

# ATTACHMENT BOOKLET (TENDERS) FOR SPECIAL COUNCIL MEETING

20 July 2022 at 4:00pm

## INDEX

6.2.1 RFT10 - 2021/22 Local Supplier Panel – Request for Tender Documents	1
6.2.2 CONFIDENTIAL – Tender Panel Evaluation – provided under separate, confidential cover	-
6.3.1 RFT1 – 2022/23 Tennis Clubhouse – Request for Tender Documents	85
6.3.2 CONFIDENTIAL – Tender Panel Evaluation – provided under separate, confidential cover	-
6.4.1 Existing Regional Waste Contract - Cleanaway	199
6.4.2 CONFIDENTIAL – Schedule of Fees & Charges tendered	-



## Shire of Mingenew

# **REQUEST FOR TENDER**

Panel of Pre-qualified Providers for the Provision of: Wet hire of plant & equipment Electrical Services Plumbing Services Handyman Services Arbor Services Airconditioning and Refrigeration Services Supply and laying of concrete Supply and installation of kerbing Mechanical services Auto electrician services Painting services Pest Control Fire Management

## RFT Number: RFT10-21/22

Initial Contract Period 1 August 2022 – 31 July 2024 (2 years); with three possible single (1) year extensions thereafter (given at the discretion of the Shire of Mingenew), total of five (5) years maximum.

Date issued:04/05/2022All enquiries:To be directed to the Business Operations Manager, GFG Consulting, paul@gfgconsulting.com.au

TENDER DEADLINE: Wednesday 8 June 2022 at 2:00PM WST

- TENDERS MUST BE RECEIVED NO LATER THAN THE DEADLINE
- TENDERS SENT BY EMAIL ONLY. HARDCOPY AND/OR FACSIMILE TRANSMISSION WILL NOT BE ACCEPTED
- TENDERS WILL BE OPENED IN THE SHIRE OFFICE ON WEDNESDAY, 8 JUNE 2022 AT 10.30 AM WST

Tenders must be submitted by email to: tenders@mingenew.wa.gov.au

# Table of Contents

Part 1		4
Conditio	ns of Tendering	4
Contra	ct Requirements in Brief	4
1.1	Definitions	4
1.2	Request for Tender Documents	6
1.3	How To Prepare Your Tender	6
1.4	Contact Persons	6
1.5	Access To Work Sites	6
1.6	Lodgement Of Tenders & Delivery Method	6
1.7	Form Of Lodgement	7
1.8	RFT Checklist	7
1.9	Disclosure of Contract Information	7
1.10	Late Tenders	7
1.11	Rejection Of Tenders	7
1.12	Acceptance of Tenders	8
1.13	Extension of The Deadline	8
1.14	Outcome of The RFT	8
1.15	Tender Validity Period	8
1.16	Precedence of Documents	8
1.17	Registration & Licensing of Tenders	8
1.18	Alternative Tenders	8
1.19	Tenderers to Inform Themselves	8
1.20	Alterations to the RFT	9
1.21	Tenderers Enquiries Prior to the Deadline	9
1.22	Risk Assessment	9
1.23	Evaluation Of Tenders	9
1.24	Selection Criteria	
1.25	Compliance Criteria	10
1.26	Qualitative Criteria	10
1.27	Preference Given to Local Tenderers	
1.28	Price Basis & GST	
1.29	Ownership Of Tenders	
1.30	Canvassing Of Officials	11
1.31	Identity Of The Tenderer	11
1.32	Costs Of Tendering	11
1.33	Tender Opening	11
1.34	In-House Tenders	11
RFT PANE	L OF PROVIDERS 2	Page 2

1.35	Reference Documents	11
1.36	Disclaimer	11
Part 2		12
Specifica	ition	12
2.1	Scope Of Works	12
2.2	Allotment of Works	14
2.3	Protection & Safety	15
Part 3		15
Terms &	Conditions Of Contract	15
3.1	Pre-Qualified Supplier Panel Contract	15
3.2	WHS Requirement	15
3.3	Processing Services	15
3.4	Quality Assurance	16
3.5	Term Of Contract	16
3.7	Key Performance Indicators	16
Appendi	ix A	17
Appendi	ix B - E	17
Shire of I	Mingenew Policies and Procedures	17

## Part 1 READ & KEEP

## Conditions of Tendering

## Contract Requirements in Brief

The Shire of Mingenew wishes to develop a Panel of Pre-qualified Suppliers covering varies scopes of work. Establishing this Panel will enable the Shire to engage identified contractors to supply various services and supplies to support the delivery of the Council's maintenance and capital works programmes.

The Contracts to be offered to successful Tenderers will be a Panel type Contract for a period of Two (2) years with possibility of up to three One (1) year extension, subject to the Principal's approval.

As the Contract to offered is a Panel type Contract and the services and supplies required are varied, Contractors who wish to submit a Tender must clearly identify only those items which they determine they can effectively fulfil. Tenders will be assessed on each area of submission.

The Shire of Mingenew acknowledges that the tender response requirements are comprehensive. Tenderers should complete the response to the best of their abilities and not be perturbed by these requirements.

## 1.1 Definitions

Below is a summary of some of the important defined terms used in the RFT:

Alternative Tender: A Tender in which the Tenderer consciously deviates from the Specification;

Attachments: The Documents you attach as part of your Tender;

Canvass: To solicit or influence judgment or outcome in the due process of a Tender process.

**Code(s)**: All current construction Codes from The Australian Building Codes Board, Building Acts and referenced Documents in those Codes or Acts; if no Code or Act can be sourced for a construction industry regulatory requirements shall be used in its place after receiving clarification from the Superintendent.

**Consultant**: Licenced design professional associated with Contract Documentation and drafting (Technical Drawings) for building and construction Works. e.g. an Architect or Engineer.

**Consumer Price Index**: Means the index published by the Australian Bureau of Statistics known as the table 2 index - 6401.0 (weighted average of eight cities for all groups) or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

**Contract**: Legal binding agreement between the Tenderer and the Principal for this RFT. The project contract will consist of the successful Tenderer's Tender RFT submission including: appendices, referenced Documents herein, the Conditions of Tendering, the terms and conditions of Contract including and any Special Conditions of Contract;

**Contract Date**: The date by which the Formal Instrument of Agreement is signed by both parties;

Sample: A quality assurance sample of product for installation to be approved by the Superintendent. This sample is to govern the minimum Standard for installation.

Deadline: The Deadline for lodgement of the Tender stipulated on the front of this Request for Tender;

Deliverable(s): a tangible or intangible object produced to meet the Requirements of this RFT. A Deliverable could be a report, a Document, a Drawing, physical building upgrade or any other accumulation of items to complete a stage or part thereof. It is an outcome to be achieved as listed in the Requirements of the RFT;

Document(s)/ Documented/Documentation: Technical product or products under use to illustrate and denote the Requirements and Deliverables in the RFT. The set of technical Documents provided as appendices of this Document and the associated referenced material;

General Conditions of Contract: Means the terms and conditions of Contract attached as Appendix A;

**Offer**: The final submission to supply the Requirements in response to the RFT;

Panel: A Pool of successful tenderers who have offered to supply or provide all or a selection of the services requested in this tender.

**Principal**: in this case Shire of Mingenew (SoM), occasionally referred to in these Tender documents as the "Shire";

Principal's Representative: A person nominated or appointed to act or speak for the Principal;

Provisional Sum: Includes monetary sum, contingency sum, and prime cost item;

Request for Tender/RFT: This Document, including appendices;

**Requirements**: The goods and/or Services requested by the Principal in this RFT;

Sample: A quality assurance sample of product for installation to be approved by the Superintendent. This sample is to govern the minimum Standard for installation.

Selection Criteria: The criteria used by the Principal in evaluating your Tender;

Services: Electrical Services, Plumbing Services, Handyman Services, Arbor Services, Airconditioning and Refrigeration Services, Supply and laying of concrete, Supply and installation of kerbing, Mechanical services, Auto electrician services, Painting services, Wet Hire of Plant and equipment

Special Conditions: Any terms and conditions of Contract additional to the General Terms and Conditions of Contract;

Standard(s): All current Australian / NZ Standards and referenced Documents in those Codes or Acts, if no Code or Act can be sourced for a construction industry regulatory requirements shall be used in its place after receiving clarification from the Superintendent;

Supplier: Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assigns of such person or persons, corporation or corporations;

Superintendent: is the person appointed by the Principal to administer the Contract terms and conditions. This person will be the contact for the Principal for Works required by this Document;

Technical Specification: The set of Documented Requirements provided by the individual professional construction Consultants for Works specific to this Request for Tender; **RFT PANEL OF PROVIDERS** Page 5 5

Tender(s): The Tenderer's response to the RFT;

Tenderer: A person or corporation who submits an Offer to the Principal;

**Work(s)**: The whole of the Work to be executed in accordance with the Contract, including variations provided for by the Contract, which by the Contract is to be handed over to the Principal;

Witness Point: A point in the Work process at which an activity is to be observed.

## 1.2 Request for Tender Documents

This Request for Tender is comprised of the following Documents and parts:

- (a) Part 1 Conditions of Tendering (read and keep this Part);
- (b) Part 2 Specification (read and keep this Part);
- (c) Part 3 Terms and Conditions of Contract (read and keep this Part);
- (d) Part 4 Tenderer's Offer (separate document complete and return this Part);
- (e) Appendix A Prequalified Supplier Panel Contract (read and keep this part);
- (f) Appendix B Prequalified Suppliers Management Procedure (read and keep this part);
- (g) Appendix C Prequalified Suppliers Policy (read and keep this part);
- (h) Appendix D Purchasing Policy (read and keep this part);
- (i) Appendix E Regional Price Preference Policy (read and keep this part);

#### Additional Documents

- (a) Addenda and any other special correspondence issued to Tenderers by the Principal.
- (b) Any other policy or Document referred to but not attached to this RFT.
- 1.3 How To Prepare Your Tender
- (a) Carefully read the entire RFT.
- (b) Ensure that you understand the Requirements.
- (c) Complete and return the Tenderer's Offer and include all Attachments requested. Include responses only for the plant and services you are able to offer. Mark those you are unable to offer as "N/A".
- (d) Ensure that you have signed the Offer Form and responded to all the Selection Criteria.
- (e) Lodge your Tender before the Deadline.

## 1.4 Contact Persons

Tenderers should not rely on information provided by any person other than the Tendering Officer.

## 1.5 Access To Work Sites

The Contractor shall not have exclusive possession of the Work Sites and shall comply with all by-laws and regulations of the Local Authority in respect to public roads, rights of way and adjacent areas.

The Contractor shall occupy only such portions of Work Sites around the immediate area necessary for carrying out Works under the Contract.

## 1.6 Lodgement Of Tenders & Delivery Method

Tenders must be delivered by the following method -

RFT PANEL OF PROVIDERS

(a) Return of completed "PART 4" document accompanied by any relevant attachments BY EMAIL ONLY to tenders@mingenew.wa.gov.au.

#### TENDERS SENT BY HARDCOPY MAIL SERVICE OR BY FACSIMILE TRANSMISSION WILL NOT BE ACCEPTED.

All pages must be numbered consecutively, and the Tender must include an index.

Submissions that do not comply with section 1.6 may be excluded for evaluation.

## 1.7 Form Of Lodgement

Please note that it is the responsibility of the Tenderer to ensure that their submission is received prior to the close date and time of the Request for Tender.

The Shire of Mingenew takes no responsibility for time delays related to outage of internet or email hosting services experienced by the Tenderer, due to insufficient time allowed for delivery by the Tenderer.

## 1.8 RFT Checklist

Tenderers are to compile their Submission in the order as detailed below. Submissions that do not comply with the following order may be excluded for evaluation.

- Cover Page
- Response Form (part 4.1)
- Compliance Criteria (part 4.2)
- Financial Assessment (part 4.3)
- Risk Assessment (part 4.4)
- Safety & Health Assessment (part 4.5)
- Insurance Coverage (part 4.6)
- Certification (part 4.7)
- Regional Price Preference (part 4.8)
- Qualitative Criteria (part 4.9)
- Price Schedule (Part 4.11) Tenderers are to clearly nominate which items or supply or service they are offering to provide.

#### 1.9 Disclosure of Contract Information

Documents and other information relevant to the Contract may be disclosed when required by law under the Freedom of Information Act 1992 or under a Court order.

The Principal maintains a Tender Register as per the Local Government (Functions and General) Regulations 1996. By submitting a Request for Tender, the Tenderer acknowledges and agrees to this requirement.

#### 1.10 Late Tenders

Tenders received after the Deadline will be rejected.

#### 1.11 Rejection Of Tenders

A Tender will be rejected without consideration of its merits if -

#### **RFT PANEL OF PROVIDERS**

- (a) It is lodged after the Deadline, or
- (b) It is lodged at a place or by a method other than that specified in the RFT. A Tender may be rejected without consideration of its merits if
  - (a) It fails to comply with any of the other Conditions of Tendering, or
  - (b) It is incomplete.

#### 1.12 Acceptance of Tenders

The Principal is not bound to accept the lowest Tender and may reject or accept any or all Tenders submitted.

#### 1.13 Extension of The Deadline

The Principal will in exceptional circumstances extend the Deadline for the submission of Tenders.

Such applications must be received prior to the Deadline, as regulation 18(1) of the Local Government (Functions and General) Regulations 1996 precludes extensions of time after the Deadline has passed.

## 1.14 Outcome of The RFT

All Tenderers will be advised of the outcome of the RFT.

## 1.15 Tender Validity Period

All Tenders will remain valid and open for acceptance for a minimum period of ninety (90) days from the Deadline or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

#### 1.16 Precedence of Documents

In the event of there being any conflict or inconsistency between the terms and conditions in this Request and those in the General Conditions of Contract, the terms and conditions appearing in this Request will have precedence.

#### 1.17 Registration & Licensing of Tenders

Where an Act or Ordinance of the State of Western Australia requires that a Contractor (as defined by the Act or Ordinance) be registered or licensed to carry out the Requirements, the Tenderer shall state in its Offer its registration or licence number. The Tender may not be evaluated if the Tenderer fails to provide such registration or licence number.

## 1.18 Alternative Tenders

Alternative Tenders must be clearly marked as Alternative and may not be accepted.

#### 1.19 Tenderers to Inform Themselves

Tenderers will be deemed to have:

- (a) Examined the Request for Tender and all other information available in writing to Tenderers for the purpose of Tendering;
- (b) Examined all further information relevant to the risks, contingencies, and other circumstances influencing their Tender obtainable by the making of reasonable enquires;

- (c) Satisfied themselves as to the correctness and sufficiency of their Tenders including Tendered prices, which will be deemed to cover the cost of complying with the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the Requirements;
- (d) Acknowledged that the Principal may enter into negotiations with a preferred Tenderer and that those negotiations are to be carried out in good faith; and
- (e) Satisfied themselves they have a full set of the RFT Documents.

The Tenderer is to inform themselves and the Principal of any risk, legal obligation, or service to perform the Requirements of this RFT. Any submission of Tender will have been deemed to have completed a risk analysis to the Principal and any rectification in a future instance will not be the responsibility of the Principal.

## 1.20 Alterations to the RFT

Unless alterations to the RFT Documents are required by the RFT, the Tenderer must not make any alteration to those Documents unless such alterations are included in a Schedule of Departures and submitted with the Tender, failing which any alteration made will be deemed not to have been made.

The Principal will issue an addendum to all Tenderers where matters of significance make it necessary to amend or supplement the RFT before the Deadline.

## 1.21 Tenderers Enquiries Prior to the Deadline

Tenderers may submit questions about the RFT up to 48 hours before the Deadline. Questions must be submitted via email to Paul Owen, Tender consultant, Shire of Mingenew, paul@gfgconsulting.com.au

The identities of Tenderers who submit any questions will not be disclosed. It is recommended that all Documentation be read before posting questions.

#### 1.22 Risk Assessment

In assessing Tenders, the Principal may have access to and give consideration to:

- (a) Any risk assessment undertaken by any credit rating agency;
- (b) Any financial analytical assessment undertaken by any agency; and
- (c) Any information produced by the Bank, financial institution, or accountant of a Tenderer.

