including water, electricity, gas, telecommunications, drainage, stormwater, sewerage services and supporting infrastructure) and assets of Council and work previously performed at the Site by another party);

- (ii) prevent harm to any persons on or near the Site;

- (iii) avoid unnecessary interference with the passage of people and vehicles on or near the Site; and

- (iv) prevent nuisance and unreasonable noise and disturbance on or near the Site.

(h) If any damage, harm, interference, nuisance or disturbance is caused by the Contractor or its Personnel, the Contractor must:

- (i) remedy, at its own cost and risk, the damage, harm, interference, nuisance or disturbance as soon as possible to the satisfaction of Council; and

- (ii) indemnify Council for any damage, loss, cost or expense suffered by Council in connection with the damage, harm, interference, nuisance or disturbance.

(i) If the Contractor fails to comply with its obligations in clause 11(h), Council may perform those obligations itself or through others and all costs, damages and expenses incurred by Council in performing those obligations will become a debt due and payable to Council from the Contractor.

(j) Subject to any Legislative Requirements that require otherwise, the Contractor must only access the Site, and perform any part of the Supply required to be performed on the Site, during the hours of work set out in the Contract unless directed otherwise by Council.

**12 Defects**

**12.1 Contractor to notify**

(a) If, before the expiry of the Defects Liability Period, the Contractor learns of any Defect in the Supply, it must notify Council in writing of the nature and reason for the non-compliance as soon as possible.

(b) Without limiting clause 12.1(a), where Council becomes aware of any Defect during the carrying out of the Supply or during the Defects Liability Period (if applicable), it may direct the Contractor by notice to, at its own cost and risk, rectify the Defect (by any one or more of repair, replacement or re-performance as determined by Council).

**12.2 Rectification of Defects**

(a) The Contractor must, at its cost, rectify any Defect during the carrying out of the Supply or the Defects Liability Period (if applicable). The Contractor is responsible for all work and liable for all costs associated with the rectification of the Defect.

(b) If any Defect is not rectified within 5 Business Days (or such longer time as agreed in writing) of a direction by Council under clause 12.1(b), Council may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to Council from the Contractor.

(c) Instead of exercising its rights under clauses 12.1(b) and 12.2(b), but without limiting Council's other rights, if before Completion or the expiry of the Contract Term (as the case may be), or otherwise during the Defects Liability Period, Council discovers any Defects in any Goods (**Defective Goods**), Council may:

- (i) notify the Contractor that Council rejects the Defective Goods, in which case the Contractor must, at its cost and risk, collect the Defective Goods within 5 Business Days of Council's notice; or
- (ii) if the Contractor fails to collect the Defective Goods in accordance with the preceding sub-clause, return the Goods to the Contractor at the Contractor's cost and risk,

and Council may recover from the Contractor all expenses incurred by Council arising from the return of the Defective Goods as a debt due and payable by the Contractor to Council.

(d) Any repairs or replacement Goods, or re-performed or rectified Services, provided by the Contractor will be subject to the same warranties as the original Supply from the date of repair, replacement, re-performance or rectification and the Defects Liability Period will recommence from such date.

### 12.3 Contractor's obligations not affected

Any action taken by Council under clause 12.2 will not relieve the Contractor of any of its obligations or liabilities under the Contract, but may be taken into account in the calculation of any applicable damages award.

## 13 Quality assurance, meeting and reporting

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### 13.1 Quality assurance and record keeping

During the period from the Commencement Date until:

- (a) the expiry of the last Defects Liability Period under the Contract; or
- (b) where 0 states that no Defects Liability Period applies, Completion of all of the Supply or expiry of the Contract Term (as applicable),

the Contractor must:

- (c) have in place and maintain a quality assurance system (**QA System**) that is applicable to the Supply described in 0 and **Error! Reference source not found.** If required in 0, the QA System must be accredited by Standards Australia or another organisation approved by Council; and
- (d) make and keep accurate records of the Supply it has performed, in accordance with Industry Practice.

### 13.2 Inspections and audits

- (a) From time to time until the expiry of the period set out in clause 13.1, the Contractor must, after reasonable notice by Council:
  - (i) at its own cost, provide Council with documentation that describes its QA System and copies of any records relating to the Supply, in the format reasonably requested by Council; and
  - (ii) allow Council and its representatives access to the Contractor's premises, and the premises of any relevant subcontractors, to do any one or more of:
    - (A) inspect the performance of the Supply; and
    - (B) audit records relating to the QA System, the conformance of applicable processes to the QA System and the conformance of the Supply to the Contract.

(b) Council must reimburse the Contractor its direct costs reasonably incurred as a result of an audit under clause 13.2(a), unless the audit discloses any material non-conformances under the QA System or any breach of the Contract.

### 13.3 Contractor not relieved of obligations

The Contractor is not relieved of any of its obligations under the Contract by any audit or inspection under clause 13.2(a) or by the maintenance of the QA System.

### 13.4 Meetings and reports

- (a) The Contractor must keep Council fully informed on all aspects of the Supply.
- (b) The Contractor must have relevant Personnel attend any meetings requested by Council from time to time to discuss either the Contract or the Supply. If directed by Council, the Contractor must prepare and circulate minutes of those meetings.
- (c) The Contractor must provide to Council all reports required under the Contract, and any other reports requested by Council from time to time, regarding the status, and any particular details, of the Supply, requested by Council. The Contractor must ensure that all reports comply with all applicable requirements in the QA System.

## 14 Representatives

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### 14.1 Council's representatives

- (a) Council must appoint a person to be Council's Representative for the purposes of the Contract.
- (b) Council may at any time and from time to time by written notice to the Contractor replace the representative described in clause 14.1(a).
- (c) The Contractor and Council agree that Council's Representative acts at all times as Council's agent for the purposes of the Contract, is subject to the directions of Council and will act solely in the interests of Council.
- (d) Council's Representative is authorised to give any direction to the Contractor for the purposes of the Contract. The Contractor must comply with all lawful directions of the Council's Representative.

### 14.2 Contractor's representatives

- (a) The Contractor must appoint a Contractor's Representative who is in a position to promptly attend meetings upon reasonable request by Council.
- (b) The Contractor's Representative must have the authority to bind the Contractor in respect of all matters relating to the Contract.
- (c) Matters within the knowledge of a Contractor's Representative are deemed to be within the knowledge of the Contractor.
- (d) The Contractor may at any time and from time to time by written notice to Council replace its representative described in clause 14.2(a), provided that any replacement satisfies the applicable requirements of clause 14.2(a) and 14.2(b).

## 15 Personnel

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### 15.1 Key Personnel

The Contractor must:

- (a) not replace or remove any Key Personnel without Council's prior written approval;
- (b) if any Key Personnel leave the Contractor's employment, promptly replace each such Key Personnel with a person of comparable skill, experience and qualification, and obtain Council's prior written approval to such replacement Key Personnel. Council may not unreasonably withhold or delay that approval;

- (c) ensure that each of the Key Personnel is available at the times required by the Contract or as otherwise required in writing by Council; and
- (d) ensure that the Key Personnel properly perform their roles and responsibilities in accordance with the Contract.

### 15.2 Removal of Personnel for poor conduct

- (a) The Contractor must not allow any of its Personnel to behave in a manner that could be perceived as offensive, discriminatory or bullying, or to behave unsafely, incompetently or in breach of any Policies and Plans.
- (b) If the behaviour described in clause 15.2(a) occurs, then without limiting Council's other rights, Council may direct the Contractor to replace that individual, and the Contractor must as soon as possible remove that individual from Council's premises, and as soon as reasonably possible afterwards have them replaced. The Contractor is not entitled to any Claim in connection with it removing and replacing that individual.

### 15.3 QBCC Act

If the Supply constitute 'building work' for the purposes of the *Queensland Building and Construction Commission Act 1991* (Qld) (**QBCC Act**), the Contractor:

- (a) warrants that the Supply will be undertaken by persons with the necessary licences required under the QBCC Act to undertake the Supply, including that the Contractor is licenced to the extent that it undertakes any 'building work' itself; and
- (b) must supervise and manage the performance of the Supply (including any Supply performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.

## 16 Contractor's resources and Council property

### 16.1 Contractor to supply all necessary resources

- (a) The Contractor must supply at its own expense all plant, equipment, vehicles, appliances and other property and items the Contractor requires to fulfil its obligations under the Contract, except to the extent expressly stated otherwise.
- (b) If Council determines, acting reasonably, that any of the Contractor's resources referred to in clause 16.1(a) are inadequate or unsuitable to carry out the Supply in accordance with the Contract, then it may direct the Contractor to take any action necessary to rectify that inadequacy within a reasonable time directed by Council. The Contractor must comply with that direction and will have no Claim in connection with it doing so.
- (c) The Contractor's compliance with a direction under clause 16.1(b) neither relieves it of any liability under the Contract nor prejudices any other right or remedy of Council.

### 16.2 Council property

- (a) Any plant, equipment, tools, appliances or other property and items that Council provides to the Contractor to enable it to comply with its obligations under the Contract remain Council's property and must only be used for complying with its obligations under the Contract.
- (b) The Contractor must keep Council's property in good order and condition, subject to fair wear and tear.

## 17 Subcontracting

### 17.1 No subcontracting allowed without approval

The Contractor must not subcontract any obligation under the Contract without Council's prior written consent. Council may

refuse its consent, or grant its consent on any conditions, in Council's sole and unfettered discretion.

### 17.2 Liability of Contractor for subcontracted Supply

If the Contractor subcontracts any of its obligations pursuant to clause 17.1, the Contractor:

- (a) remains fully responsible for the performance of those obligations;
- (b) must ensure that the subcontractor performs its duties with due care and skill and in accordance with all applicable obligations under the Contract; and
- (c) will be vicariously liable to Council for the acts and omissions of its subcontractors and their employees as if they were acts or omissions of the Contractor.

## 18 Invoicing and payment

### 18.1 Price

- (a) Subject to Council's rights under the Contract, Council must pay the Contractor the Price in consideration of the Contractor performing the Supply in accordance with the Contract.
- (b) Neither the Price nor the Pricing Schedule (if applicable) are subject to any rise and fall, currency fluctuation or other adjustment, other than any adjustment permitted by clause 21.3 or **Error! Reference source not found.**

### 18.2 Preconditions to payment claims

Despite any other provision of the Contract, the Contractor is neither entitled to submit to Council any claim for payment nor entitled to any payment and an Invoice Date will not arise unless:

- (a) if the Contract states that payment of the Price is to be made in lump sum or capped amounts on completion of a nominated Supply:
  - (i) the Contractor has completed the applicable Supply; and
  - (ii) the amount claimed in respect of that Supply does not exceed the corresponding lump sum or any capped amount stated, except to the extent that lump sum or capped amount has been varied previously in accordance with clause 21.3 or the Price Cap is otherwise increased under clause 18.9;
- (b) all insurance policies that the Contract requires the Contractor to procure are currently in effect in accordance with all requirements of the Contract; and
- (c) the Contractor has provided security in accordance with clause 5.

### 18.3 When payment claims may be issued

- (a) The Contractor must issue payment claims to Council:
  - (i) at the times set out in, or calculated in accordance with, 0 (**Invoice Date**); and
  - (ii) in accordance with this clause 18.
- (b) A payment claim submitted earlier than the Invoice Date will be deemed to have been submitted on the Invoice Date, but if the Invoice Date is not a Business Day, then the payment claim will be deemed to have been submitted on the next Business Day.
- (c) If the Contract stipulates that the Contractor may not claim payment of the Price until a condition has been satisfied or an event has occurred, including those in clause 18.2 (**Claim Preconditions**), then the only date that the Contractor will be entitled to submit a claim for payment will be the later of:
  - (i) the date that the last of the Claim Preconditions applicable to it has been satisfied; and

- (ii) the date calculated under clauses 18.3(a) and 18.3(b).

**18.4 Information to include in payment claims**

The Contractor must ensure that each claim for payment (including the Final Claim under clause 18.8):

- (a) identifies the contract number applicable to the Contract and Request for Supply number (if applicable);
- (b) is in the form of a Tax Invoice;
- (c) includes the Contractor's name, ABN and the name of the Council's Representative;
- (d) sets out the Contractor's calculation of the amount due to the Contractor by Council in accordance with the Contract;
- (e) sets out any deductions in respect to amounts owed to Council by the Contractor; and
- (f) includes any other information or documentation reasonably requested by Council.

**18.5 Payment Schedule**

Within the time set out in Schedule 1 of receipt of a payment claim, Council will issue to the Contractor a payment schedule stating:

- (a) the payment claim to which the payment schedule applies;
- (b) the amount of the payment claim which in the opinion of Council (subject to clause 18.7), is payable by Council; and
- (c) if the amount in the payment schedule is less than that in the payment claim, the reasons why,

(Payment Schedule).

**18.6 Payment**

- (a) Subject to clause 18.7 and any other rights Council may have, Council will pay the amount in the Payment Schedule within the time frame stated in Schedule 1 after receipt of a payment claim which complies with clause 18.4.
- (b) Payments by Council are on account only and are neither evidence of Council's acceptance that the Supply have been performed in accordance with the Contract nor an admission of liability.

**18.7 Deductions**

- (a) Without limiting any other right that Council may have under the Contract or otherwise at law, Council may deduct or set-off from any payment due to the Contractor, any:
  - (i) amounts which the Contractor owes, or must reimburse, to Council;
  - (ii) amounts which Council pays on the Contractor's behalf pursuant to a right under the Contract; or
  - (iii) other money that is the subject of a bona fide claim by Council against the Contractor, whether for damages or otherwise.
- (b) If no payment is due to the Contractor, or if the payment due to the Contractor is insufficient to discharge the amount which may be deducted or set-off, Council may have recourse to any security provided in accordance with clause 5.

**18.8 Final Claim**

- (a) On the later of:
  - (i) when the last Claim Precondition has been satisfied;
  - (ii) 10 Business Days after Completion of all of the Supply or expiry of the Contract Term (as applicable); and

- (iii) 10 Business Days after the expiry of the last Defects Liability Period (if applicable),

the Contractor shall lodge with Council a final payment claim and endorse it 'Final Claim'.

- (b) The Contractor shall include in that Claim all moneys which the Contractor considers to be due from Council under or arising out of this Contract or any alleged breach of it. Any Claim by the Contractor must be in writing and must specify:

- (i) the legal basis for the Claim, whether based on a term of the document or otherwise, and if based on a term of the document, clearly identifying the specific term;
- (ii) the facts relied upon in support of the Claim in sufficient detail to permit proper verification and assessment by Council; and
- (iii) details of the quantification of the Claim, in all cases showing the basis of the calculations.

- (c) After the expiration of the period for lodging a Final Claim, any Claim which the Contractor could have made against Council and which has not been made and any upward adjustment to the quantum of the Final Claim made shall be barred.

**18.9 Price Cap**

- (a) Without limiting clause 21, if the Price exceeds or is likely to exceed the Price Cap, the Contractor must obtain Council's prior written approval for any increase in the Price over the Price Cap. Council will not be liable to pay the Contractor more than the Price Cap unless prior written approval is obtained.
- (b) Without limiting the Contractor's obligations under clause 18.9(a), Council may increase the Price Cap at any time, and from time to time, in its sole and unfettered discretion, without being obliged to or considering the interests of the Contractor, even if the Contractor has not requested such approval.

**19 Security of Payment**

- (a) This clause applies to the extent that any part of the Supply is subject to the Security of Payment Act.
- (b) The Contractor must:
  - (i) ensure that any written communication it delivers or arranges to deliver to Council of whatever nature in relation to the Security of Payment Act is delivered to the address for service of notices set out in Schedule 1; and
  - (ii) promptly give Council a copy of any written communication of whatever nature in relation to the Security of Payment Act, which the Contractor receives from another party (excluding any 'payment claims' or 'payment schedules' as defined under the Security of Payment Act).
- (c) If the Contractor suspends the whole or part of the Supply pursuant to the Security of Payment Act:
  - (i) the suspension will not affect the Completion Date or relevant Key Supply Date; and
  - (ii) subject to any payment owed under the Security of Payment Act, Council shall not be liable for any costs, expenses, damages, losses or other liability whatsoever suffered or incurred by the Contractor as a result of the suspension.

## **20 GST and Tax**

### **20.1 Definitions**

Any terms capitalised in clause 20 and not already defined in clause 1.1 have the same meaning given to those terms in the GST Act.

### **20.2 GST exclusive**

Except under clause 20, the consideration for a Supply made under or in connection with the Contract does not include GST.

### **20.3 Taxable Supply**

If a Supply made under or in connection with the Contract is a Taxable Supply, then at or before the time any part of the consideration for the Supply is payable:

- (a) the Recipient must pay the Contractor an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Contract for that Supply; and
- (b) the Contractor must give the Recipient a Tax Invoice for the Supply.

### **20.4 Later GST change**

For clarity, the GST payable under clause 20.3 is correspondingly increased or decreased by any subsequent adjustment to the amount of GST for the Supply for which the Contractor is liable, however caused.

### **20.5 Reimbursement or indemnity**

If either party has the right under the Contract to be reimbursed or indemnified by another party for a cost incurred in connection with the Contract, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified, or by its Representative Member, Joint Venture Operator or other similar person entitled to the Input Tax Credit (if any).

### **20.6 Warranty that Tax Invoice is issued regarding a Taxable Supply**

Where a Tax Invoice is given by the Contractor, the Contractor warrants that the Supply to which the Tax Invoice relates is a Taxable Supply and that it will remit the GST (as stated on the Tax Invoice) to the Australian Taxation Office.

### **20.7 Progressive or Periodic Supplies**

Where a Supply made under or in connection with the Contract is a Progressive or Periodic Supply, clause 20.3 applies to each component of the Progressive or Periodic Supply as if it were a separate Supply.

### **20.8 Other Taxes, Duties and Charges**

Except as provided in this clause 20 or explicitly stated elsewhere in the Contract, the Contractor must pay, and reimburse Council for the payment of (where applicable), all sales tax, customs duties, stamp duties and other duties, charges, taxes or imposts payable in connection with the carrying out the Supply.

## **21 Variations**

### **21.1 Council directed variations**

- (a) Council may direct the Contractor to:
  - (i) increase, decrease or omit any part of the Supply (including omission for the purpose of performing that Supply itself or by engagement of a third party);
  - (ii) change the nature or quality of the Supply; or
  - (iii) perform additional Supply,(Variation) provided that any changed or additional Supply remain largely consistent with the types of Supply described in **Error! Reference source not found.** For the avoidance of doubt, a Request for Supply does not constitute a Variation.

- (b) Unless Council and the Contractor agree on the price for a Variation, Council must determine the value of a Variation in accordance with clause 21.3.

- (c) If the Contractor is of the opinion that any direction or instruction is a Variation even though it was not expressed as such, the Contractor must notify Council's Representative within three Business Days of receipt of the direction or instruction and before giving effect to the direction or instruction. If the Contractor fails to notify Council in accordance with this clause, the Contractor will not be entitled to make any Claim with respect to the instruction or direction.

- (d) No Variation or combination of Variations shall invalidate the Contract or give rise to any repudiatory conduct and Council will not be in breach of the Contract if it omits any part or all of the Supply and thereafter either carries out such Supply itself or employs or engages another person to carry out the omitted Supply.

### **21.2 Variation proposal**

- (a) Council may issue a proposal to the Contractor for a Variation and direct the Contractor to notify Council, within a reasonable time nominated by Council, of:
  - (i) the applicable rates and total price to effect the Variation; and
  - (ii) the time frame to perform the Variation, the effect of the Variation on the other Supply and any alternatives to that Variation that may satisfy Council's aims.

- (b) Council must reimburse the Contractor its reasonable costs necessarily incurred as a direct result of complying with a direction under clause 21.2(a), and the Contractor will have no other entitlement to Claim in connection with it complying with that direction.

- (c) If Schedule 1 sets out the Supply is under a Standing Offer Arrangement (Option 3 is marked 'Yes'), then without limiting Council's rights under the Contract including clause 21.1, Council may, in its absolute discretion, require a proposal from the Contractor under clause 21.2 for a proposed Request for Supply, and clause 21.2 will be read as if the references to a proposed Variation were references to a proposed Request for Supply.

### **21.3 Valuation**

If the Contract states that a valuation is to be made under this clause, then the valuation must be undertaken as follows:

- (a) if the Contract contains applicable rates or prices, then those rates or prices are to be used;
- (b) to the extent clause 21.3(a) does not apply, then the Pricing Schedule is to be used to the extent it is applicable;
- (c) to the extent that neither clauses 21.3(a) nor 21.3(b) apply, then Council must determine reasonable rates and prices to be used; and
- (d) if the valuation concerns a change to, or the imposition of a new, fee or charge, then only the actual amount of the fee or charge is to apply,

except that if the Variation was caused or materially contributed to by the Contractor's breach of the Contract, then the Contractor will have no Claim for its performance of the Variation.

The Contractor may only Claim in connection with a valuation which is to be made under this clause as part of a payment claim under clause 18 provided the Contractor has fully complied with all other requirements under the Contract (including clause 30 if applicable).