Tenderers may be required to undertake to provide to the Principal (or its nominated agent) upon request all such information as the Principal reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capacity to provide the Requirements and to otherwise meet their obligations under any proposed Contract. The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from the nominated agent may contact Tenderers to request financial information.

The financial assessment is specifically for use by the Principal for the purpose of assessing Tenderers and will be treated as strictly confidential.

## 1.23 Evaluation Of Tenders

The following evaluation methodology will be used in respect of the Request for Tender:

(a) Tenders will be checked for completeness. Tenders which do not contain all information requested may be excluded from further evaluation.

- (b) Tenders are assessed against the Selection Criteria contained in Part 4 and the Qualitative Criteria will be weighted as indicated.
- (c) Tenderers may need to satisfy credit and reference checks.
- (d) The most suitable Tenderers may be short listed and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution Offered and/or open premises for inspection. Referees may also be contacted prior to the award of Tender.

While the Principal need not award the Tender to any Tenderer, if awarded the Tender will be awarded to the Tenderer/s whose Tender is considered the most advantageous to the Principal. The tender may be awarded to multiple tenderers.

## 1.24 Selection Criteria

Tenders will be assessed against the qualitative and compliance criteria in Part 4 of the RFT to determine the most advantageous outcome to the Principal. Due to the qualitative criteria and their respective weighting, the Offer which contains the lowest price will not necessarily be accepted, nor will the Tender rank the highest on the qualitative criteria.

#### 1.25 Compliance Criteria

The compliance criteria will not be point scored but assessed on a Yes/No basis as to whether each criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Tender from further consideration.

## 1.26 Qualitative Criteria

A weighted scoring system will be used to assess the qualitative criteria. The weighting is indicative of the relative degree of importance that the Principal places on each criterion. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score.

## 1.27 Preference Given to Local Tenderers

Should a Tenderer wish to be considered under the Principal's Local Content Preference Policy, it must submit with its Offer, proof of eligibility to be considered under that policy. Refer to section 4.8 and the Principal's Regional Price Preference Policy in Appendix E for policy eligibility requirements.

#### 1.28 Price Basis & GST

All prices for goods/services offered under this RFT are to be fixed for the term of the Contract and must include all applicable levies, duties, charges, and taxes, including GST. Rise and fall in pricing shall be considered annually upon written submission to the Works Manager with such submission to include details of the justification for the requested adjustment including reference to movements in relevant Consumer Price Indexes. Any awarded price adjustments shall take effect as at date of award of each year but not earlier than 1 July 2023. The Contract must include all applicable levies, duties, charges, and taxes including GST.

#### 1.29 Ownership Of Tenders

All Documents, materials, articles, and information submitted by the Tenderer as part of or in support of a Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process. Tenderers will, however, retain copyright and other intellectual property rights in the material submitted, unless otherwise provided by the Contract.

## 1.30 Canvassing Of Officials

If a Tenderer, whether personally or by an agent, canvasses any of the Principal's Councillors or officers with a view to influencing the acceptance of any Tender made by it or any other Tenderer, then regardless of such Canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit that Tenderer's Tender from consideration.

## 1.31 Identity Of The Tenderer

The Tenderer shall be the person, persons, corporation or corporations named as the Tenderer in the Tenderer's Offer and whose execution appears on the Offer Form in Part 4. Upon acceptance of the Tenderer's Offer, the Tenderer shall become the Contractor.

## 1.32 Costs Of Tendering

The Principal shall not be liable for any costs, losses or expenses incurred by the Tenderer in preparing its Offer.

## 1.33 Tender Opening

Tenders shall be opened at the Principal's offices, 21 Victoria Road, Mingenew WA 6522, at the time depicted on the cover page of the RFT document.

Tenderers and members of the public may attend or be represented at the Tender opening. The names of the Tenderers who submitted a Tender by the Deadline will be read out and no discussions will be entered into between Tenderers or the Tenderers' representatives and the Principal's officers present or otherwise, concerning the Tenders submitted.

#### 1.34 In-House Tenders

The Principal does not intend to submit an in-house Tender.

#### 1.35 Reference Documents

- a) Local Government Act 1995
- b) Local Government (Functions & General) Regulations 1996
- c) Work Health and Safety Act (2020)
- d) Work Health and Safety (General) Regulations 2022
- e) State Records Act 2000
- f) Freedom of Information Act 1992
- g) Public Disclosure Act 2003
- h) Shire of Mingenew Policies and Procedures

#### 1.36 Disclaimer

Subject to any Law to the contrary, and to the maximum extent permitted by Law, the Principal, its officers, employees, agents and advisers each disclaim all liability for any Loss (whether foreseeable or not) suffered by any other person acting on any part of the information contained in the RFT, whether or not the Loss arises in connection with any negligence, default, lack of care, misrepresentation or any other cause on the part of the Principal, its officers, employees, agents or advisers or any other person.

#### Part 2 READ & KEEP

## Specification

## 2.1 Scope Of Works

The Principal invites bids from suitably qualified and experienced contractors to carry out the Services and Wet Hire of Plant within the Shire of Mingenew.

- 1 The Plant Hire Services will include supply of plant (wet hire) that represents the most economically and efficient method of completing the required task at hand within the budget and timeframe.
  - a) Each item of plant and equipment shall be fully self-contained, which means;
    - i. Provided with a suitably qualified and experienced operator
    - ii. Must be able to provide sufficient fuels and oils for the terms of its use
    - iii. Must be responsible for own maintenance and servicing
    - iv. Must define full accommodation cost for operator(s) and any service or support staff
    - v. Must be fully insured to indemnify the Shire of Mingenew from loss or damage.
  - b) Below is a list of the Plant that may be required during the term of the Plant Hire agreement;
    - i. Skid steer
    - ii. Grader maintenance
    - iii. Grader construction/final trim
    - iv. Truck and side tipper (please specify single or double)
    - v. Water truck and tanker (please specify capacity)
    - vi. Loader
    - vii. Backhoe
    - viii. Dozer
    - ix. Roadside mulching equipment
    - x. Road broom
    - xi. Roller steel drum/vibrating
    - xii. Roller rubber
    - xiii. Roller grid

#### 2 Electrical Services:

- To Include but not be limited to;
  - a. Connecting electricity supply wiring to electrical equipment or disconnecting electricity supply wiring from electrical equipment; or
  - b. Manufacturing, constructing, installing, removing, adding, testing, replacing, repairing, altering or maintaining electrical equipment or an electrical installation.
  - c. Services in connection with the use of electrical energy in, on, outside, or attached to a building, residence, structure, property, or premises.
  - d. Competent Safety practices
  - e. Professional processes and practices
  - f. Coordination with other trades, contractors, suppliers and providers on any given project.
- 3 Plumbing Services;

#### To include but not limited to;

a. The design, installation, alteration, construction, reconstruction, or repair of plumbing, gas, and drainage systems

- b. Services in connection with the use of natural or supplied water in, on, outside, or attached to a building, residence, structure, property, or premises.
- c. Competent Safety practices
- d. Professional processes and practices
- e. Coordination with other trades, contractors, suppliers and providers on any given project.
- 4 Handyman Services:

To include, but will not be limited to;

- a. Building Construction and Maintenance
- b. Asbestos Removal (optional but desirable)
- c. Miscellaneous Plumbing Works
- d. Cabinet Making
- e. Painting
- f. Plastering and Gyprock works
- g. Tiling
- h. Brick Laying and Paving
- i. Glazing Works
- j. Concrete and Grano Works
- k. Fencing Construction and Maintenance
- I. General Handyman Duties
- 5 Arbor Services:

To include, but will not be limited to;

- a. Tree lopping
- b. Tree pruning
- c. Mulching, wood chipping
- d. Stump grinding
- 6 Air conditioning and refrigeration: To include, but will not be limited to;
  - a. Leak detection and regas
  - b. Repairs
  - c. Installations
- 7 Concrete Supply and Installation:

To include but not be limited to;

- a. Supply of Concrete to specified MPa
- b. Concrete Testing and certificates thereof
- c. Formwork including shoring, sacrificial and removable forms
- d. Reinforcement supply and installation
- e. Coordination with other trades (earthwork, services & trades)
- 8 Supply and installation of kerbing:

To Include but not be limited to;

- a. Supply of concrete formed kerbing in accordance with design specifications
- b. Competent Safety practices
- c. Professional processes and practices
- d. Coordination with other trades, contractors, suppliers and providers on any given project
- 9 Mechanical Repairs and Maintenance: To include but not limited to;
  - a. Heavy Plant Maintenance;
  - b. Heavy Plant Repairs;

- c. Light Fleet Plant Maintenance;
- d. Light Fleet Repairs;
- e. Small Machine Maintenance
- f. Small Machine Repairs;
- g. Tyre Puncture Repairs
- h. Supply and Fit New Tyres
- 10 Auto electrician services:
  - To include but not limited to;
    - a. Heavy Plant Maintenance;
    - b. Heavy Plant Repairs;
    - c. Light Fleet Plant Maintenance;
    - d. Light Fleet Repairs;
    - e. Small Machine Maintenance
    - f. Small Machine Repairs;
    - g. Supply and Fit New Batteries
- 11 Painting Services:
  - To include, but will not be limited to;
    - a. Preparation of surfaces
    - b. Crack repairs
    - c. Internal and external painting
    - a. Competent Safety practices
    - b. Professional processes and practices
    - d. Coordination with other trades, contractors, suppliers and providers on any given project
- 12 Pest Control Services:
  - To include, but will not be limited to;
    - a. Treatment or prevention of infestation of termites, rats, mice etc
    - b. General pest treatment

#### 13 Fire Management Services:

To include, but will not be limited to;

- a. Inspection and testing of fire extinguishers, fire blankets, smoke alarms and fire hoses
- b. Advice on fire prevention and response requirements

The successful tenderer / tenderers will complete the works assigned in a timely manner to a standard of finish comparable with existing works within the Shire and to the satisfaction of the Works Manager or his nominated representative.

The successful tenderer / tenderers are expected to supply all labour, associated administration, machinery as detailed in schedule of rates Section 4.11 and all tools of trade required to carry out the assigned tasks.

## 2.2 Allotment of Works

The distribution of work among panel members is guided by the Shire's Policy and Procedures, in particular:

- 1.2.9 Prequalified Suppliers Management Procedure
- 1.2.9 Prequalified Suppliers Policy
- 1.3.1 Purchasing Policy
- 1.3.7 Regional Price Preference Policy

The work will be allotted to the Contractor/Contractors, by the Principal's Representative. Works shall not commence on projects for which approval by the Principal's Representative has not been issued and a purchase order issued.

The Shire is under no obligation to use the services of the successful tenderer and may use their own plant and workforce, and /or an alternative Contractor to complete tasks. The actual selection of a Contractor for any scope of works, project or task will be solely at the relevant Shire Officer's discretion. This selection will be based on a project-by-project basis and will provide the best and most suitable outcome for the Shire of Mingenew.

The successful Tenderer will have no claim or recourse against the Shire of Mingenew should they not be awarded any particular task or services.

Should the successful Tenderer not be able to carry out the works or supply satisfactory items of plant or services as required for scopes of work, projects, or tasks, then the Shire of Mingenew will go to market to source the appropriate item of plant or service.

## 2.3 Protection & Safety

The Contractor shall protect all structures, services, fences, trees, storm water pipes, etc, in the vicinity of the works from any damage whatsoever, except those structures which are to be relocated, as detailed elsewhere in the Specification.

The Contractor shall take all necessary steps to ensure the safety of workers by the wearing of all appropriate personnel protective equipment that complies with the relevant Australian Standards including high visibility vests and the public by erecting any necessary barricades and warning signs and safety tape, as required under Work Health and Safety legislation.

All contractors must complete a Shire of Mingenew safety induction prior to commencing work. Inductions are valid for a period of two years.

#### Part 3 READ & KEEP

# Terms & Conditions Of Contract

## 3.1 Pre-Qualified Supplier Panel Contract

The draft version of the Pre-Qualified Supplier Panel Contract for Minor Works and Related Services is attached.

## 3.2 WHS Requirement

The Contractor shall be responsible for ensuring that all Works under this contract are carried out in accordance with Work Safe WA Regulations and relevant legislative and local laws including but not limited to the Work Health and Safety Act 2020 and Regulations (2022).

The Contractor is to supply the Principal with a copy of the Contractor's Occupational Health and Safety Procedure and Policy for their business operation, and this shall be supplied before any works can be undertaken.

#### 3.3 Processing Services

The Tenderer(s) shall:

RFT PANEL OF PROVIDERS

- (a) Commence provision of the Services on the commencement date to be agreed by the Principal and the Tenderer.
- (b) Perform the Services:
  - 1) With reasonable care, skill and attention expected of an organisation experienced in providing service and performing work of the nature requested;
  - 2) To the best practice standards and to the satisfaction of the Principal.
- (c) Employ competent, trained, qualified and, where appropriate, licensed staff.
- (d) Ensure that all staff have undergone Shire of Mingenew safety induction.
- (e) Perform the Services for the duration of the contract and complete it by the completion date agreed by the Principal and the Successful Tenderer.
- (f) Perform the Services in a timely manner.
- (g) Observe and continue to observe the Principal's requirements in the performance of the Services.
- (h) Act professionally and ethically at all times in the performance of the Services.
- (i) Comply with and ensure that the Services and anything produced from or during the performance of the Services complies with all relevant laws in force affecting the provisions of the Services and the requirements of persons acting in the exercise of statutory powers enabling them to give directions affecting the Services or anything produced from the performance of the Services.

#### 3.4 Quality Assurance

It is assumed that the Contractor will have an accredited quality system in place and that test results on materials and equipment can be made available to the Superintendent upon request. Tenderers are requested to submit details of any quality system with their tender should such information be available. Contractors not having a quality system in place will need to allow, in their tendered rates, for the undertaking of testing and the provision of results to the Superintendent upon request.

#### 3.5 Term Of Contract

The initial contract term will be for two (2) years, from 1 August 2022 until 31 July 2024, with up to three possible single (1) year extensions, subject to approval in each instance by the Principal, up to maximum five (5) years in total.

Contract extensions will be granted providing but not limited to the Contractor meeting set Key Performance Indicators.

#### 3.7 Key Performance Indicators

The Contractor will be expected to meet the following the following KPI's. KPI's may be reviewed annually by the Principal. KPI's may be used as a measure to determine extension of this contract.

- 1) Quality Work to be performed to agreed standard of quality or to agreed Australian Standard
- 2) Timeliness Work to be performed to agreed project or task timeline
- 3) Value Goods or services supplied in accordance with tendered price schedule as audited from time to time
- 4) Safety Sound Work Health and Safety practices are maintained.

# Appendix A

**READ & KEEP** 

Draft Prequalified Supplier Panel Contract

# Appendix B - E READ & KEEP

# Shire of Mingenew Policies and Procedures

Attach copies of Policies and Procedures:

- 1.2.9 Prequalified Suppliers Management Procedure
- **1.2.9** Prequalified Suppliers
- 1.3.1 Purchasing Policy
- 1.3.7 Regional Price Preference



# DRAFT ONLY DO NOT COMPLETE AT THIS STAGE READ AND RETAIN

# RFT10 21/22 PRE-QUALIFIED SUPPLIER PANEL CONTRACT FOR MINOR WORKS AND RELATED SERVICES

Shire of Mingenew of 21 Victoria Road Mingenew WA 6522 ABN 41 454 990 790 (Local Government)

and

[insert Contractor] of [insert address] [insert ABN] (Contractor)

(together, the **Parties**)

Date of Panel Contract: [insert date]

[Guidance note: for general notes on how this Panel Contract operates and how individual Supply Contracts are created under the Panel Arrangement, see the green highlighted guidance notes in Schedule 5 and the other Schedules to this document. If desired, the guidance notes can be deleted in final executed contracts, but it is not necessary to delete them.]

## TABLE OF CONTENTS

1	DEFINITIONS	4	
2	INTERPRETATION	8	
3	TERM	8	
4	PANEL	9	
5	APPLICATION OF THIS PANEL CONTRACT	9	
6	NO ASSURANCES	9	
7	PRICING FOR SUPPLY OF THE MINOR WORKS AND RELATED SERVICES	S10	
8	SUPPLY REQUESTS	10	
9	SUPPLY CONTRACTS FOR CONTRACTED MINOR WORKS AND RELATED SERVICES	D 11	
10	PURCHASE ORDER OR LETTER OF AWARD	12	
11	DEFAULT, SUSPENSION AND TERMINATION OF SUPPLY CONTRACTS	13	
12	CONSEQUENCES OF TERMINATION OF A SUPPLY CONTRACT	15	
13	CONTRACTOR'S EMPLOYEES AND AGENTS	16	
14	RECORDS	16	
15	PANEL CONTRACT AND SUPPLY CONTRACT MANAGEMENT	16	
16	CONTRACTOR TO HAVE INFORMED ITSELF	17	
17	INDEPENDENT FINANCIAI ASSESSMENT	17	
18	INSURANCE	17	
19	EXPENSES	20	
20	LEGAL REQUIREMENTS AND SAFETY OBLIGATIONS	20	
21	SUSTAINABLE PROCUREMENT	21	
22	DEFAULT, SUSPENSION AND TERMINATION OF PANEL CONTRACT	21	
23	FORCE MAJEURE EVENT	23	
24	GOODS AND SERVICES TAX	24	
25	LIABILITY	24	
26	INTELLECTUAL PROPERTY RIGHTS	24	
27	CONFIDENTIALITY	25	
28	SETTLEMENT OF DISPUTES	26	
29	NOTICES	27	
30	ASSIGNMENT AND SUB-CONTRACTING BY THE CONTRACTOR	27	
31	RESTRUCTURE OF THE LOCAL GOVERNMENT	28	
32	GENERAL	28	
EXECU <sup>.</sup>	EXECUTION		
Schedu	le 1 - Panel Contract Specifics	33	
Schedu	le 2 - Key Performance Indicators	35	
Schedu	Schedule 3 - Pricing and rates		
Schedule 4 - SPECIFICATION			

Schedule 5 - Supply Contract Conditions		
2	Definitions and interpretation	40
3	Execution of the MINOR works; INSURANCE	42
4	Compliance with legal requirements, industrial awards and agreements	42
5	Safety obligations	42
6	Works program	43
7	Site possession	44
8	Commencement and completion of the works	44
9	Latent conditions	45
10	Plant and equipment	45
11	Materials	45
12	Works variation	46
13	Testing	46
14	Defects liability period	46
15	OTHER WORKS	47
16	Payment	47
17	Interest on overdue payments	48
18	Retention moneys and security	48
19	Construction contracts act	48
20	Assignment and sub-contracting	48
21	PERSONAL PROPERTY SECURITIES Act	49
22	BCITF Levy	50
Schedule 6 - SUPPLY CONTRACT SPECIFICS		51

#### BACKGROUND

- (a) The Local Government wishes to form a panel of pre-qualified suppliers of the Minor Works and Related Services from which it may procure the Minor Works and Related Services in accordance with Part 4, Division 3 of the Regulations.
- (b) The Contractor has been selected to be appointed to the Panel.
- (c) This Panel Contract sets out the terms and conditions relating to the Contractor's acceptance onto the Panel and the operation of the Panel.

## **OPERATIVE PART**

#### 1 DEFINITIONS

In this Panel Contract, except where the context indicates otherwise:

Affected Obligations has the meaning given in clause 23.1(a).

**Approval** means any certificate, licence, consent, permit, approval, authority or requirement necessary for the performance of the Contractor's obligations under this Panel Contract or a Supply Contract and the provision of the Minor Works and Related Services to the Local Government.

**Authority** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

**Background Intellectual Property Rights** means any Intellectual Property Rights owned by a Party prior to the commencement of this Panel Contract or which did not come into existence by reason of this Panel Contract, and which a Party is entitled to exercise and sublicense, which are embodied in, attached to or otherwise relate to this Panel Contract or a Supply Contract.

**Business Day** means a day that is not a Saturday, Sunday, a public holiday in Western Australia or 27, 28, 29, 30 or 31 December.

**Claim** means a claim, demand, action or proceeding of any nature, whether actual or threatened:

- (a) under, arising out of, or in any way in connection with, this Panel Contract;
- (b) arising out of, or in any way in connection with, the supply of the Minor Works and Related Services in accordance with the Panel Arrangement; or
- (c) arising otherwise under Law in respect of the subject matter of this Panel Contract.

**Commencement Date** means the date on which this Panel Contract is executed by the last Party to execute.

Confidential Information means:

- (a) this Panel Contract;
- (b) the terms and conditions of a Supply Contract;
- (c) information relating to the Local Government's past, existing or future business, strategic plans, operations, finances or customers;
- (d) any other information provided by a Disclosing Party to the Receiving Party which is identified by the Disclosing Party as confidential; and
- (e) any copies, extracts or summaries of the information described in paragraphs (a) to
  (d) (inclusive) above,

but excluding information which has entered the public domain other than through a breach of a confidentiality obligation owed to the Disclosing Party by the Receiving Party or by another person.

**Consequential Loss** means any loss of production, revenue, profit, business reputation, opportunities or anticipated savings, and loss arising from wasted overheads or business interruptions.

Construction Contracts Act means the Construction Contracts Act 2004 (WA).

**Contamination** has the meaning given to 'contaminated' by the *Contaminated Sites Act 2003* (WA).

**Contracted Minor Works and Related Services** means Minor Works and Related Services subject to a Supply Contract.

**Contractor's Panel Representative** means the person named as such in the Panel Contract Specifics or any replacement person notified by the Contractor to the Local Government.

Contractor's Vehicles and Equipment has the meaning given in clause 18.4.

**Date for Completion** means a date for completion of Contracted Minor Works and Related Services in accordance with a Supply Contract.

**Disclosing Party** means the Party which has disclosed Confidential Information that is confidential to that Party.

**Dispute** means any dispute or difference between the Parties in connection with this Panel Contract or a Supply Contract.

**Dispute Notice** has the meaning given in clause 28.1.

End Date means the date specified as such in the Panel Contract Specifics.

**Force Majeure Event** means an event or cause beyond the reasonable control of the Party claiming force majeure comprising any of the following:

- (a) act of God, lightning, storm, flood, fire, earthquake, explosion, cyclone or wind and wave conditions associated with a cyclone, tidal wave, landslide or adverse weather conditions;
- (b) strike, lockout or other labour difficulty; or
- (c) act of public enemy, war, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic or terrorism; or
- (d) a change in any Law or of any authority exercised by an Authority or official by Law.

Force Majeure Event Termination Period means 120 consecutive days.

**GST** means goods and services tax applicable to any taxable supplies as determined under the GST Law.

**GST Law** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax.

#### Insolvency Event means:

- (a) in relation to a corporation, where that corporation:
  - goes into liquidation, except for the purpose of reconstruction or amalgamation of which the affected Party has given the other Party 5 Business Days' prior written notice of such reconstruction or amalgamation;
  - (ii) is otherwise dissolved;
  - (iii) has had appointed to it a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Party;
  - (iv) enters into any composition or scheme of arrangement with its creditors;
  - (v) has had appointed to it an inspector or like official to examine the affairs of the Party or the Party enters into voluntary or other external administration; or
  - (vi) is otherwise unable to pay all its debts as and when they fall due; and

- (b) in relation to a natural person, where that natural person:
  - (i) commits an act of bankruptcy; or
  - (ii) becomes subject to an order for the sequestration in bankruptcy of the estate of the Party; or
  - (iii) assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors; or
  - (iv) is otherwise unable to pay all its debts as and when they fall due.

**Insurance** means the insurances that the Contractor is required to obtain and maintain under this Panel Contract.

**Intellectual Property Rights** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trademarks, designs, patents, inventions, semiconductor, circuit and other eligible layouts, copyright (including future copyright), database rights and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967, as amended from time to time, including any application or right to apply for any of these rights.

**Invitation to Tender** means the Local Government's invitation to tender issued to suppliers of the Minor Works and Related Services for the purpose of appointing suppliers to the Panel.

Key Performance Indicators or KPIs means the key performance indicators (if any) set out in Schedule 2.

**Law** means statute, equity, the common law and the legally enforceable requirements of Authorities, including any regulation or local law of the Local Government.

**Legal Requirement** means a requirement under any Law or Approval including a requirement to pay any fees and charges in connection with any Law or Approval.

**Letter of Award** means a written communication, other than a Purchase Order, issued by the Local Government to the Contractor directing the supply of specified Minor Works and/or Related Services.

**Local Government's Documents** means any documents, including drafts or working versions, whether in hard copy or electronic format, in the possession of, or otherwise under the control of, the Local Government.

**Loss** means any liability, loss, damage, cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising.

Minor Works means the works described in the Specification.

Minor Works and Related Services means the Minor Works and any Related Services.

**OSH Laws** means all workplace, health and safety related Law, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Authority and standards, where any part of the Contractor's obligations under this Panel Contract or a Supply Contract are being performed. This includes the *Occupational Safety and Health Act 1984* (WA), in addition to any other relevant legislation or regulations.

**Panel** means the panel of pre-qualified suppliers appointed by the Local Government in its sole discretion from time to time as part of the Panel Arrangement.

**Panel Arrangement** means the arrangement between the Local Government and the Panel Suppliers for the supply of the Minor Works and Related Services under Part 4, Division 3 of the Regulations.

**Panel Contract** means this agreement between the Parties. To avoid doubt, 'Panel Contract' does not include any Supply Contract between the Parties.

**Panel Contract Manager** means the person named as such in the Panel Contract Specifics or any replacement person notified by the Local Government to the Contractor in writing.

Panel Contract Specifics means the information set out in Schedule 1.

**Panel Supplier** means a supplier appointed to the Panel. To avoid doubt, 'Panel Supplier' includes the Contractor.

**Party** means the Local Government or the Contractor, as the context requires, and **Parties** means both of them.

**Personnel** means the personnel engaged by the Local Government, the Contractor or a related body corporate of the Contractor, including directors, officers, employees and agents, contractors and sub-contractors and any director, officer, employee, contractor or agent of any sub-contractor, but when used in the context of the Local Government's Personnel does not include the Contractor or the Contractor's Personnel.

**Policy** means the Local Government's written policy required under regulation 24AC(1)(a) of the Regulations.

**Proposed Supply Contract Price** means the price proposed by the Contractor for the supply of specified Minor Works and Related Services to the Local Government, as set out in a Supply Request Response.

**Purchase Order** means a purchase order given by the Local Government to the Contractor directing the supply of specified Minor Works and/or Related Services.

**Receiving Party** means the Party to whom Confidential Information is disclosed by the Disclosing Party.

Regulations means the Local Government (Functions and General) Regulations 1996 (WA).

Related Services means the services set out in the Specification.

**Site** means the location(s) at which Contracted Minor Works and Related Services shall be conducted in accordance with the relevant Supply Contract.

Specification means the contract information in Schedule 4.

**Supply Contract** means a separate contract between the Parties for the supply of specified Minor Works and Related Services as part of the Panel Arrangement. A 'Supply Contract' is formed under clause 9.

Supply Contract Commencement Date has the meaning given in clause 9.6.

Supply Contract Conditions means the document comprising Schedule 5.

**Supply Contract Price** means the price paid or to be paid by the Local Government to the Contractor under a Supply Contract for the supply of Contracted Minor Works and Related Services to the Local Government under that Supply Contract.

**Supply Contract Specification** means a specification or scope of works for the supply of Contracted Minor Works and Related Services:

- (a) provided by the Local Government to the Contractor before the Contractor provides its Supply Request Response; or
- (b) developed after the Contractor provided its Supply Request Response or after the Supply Contract came into effect, and agreed to by the Parties.

Supply Contract Specifics means the information relating to any Supply Contract set out in

Schedule 6.

Supply Request has the meaning given in clause 8.1.

**Supply Request Response** has the meaning given in clause 8.2(a).

Suspension Notice has the meaning given in clause 22.2.

Sustainability Objectives has the meaning given in clause 21.1.

**Tender** means the offer submitted by the Contractor in response to the Invitation to Tender and associated documentation.

**Wilful Misconduct** means any wrongful act or omission that was intentionally done or involved reckless disregard to the likely consequences, including an intentional breach of this Panel Contract or a Supply Contract.

**Works Program** means a written document setting out of the Contractor's proposed activities and timeline for executing Contracted Minor Works and Related Services.

#### 2 INTERPRETATION

- 2.1 In this Panel Contract, unless the context suggests otherwise:
  - (a) a reference to this Panel Contract means this Panel Contract as novated or varied from time to time;
  - (b) a reference to 'including' must be read as if it is followed by '(without limitation)';
  - (c) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
  - (d) words in the singular include the plural and vice-versa;
  - (e) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;
  - (f) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
  - (g) a reference to a clause or Schedule is a reference to a clause or Schedule of this Panel Contract;
  - (h) a reference to a 'day', 'month' or 'year' is a reference to a calendar day, calendar month or calendar year;
  - (i) headings are for convenience only and do not affect interpretation of this Panel Contract;
  - (j) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Panel Contract or any part of it; and
  - (k) monetary references are references to Australian currency and, unless stated to the contrary, are exclusive of GST.

#### 3 TERM

- 3.1 This Panel Contract commences on the Commencement Date and shall terminate on the End Date, unless:
  - (a) the Panel Contract is terminated earlier:
    - (i) by agreement of the Parties in writing; or
    - (ii) pursuant to clauses 15.6, 22.5 to 22.8 (inclusive) or 23.4; or

- (b) any Contracted Minor Works and Related Services are not complete by the End Date, in which case the Panel Contract shall terminate upon termination of the relevant Supply Contract.
- 3.2 Clauses 1 (Definitions), 2 (Interpretation), 3.2 (regarding survival), 6.2 (bar to Claims), 14 (records), 22.9 and 22.10 (regarding termination), 25 (Liability), 26 (Intellectual Property Rights), 27 (Confidentiality), 28 (Settlement of Disputes), 29 (Notices) and 32.2 (Governing Law) shall survive termination of this Panel Contract.

## 4 PANEL

- 4.1 By entering into this Panel Contract, the Local Government appoints the Contractor to the Panel and the Contractor accepts the appointment to the Panel.
- 4.2 The Contractor acknowledges and agrees that, at all times during the term of this Panel Contract:
  - (a) the constitution of the Panel is determined by the Local Government;
  - (b) the Local Government shall operate the Panel in accordance with the Policy;
  - (c) the Local Government may engage any Panel Suppliers to supply the Minor Works and Related Services in accordance with the Policy;
  - (d) the Local Government may engage a person or entity to supply the Minor Works and Related Services outside of the Panel Arrangement, if not prohibited by the Policy.

## 5 APPLICATION OF THIS PANEL CONTRACT

This Panel Contract applies to Minor Works and Related Services sought and/or provided as part of the Panel Arrangement and does not apply to works or services of the same or similar nature sought and/or provided by the Contractor to the Local Government outside the Panel Arrangement.

#### 6 NO ASSURANCES

- 6.1 Without limiting clause 4.2, the Contractor acknowledges and agrees that:
  - (a) the Local Government is not obliged to submit any Supply Requests to the Contractor or engage the Contractor to supply the Minor Works and Related Services;
  - (b) the Local Government makes no representations as to the number of Supply Requests it may issue to the Contractor (if any), nor does the Local Government commit to any minimum volume of engagements or minimum value spend; and
  - (c) where the Local Government makes a Supply Request, no representation or warranty has been made or given by the Local Government that:
    - (i) the Local Government will engage the Contractor for the supply of the Minor Works and Related Services; or
    - (ii) a Supply Contract will be formed.
- 6.2 The Contractor is barred from making any Claim against the Local Government arising out of or in connection with:
  - (a) any Supply Request submitted or not submitted to the Contractor;
  - (b) any engagement by the Local Government of a person or entity other than the Contractor or another Panel Supplier to supply the Minor Works and Related Services to the Local Government, if not prohibited by the Policy; and

(c) Supply Contracts formed or not formed.