## **22 Suspension**

### **22.1 Council's right to suspend the Supply**

- (a) Subject to clause 22.1(c), the Contractor must suspend the whole or any part of the Supply that

Council directs it in writing to suspend, in Council's sole and unfettered discretion, for such periods directed by Council from time to time.

- (b) Subject to clause 22.1(c), the Contractor must recommence the Supply as soon as reasonably possible after receiving a written direction from Council to do so.
- (c) Except if a suspension was caused or contributed to by the Contractor's breach of the Contract (**Contractor Caused Suspension**), Council may not suspend the entirety of the Supply under the Contract for a continuous period of more than the period set out in 0.

## 22.2 Consequences of suspension

If a suspension directed by Council was a Contractor Caused Suspension, then the Contractor will have no Claim in connection with the suspension. In all other circumstances, the Contractor's only Claim in connection with the suspension will be for its costs necessarily and reasonably incurred as a direct result of the direction to suspend, provided that the Contractor has used reasonable endeavours to mitigate all such costs.

## 23 Confidentiality

### 23.1 Information to be kept confidential

- (a) The Contractor must keep confidential, and not use for any purpose other than performing its obligations under the Contract, any Confidential Information of Council, except for the following disclosures:
  - (i) to its Personnel to the extent necessary to complete the Supply;
  - (ii) to its professional advisors; or
  - (iii) with Council's prior written permission, which may be given subject to reasonable conditions, and the Contractor agrees to comply with those conditions.
- (b) If Confidential Information is disclosed in accordance with clauses 23.1(a)(i) or 23.1(a)(ii), the Contractor must ensure that the person agrees to keep the information confidential, and if requested by Council, have that person execute a legally binding agreement to keep the information confidential.
- (c) Council must keep confidential all Confidential Information of the Contractor, except for the following disclosures:
  - (i) to its professional advisors, provided that they undertake to keep it confidential;
  - (ii) to its Councillors;
  - (iii) to its Personnel for the administration of the Contract;
  - (iv) with the Contractor's prior written permission, which may be given subject to reasonable conditions, and Council agrees to comply with those conditions; and
  - (v) as required under Legislative Requirements (including the *Right to Information Act 2009* (Qld)).

### 23.2 Survival

The obligations in this clause 23 survive for a period of three years from the expiry or earlier termination of the Contract.

## 24 Privacy

### 24.1 General obligations

The Contractor must:

- (a) process all Personal Information relating to the Contract in accordance with the Privacy Laws (regardless of whether or not the Contractor is otherwise obliged to comply with the Privacy Laws) and only for the purposes of performing its obligations under the Contract;

- (b) comply with all reasonable requests or directions of Council in connection with the obligations of Council under the Privacy Laws or in connection with Policies and Plans relating to compliance with the Privacy Laws;

- (c) not disclose Personal Information collected for the purposes of the Contract (**Contract PI**) without the prior authority of Council unless the disclosure is required:

- (i) for the purposes of performing its obligations under the Contract; or

- (ii) by Legislative Requirements;

- (d) not transfer outside Australia Contract PI, or allow parties outside Australia to have access to Contract PI, without the prior written consent of Council; and
- (e) take all necessary steps to ensure that Contract PI is protected against:

- (i) misuse, loss or interference; or

- (ii) access, use, modification, or disclosure that is unauthorised,

and that only those of its Personnel authorised by Council have access to Contract PI.

## 24.2 Notification

The Contractor must notify Council immediately if it becomes aware:

- (a) of a breach of any of clause 24.1 by the Contractor or any of its Personnel; or
- (b) that a disclosure of Contract PI may be required by Legislative Requirements.

## 25 Intellectual Property

### 25.1 Licence

- (a) The Contractor grants Council an irrevocable, royalty free, fully assignable licence, including a right to sublicense, to use the Intellectual Property Rights in the Supply, including any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material or Goods provided to Council in connection with the Contract for any purpose associated with the Supply.
- (b) The Contractor warrants to Council that the carrying out of the Supply, and any plans, designs, drawings, engineering information, data, specifications, work methods, reports, accounts and any other material or Goods provided to Council in connection with the Contract, will not infringe the Intellectual Property Rights of any third party.
- (c) If the Contractor suspects or becomes aware that any part of the Supply will infringe any third party's Intellectual Property Rights then the Contractor must:
  - (i) immediately notify Council of that infringement; and
  - (ii) take any action required by Council in connection with the infringement or suspected infringement of that third party's Intellectual Property Rights.

- (d) The Contractor is liable for, and indemnifies Council from and against, all loss or damage (including legal costs) incurred or suffered by Council in connection with a breach of this clause 25.1.

### 25.2 Reputation and logos

- (a) The Contractor must not perform any act or omission which damages or is likely to damage the reputation of Council.
- (b) The Contractor must not, and must ensure that its officers, employees and agents do not, use the names, trade marks or logos of Council except with the prior consent of Council.

### 25.3 Survival of obligations

The obligations of the Contractor, and the Intellectual Property Rights granted, under this clause 25 continue after the expiry or termination of the Contract for any reason.

## 26 Parties' relationship

### 26.1 Principal and independent contractor

The parties acknowledge and agree that:

- (a) the parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership; and
- (b) the Contractor does not have the right or authority to act on behalf of or bind Council unless the Contractor has been expressly authorised by Council in writing.

### 26.2 No relationship between Council and Contractor's Personnel

- (a) No contractual relations will arise between any of the Contractor's Personnel and Council as a result of the Contract.
- (b) Apart from the Price, neither the Contractor nor the Contractor's Personnel are entitled to any fees, payments, commissions, bonuses, wages, holiday pay, long service leave, sick pay, termination pay or any similar entitlement from Council. The Contractor is solely responsible for providing the Contractor's Personnel with these entitlements.

## 27 Insurance

### 27.1 Requirement to maintain insurances

As a minimum, the Contractor must procure and maintain the insurances set out in 0 until:

- (a) the later of the end of the last Defects Liability Period or the period stated in 0; or
- (b) if paragraph (a) is not applicable, Completion of the Services or expiry of the Contract Term (as applicable).

### 27.2 Insurer requirements

The insurances required under clause 27.1 must be taken out and maintained with an insurer that is authorised under applicable Legislative Requirements to carry on an insurance business in Australia and complies with all applicable prudential and other requirements prescribed under applicable Legislative Requirements.

### 27.3 Evidence of insurance

- (a) The Contractor must provide to Council certificates of insurance for all insurances it is required to effect under clause 27.1, on request by Council from time to time.
- (b) If at any time Council does not receive evidence that the Contractor has in place the insurances required by clause 27.1 with an insurer that complies with clause 27.2:
  - (i) Council may direct the Contractor to procure the prescribed insurance with an insurer that complies with clause 27.2, within the time directed by Council; and
  - (ii) if the Contractor fails to strictly comply with clause 27.3(b)(i), Council may effect and maintain the insurance and pay the premiums. All expenses suffered by Council in connection with it procuring that insurance will be a debt due and payable by the Contractor.

### 27.4 Contractor to keep Council informed

The Contractor must:

- (a) inform Council in writing of any occurrence that may give rise to a claim under an insurance policy required by clause 27.1 and keep Council informed of subsequent developments concerning the claim;

- (b) ensure that its subcontractors similarly comply with this obligation; and
- (c) immediately advise Council of any cancellation or amendment of the terms of any policy.

## 27.5 Liabilities and obligations

The liabilities and obligations of the Contractor under the Contract are not affected by reason of it or its Personnel maintaining the insurances required by this clause 27.

## 27.6 Subcontractors

Before they commence any Supply, the Contractor must ensure that each of its subcontractors is covered by or takes out and maintains policies of insurance of the types and for the amounts set out in clause 27.1 (to the extent that they are applicable to the functions performed by that subcontractor).

## 28 Indemnity

### 28.1 Contractor to indemnify Council

The Contractor must indemnify Council from and against any claim (including Claims by the Contractor), loss, expense or damage, of any nature (including financial loss and all legal expenses on a full indemnity basis) suffered or incurred by Council in connection with:

- (a) loss of, or damage to, real or personal property of any person (including the Contractor);
- (b) personal injury, illness or death to any person (including the Contractor's Personnel); or
- (c) harm to the environment or nuisance to third parties, arising out of any act or omission of the Contractor or its Personnel, except to the extent that any negligent act or omission of Council or its Personnel contributed to the event giving rise to the obligation to indemnify.

### 28.2 Effect of indemnities

Council need not incur any cost before enforcing an indemnity under clause 28.1.

### 28.3 Survival

The obligations in this clause survive the expiry or termination of the Contract.

## 29 Default and Termination

### 29.1 Council's right to terminate for default

If the Contractor:

- (a) breaches any term of the Contract, in circumstances where Council has determined in its sole and unfettered discretion that:
  - (i) the breach was capable of being remedied;
  - (ii) the Contractor has failed to remedy that breach to Council's satisfaction within the time notified by Council in writing to do so; and
  - (iii) the Contractor has failed to satisfy Council, within the time notified by Council in writing to do so, that the Contractor has implemented all necessary measures to ensure that a breach of a similar nature will not occur again;
- (b) breaches any term of the Contract in such a way as to pose an unacceptable risk of harm to any person or the natural environment, as determined by Council in its sole and unfettered discretion;
- (c) breaches any term of the Contract, in circumstances where Council has determined in its sole and unfettered discretion that such breach is not capable of being remedied;
- (d) commits a fraudulent or other illegal act; or
- (e) suffers an Insolvency Event,

Council may, in its sole and unfettered discretion, immediately:

- (f) terminate the Contract, whereby the rights and liabilities of the parties shall be the same as they

- (g) would have been at common law had the Contractor repudiated the Contract and Council elected to treat the Contract as at an end and recover damages; or take out of the hands of the Contractor the whole or part of the Supply remaining to be completed (which may include all of the Supply within one or more Requests for Supply),

by notice in writing to the Contractor.

**29.2 Taking Supply out of Contractor's hands**

- (a) When Supply which is taken out of the hands of the Contractor under clause 29.1 is completed, the Council's Representative must ascertain the cost incurred by Council in completing the Supply and must issue a certificate to Council and the Contractor certifying the amount of that cost.
- (b) If the cost incurred by Council is greater than the amount which would have been paid to the Contractor if the Supply had been completed by the Contractor, the difference will be a debt due from the Contractor to Council. If the cost incurred by Council is less than the amount that would have been paid to the Contractor if the Supply had been completed by the Contractor, the difference will be a debt due to the Contractor from Council.