#### 7 PRICING FOR SUPPLY OF THE MINOR WORKS AND RELATED SERVICES

- 7.1 Where **Schedule 3** sets out prices and conditions available to the Local Government for supply of the Minor Works and Related Services, the Contractor:
  - (a) warrants that those prices are its best prices and conditions for supply of the Minor Works and Related Services to the Local Government; and
  - (b) must ensure that any Proposed Supply Contract Price and conditions it proposes in a Supply Request Response are no less favourable than the prices and conditions in Schedule 3.
- 7.2 If this Panel Contract does not set out prices and conditions available to the Local Government for supply of the Minor Works and Related Services, the Contractor agrees to ensure that any Proposed Supply Contract Price and conditions made available to the Local Government for the supply of the Minor Works and Related Services are its best prices and conditions for the supply of such Minor Works and Related Services to the Local Government based on:
  - (a) the quantity of the Minor Works and Related Services sought;
  - (b) the geographical location of the Local Government; and
  - (c) any other reasonable factors affecting the Contractor's costs of supplying the Minor Works and Related Services to the Local Government.
- 7.3 The Contractor shall assist the Local Government to identify changes or developments in processes, techniques, technologies and materials which may create efficiencies in the provision of the Minor Works and Related Services to the Local Government and in the implementation of this Panel Contract and any Supply Contracts.
- 7.4 To achieve the objectives of clause 7.3, the Contractor agrees to:
  - (a) use reasonable endeavours to identify opportunities for improving the provision of the Minor Works and Related Services to the Local Government and in the implementation of this Panel Contract and any Supply Contracts; and
  - (b) meet with the Local Government annually (or more frequently as agreed by the Parties) to discuss opportunities referred to in clause 7.4(a) and determine measures for pursuing and implementing such opportunities.

## 8 SUPPLY REQUESTS

- 8.1 The Local Government may issue a written request to the Contractor to provide a quotation and/or proposal for the supply of specified Minor Works and Related Services (**Supply Request**).
- 8.2 Where the Local Government issues a Supply Request to the Contractor:
  - (a) the Contractor must provide a response (**Supply Request Response**) within the timeframe specified in the Supply Request;
  - (b) the Supply Request Response must include all information requested in the Supply Request, including a Proposed Supply Contract Price and an itemisation of the Proposed Supply Contract Price;
  - (c) any Proposed Supply Contract Price included in a Supply Request Response must:

- (i) include allowances for labour, parts, Contractor's mark-up, removal of all rubbish and redundant parts or items from the Site, and any scrap or tradein value of redundant parts or items; and
- (ii) be genuine and calculated in accordance with the Local Government's requirements set out in the Supply Request;
- (d) the Contractor must not, and must ensure that its Personnel do not, canvass any councillor, commissioner, officer or other Personnel of the Local Government, with a view to influencing the acceptance of any Supply Request Response, other than usual and reasonable marketing activities;
- (e) the Local Government may accept a Supply Request Response by issuing the Contractor with a Purchase Order or Letter of Award within 15 Business Days of its receipt of the Supply Request Response (or such other time specified in the Supply Request); and
- (f) to avoid doubt:
  - the Local Government may reject a Supply Request Response or propose an amendment to a Supply Request Response, within 15 Business Days of its receipt of the Supply Request Response (or such other time specified in the Supply Request); and
  - (ii) the Contractor may reject any amendment to a Supply Request Response proposed by the Local Government.
- 8.3 If specified in the Panel Contract Specifics, the Local Government may use a ranking system to determine the Panel Supplier to engage to provide certain Minor Works and Related Services. The Contractor acknowledges that the Local Government will generally engage the Panel Supplier who is first ranked following the assessment process. Where the first ranked Panel Supplier is unable to perform certain Minor Works and Related Services, the next ranked Panel Supplier may be engaged by the Local Government to perform those Minor Works and Related Services.
- 8.4 Alternatively to clauses 8.1 and 8.2, the Local Government may issue a Purchase Order to the Contractor without issuing a Supply Request, provided that the Purchase Order is consistent with the Panel Contract.

## 9 SUPPLY CONTRACTS FOR CONTRACTED MINOR WORKS AND RELATED SERVICES

- 9.1 The Contractor must execute Contracted Minor Works and Related Services in accordance with the relevant Supply Contract including the Supply Contract Conditions.
- 9.2 The Contractor acknowledges that a Supply Contract shall be formed by the Local Government issuing a Purchase Order or Letter of Award to the Contractor under clauses 8.2(e) or 8.4, unless otherwise agreed in writing by the Parties.
- 9.3 To avoid doubt, the Parties may enter into multiple Supply Contracts, with each Purchase Order or Letter of Award issued by the Local Government to the Contractor giving rise to a separate Supply Contract, unless agreed otherwise in writing by the Parties.
- 9.4 The Parties agree that a Supply Contract shall comprise:
  - (a) the Purchase Order or Letter of Award;
  - (b) where clause 8.2(e) applies, the Supply Request and Supply Request Response;
  - (c) a term that the Parties must comply with the Supply Contract Conditions, including as supplemented by the Supply Contract Specifics, in respect of any Contracted Minor Works and Related Services;
  - (d) a term that the Supply Contract:

- (i) is subject to clauses 10 and 11 of this Panel Contract; and
- (ii) incorporates clauses 9, 23 to 27 (inclusive) and 32 of this Panel Contract,

with any necessary modifications; and

- (e) a term that the Parties' rights and obligations under:
  - clauses 7.3 (regarding re-possession of the Site and Minor Works), 14 (Defects Liability Period) and 18.5 (return of 'Retention Sum' or security) of the Supply Contract Conditions; and
  - clauses 12 (Consequences of Termination), 25 (Liability), 26 (Intellectual Property Rights), 27 (Confidentiality), 28 (Settlement of Disputes), 29 (Notices) and 32.2 (Governing Law) of this Panel Contract,

shall survive termination of the Supply Contract.

- 9.5 The Contractor acknowledges that it has read and understands the contents of the Supply Contract Conditions.
- 9.6 A Supply Contract shall be formed and commence on the date that the Letter of Award or Purchase Order is issued by the Local Government to the Contractor (**Supply Contract Commencement Date**).
- 9.7 A Supply Contract shall terminate upon the Date of Completion or the expiry of 12 months from the Supply Contract Commencement Date, whichever occurs first, unless terminated earlier:
  - (a) by written agreement of the Parties; or
  - (b) in accordance with clauses 11.6, 11.7 or 11.8(k).
- 9.8 The termination of a Supply Contract shall not affect the rights, liabilities and obligations of a Party accrued prior to termination under that Supply Contract.
- 9.9 To the extent of any inconsistency between the parts of a Supply Contract or documents referred to in the Supply Contract Conditions, the provisions of the parts of that Supply Contract or documents are listed in order of precedence below, such that those parts or documents listed earlier prevail over the inconsistent provisions of the part or document listed later:
  - (a) Supply Contract Conditions;
  - (b) Supply Contract Specifics;
  - (c) provisions of this Panel Contract set out in clause 9.4(d);
  - (d) Supply Contract Specification;
  - (e) Purchase Order or Letter of Award;
  - (f) Supply Request; and
  - (g) Supply Request Response.

## 10 PURCHASE ORDER OR LETTER OF AWARD

- 10.1 Subject to clause 10.4, within 5 Business Days of receipt of a Purchase Order or Letter of Award, the Contractor must give written notice to the Local Government if it:
  - disagrees with any of the information and/or requirements contained in the Purchase Order or Letter of Award, including details of the aspects in respect of which it disagrees; or

- (b) recommends any changes to the Purchase Order or Letter of Award, including the Contractor's reasons for the recommendation.
- 10.2 If the Contractor:
  - (a) gives written notice under clause 10.1, the Parties must attempt to agree on the information and requirements, and once agreement has been reached, the Local Government must re-issue the Purchase Order or Letter of Award, as the case may be, and the Supply Contract shall be varied to that effect; or
  - (b) does not give written notice under clause 10.1, the Contractor must perform its obligations under the Supply Contract in accordance with the requirements of the Purchase Order or Letter of Award, as the case may be.
- 10.3 The Supply Contract shall terminate with immediate effect if the Parties cannot agree on the information and requirements for the Purchase Order or Letter of Award, as the case may be, under clause 10.2(a), within 10 Business Days of the giving of the written notice under clause 10.1, or such longer period as the parties may agree in writing.
- 10.4 The Contractor must not give written notice to the Local Government under clause 10.1 if the terms of the Purchase Order or Letter of Award are consistent with the provisions of this Panel Contract or the relevant Supply Request or Supply Request Response. Any written notice issued by the Contractor to the Local Government in breach of this clause 10.4 shall be of no effect.

## 11 DEFAULT, SUSPENSION AND TERMINATION OF SUPPLY CONTRACTS

#### Default

- 11.1 Without limiting the Local Government's rights under clause 11.8, if a Party breaches a provision of a Supply Contract in respect of Contracted Minor Works and Related Services and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:
  - (a) identifying the nature of the alleged breach;
  - (b) requiring the Party to comply with the relevant provision of the Supply Contract; and
  - (c) requiring the Party to remedy the breach in any manner and within a reasonable timeframe specified in the notice.
- 11.2 If a Party breaches or shows an unwillingness to be bound by a Supply Contract, nothing in this Panel Contract or that Supply Contract prejudices the right of the other Party to recover damages or exercise any other right under the relevant Supply Contract, this Panel Contract or any applicable Legal Requirement.

#### Suspension

- 11.3 Without limiting the Local Government's rights under clause 11.8, if a Party breaches a provision of a Supply Contract in respect of Contracted Minor Works and Related Services and fails to comply with a written notice issued under clause 11.1, the non-defaulting Party may suspend the performance of its obligations in respect of the relevant Contracted Minor Works and Related Services (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party until such time that:
  - (a) the breach is remedied to the non-defaulting Party's reasonable satisfaction; or
  - (b) the non-defaulting Party otherwise directs that the performance of obligations in respect of the Contracted Minor Works and Related Services is no longer suspended,

(in each case the non-defaulting Party shall give written notice to the defaulting Party of the cessation of the suspension) at which point the Parties must promptly recommence the performance of their obligations.

- 11.4 The Contractor must bear any cost it incurs as a result of a suspension under clause 11.3 or otherwise under the Supply Contract and any costs incurred by the Local Government as a result of the suspension and any amounts payable by the Contractor to the Local Government under this clause become a debt due to the Local Government by the Contractor.
- 11.5 To avoid doubt, if a Party suspends the performance of obligations in respect of Contracted Minor Works and Related Services or any part of those obligations in accordance with clause 11.3, the Date for Completion shall not be extended by the period of that suspension, except as otherwise agreed in writing by the Parties.

#### Termination of a Supply Contract for breach

- 11.6 Subject to clause 11.7, without limiting the other circumstances in which a Supply Contract may be terminated, if a Party breaches a provision of a Supply Contract and fails to remedy the breach following the issue of a notice under clause 11.1, then the other Party:
  - (a) may give a further notice to the defaulting Party of its intention to terminate the relevant Supply Contract if the breach is not remedied or rectified in accordance with any manner or timeframe specified in the notice; and
  - (b) by a further and final notice in writing to the defaulting Party, may immediately terminate the relevant Supply Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 11.6(a).
- 11.7 If a Party breaches a material provision of a Supply Contract and that default is incapable of remedy or rectification, the non-defaulting Party may immediately terminate the relevant Supply Contract by written notice to the defaulting Party.

#### 'Show cause' procedure

- 11.8 At any time, irrespective of whether the Local Government has followed the steps in clauses 11.1 to 11.7 (inclusive), the Local Government may by written notice to the Contractor require the Contractor to show cause, by a date specified in the notice, why the Local Government should not terminate a Supply Contract or suspend payment and take the Contracted Minor Works and Related Services remaining to be completed wholly or partly out of the hands of the Contractor without prejudice to any rights of the Local Government under that Supply Contract or at Law if the Contractor:
  - (a) fails to commence the relevant Contracted Minor Works and Related Services by the Start Date;
  - (b) fails to proceed with the Contracted Minor Works and Related Services at a reasonable rate of progress in accordance with the Works Program;
  - (c) commits a material breach of that Supply Contract;
  - (d) fails to comply with a Legal Requirement relating to the execution of the relevant Contracted Minor Works and Related Services;
  - (e) fails to maintain the Insurances;
  - (f) assigns or sub-contracts the Supply Contract or the relevant Contracted Minor Works and Related Services or any part thereof without the prior written consent of the Local Government; or
  - (g) commits an Insolvency Event,

and if the Local Government does so take all or part of the relevant Contracted Minor Works and Related Services out of the hands of the Contractor because the Contractor has failed to show sufficient cause:

- (h) the Local Government may complete the whole or any part of those Contracted Minor Works and Related Services itself or by means of other persons;
- the Local Government may take possession of the Site, the Contracted Minor Works and Related Services and, except where the Supply Contract is terminated, the plant and other things on or in the vicinity of the Site as are owned by the Contractor;
- (j) if the costs incurred by the Local Government in completing the relevant Contracted Minor Works and Related Services are greater than the amount which would have been paid to the Contractor if the Contractor had completed the relevant Contracted Minor Works and Related Services, the difference shall be a debt due from the Contractor to the Local Government, otherwise any difference shall be a debt due from the Local Government to the Contractor; and
- (k) the Local Government may terminate the relevant Supply Contract by written notice to the Contractor.

#### Panel Contract

11.9 To avoid doubt, a breach of the Supply Contract Conditions constitutes a breach of this Panel Contract and a breach of the relevant Supply Contract. In such cases, a Party may exercise its rights under this clause 11 without exercising its rights under clause 22 (and vice versa), save that if the Party wishes to suspend and/or terminate both contracts following a breach, it must comply with this clause 11 and clause 22 in respect of that breach.

## 12 CONSEQUENCES OF TERMINATION OF A SUPPLY CONTRACT

- 12.1 If a Supply Contract is terminated, the Local Government may engage or contract with any person other than the Contractor to execute all or part of the relevant Contracted Minor Works and Related Services.
- 12.2 Where the Local Government terminates a Supply Contract in accordance with clauses 11.6(b), 11.7 or 11.8(k), the Local Government shall ascertain the amount of all damages and expenses suffered or incurred by the Local Government as a result of any of the matters referred to in those clauses and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered by the Local Government as a debt due by the Contractor to the Local Government.
- 12.3 When a Supply Contract is terminated, the Contractor must:
  - (a) promptly return to the Local Government any of the Local Government's property or Local Government's Documents that the Contractor has in its possession or control, in compliance with any written direction given by the Local Government for the purposes of that Supply Contract;
  - (b) only if directed in writing by the Local Government to do so, destroy any of the Local Government's property or Local Government's Documents that the Contractor has in its possession or control for the purposes of that Supply Contract; and
  - (c) if requested by the Local Government, co-operate with and assist the Local Government to transition the execution of the relevant Contracted Minor Works and Related Services to the Local Government or to another person engaged by the Local Government.
- 12.4 The termination of a Supply Contract shall not affect the Parties' rights and obligations under this Panel Contract which shall remain in effect between the Parties unless otherwise terminated in accordance with this Panel Contract.

## 13 CONTRACTOR'S EMPLOYEES AND AGENTS

The Contractor warrants that its Personnel are competent and have all the necessary skills, training and qualifications to competently supply the Minor Works and Related Services to the Local Government.

#### 14 RECORDS

The Contractor must maintain complete, accurate and up to date records relating to its supply of the Minor Works and Related Services to the Local Government, including records as reasonably requested by the Local Government.

#### 15 PANEL CONTRACT AND SUPPLY CONTRACT MANAGEMENT

- 15.1 The Panel Contract Manager will be responsible for liaison with the Contractor in respect of the management and performance of the Panel and this Panel Contract, and the Contractor's performance or delivery of Contracted Minor Works and Related Services, and Supply Contracts.
- 15.2 The Contractor must appoint a person to be the Contractor's Panel Representative and provide the Local Government with prompt written notice of any change to the identity of the Contractor's Representative.
- 15.3 The Contractor's Panel Representative must:
  - (a) be the primary point of contact with the Local Government and liaise with the Panel Contract Manager;
  - (b) exercise responsibility for the management and performance of this Panel Contract and Supply Contracts; and
  - (c) if requested by the Local Government or if required under a KPI, attend meetings with the Local Government to review KPI performance, Panel operation and effectiveness and to address any issues raised in relation to this Panel Contract or the performance of a Supply Contract.
- 15.4 The Contractor agrees to provide the Local Government with any reasonable assistance or reports requested from time to time by the Local Government, at the Contractor's cost, which may include:
  - (a) marketing;
  - (b) responding to general enquiries from the Local Government;
  - (c) meetings with the Local Government to discuss and resolve issues with this Panel Contract and/or the performance of Contracted Minor Works and Related Services;
  - (d) meetings with the Local Government in relation to the supply of the Minor Works and Related Services; and
  - (e) assisting with Supply Request Response information.
- 15.5 The Contractor must achieve the KPIs (if any) to the Local Government's reasonable satisfaction. The Local Government must provide the Contractor with written notice if the Contractor has not achieved a KPI to the Local Government's reasonable satisfaction.
- 15.6 If the Contractor fails to achieve the KPIs (if any) to the Local Government's reasonable satisfaction on multiple occasions, the Local Government may, in its discretion, terminate this Panel Contract by written notice to the Contractor irrespective of whether any failures to achieve the KPIs have been rectified.