**29.3 Council's right to terminate for convenience**

- (a) Council may at any time in its sole and unfettered discretion terminate the Contract or one or more of the Requests for Supply for its convenience and without reason by giving three Business Days' notice in writing to the Contractor.
- (b) Subject to clause 29.3(c), if Council terminates the Contract or one or more Requests for Supply under clause 29.3(a), the Contractor's sole entitlement to Claim in relation to that termination will be for payment of:
  - (i) all Supply carried out in accordance with the Contract or the relevant Requests for Supply (as applicable) up to, but excluding, the date that the termination becomes effective;
  - (ii) items validly ordered by the Contractor prior to the date of termination which would have formed part of the Supply, provided that title in such items will transfer to Council upon payment for the item;
  - (iii) any costs reasonably incurred by the Contractor in the expectation of completing the Supply, and which are not included in any other claim for payment; and
  - (iv) reasonable costs of demobilising individuals and equipment that are incurred as a direct and unavoidable result of the termination,
 provided that:
  - (v) a claim for payment under this clause 29.3 is subject to clause 18; and
  - (vi) the Contractor may not claim payment for any amounts that have been the subject of a previous payment claim.
- (c) If Council terminates the Contract or one or more Requests for Supply under clause 29.3(a) and at the time of termination the Contractor:
  - (i) is subject to an Insolvency Event;
  - (ii) has not provided a statutory declaration in accordance with clause 29.9 (if requested); or
  - (iii) has provided a statutory declaration which required under the Contract and such statements are determined by Council (acting reasonably) to be untrue, false or misleading,

Council shall not be required to make further payment to the Contractor.

- (d) If Council terminates one or more Requests for Supply, but does not terminate the Contract, all Requests for Supply other than those specified by Council as being terminated will continue in force.
- (e) For the avoidance of doubt, if Council terminates the Contract, all Requests for Supply will terminate as of the same date and time as the date and time for termination of the Contract.

**29.4 Termination not valid**

- (a) If Council terminates, or purports to terminate, under clause 29.1 or otherwise at law and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for Council's convenience under clause 29.3 as at the same date and time as the original notice of termination.
- (b) The Contractor waives any Claim the Contractor has or would have had, but for this clause 29.4, arising out of or in connection with any termination, or purported termination, by Council under clause 29.1, or otherwise at law being subsequently held to be invalid, void or otherwise.

**29.5 Contractor's right to terminate**

- (a) If:
  - (i) Council has failed to pay the Contractor an amount that is due and owing to the Contractor within the time required by the Contract, and that amount is not under dispute; and
  - (ii) after expiry of the applicable time for payment, the Contractor notifies Council in writing of the amount that is outstanding, attaches the original claim for payment of that amount and states in the notice that the Contractor will terminate the Contract if Council does not make payment in full of the outstanding amount within 10 Business Days,
 and Council fails to pay the outstanding amount within 10 Business Days of receipt of the notice in clause 29.5(a)(ii), then the Contractor may immediately terminate the Contract by notice in writing to Council.
- (b) If the Contractor terminates the Contract under clause 29.5(a) or pursuant to any other rights it may have whatsoever, then the Contractor's sole entitlement to Claim in relation to that termination will be as set out in clause 29.3(b).

**29.6 Clauses that survive termination**

Rights and obligations of the Contract that are capable of surviving the expiration or termination of the Contract, will survive that expiration or termination, irrespective of the reason for any termination, except if the context requires otherwise.

**29.7 Actions following termination or expiry of Contract**

- Promptly upon the expiry, or termination for any reason, of the Contract, the Contractor must:
- (a) either return or destroy all Confidential Information (including copies) belonging to Council, except if Council agrees to allow the Contractor to keep one copy solely for its internal records;
  - (b) provide to Council all parts of the Supply executed by the Contractor up to the date of termination, whether they are complete or not;
  - (c) return to Council all of its property, in the Contractor's possession, power or control and cease carrying out the Supply.

## 29.8 Termination reference date

- (a) This clause shall only apply to the extent that the Security of Payment Act applies to the Contract
- (b) Despite anything else in the Contract to the contrary or which would otherwise limit the operation of this clause, in the event of termination of the Contract for any reason, the Contractor is entitled to make a single claim for payment in accordance with clause 18 (whether or not the Contractor has satisfied the Claim Preconditions which would otherwise apply in respect of that claim for payment) on and from the termination date, such termination date being considered a 'reference date' for the purposes of the Security of Payment Act (**Termination Reference Date**). For clarity, nothing prevents the Council's Representative or Council setting off or withholding any amount arising out of, or in connection with, a failure of the Contractor to satisfy any Claim Preconditions, where such failure is also a breach of the Contract or results in any other claim of Council against the Contractor.
- (c) The Contractor may only include in the claim for payment contemplated by this clause, any amount which is due and payable to the Contractor under the Contract in respect of Supply properly undertaken prior to or on the Termination Reference Date.
- (d) Unless otherwise instructed by Council, the Council's Representative must not assess any other amounts and Council shall have no obligation to pay another amount, including additional amounts contemplated under clause 29, until such time as the claim for payment contemplated by this clause has been made and assessed in a payment schedule by the Council's Representative (or the time for making such a payment claim has elapsed under the Security of Payment Act).
- (e) The parties acknowledge and agree that where the Contract is terminated for any reason the Termination Reference Date will be the sole and final 'reference date' under the Security of Payment Act to survive beyond termination.
- (f) At any time following a termination, including after the submission and assessment of any claim for payment contemplated by this clause, Council may request the Council's Representative to issue a payment schedule, including to assess any amounts owing either to Council from the Contractor, or to the Contractor from Council, as the case may be.
- (g) Within 15 Business Days of receipt of such a request, the Council's Representative must issue a payment schedule to Council and the Contractor. Any amount owing under the payment schedule must be paid by the Contractor to Council, or Council to the Contractor, as the case may be, within 15 Business Days of the date of the payment schedule.

## 29.9 Statutory declaration

The Contractor agrees that:

- (a) at any time, the Council's Representative may request the Contractor to provide a completed and signed statutory declaration (in a form and containing such detail as reasonably required by the Council's Representative) from a representative of the Contractor who is in a position to know the facts confirming that:
  - (A) the Contractor is solvent and not subject to any Insolvency Event; and
  - (B) the Contractor is not seeking, to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the *Corporations Act 2001* (Cth); and

- (b) the Contractor must provide such completed and signed statutory declaration within 2 Business Days of the request from the Council's Representative.

## 30 Notification of claims

### 30.1 Conditions for making claims

The Contractor is not entitled to make any Claim against Council unless:

- (a) if the requirements for notification of the Claim are prescribed elsewhere in the Contract, the Contractor has strictly complied with those requirements; or
- (b) if clause 30.1(a) does not apply, then the Contractor has given Council written notice of the intent to Claim within 15 Business Days of when the Contractor should reasonably first have become aware of the occurrence of the event giving rise to the Claim.

### 30.2 Requirements for notice

A notice under clause 30.1(b) must be in writing and include:

- (a) the legal basis for the Claim, and if based on a term of any contract, clearly identify which contract and the specific term;
- (b) the facts relied upon in support of the Claim in sufficient detail to permit verification and assessment; and
- (c) details of the quantum of the Claim showing the calculations and their bases.

### 30.3 Non-compliant Claims barred

Failure by the Contractor to comply with this clause 30 is an absolute bar to making the Claim.

## 31 Personal Property Securities Act

- (a) If Council determines that the Contract (or a transaction in connection with it) is or contains a Security Interest, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed, and supplying information) as Council may reasonably require for the purposes of:
  - (C) ensuring that the Security Interest is enforceable, perfected and otherwise effective and ranks ahead of other Security Interests;
  - (D) enabling Council to apply for, and obtain, any registration or providing any notification in accordance with the *Personal Property Securities Act 2009* (Cth) (PPSA); or
  - (E) enabling Council to exercise any right in connection with the Security Interest or the property the subject of the Security Interest.
- (b) The Contractor waives each right to receive any notice from Council under the PPSA (including notice of a verification statement) that can be waived.
- (c) Except as expressly agreed in writing to the contrary, the Contractor:
  - (F) acknowledges that neither the Contract nor a transaction in connection with it is intended to provide a Security Interest in favour of the Contractor; and
  - (G) agrees that it will not register or otherwise perfect (or seek to perfect) any Security Interest, and will remove any registration in respect of the Contract or a transaction in connection with it.

(d) The Contractor must promptly notify Council if it knows or becomes aware (whether by receipt of a notice under the PPSA or otherwise) that a third party has or claims a Security Interest over a product of the Supply:

- (H) owned by Council;
- (I) supplied or to be supplied by the Contractor to Council; or
- (J) in which Council has an interest.

(e) The Contractor must, on request by Council, use best endeavours to ensure that the third party:

- (K) discharges any such Security Interest, and does not register or otherwise perfect (or seek to perfect), and removes any registration, in respect of any such Security Interest; or
- (L) subordinates any such Security Interest to the interest of Council, by an agreement in form and substance satisfactory to Council.

(f) At any time when title to or ownership of any product of the Supply, is passed to Council, the Contractor must ensure that title or ownership is passed free of any Security Interest of the Contractor or any other person.

(g) The Contractor must ensure that each subcontract has, for the benefit of Council, a clause that reflects this clause 31.

(h) Without limiting clause 23, neither Council nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA, and the Contractor will not authorise, and will ensure that no other party authorises, the disclosure of such information. However, this does not prevent disclosure where required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

## **32 Dispute resolution**

### **32.1 Dispute resolution process**

- (a) Either party may at any time by notice in writing to the other, refer any disagreement or dispute that has arisen between the parties in relation to the Contract or the formation, validity or subject matter of the Contract (**Dispute**), to dispute resolution in accordance with this clause 32.
- (b) A party that issues a notice of Dispute under clause 32.1(a) must include in that notice reasonable details of the legal and factual basis of the Dispute.
- (c) Except to the extent:
  - (i) permitted by clause 32.6; or
  - (ii) that this clause 32 would be in breach of any applicable Legislative Requirement,if either party refers a Dispute to resolution in accordance with this clause 32, then completion of the process set out in this clause 32 will be a condition precedent to the initiation of any proceeding or action in a Court or otherwise regarding that Dispute.

### **32.2 Negotiation**

- (a) If a party receives notice of a Dispute under clause 32.1(a), then, within 10 Business Days of receipt of that notice of Dispute, or such longer time as the parties may agree in writing, both parties must have their representatives meet in an effort to negotiate a resolution of the Dispute.
- (b) At any meeting under clause 32.2(a), the parties must:

- (M) not have legal representation;
- (N) each be represented by at least one person with authority to resolve the Dispute on their behalf; and
- (O) ensure that their representatives make genuine efforts to understand the other party's position, to clearly articulate their position, and to identify and put forward any matters on which Contract can be reached.

### **32.3 Mediation**

If the Dispute is not resolved within 5 Business Days of occurrence of the meeting under clause 32.2(a), or such longer period as the parties may agree in writing, then the parties must refer the Dispute to mediation in accordance with, and subject to, the most current version of the Resolution Institute's Mediation Rules.

### **32.4 Litigation**

If the Dispute is not resolved in accordance with clause 32.3, then either party may commence Court proceedings to resolve the Dispute.

### **32.5 Continued performance required**

Despite the existence of a Dispute, both parties must continue to perform their obligations under the Contract.

### **32.6 Urgent interlocutory relief**

A party may commence Court proceedings relating to any Dispute at any time if that party seeks urgent interlocutory relief.

### **32.7 Confidentiality**

The parties agree that:

- (a) the reason for a party providing any information, including the making of any offer of settlement, under clause 32 is to attempt to resolve the Dispute;
- (b) information provided under clause 32 is Confidential Information for the purposes of clause 23; and
- (c) no party may use this information for any purpose other than to resolve the Dispute.

### **32.8 Survival**

The obligations in this clause 32 survive the expiry or termination of the Contract.

## **33 General**

### **33.1 Amendments**

The Contract may only be amended by written Contract between all parties.

### **33.2 Assignment, novation and change of control**

- (a) The Contractor may only assign its rights under the Contract, or effect a Change of Control, with the written consent of Council, whose consent may be withheld, or given subject to conditions, in its sole and unfettered discretion.
- (b) Council may at any time in its sole and unfettered discretion assign any or all of its rights under the Contract to a third party by notice in writing to the Contractor.
- (c) Council may at any time in its sole and unfettered discretion novate all of its rights and obligations under the Contract to any third party that is carrying out work or Supply related to the Supply. The Contractor must execute any deed or Contract that Council reasonably requires to effect that novation.
- (d) If the Contractor effects a Change of Control without Council's prior written consent, Council may, in its absolute discretion, exercise a right set out in clauses 29.1(f) and 29.1(g).

**33.3 Counterparts**

The Contract may be signed in any number of counterparts. All counterparts together make one instrument.

**33.4 No merger**

The rights and obligations of the parties under the Contract do not merge on completion of any transaction contemplated by the Contract.

**33.5 Entire Contract**

- (a) The Contract supersedes all previous Contracts about its subject matter and any Contracts collateral to those Contracts. The Contract embodies the entire Contract between the parties regarding its subject matter.
- (b) Except to the extent expressly provided to the contrary in the Contract, each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into the Contract.

**33.6 Further assurances**

The Contractor must do all things necessary to give effect to the Contract and the transactions contemplated by it.

**33.7 No waiver**

- (a) The failure of a party to require full or partial performance of a provision of the Contract does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under the Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

**33.8 Governing law and jurisdiction**

- (a) The Contract is governed by, and construed in accordance with, the laws of Queensland, except that the Sale of Goods (*Vienna Convention*) Act 1986 (Qld) and section 68 of the Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth) does not apply to the Contract or the Supply. The Parties irrevocably submit to the non-exclusive jurisdiction of the courts of Queensland and courts competent to hear appeals from those courts.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

**33.9 Severability**

A clause or part of a clause of the Contract that is illegal or unenforceable may be severed from the Contract and the remaining clauses or parts of the clause of the Contract continue in force.

**33.10 Notice**

- (a) A notice, consent or communication under the Contract is only effective if it is:
  - (i) in writing, in English, signed by or on behalf of the person giving it;
  - (ii) addressed to the person to whom it is to be given; and
  - (iii) given as follows:
    - (A) delivered by hand to that person's address;
    - (B) sent to that person's address by prepaid mail or by prepaid airmail, if the address is overseas;
    - (C) sent by fax to that person's fax number where the sender

receives a transmission confirmation report from the despatching machine indicating the transmission was made without error and showing the relevant number of pages and the correct destination fax number or name of recipient; or

- (D) sent by email to that person's email address, except that the email will be deemed not to have been received if either the email size exceeds the size limit shown in 0, or the sender receives a response (including an automated response) indicating that the email was not properly sent or received.

- (b) A notice, consent or communication given under clause 33.10(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

NOTE: If a notice is	NOTE: It is given and received on
<b>34</b> Delivered by hand or sent by fax or email	(a) that day, if delivered by 5.00pm on a Business Day; or (b) the next Business Day, in any other case.
<b>35</b> Sent by post	(a) three Business Days after posting, if sent within Australia; or (b) seven Business Days after posting, if sent to or from a place outside Australia.

- (a) A person's address, email address, email size limit and fax number for notices issued under the Contract are as set out in 0, or as the person notifies the sender.

**35.2 Contractor consisting of multiple parties**

If the Contractor consists of more than one person:

- (a) an obligation of those persons is joint and several, and each of those persons agrees that it is responsible for the acts and omissions of the other as if they were its own;
- (b) a right of those persons (including to payment) benefits them jointly, and a payment by Council to one of those persons will be deemed to be payment to all of them; and
- (c) the Contractor may not exercise any right under the Contract unless that right is exercised concurrently by all persons constituting the Contractor.

## PART 5 – SCOPE

### SCHEDULE 1 – CONTRACT PARTICULARS

Details	
<b>Council:</b>	<b>Central Highlands Regional Council ABN 79 198 223 277</b> of corner of Egerton and Borilla Streets, Emerald QLD 4720
<b>Contractor:</b>	[#insert legal name and ACN or ABN] of [#Insert address]
<b>Commencement Date:</b>	02 August 2021
Nature of Contract	
<b>Is the Supply under a Standing Offer Arrangement: (clause 6.3)</b>	Yes
<b>If Yes, the Contract Term for the Standing Offer Arrangement is:</b>	12 months (02 August 2022)
<b>Extension of Contract Term: (clause 6.3(d))</b>	12 months (02 August 2023) followed by another 12 months (02 August 2024) (1+1+1)
Supply	
<b>Goods to be supplied (if any):</b>	Parts and equipment required for reactive maintenance for works on WTPs, WWTPs, water pump stations, sewer pump stations and associated infrastructure, supplied at cost plus the mark up indicated in Schedule 3 – Pricing Schedule.
<b>Extent to which the Goods (if any) may not be new (clause 9.5(a)):</b>	None
<b>Services to be supplied (if any):</b>	Labour and supervision for reactive electrical maintenance relating to: <ul style="list-style-type: none"> <li><input type="checkbox"/> Installation, service and maintenance of switchboards and motors</li> <li><input type="checkbox"/> Electrical installation and connection of instrumentation and controls (e.g. turbidity meters, valve actuators, etc.)</li> <li><input type="checkbox"/> Installation, service and maintenance of air conditioners</li> </ul>

	<input type="checkbox"/> Programmable Logic Controller (PLC) programming, predominately Allen Bradley PLCs, drive programming (e.g. variable speed drives) <input type="checkbox"/> Installation, service and maintenance of generators for Water Utilities as well as Uninterrupted Power Supply (UPS) storage systems	
<b>Sites:</b>	All Council WTPs, WWTPs, water pump stations, sewer pump stations and associated infrastructure.	
<b>Details for notices under Contract</b>		
<b>Council's Representative:</b>	Name:	Marvin Pacheco
	Postal address:	PO Box 21, Emerald QLD 4720
	Telephone:	1 300 242 686
	Fax:	1300 242 687
	Email address:	<a href="mailto:mpacheco@chrc.qld.gov.au">mpacheco@chrc.qld.gov.au</a>
	Email size limit:	20 MB
<b>Contractor's Representative:</b>	Name:	[#insert]
	Postal address:	[#insert]
	Telephone:	[#insert]
	Fax:	[#insert]
	Email address:	[#insert]
	Email size limit:	[#insert]
<b>Security of Payment notices (clause 19(b))</b>	Address / email address:	<a href="mailto:creditors@chrc.qld.gov.au">creditors@chrc.qld.gov.au</a>
<b>Meetings and reports</b>		
<b>Meetings and reports (clause 14.4)</b>	Meetings will occur prior to commencement and at monthly intervals thereafter.	
	The Contractor must provide Council with copies of the Service Reports within seven (7) days of completion of the Service Request.	

	<p>No later than two (2) days prior to the monthly meeting, the Contractor must provide Council with a complete updated copy of the Service Reports, an updated copy of all equipment on order, an updated copy of all equipment currently held by the Contractor for repair, an updated copy of all work completed to date with status (complete, in progress, incomplete) in native format.</p>	
	<p>As a requirement of Completion (or where the Contract is earlier terminated, no later than 10 Business Days after the notice of termination under clause 30 is given), the Contractor must provide the Council with a complete updated copy of the Service Records, an updated copy of all equipment on order, an updated copy of all equipment currently held by the Supplier for repair, an updated copy of all work completed to date with status (complete, in progress, incomplete) all in native format accompanied by a statutory declaration to the effect that the records are complete and accurate. The Contractor must provide this equipment in full to Council within the specified timeline (no later than 10 Business Days).</p>	
<b>Payment</b>		
<b>Price</b>	Determined by reference to the Schedule 3 – Pricing Schedule.	
<b>Invoice Date (clause 18.3(a))</b>	<p>Except for the Final Claim, the later of the dates worked out as follows:</p> <p>(a) the last business day of each month; and</p> <p>(b) the date of satisfaction of the last Claim Precondition.</p>	
<b>Time for payment schedule (clause 18.5)</b>	15 Security of Payment Days	
<b>Payment terms (clause 18.6)</b>	Within 30 days of the last day of the month in which the invoice is received.	
<b>Quality</b>		
<b>Quality assurance system: (Clause 13.1(c))</b>	If the Contractor is comprised of more than 10 employees, the Quality Assurance System must incorporate full third-party certification of 'Safety' (AS/NZS 4801) and 'Quality Management' (ISO 9001) systems including audit reports.	
<b>Miscellaneous</b>		
<b>Key Personnel: (clause 15)</b>	Name:	[#insert]
	Role:	[#insert]
	Name:	[#insert]
	Role:	[#insert]
<b>Insurances</b>		
<b>General third party liability insurance</b>		

<b>Minimum requirements for cover</b>	\$20,000,000
<b>Workers' compensation and employer's liability insurance</b>	
<b>Minimum requirements for cover</b>	As required by law
<b>Motor vehicle insurance</b>	
<b>Minimum requirements for cover</b>	Third party and comprehensive motor vehicle insurance for each vehicle used by the Contractor in performing its obligations under this Contract
<b>Professional indemnity insurance</b>	
<b>Minimum requirements for cover</b>	\$2,000,000

# **PART 5 – SCOPE**

## **SCHEDULE 2 – SCOPE OF SUPPLY**

### **1. Introduction**

Council is seeking a Panel of Prequalified Suppliers (Panel) to provide reactive electrical maintenance services including labour, materials, parts, equipment and supervision to carry out works on all of its WTPs, WWTPs, water pump stations, sewer pump stations and associated infrastructure. This may include after-hours and on-call support.