## 16 CONTRACTOR TO HAVE INFORMED ITSELF

By entering into this Panel Contract, the Contractor acknowledges that it has:

- (a) examined carefully this Panel Contract, and has acquired actual knowledge of the contents of its Tender, this Panel Contract and any other information made available in writing by the Local Government to the Contractor for the purposes of the Tender and this Panel Contract; and
- (b) satisfied itself as to the correctness and sufficiency of its Tender and of all matters and things necessary for the proper performance and completion of this Panel Contract.

#### 17 INDEPENDENT FINANCIAL ASSESSMENT

- 17.1 The Contractor warrants that it is financially viable and has the financial capability to supply the Minor Works and Related Services to the Local Government from time to time.
- 17.2 The Contractor must provide to the Local Government any information reasonably requested by the Local Government to demonstrate that it continues to be financially viable.
- 17.3 At its own cost, the Local Government may engage an independent financial assessor to conduct financial assessments. The results of any such financial assessments are to be kept confidential by the Local Government and must be provided by the Local Government to the Contractor upon request. The Contractor must co-operate with, and provide any information reasonably requested by the Local Government or the assessor, to the Local Government and the independent financial assessor for the purposes of such assessments.

#### 18 INSURANCE

- 18.1 The Contractor must:
  - (a) procure and maintain the Insurances with the minimum level of cover set out in the Panel Contract Specifics from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency, approved by the Local Government, which either:
    - (i) carries on business in Australia and is authorised by the Australian Prudential Regulation Authority; or
    - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia, with any limitations regarding this requirement to have been notified to, and approved by, the Local Government;
  - (b) ensure that its Sub-contractors have appropriate and reasonable insurance for the work or services they may conduct or provide under a sub-contract relating to the provision of Contracted Minor Works and Related Services to the Local Government;
  - (c) provide to the Local Government copies of current and updated certificates of insurance for all Insurances;
  - (d) pay all premiums and deductibles applicable to any of the Insurances when due;
  - (e) promptly reinstate any Insurance required if it lapses or cover is exhausted;
  - (f) give the Local Government at least 20 Business Days' prior written notice of any cancellation or non-renewal of, or a material alteration to, any of the Insurances; and
  - (g) not do any act or omission that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances.

- 18.2 To the extent possible, at the times of placement or renewal of any Insurances, each Insurance must:
  - (a) state that it is governed by the laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction to deal with any dispute under the policy; and
  - (b) where the Local Government is entitled to cover under the Insurance:
    - (i) provide that the Insurance is primary with respect to the interests of the Local Government and any other insurance maintained by the Local Government is excess to and not contributory with the Insurance;
    - provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Local Government;
    - except for compulsory workers' compensation insurance, compulsory third party motor liability insurance and professional indemnity insurance, include a cross-liability provision extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity);
    - (iv) provide that, where the Local Government is not a named insured, the insurer must waive rights of subrogation against the Local Government; and
    - (v) provide that any breach of the conditions of that Insurance by an insured other than the Local Government must not in any way prejudice or diminish any rights which the Local Government has under that Insurance.
- 18.3 Where the Panel Contract Specifics require the Contractor to procure and maintain public liability insurance and product liability insurance, such insurance must:
  - be for an amount not less than the amount set out in the Panel Contract Specifics in respect of any one claim, be unlimited in the amount of occurrences and not less than the amount set out in the Panel Contract Specifics in the aggregate during any one 12 month period of insurance;
  - (b) cover the liability of the Contractor, its Personnel and the Local Government in respect of:
    - (i) loss of, damage to, or loss of use of, any real or personal property; and
    - the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers' compensation policy),

arising out of or in connection with the Contractor's performance of a Supply Contract; and

- (c) cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with any Supply Contract and sudden and accidental pollution.
- 18.4 Where the Panel Contract Specifics require the Contractor to procure and maintain vehicle and equipment insurance for the Contractor's vehicles, plant and equipment used in connection with a Supply Contract (**Contractor's Vehicles and Equipment**) (in addition to any compulsory third party motor vehicle insurance), such insurance must:
  - (a) cover all loss and/or damage to the Contractor's Vehicles and Equipment;
  - (b) cover third party personal injury or death (to the extent not covered by any public and product liability insurance taken out by the Contractor and any compulsory third party

Page 18
motor vehicle insurance) and third party property damage liability involving the Contractor's Vehicles and Equipment;

- (c) be unlimited in the number of occurrences; and
- (d) to the extent available from the insurance market from time to time, contain a principal's indemnity extension in favour of the Local Government.
- 18.5 Where the Panel Contract Specifics require the Contractor to procure and maintain workers' compensation insurance:
  - (a) the Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability under statute and at common law with a level of cover not less than the amount set out in the Panel Contract Specifics in respect of any one event; or
  - (b) where the Contractor is a sole trader and has no workers' compensation policy in place, the Contractor must insure against the loss of income and illness by the purchase of an income protection or salary continuance policy.
- 18.6 Where the Panel Contract Specifics require the Contractor to procure and maintain professional indemnity insurance, such insurance must:
  - (a) be for not less than the amount set out in the Panel Contract Specifics in respect of any one claim and not less than the amount set out in the Panel Contract Specifics in the aggregate for all claims arising in any one 12 month period of insurance;
  - (b) include one full automatic reinstatement of the limit of liability;
  - (c) cover liability arising from any act or omission in connection with or arising out of the Contractor's professional activities and duties under any Supply Contract; and
  - (d) cover claims in respect of a Supply Contract under the *Competition and Consumer Act 2010* (Cth), the *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.
- 18.7 Where the Panel Contract Specifics require the Contractor to procure and maintain construction works insurance, such insurance must:
  - (a) cover against all loss and/or damage to any works, including any existing structures and unfixed goods and materials;
  - (b) be extended to include the Local Government, the Contractor and both their Personnel employed or engaged in relation to the works as joint insureds;
  - (c) provide coverage until the completion of a defects liability period under a Supply Contract;
  - (d) be for an amount not less than the replacement value of the works, from time to time, subject to escalation, including professional fees, expediting expenses, removal of material and debris from the site, including demolition fees, temporary works, Local Government supplied materials and equipment and temporary protection and loss mitigation; and
  - (e) include a cross-liability endorsement extending the policy to operate in the same manner as if there was a separate policy of insurance covering each party insured (without increasing the deductibles or reducing the overall limit of indemnity).
- 18.8 Notwithstanding any other provision of this clause 18, if permitted in the Panel Contract Specifics, the Contractor may self-insure in respect of any or all of the Insurances provided that:
  - (a) it is lawful for the Contractor to do so;

- (b) the Contractor identifies in writing to the Local Government which of the risks required to be insured are being self-insured; and
- (c) if required by the Local Government from time to time, the Contractor will provide to the Local Government a copy of the Contractor's latest annual report and accounts and/or demonstrate to the Local Government's reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.
- 18.9 The Contractor must:
  - (a) inform the Local Government in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with a Supply Contract under any of the Insurances, except claims which the Local Government may have against the Contractor; and
  - (b) disclose to the Local Government in writing any limitations under an Insurance or other factors relevant to any Insurance which may adversely impact on the performance of Contracted Minor Works and Related Services by the Contractor or a claim in connection with the Supply Contract.
- 18.10 The Parties acknowledge and agree that:
  - (a) the effecting and maintaining of the Insurances by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under a Supply Contract;
  - (b) the Insurances are primary, and not secondary, to the indemnities referred to in the Panel Contract and the Local Government is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under such indemnities;
  - (c) whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence;
  - (d) the Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurances;
  - (e) nothing in this clause 18 fixes the Local Government with notice of the contents of any Insurance policy and must not be raised as a defence to any claim by the Local Government against the Contractor; and
  - (f) where relevant, the Contractor must provide reasonably requested assistance to the Local Government in the preparation and negotiation of insurance claims.
- 18.11 The Contractor, at the discretion of the Local Government, may be required to provide the Local Government with a risk management plan relating to the Contract in accordance with AS/NZS 31000:2009 Risk Management.

### 19 EXPENSES

Unless otherwise provided in this Panel Contract, the Local Government is not liable to reimburse the Contractor for any expenses incurred by the Contractor in connection with the performance of its obligations under this Panel Contract.

# 20 LEGAL REQUIREMENTS AND SAFETY OBLIGATIONS

20.1 At its own cost, the Contractor shall comply, and ensure that its Personnel comply, with all Legal Requirements and industrial awards or agreements affecting or applicable to this Panel Contract and the supply of Contracted Minor Works and Related Services to the Local Government.

20.2 The Contractor must do all things necessary to ensure that Contracted Minor Works and Related Services are supplied in a manner that is safe and without risks to health.

### 21 SUSTAINABLE PROCUREMENT

- 21.1 The Contractor acknowledges that the Local Government supports ethical and environmentally, socially and economically sustainable procurement practices, including the matters contemplated by clause 21.2 (**Sustainability Objectives**) and acknowledges that its support of the Sustainability Objectives assists the Local Government in meeting its own Sustainability Objectives.
- 21.2 The Contractor agrees to use reasonable endeavours to conduct its business and supply Contracted Minor Works and Related Services in a manner which seeks to support the Sustainability Objectives, which endeavours may include:
  - (a) preparing and implementing policies to seek to support the Sustainability Objectives, including providing training to its Personnel regarding such policies;
  - (b) implementing practices which seek to reduce the environmental impact of the Contractor's activities, including:
    - (i) using recycled materials and products;
    - (ii) reducing emissions;
    - (iii) adopting greener energy solutions;
    - (iv) adopting environmentally sustainable design; and
    - (v) reducing wastage;
  - providing employment or training opportunities to individuals with a disability or experiencing disadvantage, and using the services of agencies or other businesses which provide employment or training opportunities to such individuals (such as WA Disability Enterprises and/or Aboriginal Enterprises);
  - (d) sponsoring and supporting local community groups and local community development initiatives;
  - (e) promoting fair workplace practices;
  - (f) promoting workplace health;
  - (g) using services and purchasing products from Western Australian and Australian suppliers and small and medium-sized businesses; and
  - (h) using services and purchasing products that are efficient to operate and have low operating and maintenance costs.
- 21.3 The Contractor acknowledges that a rating system may be implemented by the Local Government to assess the Contractor's performance in relation to the Sustainability Objectives and in considering whether to engage the Contractor or another Panel Supplier.
- 21.4 The Contractor agrees to provide the Local Government with any reasonably requested information relating to the measures adopted by the Contractor in pursuit of the Sustainability Objectives.
- 21.5 The Contractor agrees to undertake reasonable due diligence and monitoring of its supply chain on an ongoing basis to ensure that materials and services required for the supply of the Minor Works and Related Services to the Local Government are supplied from sustainable sources.

### 22 DEFAULT, SUSPENSION AND TERMINATION OF PANEL CONTRACT

Default

- 22.1 If a Party breaches a provision of this Panel Contract and that breach continues for a period of 5 Business Days, the other Party may provide a written notice to that Party:
  - (a) identifying the nature of the alleged breach;
  - (b) requiring the Party to comply with the relevant provision of this Panel Contract; and
  - (c) requiring the Party to remedy the breach in any manner or timeframe specified in the notice.

#### Suspension

- 22.2 If a Party breaches a provision of this Panel Contract and fails to comply with a written notice issued under clause 22.1, the non-defaulting Party may suspend the performance of its obligations (or any of them) and the defaulting Party's obligations (or any of them) by written notice to the defaulting Party (**Suspension Notice**) until such time that:
  - (d) the breach is remedied to the non-defaulting Party's reasonable satisfaction; or
  - (e) the non-defaulting Party otherwise directs that the performance of this Panel Contract is no longer suspended;

(in each case the non-defaulting Party shall give written notice to the defaulting Party of the cessation of the suspension) at which point the Parties must promptly recommence the performance of their obligations.

- 22.3 To avoid doubt, nothing in clause 22.2 affects the operation of, or performance by the Contractor under, any Supply Contract that is in effect as at the date of the Suspension Notice.
- 22.4 The Contractor acknowledges that it may not receive any Supply Requests during any period that this Panel Contract is suspended.

#### Termination for breach

- 22.5 Subject to clause 22.6, without limiting the other circumstances in which this Panel Contract may be terminated, if a Party breaches a provision of this Panel Contract and fails to remedy the breach following the issue of a notice under clause 22.1, then the other Party:
  - (a) may give a further notice to the other Party of its intention to terminate the Panel Contract if the breach is not remedied or rectified in accordance with any specific manner or timeframe; and
  - (b) by a final notice in writing to that Party immediately terminate this Panel Contract if the breach is not remedied or rectified within the timeframe specified in the notice given under clause 22.5(a).
- 22.6 Notwithstanding clause 22.5, if a Party breaches a material provision of this Panel Contract and that default is incapable of remedy or rectification, the non-defaulting Party may terminate this Panel Contract by written notice to the defaulting Party.

#### Termination for reasons other than breach

- 22.7 Without limiting the other circumstances in which this Panel Contract may be terminated, this Panel Contract may be terminated by a Party if the other Party:
  - (a) commits an Insolvency Event; or
  - (b) assigns or sub-contracts this Panel Contract or any part thereof without the prior written consent of the other Party as required by this Panel Contract; or

- (c) is the Contractor and it included in its Tender or any other reports or communications submitted to the Local Government any statement, representation, description of fact, matter, information or thing which is in a material respect false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- (d) is the Contractor and any of its Personnel are found guilty of any criminal act relating to the provision of the Minor Works and Related Services; or
- (e) is the Contractor and it does an act or omission which damages or adversely affects the Local Government's reputation.
- 22.8 This Panel Contract may also be terminated by the Local Government giving written notice to the Contractor:
  - (a) if the State or Federal Government has introduced or changed legislation which makes the future performance of this Panel Contract impossible or impracticable in the Local Government's reasonable opinion; or
  - (b) if the Contractor has not been engaged by the Local Government to supply the Minor Works and Related Services for at least one (1) year.

#### Consequences of termination

- 22.9 If this Panel Contract expires or terminates, the Contractor shall be removed from the Panel, however, such expiry or termination of this Panel Contract does not affect:
  - (a) any rights or liabilities of the Parties accrued before the expiry or termination of this Panel Contract; or
  - (b) the rights and obligations of the Parties under a Supply Contract which shall remain in effect between the Parties unless that Supply Contract is otherwise terminated in accordance with this Panel Contract.
- 22.10 The Parties acknowledge and agree that the Contractor will not be entitled to any compensation for any Loss in the nature of loss of future profits or loss of income as a result of, or in connection with, the termination of this Panel Contract.

### 23 FORCE MAJEURE EVENT

- 23.1 A Party must:
  - (a) immediately give notice to the other Party of any Force Majeure Event that precludes that Party from partially or wholly complying with any of its obligations under this Panel Contract or a Supply Contract (**Affected Obligations**); and
  - (b) if it gives such a notice, either:
    - (i) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
    - (ii) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the other Party with periodic supplementary notices during the period over which the Force Majeure Event continues.
- 23.2 The Party's obligation to perform the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- 23.3 The Party whose performance is affected by the Force Majeure Event must use its reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay so caused.
- 23.4 If a Force Majeure Event continues to affect the provision of the Minor Works and Related Services for the duration of the Force Majeure Event Termination Period, the Local

Page 23

Government may terminate this Panel Contract and/or a Supply Contract by serving written notice on the Contractor.