This Contract is for a period of one (1) year from the commencement date with an option to extend for one (1) year, and an option for an additional extension of one (1) year after that. Extension of the Contract will be purely at the discretion of Council.

Council requires the provision of electrical and refrigeration trade services from Suppliers who provide quality services and materials which provide a value of money deliverable to maintain Council facilities, infrastructure and plant.

Council reserves the right to accept one or more Tenderers, for the whole or part of its requirements. If for any reason Council is unable to satisfy its requirements by use of a successful Tenderer, it reserves the right to deal with additional suppliers.

### **NON-EXCLUSIVITY OF SERVICES**

This Agreement is not exclusive and Council may, at its discretion, engage another entity or use internal resources to provide the Services.

Council does not guarantee a quantity of work under this contract but is based on a Fixed Schedule of Rates provision of services when required by Water Utilities.

### **2. Scope of Works**

The services provided by the Panel will be utilised in reactive maintenance on specified sites. The contract incorporates electrical and refrigeration trades, associated skills and necessary qualifications / licenses and Queensland Building and Construction Commission (QBCC) licenses required from the prequalified suppliers as listed below.

Where required, the Contractors must have the QBCC licenses as per <http://www.qbcc.qld.gov.au>.

The following services are included in the scope of works:

- a. Reactive maintenance work (evaluation, repair, maintenance, replacement and troubleshooting), including:
  - i. Installation, service and maintenance of switchboards and motors
  - ii. Electrical installation and connection of instrumentation and controls (e.g. turbidity meters, valve actuators, etc.)
  - iii. Installation, service and maintenance of air conditioners
  - iv. PLC programming, predominately Allen Bradley PLCs, drive programming (e.g. variable speed drives)
  - v. Installation, service and maintenance of generators for Water Utilities as well as UPS storage systems

- b. Mileage in \$ per each location, starting from the Contractor's base of operations, specified in Part 6 – Response Schedules.
- c. Supply of materials and parts required for the works at cost plus the mark up indicated in Schedule 3 – Pricing Schedule.
- d. Cost per annum to satisfy on-call conditions, where one (1) qualified trade electrician at minimum provides on-call support across all service areas and locations at all times of the year, including public holidays, after-hours support and emergency requests.
- e. Reporting on the completion of all works utilising Council's maintenance service report template provided in Appendix A, which may include information such as:
  - i. Safety defects
  - ii. Status of the work, including photographs
  - iii. Any statutory or commissioning testing or reporting
  - iv. Red line marked up drawings, if applicable (the Contractor shall make every effort to locate existing drawings)
  - v. Process control modifications including what the code was before and after the change and the programme name and rung numbers effected by the change (all PLC programming must be completed on the Council laptop and backed up which shall remain at the East Nogoia WTP when not in use)
  - vi. Decommissioning or demolition work including what was decommissioned / demolished, how cables are terminated, stored location of any electrical / control equipment.

Note that Council's maintenance service report will migrate to an electronic maintenance ticketing system in the near future and that Contractors will be required to utilise this system.

The following services are outside the scope of works:

- Planned test and tag programs
- New installations for capital projects
- Fire panels
- Emergency exits
- High voltage installations
- Planned inspection regimes
- Laboratory equipment
- SCADA

### **3. Qualifications**

Strong working knowledge of the operation of the treatment plants will be required as well as a knowledge of old switchboards. The following qualifications are required:

- a. Queensland Electrical Contractors Licence
- b. Electrical Licence Fitter/Mechanic
- c. PLC Programming (Industrial Automation and Control) Competency
- d. Asbestos Awareness
- e. Confined Space Entry
- f. Cardiopulmonary Resuscitation (CPR) and Low Voltage Rescue (LVR)
- g. Inoculations for working with wastewater, e.g. Hepatitis A, Hepatitis B, Tetanus, etc. in alignment with Council's Infection Control Procedure

- h. Awareness of hydrogen sulphide and other sewer gases associated with foul air and wastewater
- i. Awareness of chemical systems listed in Section 4.6

The following qualifications are desired:

- a. Hazardous Area Competency (EEHA)
- b. Electrical Instrumentation Competency
- c. Working at Heights

The Contractor must provide evidence that the actual tradesperson holds the relevant licenses/tickets and is appropriately qualified, experienced and competent. All accreditations etc. will be checked for currency prior to commencement of work. Tradespersons must carry all accreditations on them at all times while on site.

Note that all staff working in and around wastewater assets may be required to wear a gas detector and are responsible for their proper operation, calibration and maintenance.

All work shall comply with the following (and any revisions that occur during the Contract Term including extensions of the Contract):

- a. AS/NZS 3000:2018 Electrical Installations “Wiring Rules”
- b. AS/NZS 3001:2008 Electrical installations – Transportable structures and vehicles including their site supplies
- c. AS/NZS 3008:2017 Electrical installations – Selection of cables
- d. AS/NZS 3017:2007 Electrical installations – Verification guidelines
- e. AS/NZS 3760:2010 In-service safety inspection and testing of electrical equipment
- f. AS/NZS 4836:2011 Safe working on or near low-voltage electrical installations and equipment
- g. Electrical Safety Act 2002
- h. Electrical Safety Regulation 2013
- i. Relevant Codes of Practice<sup>1</sup>
- j. CHRC (Council) Contractor Management System

## **4. Safety**

### **4.1. Policies and Procedures**

Council has a number of policies that are applicable to all employees of Council and any person who performs work for Council including Contractors and their employees. The Supplier must comply with all Council policies, procedures and site-specific requirements, including but not limited to:

- a. Council Contractor Management System<sup>2</sup> including online inductions, safety permit, authority to work, Safe Work Method Statement (SWMS) and permits for high-risk activities
- b. Council Drug and Alcohol Procedure – refer Appendix B
- c. Council Infection Control Procedure – refer Appendix C
- d. Relevant Council policies and procedures<sup>3</sup>
- e. Site specific personal protective equipment (PPE)
- f. Site specific traffic management (e.g. direction of traffic through site).

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<sup>1</sup> Available at <https://www.worksafe.qld.gov.au/laws-and-compliance/electrical-safety-laws>

<sup>2</sup> Available at <https://www.centralhighlands.qld.gov.au/about-council/suppliers/contractor-management/>

<sup>3</sup> Available at <https://www.centralhighlands.qld.gov.au/about-council/laws-policies/council-policies/>

Contractors must have their own First Aid kits and relevant PPE such as safety hard hats, safety boots, high visibility shirt or vest, safety goggles, leather gloves, and noise protection (earmuffs or plugs).

Contractors engaged to undertake for Council shall ensure that a work plan is created before work is started. The work plan may include the following information: Job Safety and Environment Analysis (JSEA), SWMS and Traffic Management Plan (TMP). The Nominated Site Operator will be responsible for ensuring the correct documentation relevant to the work has been completed work starts.

All work undertaken shall comply with current Work Health and Safety legislation.

#### **4.2. Central Highlands Regional Council Inductions**

All personnel working for Council under this agreement are required to partake in the Council Contractor's Induction. All personnel will be required to update their inductions every one (1) year.

In addition, depot and site-specific inductions may also be required. Failure to hold the correct inductions may result in the Contractor being ordered off site.

#### **4.3. Construction Industry Safety Induction Card**

All Contractors are required to have a current Construction Industry General Safety Induction Card (white card).

#### **4.4. Cross Contamination of Tools and Equipment**

To safeguard against cross contamination, tools and equipment used in wastewater environments will not be permitted to be used in potable water environments. Alternatively, the Contractor may provide a decontamination procedure which shall be carefully followed, subject to the approval of the Council's Representative to allow for one set of tools and equipment across both streams.

#### **4.5. Process Risk and Risk Management**

With all work, process risks associated with maintenance works must be documented, risk assessed and managed appropriately prior to undertaking work. Clear and timely communication to the Nominated Site Operator is critical if any work may impact process conditions and therefore public health and safety (e.g. Australian Drinking Water Guidelines), environmental regulatory compliance (Environmental Authority) or other key considerations.

#### **4.6. Hazardous Substances**

Contractors must be able to demonstrate that they have considered and can effectively control the risks from storage and use of dangerous goods / hazardous substances. This must include the risk of fires, explosion, burns, contact with skin/eyes and spillage. Safety Data Sheets (SDS) are to be provided to Council and must also be made available to workers at the point of use. As a minimum, any PPE specified with the SDS must be provided by the Contractor and used correctly.

Chemical awareness training shall be required for all Contractor personnel working in and around chemical systems which may include:

- a. Chlorine gas
- b. Sodium hypochlorite

- c. Caustic soda (sodium hydroxide)
- d. Aluminium sulphate
- e. Sulphuric acid
- f. Hydrochloric acid

Hydrogen sulphide and other gases associated with foul air and wastewater systems are to be monitored by gas detectors where appropriate. Persons wearing gas detectors shall be responsible for their proper operation, calibration and maintenance.

## 5. Specific Requirements of Contract

### 5.1. Operation of Service Personnel Panel

If appointed Contractors are unavailable to perform the required services within the requested timeframes, Council reserves the right to source contractors from outside the Panel. Council may maintain a register of Contractors not appointed to the Panel for this purpose.

Contractors that are appointed to the Panel will be placed on the list relevant to their area. Council representatives will consult the listing and select the Contractor for the required Works/Services. If the Contractor is unavailable to perform the work when required, the next Contractor will be contacted on the list, and so forth.

The number of Contractors in each area on the panel will be limited to only those numbers required to satisfy Council requirements. If no Contractors on the Panel are available, Council reserves the right to obtain quotes from other contractors that are suitably qualified and experienced.

### 5.2. Supply of Goods

The successful Contractor must provide an itemised bill of quantities for goods supplied with the services. The bill of quantities is to be approved by the Council's Representative as acceptance of the Contractor's office for supply of goods.

Goods must be supplied in accordance with clause 10 of the Supply of Goods and/or Services General Conditions of Contract.

### 5.3. Request for Services

A Request for Services will come from a Council Representative accompanied by an official Council Purchase order or in the case of after-hours or emergency works the Council Representative who will supply a Purchase Order on the next business day. Council reserves the right to issue the successful Contractor with a standing order.

Reactive maintenance work shall be undertaken within the priority rating timeline as per below from a request for services from the Council's Representative and will be carried out on a day agreed with the Council's Site Representative within normal working hours of the site, unless agreed otherwise:

Priority	Response Time
<b>Critical</b>	Response required immediately
<b>High</b>	Response required within 24 hours
<b>Medium</b>	Response required within 72 hours

Priority	Response Time
Low	Response required within 7 days

#### **5.4. Emergency Callout Situations**

Contractors may be requested to provide an after-hours service to address emergency breakdowns. Response times to call-outs will be negotiated with the contractor and align with internal service levels which are based on criticality and geographical location of the asset. The contractor will be required to provide positive communication confirming receipt of the emergency call out and the anticipated timeline of arrival to the site.

#### **5.5. On-Call Support**

Contractors may be requested to provide on-call support in addition to the after-hours service to address emergency breakdowns. The on-call support shall be at minimum one (1) trade qualified electrician provide coverage across all service areas and locations at all times of the year, including public holidays, after-hours support and emergency requests.

Contractors are invited to provide an annual cost to satisfy on-call conditions in Schedule 3 – Pricing Schedule.

#### **5.6. Incidental Purchases**

Incidental purchases (less than \$800.00 per item) which are required to complete the job will be the responsibility of the Contractor and will be paid at cost plus the mark up indicated in Schedule 3 – Pricing Schedule. For purchases greater than this amount, a written quote must be provided to the Council's Representative and approved prior to purchase, in alignment with Council's Procurement Policy. Materials and parts supplied are to be consistent with the Council preferred equipment list (where applicable) or otherwise consistent with existing equipment on site.

#### **5.7. Completion of Service Reports**

Reporting on the completion of all works shall be provided by email to the Council's Representative within seven (7) days of the completion of the works. All reports shall be submitted using the approved maintenance service report template unless otherwise approved by the Council's Representative.

#### **5.8. Dockets / Timesheets**

Contractors are required to supply docket / timesheets for services performed and are to be completed daily.

Dockets / timesheets are to include:

- A detailed breakup of hours worked including arrival time on site
- Equipment hours used if applicable
- Stand down hours
- Indicate breaks taken
- Details as to which area (by location) the services were performed in.

These docket / timesheets must be signed by the Contractor and handed to the Council's representative at the end of each day. All invoices must clearly state purchase order, dates worked,

corresponding docket numbers and Council asset number provided by the Council's Representative where available and/or Nominated Site Operator.

### **5.9. Contractor's Contact**

The successful Contractor/s must appoint a permanent contact person to liaise directly with Council's Representative on any issue that may arise. Full contact details (name, mobile number, email), including emergency callout contact details, are to be provided to Council. The nominated contact person must be familiar with Council facilities and all requirements under the contract. In addition to a permanent contact person, a proxy contact person must also be nominated with full contact details as noted above provided.

On-call support shall provide a single on-call phone number and email address with a roster naming the qualified personnel over the specified time period, to be provided in writing to Council a minimum of five (5) Business Days in advance of on-call roster commencement.

### **5.10. Removal of Council Assets**

If equipment is required to be removed from Council facilities to perform maintenance, the Contractor shall ensure the following procedure is followed:

- Obtain approval from the Nominated Site Operator
- Inform the Nominated Site Operator of the site how long the repair is estimated to take
- Provide, if possible, a temporary replacement for the equipment being repaired
- Place a tag on the item of equipment being repaired showing details of the date removed and the room or building from which it was removed
- Make safe and hazard created by the removal of any item or safety feature
- Advise the Council's Representative in writing.

The Council's Representative shall be given access to the Contractor's premises to inspect items removed for repair for the purpose of assessing their overall condition with the view to replacement in lieu of repair.

The Contractor is to advise the Council's Representative of equipment considered beyond economical repair. Parts removed or replaced shall remain the property of the Council and shall be disposed of as instructed by the Council's Representative.

### **5.11. Subcontracting**

The successful contractors must not subcontract or assign any right or obligation under this Agreement without Council's prior written consent. If written approval is given and the successful contractor subcontracts any of the Services, the successful contractor:

- Remains fully responsible for the Services and its obligations under this Agreement
- Will be liable to Council for acts or omissions of its subcontractors as if they were acts or omissions of the Contractor.

### **5.12. Public Utilities**

The Contractor shall take all precautions to avoid damage to any utility mains and services, gas, water, sewer, electric power (underground and overhead), telephone, etc. and must be addressed in safe work method statements and safety systems.

Council recommends the successful Contractor conducts a dial before you dig search prior to commencing works, where applicable. Any damage caused must be notified immediately to Council. Any damage repair cost will be at the Contractor's expense.

All equipment working in the vicinity of overhead power lines, must always maintain the minimum safe approach distances. Where spotters are required, Contractors must provide authorised spotters and comply with all relevant legislation.

Some works will be undertaken in public spaces such on pedestrian footpaths and adjacent to roadways. All works on or adjacent to roadways and footpaths shall comply with the Manual of Uniform Traffic Control Devices. This will include implementation of all relevant signage, traffic control and pedestrian management where necessary.

### **5.13. Cleaning and Housekeeping**

The contractor shall maintain all work areas in a clean and tidy condition and remove all waste products generated by the work from the site and dispose of the waste in the correct manner.

## **6. Rates**

Rates offered by the Contractor shall be exclusive of GST.

Contractors must price according to the service areas and locations listed in Schedule 3 – Pricing Schedule.

**Note: The Contractor must submit rates in the same format and in MS Excel as per the Schedule 3 – Pricing Schedule spreadsheet. Other formats may be considered as non-conforming.**

The following items **will not** be paid by Council:

- a. Breaks taken by employees including lunch breaks – breaks should be clear indicated on submitted dockets and invoices,
- b. Downtime as a result of a breakdown or failure of the Contractor's equipment or for reasons within the Contractor's control.

This agreement will be managed on a Fixed Schedule of Rates basis. Rates increases shall apply annually at 2% and submitted as detailed in the Service Agreement subject to Council's acceptance.

## **7. Standard Rate**

Standard rate hours for this agreement are defined as follows:

- a. Are the hours between 6:00 am and 6:00 pm Monday to Friday only, except Public Holidays,
- b. Must not exceed 12 hours on any day, and
- c. Cease on the completion of the Services/Works.

## **8. After-Hours Rate**

After-hours rate hours for this agreement are defined as follows:

- a. Are the hours between 6:00 pm and 6:00 am Monday to Friday, all hours Saturday and Sunday and Queensland recognised Public Holidays only,
- b. Minimum After-Hours – is the minimum hours charged for after-hour Services/Works (i.e. if the minimum hours is two (2) hours and the Services/Works is completed in one (1) hour, the Contractor will charge two (2) hours for the Services Works).
- c. Must be authorised by a Council representative.

## 9. On-Call Support

Contractors can tender for the provision of on-call support in addition to the after-hours service to address emergency breakdowns. The on-call support shall be at minimum one (1) trade qualified electrician provide coverage across all service areas and locations at all times of the year, including public holidays, after-hours support and emergency requests. Service providers shall ensure they have reviewed the on-call support conditions and can provide the coverage required by Council.

## 10. Service Areas

The following service areas require servicing. Contractors can tender in specific locations within service areas that suit their business requirements. Service providers shall ensure they have reviewed the area and have considered the distance and coverage they wish to tender.

Service Area	Location Within Service Area
<input type="checkbox"/> Service Area 1	<input type="checkbox"/> Anakie <input type="checkbox"/> Rubyvale <input type="checkbox"/> Sapphire
<input type="checkbox"/> Service Area 2	<input type="checkbox"/> Blackwater <input type="checkbox"/> Bluff <input type="checkbox"/> Dingo <input type="checkbox"/> Duaringa
<input type="checkbox"/> Service Area 3	<input type="checkbox"/> Capella <input type="checkbox"/> Tieri
<input type="checkbox"/> Service Area 4	<input type="checkbox"/> Emerald <input type="checkbox"/> Comet
<input type="checkbox"/> Service Area 5	<input type="checkbox"/> Rolleston <input type="checkbox"/> Springsure

## 11. Submitting an Offer

- The Contractor is requiring Council to consider them for a place on the Panel of Prequalified Suppliers for their selected area specified by the Contractor,
- The Contractor will make available to Council, ready to provide the services for the agreement period, as per the terms referred to in this document,

- The Contractor will ensure all licenses/qualifications are maintained throughout the agreement period to comply with Council, statutory and legislative requirements,
- The Contractor and their employees will comply with all Council policies and requirements,
- There is no guarantee from Council as to the quantity of work resulting from being appointed to the Panel,
- The Contractor must only apply for those services that can be performed by the Contractor or the Contractor's employees.

## **PART 5 – SCOPE**

### **Schedule 3**

#### **PRICING SCHEDULE**

Refer attached Schedule 3 – Pricing Schedule.

# PART 6 – RESPONSE SCHEDULES

## Tender Form

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The Tenderer lodges a tender for the provision of Panel of Prequalified Suppliers for Reactive Electrical Maintenance and After-Hours Support for WTPs, WWTPs, water pump stations, sewer pump stations and associated infrastructure to Council in accordance with the details provided in this Response Schedule. The Tenderer acknowledges that it has read and understood the request for tender and the proposed agreement and warrants and represents that it can and will comply with all obligations under, warranties given in and representations made in the agreement.

**Signature of authorised representative of Tenderer:** \_\_\_\_\_

**Name of authorised representative of Tenderer:** \_\_\_\_\_

**Date:** \_\_\_\_\_

*Note: The Tender Form must be signed for and on behalf of the Tenderer by a person or persons having full authority to bind the Tenderer for the purposes of the Tender and evidence of such authority must be provided on request.*

**Initialed by Tenderer:** \_\_\_\_\_ **Date:**     /     /

# General Details

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The Tenderer is to provide the following details:

Company or Entity Name:	
Trading Name:	
ABN:	
ACN: <i>(Leave blank if not a company)</i>	
Address:	
Contact Person:	
Telephone:	
Email:	
Full name of each director: <i>(Leave blank if not a company)</i>	
Full name of each partner: <i>(Leave blank is if not a partnership)</i>	
Authorised signatory (Name & Position):	
Bank account into which payments are to be made:	Bank: Name of Account: BSB: Account number:

Initialed by Tenderer: \_\_\_\_\_ Date:     /     /

## Capability and Availability

The Tenderer is to indicate all elements that they are willing to service. If a Contractor wants to nominate a location within a service area, they may do so. It is assumed that nominating for a service area will include all locations within that service unless otherwise indicated.