### 24 GOODS AND SERVICES TAX

- 24.1 Words capitalised in this clause 24 and not otherwise defined have the meaning given in the GST Law.
- 24.2 Where an amount of Consideration is payable for a Taxable Supply made under this Panel Contract or a Supply Contract (whether that amount is specified or can be calculated in accordance with this Panel Contract or the Supply Contract, as the case may be), it does not include GST and must be increased by the GST Rate.
- 24.3 The Party making a Taxable Supply under this Panel Contract or a Supply Contract must issue a Tax Invoice or Adjustment Note to the Recipient in accordance with the GST Law.
- 24.4 If any Party has a right to be reimbursed or indemnified for any cost or expense incurred under this Panel Contract or a Supply Contract, that right does not include the right to be reimbursed or indemnified for that component of a cost or expense for which the indemnified Party can claim an Input Tax Credit.

### 25 LIABILITY

- 25.1 Subject to clause 25.3, the Contractor shall indemnify the Local Government and the Local Government's Personnel against any Loss suffered or incurred in connection with:
  - (a) any act or omission of the Contractor or the Contractor's Personnel in connection with the execution of any Contracted Minor Works or Related Services;
  - (b) any breach of a Supply Contract or this Panel Contract by the Contractor;
  - (c) any Contamination affecting a Site or land adjacent to or in the vicinity of a Site; and
  - (d) any claim made by a third party against the Local Government or its Personnel in connection with the matters in clauses 25.1(a) to 25.1(c) (inclusive),

except to the extent that the Loss is caused by the Wilful Misconduct or gross negligence of the Local Government or the Local Government's Personnel.

- 25.2 If the Contractor or the Contractor's Personnel damages property, including property on or adjacent to the Site, the Contractor must promptly make good the damage and compensate the Local Government for any Loss suffered or incurred by the Local Government in connection with such damage.
- 25.3 Notwithstanding any other clause of the Panel Contract or a Supply Contract, neither Party will be liable to the other Party for any Consequential Loss unless:
  - (a) the Parties agree in writing that a Party will be liable for that Consequential Loss; or
  - (b) the Consequential Loss is specified in or otherwise covered by an Insurance.
- 25.4 Each Party agrees that Part 1F of the *Civil Liability Act 2002* (WA), to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with a Supply Contract and any of the Contractor's Sub-contractors or such Sub-contractors' personnel.

### 26 INTELLECTUAL PROPERTY RIGHTS

26.1 The Contractor warrants and agrees that any supply by it of Contracted Minor Works and Related Services to the Local Government, and any design, documents, materials, equipment

or methods of working provided by it in doing so, will not infringe any Intellectual Property Right.

- 26.2 The Contractor shall indemnify the Local Government against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right arising from or in connection with the supply of Contracted Minor Works and Related Services or from any designs, documents, materials, equipment or methods of working provided by the Contractor to the Local Government in supplying Contracted Minor Works and Related Services under a Supply Contract.
- 26.3 Ownership of a Party's Background Intellectual Property Rights vests in and shall remain vested in that Party.
- 26.4 The Contractor grants to the Local Government a royalty-free, perpetual, irrevocable, express, non-exclusive, world-wide licence to use, exercise and sub-license the Contractor's Background Intellectual Property Rights only for the intended purpose of this Panel Contract or a relevant Supply Contract, and only for the benefit of the Local Government.
- 26.5 The Local Government grants the Contractor a revocable, royalty-free and non-transferrable licence to use the Local Government's Background Intellectual Property Rights to the extent necessary for the Contractor to supply Contracted Minor Works and Related Services to the Local Government.
- 26.6 Promptly following a request by the Local Government, the Contractor must disclose to the Local Government any inventions, discoveries, improvements, designs, trademarks, work or other subject matter created by or on behalf of the Contractor during the course of, or in connection with, performing work or fulfilling obligations for the Local Government under a Supply Contract, whether capable of attracting Intellectual Property Rights or not.
- 26.7 The Contractor must ensure that:
  - (a) copyright or any other ownership interests or rights in the designs, documents, materials, equipment or methods of working provided by the Contractor under this Panel Contract or a Supply Contract do not vest in any subcontractor of the Contractor or any other third party; and
  - (b) no third party is in a position to successfully assert any moral rights or other proprietary interests in relation to the Minor Works and Related Services, this Panel Contract or the Supply Contract contrary to the interests of the Local Government.
- 26.8 A Party must not:
  - (a) grant any third party access to the other Party's Intellectual Property Rights without that other Party's prior written consent, which may be given in that other Party's discretion; or
  - (b) do or allow to be done, or fail to do, any act that may infringe the other Party's Intellectual Property Rights.
- 26.9 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the Supply Contract shall be included in the Supply Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.

### 27 CONFIDENTIALITY

- 27.1 Subject to clause 27.2, the Parties must not:
  - (a) disclose Confidential Information to any other person; or

- (b) use Confidential Information except to the extent necessary to fulfil their obligations under this Panel Contract or a Supply Contract.
- 27.2 Subject to clause 27.3, a Party may disclose Confidential Information to a third party:
  - (a) with the prior consent of the Disclosing Party;
  - (b) to the extent required by any Law or applicable securities regulation or rule;
  - (c) in connection with any dispute or litigation concerning this Panel Contract, a Supply Contract or the subject matter of this Panel Contract or a Supply Contract;
  - (d) to the extent required by any Authority having jurisdiction over the Receiving Party; or
  - (e) who is an employee, officer, financier, joint venture partner, related body corporate, contractor, financial adviser, legal adviser or insurer of the Receiving Party, where the disclosure is necessary for the purpose of the Receiving Party performing its obligations, or enforcing its rights, under this Panel Contract or a Supply Contract.
- 27.3 Before making a disclosure to a person under clause 27.2, the Receiving Party must:
  - (a) inform the entity or person to whom the Confidential Information is being disclosed of the Receiving Party's obligations under this Panel Contract, except where clause 27.2(b) applies;
  - (b) notify the Disclosing Party and give the Disclosing Party a reasonable opportunity to take any steps that the Disclosing Party considers necessary to protect the confidentiality of that information; and
  - (c) where clause 27.2(e) applies, but with the exception of employees or officers of the Receiving Party, procure that the person or entity executes a deed in favour of the Disclosing Party in a form acceptable to the Disclosing Party, acting reasonably, imposing on the person or entity an undertaking of confidentiality having substantially similar effect as the confidentiality requirements of this clause 27.

### 28 SETTLEMENT OF DISPUTES

- 28.1 In the event of a Dispute, a Party may provide a written notice to the other Party identifying the nature of the Dispute and containing enough information to enable the other Party to reasonably understand the facts relevant to the Dispute (**Dispute Notice**).
- 28.2 Within 15 Business Days of receipt of the Dispute Notice, the Parties shall meet to seek to negotiate, in good faith, a resolution to the Dispute.
- 28.3 In the event that the Dispute remains unresolved after the time period referred to in clause 28.2, either Party may, at any time after giving notice to the other Party of its intention to do so, refer the Dispute for mediation in accordance with clause 28.4.
- 28.4 A mediation under this clause 28 shall:
  - (a) be conducted by a single mediator to be appointed, in the absence of agreement by the Parties within 5 Business Days after the giving of the notice of intention under clause 28.3, by the Chairperson (or his or her nominee) for the time being of the dispute resolution organisation known as the Resolution Institute;
  - (b) be conducted according to the rules proposed by the appointed mediator; and
  - (c) be conducted during a period of 10 Business Days (or such longer period as the Parties may agree in writing) from the acceptance by the mediator of his or her appointment.

- 28.5 The Parties shall each pay their own costs of the mediation and will each pay half of the mediator's fees and costs.
- 28.6 If the Parties are unable to resolve the Dispute within the mediation period stipulated in, or agreed under, clause 28.4(c), either Party may take whatever other action is available to it under this Panel Contract or the Law, including initiating proceedings in a court of competent jurisdiction.
- 28.7 Nothing in this clause 28 precludes a Party from seeking interlocutory relief relative to the subject matter of a Dispute from a court of competent jurisdiction, including the right to seek injunctive relief.
- 28.8 To avoid doubt, nothing in this clause 28 affects or limits a Party's right to apply for an adjudication under the Construction Contracts Act.

### 29 NOTICES

- 29.1 Any notice under this Panel Contract or a Supply Contract shall be in English, in legible writing and signed by hand or by electronic signature, and shall be given or served by:
  - (a) hand delivery or prepaid post to the address of the receiving Party specified in the Panel Contract Specifics, or at such other address as may from time to time be notified in writing to the notifying Party by the receiving Party, but in any event to the last notified address; or
  - (b) email to the email address of the receiving Party specified in the Panel Contract Specifics, or at such other email address as may from time to time be notified in writing to the notifying Party by the receiving Party, but in any event to the last notified email address.
- 29.2 Any notice is regarded as being given by the notifying Party and received by the receiving Party:
  - (a) if by delivery in person, when delivered to the address of the recipient;
  - (b) if by post, 5 Business Days from and including the date of postage; and
  - (c) if sent by email, in accordance with section 14 of the *Electronic Transactions Act* 2011 (WA),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time), it is regarded as received at 9.00am on the following Business Day.

### **30** ASSIGNMENT AND SUB-CONTRACTING BY THE CONTRACTOR

- 30.1 The Contractor shall not:
  - (a) assign all or any part of its rights and obligations under this Panel Contract; or
  - (b) sub-contract the whole or any part of this Panel Contract,

without:

- (c) the Local Government's prior written approval; and
- (d) in the case of an assignment under clause 30.1(a) where obligations are to be assumed, the proposed assignee executing a deed in favour of the Local Government agreeing to comply with and be bound by the obligations of the Contractor under this Panel Contract.
- 30.2 To avoid doubt, the Local Government's approval to assign or sub-contract under clause 30.1 does not discharge or release the Contractor from any liability or obligation under this Panel Contract.

### 31 RESTRUCTURE OF THE LOCAL GOVERNMENT

- (a) If the Local Government is restructured by Law, such that the Local Government ceases to exist or is amalgamated with a different entity to form a new entity, then the rights and obligations of the Local Government under this Panel Contract and any Supply Contract are assigned to and assumed by the appropriate legal entity as determined by:
  - (i) the Local Government; or
  - (ii) the successors of the Local Government under the restructure.
- (b) To avoid doubt, the Contractor may enter into a deed of assignment and assumption with the new legal entity to confirm the assignment and assumption.

#### 32 GENERAL

#### 32.1 **Relationship of the Parties**

- (a) The Contractor acknowledges and agrees that it is an independent contractor and not an agent of the Local Government and that the Contractor has no authority to bind the Local Government by contract or otherwise.
- (b) Nothing in this Panel Contract or a Supply Contract creates a partnership, trust or agency between the Parties or imposes any fiduciary duties on either Party in relation to the other, unless expressly stated.

#### 32.2 Governing law

This Panel Contract, a Supply Contract and any Dispute shall be governed by the Laws of the State of Western Australia and the Parties agree that the courts of that State will have exclusive jurisdiction to deal with any Dispute.

#### 32.3 Variation to Contract terms

The terms of the Panel Contract or a Supply Contract shall not be varied except by the written agreement of the Parties, subject to clause 10.2(a).

#### 32.4 Waiver

- (a) A Party may only waive a right or power it has under this Panel Contract or a Supply Contract by written notice to the other Party.
- (b) No forbearance, delay or indulgence by a Party in enforcing a provision of this Panel Contract or a Supply Contract shall prejudice, restrict or limit the rights of, or the exercise of the powers of, that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach or of that right or power in the future.

#### 32.5 Entire agreement

- (a) This Panel Contract constitutes the entire agreement between the Parties for the admission of the Contractor to the Panel and the operation of the Panel. Any prior arrangements, agreements, representations or undertakings are superseded.
- (b) The Supply Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangements, agreements, understandings, quotation requests, representations, warranties, promises, statements or negotiations, express or implied, in respect of the subject matter of the Supply Contract.

#### 32.6 **Rights are cumulative**

Subject to any express provision in this Panel Contract or a Supply Contract to the contrary, the rights of a Party under the Panel Contract or Supply Contract, as the case may be, are cumulative and are in addition to any other rights of that Party.

#### 32.7 Severability

Should any part of this Panel Contract or a Supply Contract be invalid or unenforceable, that part shall be:

- (a) read down, if possible, so as to be valid and enforceable; or
- (b) if it cannot be read down, severed from this Panel Contract or a Supply Contract, as the case may be, to the extent of the invalidity or unenforceability,

and the remainder of this Panel Contract or the Supply Contract, as the case may be, shall not be affected by such invalidity or unenforceability.

# EXECUTION

[Guidance note: alternative options for 'electronic' and 'paper/handwritten' signature are provided below. Select the appropriate method of execution for the Local Government and the Contractor and delete any unused panels.]

(use for electronic signature only)

#### **Local Government**

Shire of Mingenew

[Guidance note: complete the relevant panel below and delete the irrelevant panel]

Contractor - where the Contractor is a company Signed by [Insert Contractor Name in full] in accordance with section 127(1) of the Corporations Act 2001 (Cth): Sign {{Sig\_es\_:signer1:signature}} here ► Company Secretary/Director/Sole Company Secretary/Director Full {{fullname es :signer1:fullname}} name Sign {{Sig\_es\_:signer2:signature}} here < Company Secretary/Director (\*Not applicable if company has a sole Company Secretary-Director) Full {{fullname\_es\_:signer2:fullname}} name Contractor - where the Contractor is an individual (use the below for 'paper' or 'handwritten' signature only)

[Guidance note: if the Local Government is executing the Panel Contract by hand, complete the relevant panel below for the Local Government and delete the irrelevant panel.]

#### Local Government – where applying common seal

	The common seal of the Shire of Mingenew was hereunto affixed on [ <i>insert date</i> ] by authority of a resolution of the Council in the presence of:
sign here ►	
	Mayor/President (delete whichever is not applicable)
print name	
sign here ►	
	Chief Executive Officer
print name	

#### Local Government - where executing in accordance with a delegated authority

Signed by an authorised person(s) on behalf of the Shire of Mingenew in accordance with a resolution of the Council passed on [insert date]:

#### sign here ►

[Insert title of authorised person]

print name

[Guidance note: complete the relevant panel be Contractor is not a company or an individual, the inserted]	
Contractor – where the Contractor is a comp	any
<b>EXECUTED</b> by [insert name] ACN [insert ACN] in accordance with section 127(1) of the <i>Corporations Act 2001</i> (Cth):	) ) )
Director/Secretary/Sole Director-Secretary (signature) (Delete whichever is not applicable)	←← Director/Secretary (signature) (Delete whichever is not applicable)
Director/Secretary/Sole Director-Secretary (print full name) (Delete whichever is not applicable)	Director/Secretary (print full name) (Delete whichever is not applicable)
Contractor – where the Contractor is an indiv	vidual
SIGNED by [ <i>insert name</i> ] in the ) presence of: ) )	Signature of Contractor
Signature of Witness	Date
Full name of Witness (print)	Address of Witness

# **SCHEDULE 1 - PANEL CONTRACT SPECIFICS**

ITEM	DESCRIPTION	PANEL CONTRACT SPECIFIC
1.	Panel Contract Manager (clause 15.1)	[ <mark>Insert name &amp;/or title of the Local Government's contract manager]</mark> Address: [insert] Telephone: [insert] Email: [insert]
2.	Panel Contractor's Representative (clauses 15.2 and 15.3)	[Insert name, title] Address: [insert] Telephone: [insert] Email: [insert]
3.	End Date (clause 3.1)	[insert]
4.	Ranking system (clause 8.3)	A ranking system will be used in accordance with Council policy and procdures
5.	Insurances (clause 18)	<ul> <li>Insurances must be maintained for the duration of the Panel Contract with the following minimum levels of cover:</li> <li>Public liability insurance: where applicable the Contractor shall maintain Insurance to a value of \$20,000,000.</li> <li>Products liability insurance: where applicable the Contractor shall maintain Insurance to a value of \$20,000,000.</li> <li>Workers' compensation insurance: where applicable the Contractor shall maintain insurance in accordance with the <i>Workers' Compensation and Injury Management Act 1981</i> (WA).</li> <li>Vehicle and equipment insurance: where applicable the Contractor shall maintain insurance to replacement value of each item of Plant and equipment</li> <li>Professional indemnity insurance: where applicable the Contractor shall maintain insurance to a value of \$5,000,000.</li> <li>Construction works insurance: where applicable the Contractor shall maintain insurance to a value of \$5,000,000.</li> </ul>
6.	Self-insurance (clause 18.8)	The Contractor cannot self-insure in respect of any Insurances.
7.	Local Government's notice details (clause 29.1)	Address: 21 Victoria Road Mingenew WA 6522 Postal address: PO Box 120, Mingenew WA 6522 Email: enquiries@mingenew.wa.gov.au
8.	Contractor's notice details (clause 29.1)	Address: [ <mark>insert</mark> ] Postal address (if different to above address): [ <mark>insert</mark> ] Email: [ <mark>insert</mark> ]

#### [Guidance note: this schedule will be completed as part of any finalised Panel Contract.]

Commercial in Confidence 51

# SCHEDULE 2 - KEY PERFORMANCE INDICATORS

No	Performance KPIs	Measurement Tool	Definition	Unit of Measurement	Objective
1	Quality	Panel Contract Manager to assess during site visits.	Work to be performed to agreed standard of quality or to agreed Australian Standard	4 = Excellent 3 = Good 2 = Acceptable 1 = Poor 0 = Very Poor / Unacceptable	>2
2	Timeliness	Adherence to project plan	Work to be performed to agreed project or task timeline	4 = Excellent 3 = Good 2 = Acceptable 1 = Poor 0 = Very Poor / Unacceptable	>2
3	Value	Cost comparison	Goods or services supplied in accordance with tendered price schedule as audited from time to time.	% variation	<= 0%
4	Safety	Safety incidents and near misses to be reported to the Shire of Mingenew. Safety inspections may be carried out during site visits.	Work to be performed in accordance with relevant Work Health and Safety legislation	4 = Excellent 3 = Good 2 = Acceptable 1 = Poor 0 = Very Poor / Unacceptable	>2

# **SCHEDULE 3 - PRICING AND RATES**

[Guidance note: This Schedule may be used to set out prices and conditions applicable to the supply of Minor Works and Related Services. See clause 7 ('Pricing for the supply of the Minor Works and Related Services').]