Detail	Response	
<b>Type of Services</b>	<input type="checkbox"/> Installation, service and maintenance of switchboards and motors <input type="checkbox"/> Electrical installation and connection of instrumentation and controls (e.g. turbidity meters, valve actuators, etc.) <input type="checkbox"/> Installation, service and maintenance of air conditioners <input type="checkbox"/> PLC programming, predominately Allen Bradley PLCs, drive programming (e.g. variable speed drives) <input type="checkbox"/> Installation, service and maintenance of generators for Water Utilities as well as UPS storage systems	
<b>Major Services Areas</b>	<b>Service Area</b>	<b>Location Within Service Area</b>
	<input type="checkbox"/> Service Area 1	<input type="checkbox"/> Anakie <input type="checkbox"/> Rubyvale <input type="checkbox"/> Sapphire
	<input type="checkbox"/> Service Area 2	<input type="checkbox"/> Blackwater <input type="checkbox"/> Bluff <input type="checkbox"/> Dingo <input type="checkbox"/> Duaringa
	<input type="checkbox"/> Service Area 3	<input type="checkbox"/> Capella <input type="checkbox"/> Tieri
	<input type="checkbox"/> Service Area 4	<input type="checkbox"/> Emerald <input type="checkbox"/> Comet
	<input type="checkbox"/> Service Area 5	<input type="checkbox"/> Rolleston <input type="checkbox"/> Springsure
<b>Location of Base of Operations</b>		
<b>On-Call Support</b>	<input type="checkbox"/> On-Call Support	

Initialled by Tenderer: \_\_\_\_\_ Date:        /        /

# Criteria 1 – Key Personnel and Relevant Technical Experience

---

The Tenderer must provide, in the table below, details of its key personnel proposed for the duration of the Contract. The Tenderer shall attach a maximum two (2) page curriculum vitae (CV) for each key person.

Name	Position	Contact No.	Email Address	CV Attached
	Trade Qualified Electrician			Y / N
	Instrument Technician			Y / N
	Trade Assistant			Y / N
	Refrigeration Technician			Y / N
				Y / N

The Tenderer is required to detail previous experience it has in respect of providing services similar to those required by this Contract including by providing the following details:

1. Experience providing electrical maintenance services as required under the Contract
2. Experience in maintenance in the water and wastewater treatment processes
3. Experience working in regional Queensland and/or with local or state governments
4. Details of past projects completed of a similar nature including:
  - a. The scope of the Tenderer’s involvement
  - b. Details of the outcomes
  - c. The involvement of staff proposed for this Project
  - d. Details of any innovations or added value for money achieved
  - e. Details of problems which arose and how they were overcome
  - f. Referee and contact details for each listed project
5. Details of all relevant licences and registrations held by the Tenderer (please attach copies)

Where applicable, the Tenderer must also include in a similar form to the above the relevant experience of any proposed subcontractors or subconsultants.

The Tenderer’s response shall not exceed three (3) pages (including all attachments, annexures, supplements, parts, schedules, appendices and this page, but not including CVs and copies of licences/registrations).

Any part of the Tenderer’s response in excess of that page limit may or may not be taken into account by the Council, in its absolute discretion.

Click to enter text.

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**Initialed by Tenderer:** \_\_\_\_\_ **Date:**        /        /

## Criteria 2 – Tenderer’s Resources

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The Tenderer is required to demonstrate their ability to supply the services in accordance with the Contract requirements including by providing the following details:

- 1. A current commitments schedule covering the entire Contract period including service personnel, vehicles, plant equipment, etc.
- 2. Ability and capacity to meet response timelines, specifically how you will manage emergency repairs including the process of completing emergency tasks
- 3. Ability and capacity to undertake reporting requirements
- 4. Any contingency measures or back up resources including personnel
- 5. Depot/office/workshop location and preference with regards to service areas

The Tenderer's response shall not exceed two (2) pages (including all attachments, annexures, supplements, parts, schedules, appendices and this page).

Any part of the Tenderer's response in excess of that page limit may or may not be taken into account by the Council, in its absolute discretion.

---

Click to enter text.

**Initialed by Tenderer:** \_\_\_\_\_ **Date:**     /     /

### **Criteria 3 – Understanding of Council’s Requirements**

---

The Tenderer is required to demonstrate its understanding of the scope of work and the Council’s Requirements and how it is best suited to meet those requirements including by providing the following details:

- 1. Understanding of services required
- 2. Understanding of reporting required
- 3. The process of job ordering and payment processing
- 4. Any access or operating protocols
- 5. Experience, ability and capacity to maintain effective schedule and budget management
- 6. Any training processes (if required)

The Tenderer's response shall not exceed three (3) pages (including all attachments, annexures, supplements, parts, schedules, appendices and this page).

Any part of the Tenderer's response in excess of that page limit may or may not be taken into account by the Council, in its absolute discretion.

---

Click to enter text.

**Initialed by Tenderer:** \_\_\_\_\_ **Date:**        /        /

## Criteria 4 – Development of Competitive Local Business

The Tenderer is required to indicate which category of business applies to them. Tenderers are not required to provide supporting evidence with their Tender however such evidence may be required by the Council from the preferred tenderer prior to acceptance of a Tender.

CATEGORY	Description	Select one category only
1	Business is registered and operated in the locality the work is being performed, pays rates or leases a business premises and employs locals within that locality of Central Highlands Region.	<input type="checkbox"/>
2	Business is registered and operated in the Central Highlands Regional Council area, however outside of the locality the work is being performed, pays rates or leases a business premises and employs locals within Central Highlands Regional Council boundaries.	<input type="checkbox"/>
3	Business is registered outside Central Highlands Regional Council boundaries and employs greater than 50% of its workforce in Central Highlands Regional Council boundaries.	<input type="checkbox"/>
4	Business is registered outside Central Highlands Regional Council boundaries and employs between 50% and 20% of its workforce in Central Highlands Regional Council boundaries.	<input type="checkbox"/>
5	Business is registered outside Central Highlands Regional Council boundaries and employs a locally based workforce from within the Central Highlands Regional Council boundaries of less than 20%.	<input type="checkbox"/>
6	Business is registered outside Central Highlands Regional Council boundaries and is within the Central/West Queensland Region. The business employs a locally based workforce from within the greater Central Highlands Regional Council and/or Central/West Queensland region.	<input type="checkbox"/>
7	Other	<input type="checkbox"/>

Initialled by Tenderer: \_\_\_\_\_ Date:        /        /

The Tenderer must complete the table below detailing the local content provided by any subcontractors / suppliers. The successful tenderer may be required to provide documentary evidence to support the information provided in this schedule.

	Description of the Goods / Services / Work to be Procured	Supplier Name	Local Supplier*			Estimated Value (% of Total Contract Value)
			Cat 1	Cat. 2	Cat. 3	
1			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

\*Categories of Local Suppliers are as follows:

*Cat. 1: Supplier is beneficially owned by persons who are residents of the Central Highlands Regional Council Area and pay rates*

*Cat. 2: Supplier is a registered business or individual that has its principal place of business within the Central Highlands Regional Council Area*

*Cat. 3: Supplier otherwise has a place of business within the Central Highlands Regional Council Area which solely or primarily employs persons who are residents or rate payers of the Central Highlands Regional Council Area*

Initialled by Tenderer: \_\_\_\_\_ Date: / /

## **Criteria 5 – Price**

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The Tenderer shall complete the Schedule 3 – Pricing Schedule (refer attached) detailing its rates for services supplied. Council will not pay a retainer or guarantee any volume of work to any Tenderer.

Initialed by Tenderer: \_\_\_\_\_ Date:        /        /

## Alternatives, Qualifications and Departures

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By completing this section, the Tenderer will be taken to have submitted a separate Alternative Tender consistently of the Tenderer's conforming tender, as modified by the qualifications and departures detailed below.

Tenderers should submit a conforming tender, and the rates in the price schedule should not take account of any qualifications or departures noted in this section.

The Tenderer shall give details of any proposed amendments, qualifications or departures to the Contract in the attached schedule, including:

1. the amendment, qualification or departure proposed
2. the reason for proposing the change
3. the effect on the Tenderer's price if the amendment, qualification or departure is accepted

Clause / Item No.	Amendment, qualification or departure including reasons for proposing the change	Effect on price (excl. GST) if the change is accepted*	
		Reduction / Increase	Price
		Reduction / Increase	Price
		Reduction / Increase	Price
		Reduction / Increase	Price
		Reduction / Increase	Price
		Reduction / Increase	Price
		Reduction / Increase	Price

*\*If nothing stated, the Tenderer warrants that the amendment, qualification or departure will have no effect on the price*

Initialled by Tenderer: \_\_\_\_\_ Date:        /        /

# PART 7 – EXECUTION

## Execution

EXECUTED as a Contract

Signed by Central Highlands Regional Council  
ABN 79 198 223 277

on     /     /20     by its duly authorised officer  
in the presence of:

^ \_\_\_\_\_  
Signature of witness

^ \_\_\_\_\_  
Name of witness (print)

^ \_\_\_\_\_  
Signature of Authorised Officer

^ \_\_\_\_\_  
Full Name of Authorised Officer

^ \_\_\_\_\_  
Office Held

[#Alternative execution clause: If Contractor is a company. Delete if it is not applicable]

Executed by

[#insert Contractor's name] ACN [#insert  
Contractor's ACN] on     /     /20     by:

^ \_\_\_\_\_  
Director

^ \_\_\_\_\_  
Full name of Director

^ \_\_\_\_\_  
Director/Secretary

^ \_\_\_\_\_  
Full name of Director/Secretary

[#or]

Executed pursuant to s 127 *Corporations Act*  
2001 (Cth) by

[#insert Contractor's name] ACN [#insert  
Contractor's ACN] on     /     /20

---

▲ Signature of [#insert name of sole  
director or sole secretary] who signs in  
the capacity of sole secretary and sole  
director

[#Alternative execution clause: If Contractor is an individual. Delete if it is not applicable]

Executed by [#insert name] on     /     /20  
in the presence of:

---

▲ Signature of [#insert name]

---

▲ Signature of witness

---

▲ Name of witness (print)

[#Alternative execution clause: If Contractor is a partnership. Delete if it is not applicable]

Executed for and on behalf of [#insert full name of all partners] on / /20 by being signed by [#insert name] who certifies that he/she is duly authorised to sign this Contract in the presence of:

▲ \_\_\_\_\_  
Signature of witness

▲ \_\_\_\_\_  
Signature of [#insert name]

▲ \_\_\_\_\_  
Name of witness (print)