[<mark>insert</mark>]

# **SCHEDULE 4 - SPECIFICATION**

[Guidance note: A description of the 'Minor Works' and any 'Related Services' to which this Panel Contract relates should be set out in this Schedule: see clause 1 (definitions of 'Minor Works', 'Related Services' and 'Specification').]

[<mark>insert</mark>]

# **SCHEDULE 5 - SUPPLY CONTRACT CONDITIONS**

Contr Contr	ance note: These Schedule 5 'Supply Contract Conditions' are used to create individual Supply acts under the Panel Arrangement. Once the Panel has been created (see clause 4 of this Panel act), the Local Government then has the following options (under clauses 8 and 9 of this Panel act) for creating individual Supply Contracts with the Panel Suppliers:
1.	The Local Government may issue a 'Supply Request' to the relevant Panel Suppliers who respond (see clauses 8.1 and 8.2 of this Panel Contract). The Local Government then chooses one supplier, and enters into a Supply Contract by issuing a Purchase Order or Letter of Award (see clause 8.2(e) of this Panel Contract). Adopting this process, will depend upon the Local Government' purchasing policy regarding the use of panels of prequalified suppliers and also the conditions advertised in the Invitation to Tender.
2.	Alternatively, the Local Government can issue a Purchase Order directly to a Panel Supplier, without first issuing a Supply Request (see clause 8.4 of this Panel Contract).

The Supply Contract is formed when the Local Government issues a Purchase Order or Letter of Award under either clause 8.2(e) or clause 8.4 (see clause 9.2 of this Panel Contract).]

If you choose Option 1 from above, then the following pages provide a template to assist in your development of the Supply Request.

# SUPPLY CONTRACT CONDITIONS FOR MINOR WORKS AND RELATED SERVICES

[Guidance note: these conditions are suitable for use for minor works with values of up to \$1 million. For works with a value of more than \$1 million, use an Australian Standard contract and if in doubt, seek advice as to the appropriate Australian Standard contract.]

[Guidance note: when the Panel Contact is executed, insert the date of that contract in the definition of 'Panel Contract' in these conditions.]

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Page 39

### BACKGROUND

- (a) The Contractor is a member of a panel of pre-qualified suppliers established under the Regulations for the supply of works and services in the nature of the Minor Works and Related Services.
- (b) The Local Government has engaged the Contractor to perform the Minor Works and any Related Services.
- (c) These Supply Contract Conditions set out the terms and conditions upon which the Contractor shall perform the Minor Works and any Related Services.

#### 2 DEFINITIONS AND INTERPRETATION

2.1 In these Supply Contract Conditions, except where the context indicates otherwise:

**Approval** means any certificate, licence, consent, permit, approval, authority or requirement necessary for the performance of the Contractor's obligations under the Panel Contract and the provision of the Minor Works and any Related Services to the Local Government.

Code means the Western Australian Building and Construction Industry Code of Conduct 2016.

**Completion** means that stage of the execution of the Minor Works where the Minor Works are complete and meet the requirements of the Supply Contract, except for Minor Defects, and all certificates, documents, warranties, guarantees and other information required for the use, operation and maintenance of the Minor Works have been provided to the Local Government.

**Completion Certificate** means a certificate issued by the Local Government to the Contractor confirming that Completion has occurred.

**Date of Completion** means the date specified in a Completion Certificate as the date upon which Completion occurred.

**Date for Completion** means the date for the completion of the Minor Works specified in a Purchase Order or Letter of Award or otherwise agreed by the Parties in writing.

**Defect** means any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Minor Works, or any aspect of the Minor Works, which is not in accordance with the requirements of the Supply Contract.

**Defects Liability Period** means a period of 12 months from the Date of Completion, as extended as a result of any rectification works carried out during the Defects Liability Period.

**Design Documents** means any drawings, the Supply Contract Specification and other design documents required and created for the execution of the Minor Works.

**Disbursement** means reasonable out-of-pocket costs and expenses incurred by the Contractor in executing the Minor Works and any Related Services which are:

- (a) charged to the Local Government at cost; and
- (b) incidental to the execution of the Minor Works and any Related Services.

**Extension Request** has the meaning given in clause 8.3.

**Intended Purpose** means the intended purpose of the Minor Works as stated in the Supply Request, Purchase Order, Letter of Award and/or Supply Contract Specification, or as could reasonably be inferred from the Supply Contract by a contractor with skill and experience in, and the expertise and resources necessary to carry out and complete, works of a similar nature to the Minor Works.

**Minor Defects** means Defects which do not prevent the Minor Works from being reasonably capable of being used for their Intended Purpose and which can be rectified by the Contractor without prejudicing the convenient or effective use of the Minor Works by the Local Government.

**Minor Works** means the works to be executed by the Contractor as set out in a Purchase Order or Letter of Award, as supplemented by any Supply Contract Specification.

**Other Works** means any works, operations or maintenance services, performed or undertaken or to be performed or undertaken by:

- (a) the Local Government;
- (b) the Local Government's Personnel; or
- (c) any public or private utility or any statutory or other relevant authority,

either concurrently or sequentially with the Minor Works at, on, over or adjacent to the Site, or which may be connected to, associated with, ancillary to or otherwise related to or relevant to the Minor Works and any Related Services.

**Panel Contract** means the 'Pre-qualified Supplier Panel Contract for Minor Works and Related Services' between the Parties dated [*to be inserted*], to which these Supply Contract Conditions are a schedule.

**Party** means the Local Government or the Contractor, as the context requires, and **Parties** means both of them.

**Payment Claim** means a written claim for payment made by the Contractor to the Local Government in accordance with the Supply Contract.

**Related Services** means the services to be performed by the Contractor as set out in a Purchase Order or Letter of Award, as supplemented by any Supply Contract Specification.

**Retention Moneys** means moneys withheld by the Local Government from amounts otherwise due to the Contractor in accordance with the Supply Contract.

Retention Percentage has the meaning given in clause 18.1.

**Retention Sum** means the amount (if any) specified as such in the Supply Contract Specifics or otherwise agreed in writing by the Parties.

**Site Standards and Procedures** means any guidelines, procedures, rules or requirements regarding the Site made available in writing to the Contractor by the Local Government.

**Start Date** means the date specified as such in the Supply Request, Purchase Order or Letter of Award, or as otherwise agreed by the Parties in writing, as the date upon which the Minor Works and any Related Services shall commence under the relevant Supply Contract.

**Sub-contractor** means any person or entity engaged by the Contractor in connection with the execution of the Minor Works and any Related Services and includes consultants, subcontractors, suppliers and other contractors, but does not include the Contractor's employees.

**Supply Contract Conditions** means this document titled 'Supply Contract Conditions for Minor Works and Related Services'.

**Works Program** means a written document setting out the Contractor's proposed activities and timeline for executing the Minor Works.

**Works Variation** means a variation to the scope of the Minor Works or the nature of the execution of the Minor Works.

- 2.2 Unless the context suggests otherwise, terms which are not defined in these Supply Contract Conditions and which are defined in the Panel Contract have the meaning given in the Panel Contract.
- 2.3 The rules of interpretation in the Panel Contract shall apply to the interpretation of these Supply Contract Conditions.
- 2.4 A reference in these Supply Contract Conditions to a clause is a reference to a clause of these Supply Contract Conditions.

### 3 EXECUTION OF THE MINOR WORKS; INSURANCE

#### **Execution of the Minor Works**

- 3.1 The Contractor must execute the Minor Works and any Related Services to the Local Government's reasonable satisfaction in accordance with:
  - (a) the Supply Contract;
  - (b) any Supply Contract Specification; and
  - (c) the Purchase Order or Letter of Award, as the case may be.
- 3.2 The Contractor warrants that it has the skills, experience, expertise and resources necessary to competently execute the Minor Works and any Related Services.
- 3.3 The Contractor must ensure that:
  - (a) the Minor Works when completed will be fit for their Intended Purpose;
  - (b) any Design Documents are accurate, suitable and adequate for the Intended Purpose; and
  - (c) the Minor Works are executed in accordance with the Design Documents.

#### Insurance

3.4 The Contractor must maintain the Insurances in accordance with the Panel Contract for the term of the Supply Contract.

### 4 COMPLIANCE WITH LEGAL REQUIREMENTS, INDUSTRIAL AWARDS AND AGREEMENTS

- 4.1 The Contractor must comply with all Legal Requirements affecting or applicable to the execution of the Minor Works and any Related Services and shall ensure that its Personnel and Sub-contractors also comply with the same.
- 4.2 Without limiting clause 4.1, the Contractor shall:
  - (a) comply with all industrial awards or agreements affecting or applicable to the persons employed by the Contractor for the purposes of executing the Minor Works and any Related Services;
  - (b) ensure that the remuneration and terms of employment of all of its employed Personnel are consistent with such remuneration and terms reflecting the industry standard as expressed in industrial awards, agreements and any code of practice applicable to the Contractor's industry;
  - (c) to the extent practicable, use reasonable endeavours to ensure that its Subcontractors satisfy the requirements of clauses 4.2(a) and 4.2(b);
  - (d) comply with the terms of any agreements with its Sub-contractors in relation to the Minor Works and any Related Services; and
  - (e) being subject to the Code, comply with each of the obligations under the Code.

### 5 SAFETY OBLIGATIONS

- 5.1 The Contractor must:
  - (a) do all things reasonably necessary to ensure that the Minor Works are executed in a manner that is safe and not likely to cause injury or illness to any person;
  - (b) perform all relevant functions and fulfil all relevant duties under all relevant OSH Laws required of an employer or otherwise applicable to the Contractor's role under the Supply Contract including notification of incidents as may be required under OSH Laws;

- (c) comply with any Site Standards and Procedures;
- (d) co-operate with the Local Government and the Local Government's Personnel or third parties undertaking Other Works to maintain uniform safety practices and comply with any Legal Requirements relating to safety.
- 5.2 Where any injury, property damage, accident or incident which is notifiable under any Legal Requirement occurs, the Contractor must:
  - (a) as soon as practicable, but in any event within 24 hours, notify the Local Government in writing of that injury, property damage, accident or incident; and
  - (b) provide the Local Government with any further information requested by the Local Government.
- 5.3 The Contractor acknowledges that if, in performing its obligations under the Supply Contract, its Personnel enter premises under the control of the Local Government they must comply with the Local Government's occupational health and safety policies and procedures.
- 5.4 Without limiting the Local Government's rights under the Panel Contract or otherwise under these Supply Contract Conditions in respect of suspension, the Local Government may suspend the whole or part of the performance of the Parties' obligations under the Supply Contract following any breach by the Contractor of OSH Laws or this clause which gives rise to circumstances which:
  - (a) present actual or potential risk of death or serious injury; or
  - (b) are otherwise required to be notified under OSH Laws.

### 6 WORKS PROGRAM

- 6.1 Within 10 Business Days after the Supply Contract Commencement Date, the Contractor must prepare and submit to the Local Government a draft Works Program for approval by the Local Government.
- 6.2 Unless otherwise advised in writing by the Local Government, the Works Program must:
  - (a) be consistent with the Supply Contract;
  - (b) show key dates and constraints;
  - (c) arrange activities and tasks on a week-by-week basis with each week starting on a Monday;
  - (d) arrange activities and tasks in sequential logical order and on a timeline accurately representing the Contractor's proposed timeline and method for executing the Minor Works; and
  - (e) take into account any requirements and constraints set out in the Supply Contract Specification (if any).
- 6.3 If the Local Government approves the Works Program without proposing any amendments, the Local Government must give the Contractor written notice of such approval as soon as practicable.
- 6.4 If the Local Government suggests amendments or provides other written comments on the draft Works Program, the Contractor must take such amendments or comments into account and, where applicable, provide a revised draft Works Program to the Local Government for approval.
- 6.5 Following approval of the draft Works Program by the Local Government, the Contractor must provide to the Local Government:
  - (a) a final version of the Works Program; and
  - (b) a weekly written report regarding compliance with the Works Program.

### 7 SITE POSSESSION

- 7.1 On and from the Start Date, the Local Government shall give the Contractor sufficient possession of the Site for the commencement and execution of the Minor Works and any Related Services. To avoid doubt, possession of the Site shall confer on the Contractor a right to use and control the Site only as necessary to enable the Contractor to carry out the Minor Works and any Related Services and does not constitute a right of exclusive possession of the Site.
- 7.2 While the Contractor is in possession of the Site, the Contractor:
  - (a) is liable for the care of the Minor Works, any temporary works, materials, plant and equipment on the Site until the Local Government issues a Completion Certificate; and
  - (b) must promptly rectify any loss or damage to the Minor Works, unless caused by the Wilful Misconduct or gross negligence of the Local Government or the Local Government's Personnel.
- 7.3 Upon issue of the Completion Certificate or termination of the Supply Contract, whichever comes first, the Contractor shall give possession of the Site and the Minor Works to the Local Government, but the Local Government is not responsible for any items of Contractor's property or Sub-contractor's property remaining on the Site, and the Contractor must remove, or ensure the removal of, such items as soon as possible.
- 7.4 If the Contractor fails to take urgent action necessary to protect the Minor Works, other property or people on the Site or adjacent to or in the vicinity of the Site, the Local Government may take the necessary action and the Local Government's reasonable costs in doing so shall be a debt due and immediately payable by the Contractor to the Local Government.

### 8 COMMENCEMENT AND COMPLETION OF THE WORKS

- 8.1 Unless otherwise agreed in writing by the Parties, the Contractor must commence the Minor Works on the Start Date and complete the Minor Works on or before the Date for Completion.
- 8.2 The Contractor is entitled to an extension to the Start Date or Date for Completion if a delay in the commencement or execution of the Minor Works is due to:
  - (a) a breach by the Local Government of the Supply Contract;
  - (b) delay or disruption caused by the Local Government, except where such delay or disruption is caused by the Local Government acting in accordance with the Supply Contract;
  - (c) a Force Majeure Event occurring before the Start Date or the Date for Completion, as applicable;
  - (d) suspension of the Supply Contract under the Panel Contract or these Supply Contract Conditions where the suspension is the result of a breach by the Local Government; or
  - (e) a Works Variation.
- 8.3 To obtain an extension to the Start Date or the Date for Completion, the Contractor must make a written request to the Local Government within 10 Business Days after the cause of delay has arisen, or within any other period agreed in writing by the Parties, setting out the facts on which the request is based (**Extension Request**).
- 8.4 The Local Government, acting reasonably, must notify the Contractor in writing within 10 Business Days of receiving the Extension Request, or such other time agreed in writing by the Parties, whether the Extension Request is granted and any relevant period of extension.
- 8.5 The Contractor must give the Local Government at least 15 Business Days' notice in writing of the date on which the Contractor anticipates that Completion shall occur.
- 8.6 When the Local Government is satisfied that Completion has occurred, the Local Government must issue a Completion Certificate to the Contractor.

Page 44

8.7 As soon as possible after the Date of Completion, the Contractor must clear away and remove from the Site all plant, surplus material, rubbish and temporary works of any kind and fill and consolidate and level off all excavations (other than those forming part of the Minor Works) made by the Contractor on the Site, and ensure that the Site is clean and tidy, to the Local Government's satisfaction.

### 9 LATENT CONDITIONS

- 9.1 The Contractor warrants that, before entering into the Supply Contract, the Contractor had access to, and inspected, the Site, and has carried out its own enquiries to establish, understand and satisfy itself as to the state of the Site and all risks and contingencies associated with the Site existing as at the Supply Contract Commencement Date.
- 9.2 If the Contractor discovers physical conditions on the Site or its surroundings, excluding weather conditions, which could not reasonably have been anticipated at the Supply Contract Commencement Date even where the Contractor had:
  - (a) examined all information made available in writing by the Local Government to the Contractor for the purpose of preparing a Supply Request Response in respect of the Minor Works and any Related Services;
  - (b) examined all other information made available in writing by the Local Government in relation to the Minor Works and any Related Services;
  - (c) examined all information relevant to the risks, contingencies and other circumstances having an effect on the Supply Request Response and obtainable by the making of reasonable enquiries; and
  - (d) inspected the Site and its surroundings,

the Contractor:

- (e) shall immediately notify the Local Government in writing; and
- (f) may request that a Works Variation be directed and/or may make an Extension Request, and

the Local Government must not unreasonably withhold its agreement to a Works Variation and/or Extension Request.

### 10 PLANT AND EQUIPMENT

The Contractor must:

- (a) provide all materials, labour, plant, equipment, tools and other resources necessary for executing the Minor Works and any Related Services, unless otherwise agreed in writing by the Parties; and
- (b) ensure that all such items used or supplied in connection with the Minor Works and any Related Services comply with Legal Requirements and are fit for their usual and intended purpose.

### 11 MATERIALS

- 11.1 All materials used in the execution of the Minor Works must be consistent with the nature and character of the Minor Works, be of a kind that is suitable for their purpose, and be in compliance with the Supply Contract, any Supply Contract Specification and any relevant Australian standards, unless otherwise agreed by the Parties in writing.
- 11.2 The Contractor must give the Local Government full particulars in writing of the mode, place of manufacture, source of supply and the performance capacities of materials, or other information, about the materials used in executing the Minor Works, where the Local Government makes a request in writing (acting reasonably) for such particulars or information.

11.3 At any time prior to the issue of the Completion Certificate, the Local Government may reject any material that is not in compliance with clause 11.1 and may direct its replacement, correction or removal at the Contractor's cost.

### 12 WORKS VARIATION

- 12.1 The Local Government may direct a Works Variation by providing written notice of the Works Variation, including details of the Works Variation, to the Contractor and the Contractor must comply with such a direction.
- 12.2 Within 10 Business Days of receipt of the notice under clause 12.1, the Contractor must submit to the Local Government in writing a detailed, itemised price for executing the Works Variation.
- 12.3 The Works Variation shall be valued by agreement of the Parties to be recorded in writing or, failing agreement within 10 Business Days (or such other time as is agreed in writing by the Parties) after receipt of the notice under clause 12.1, by the Local Government, and the Supply Contract Price shall be adjusted accordingly.

### 13 TESTING

- 13.1 Prior to the Date of Completion, the materials and Minor Works shall be subject to such tests as may be reasonably directed in writing by the Local Government or set out in any Supply Contract Specification to establish the compliance of materials, workmanship and the Minor Works with the Supply Contract.
- 13.2 Tests conducted under clause 13.1 shall be conducted at the Contractor's cost unless otherwise agreed in writing by the Parties.
- 13.3 The Contractor must provide to the Local Government full and substantiated results for all tests completed under this clause 13 within 5 Business Days after completion of the test or the date (if any) specified in the Supply Contract Specification or Works Program, whichever is earlier.
- 13.4 If the whole of part of the Minor Works fails to pass a test, the Contractor:
  - (a) must promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects, failure, imperfections or other factors as required to ensure that the test is satisfied;
  - (b) be responsible for all costs and expenses incurred or sustained in complying with clause 13.4(a); and
  - (c) if requested by the Local Government, provide it with details of the work proposed to be undertaken to comply with clause 13.4(a).

### 14 DEFECTS LIABILITY PERIOD

- 14.1 The Contractor must rectify any Defects notified to the Contractor by the Local Government in writing during the Defects Liability Period within a reasonable time, but no later than 30 days from the date that notice of the Defect was given by the Local Government, at the Contractor's expense.
- 14.2 If the Contractor fails to rectify a Defect in accordance with clause 14.1, the Local Government may rectify the Defect and the costs of it doing so shall be a debt due from the Contractor to the Local Government. To avoid doubt, the Local Government may recover such amounts from the Contractor either on demand or by deducting such amount from any amount owed by the Local Government to the Contractor.

### 15 OTHER WORKS

- 15.1 The Contractor acknowledges that communications relating to the Supply Contract between the Contractor and those third parties responsible for carrying out any Other Works must be directed through the Local Government.
- 15.2 In performing the Minor Works and any Related Services, the Contractor must:
  - (a) take all reasonable steps to plan, coordinate and integrate the performance of the Minor Works and any Related Services with any Other Works; and
  - (b) not carry out the Minor Works and any Related Services in a manner which may cause damage to, or inconvenience the execution of, any Other Works, and at all times take all necessary steps to protect the Minor Works from accidental damage caused by the Other Works.
- 15.3 The Contractor must:
  - (a) ensure that information it provides to third parties carrying out Other Works is accurate; and
  - (b) act in accordance with information provided to it by such third parties.
- 15.4 If the Contractor fails to comply with this clause 15 and additional work or any alterations or remedial work to either the Minor Works, any Related Services or the Other Works are required, any additional costs will be a debt due and payable immediately by the Contractor to the Local Government.

### 16 PAYMENT

- 16.1 As soon as reasonably practicable following the end of each month or at another time or frequency agreed in writing by the Parties, the Contractor must give the Local Government a detailed, itemised Payment Claim specifying:
  - (a) the amount due to the Contractor for any part of the Minor Works and any Related Services carried out up to the date of the Payment Claim, including a breakdown of such amounts and description of the Minor Works and any Related Services carried out;
  - (b) any other amounts owed by the Local Government to the Contractor at the date of the Payment Claim; and
  - (c) any other information reasonably requested in writing by the Local Government.
- 16.2 Subject to the deduction of:
  - (a) any Retention Moneys; or
  - (b) other amount which the Local Government may be entitled to deduct or which is due and payable by the Contractor to the Local Government,

the Local Government must pay the balance of a valid Payment Claim within 20 Business Days of the date of issue of the Payment Claim or the time for payment otherwise agreed in writing by the Parties. To avoid doubt, nothing in the Supply Contract obliges the Local Government to pay for Minor Works and any Related Services that are not in accordance with the Supply Contract or for plant or materials not incorporated in the Minor Works and any Related Services.

- 16.3 If the moneys deducted by the Local Government under clause 16.2(b) are insufficient to discharge the payment liability of the Contractor to the Local Government, the Local Government may have recourse to Retention Moneys or any security provided under the Supply Contract.
- 16.4 The payment of moneys to the Contractor by the Local Government shall not be evidence of the value of work done or an admission of liability or evidence that any Minor Works and any Related Services have been executed satisfactorily but shall be a payment on account only. To avoid doubt, the Local Government may correct an error in a previous payment in a later payment.

- 16.5 The Supply Contract Price shall not be subject to adjustment for rise and fall in costs.
- 16.6 The Contractor is not entitled to payment for any Disbursements not included in the Contract Price unless prior written notice of the Disbursement was provided to the Local Government and the Local Government approved the Disbursement in writing.

#### 17 INTEREST ON OVERDUE PAYMENTS

- 17.1 Interest at the rate set out in the Supply Contract Specifics, or otherwise agreed in writing by the Parties, is payable on so much of an amount that is payable under the Supply Contract by a Party to the other Party on or before a certain date but which is unpaid 20 Business Days after that date.
- 17.2 The interest is to be paid for the period beginning on the day after the date on which the amount is due and ending on and including the date on which the amount payable is paid.
- 17.3 To avoid doubt, if the Party who owes the other Party an amount under the Supply Contract pays to the other Party that amount before the expiry of 20 Business Days from the date on which the amount fell due, no interest is payable.

#### 18 RETENTION MONEYS AND SECURITY

- 18.1 Subject to clause 18.2, the Local Government may deduct as Retention Moneys a percentage set out in the Supply Contract Specifics, or otherwise agreed by the Parties in writing, of the balance of each Payment Claim (**Retention Percentage**) as security for the performance of the Contractor's obligations under the Supply Contract.
- 18.2 The Local Government may deduct Retention Moneys under clause 18.1 until the Local Government has retained an amount equalling the Retention Sum.
- 18.3 If requested by the Local Government, the Contractor must provide security equal to the value of the Supply Contract Price or part thereof in lieu of Retention Moneys in the form of an unconditional and irrevocable bank undertaking in a form, and from a financial institution, approved by the Local Government, or another form of security.
- 18.4 The Local Government may have recourse to any Retention Moneys or security at any time it may be entitled to recover from, or be paid by, the Contractor an amount under the Supply Contract or otherwise.
- 18.5 The Local Government must return to the Contractor the Retention Sum or any security provided under clause 18.3 after deduction of any amounts the Local Government is owed under the Supply Contract or otherwise within 20 Business Days of termination of the Supply Contract.

### **19 CONSTRUCTION CONTRACTS ACT**

- 19.1 The Contractor must promptly and without delay give the Local Government a copy of any notice, application or document filed or served on the Contractor or any of its Sub-contractors under the Construction Contracts Act relating to any sub-contract in respect of the Minor Works.
- 19.2 If the Local Government becomes aware that a Sub-contractor engaged by the Contractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Local Government may in its absolute discretion pay the Sub-contractor such money that may be owing to the Sub-contractor in respect of that work and any amount paid by the Local Government will be a debt due from the Contractor to the Local Government.
- 19.3 The Contractor must ensure that none of its sub-contracts contain terms prohibited by the Construction Contracts Act.

#### 20 ASSIGNMENT AND SUB-CONTRACTING

20.1 The Contractor must not:

- (a) assign any of its rights and obligations under the Supply Contract, or sub-contract any aspect of the Minor Works or any Related Services, without the Local Government's prior written approval; or
- (b) allow a Sub-contractor to further sub-contract any aspect of sub-contracted Minor Works or any Related Services without the Local Government's prior written approval.
- 20.2 To avoid doubt, the Local Government must not unreasonably withhold its approval under clause 20.1.

### 21 PERSONAL PROPERTY SECURITIES ACT

- 21.1 For the purposes of this clause 21:
  - (a) the **'Local Government's Personal Property'** means all personal property the subject of a security interest granted under the Supply Contract;
  - (b) the '**PPSA**' means the Personal Property Securities Act 2009 (Cth);
  - (c) the **'PPS Law'** means the PPSA, including any provision of the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA; and
  - (d) words and phrases used in this clause 21 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- 21.2 If the Local Government considers that the Supply Contract or a transaction in connection with that contract gives rise to or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything, including obtaining consents, signing and producing documents, completing documents and providing information, which the Local Government reasonably requests for the purposes of:
  - (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (b) enabling the Local Government to apply for any registration, complete any financing statement or give any notification in connection with the security interests; or
  - (c) enabling the Local Government to exercise rights in connection with the security interest.
- 21.3 The Contractor agrees to cause any financing statements required under clause 21.2(b) to be registered in accordance with the PPS Law and in any event at such times as may be directed by the Local Government to maintain the priority required by the Local Government.
- 21.4 The Contractor must notify the Local Government immediately after it becomes aware of:
  - (a) any personal property which does not form part of the Local Government's Personal Property becomes an accession to the Local Government's Personal Property and is subject to a security interest in favour of a third party that has attached at the time it becomes an accession; or
  - (b) if any of the Local Government's Personal Property is located or situated outside Australia or, upon request by the Local Government, of the present location or situation of any of the Local Government's Personal Property.
- 21.5 The Contractor must not:
  - (a) create any security interest or lien over any of the Local Government's Personal Property whatsoever (other than security interests granted in favour of the Local Government);
  - (b) sell, lease or dispose of its interest in the Local Government's Personal Property;
  - give possession of the Local Government's Personal Property to another person except where the Local Government expressly authorises the Contractor in writing to do so;

- (d) permit any of the Local Government's Personal Property to become an accession to or commingled with any asset that is not part of the Minor Works; or
- (e) change its name, relocate its principal place of business outside Australia or change its place of registration or incorporation without first giving the Local Government 15 Business Days' prior written notice.
- 21.6 Neither the Local Government nor the Contractor shall 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 person authorises, the disclosure of such information. This clause 21.6 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.
- 21.7 The Local Government's interest in the Local Government's Personal Property is not affected by anything which, but for this provision, might have such an effect on the Local Government's Personal Property, including any failure to perfect or to continuously perfect (within the meaning of the PPSA) the security interest in relation to any personal property forming part of the Local Government's Personal Property at any time.
- 21.8 Everything the Contractor is required to do under this clause is at the Contractor's expense. The Contractor agrees to reimburse, upon demand, all costs and expenses of the Local Government in connection with anything the Local Government is required to do under this clause including preparing, registering and maintaining any financing statement or financing change statement.

### 22 BCITF LEVY

- 22.1 The Contractor must pay any training levy amount required under the *Building and Construction Industry Training Fund and Levy Collection Act 1990* (WA) in connection with the Minor Works.
- 22.2 The Contractor shall lodge with the Local Government a certificate of proof that it has paid the relevant training levy amount, prior to the commencement of the Minor Works.

# **SCHEDULE 6 - SUPPLY CONTRACT SPECIFICS**

[Drafting note: this schedule is only applicable where the Panel Arrangement relates to Minor Works and Related Services and so the 'Supply Contract Conditions for Minor Works and Related Services' are inserted at Schedule 5. If the Panel Arrangement relates to goods and services, mark this Schedule 6 as 'not used']

[Guidance note: this schedule should be completed as part of any finalised Panel Contract relating to a Panel Arrangement for Minor Works and Related Services.]

ITEM	DESCRIPTION	SUPPLY CONTRACT SPECIFIC
1.	Retention Sum (Clause 1.1 of the Supply Contract Conditions – definition of 'Retention Sum')	[Insert]
2.	Retention Percentage (Clause 17.1 of the Supply Contract Conditions)	[insert]
3.	Interest (Clause 16 of the Supply Contract Conditions)	[insert]



### **1.2.9 PRE-QUALIFIED SUPPLIERS PROCEDURES**

Relevant Council Policy 1.2.9 Pre-Qualified Suppliers Policy Approval Date: Appendix: Nil Relevant CEO Directive N/A Review: Annual

# Objective:

The Shire will consider establishing a Panel for purchasing activity when all of the following factors apply:

- It determines that a range of similar goods or services are required to be purchased on a continuing and regular basis;
- The purchases are considered vital, but of low value, and may be needed prior to a purchase order being completed;
- There are numerous potential suppliers in the local and regional procurement-related market sector(s) that offer 'value for money';
- The purchasing activity under the intended Panel is considered to be of a low and medium risk;
- The Panel will streamline and improve procurement processes; and
- It has the capacity to establish, manage the risks and achieve the benefits expected of the proposed Panel.

# Panel Establishment

Should the Shire determine it is advantageous to establish a Panel, it must do so in accordance with Part 4, Division 3 of the Local Government (Functions and General) Regulations and its internal procurement procedures.

- A Panel may be established for one supply requirement, or a number of similar supply requirements under defined categories within the Panel.
- Panels may be established for a minimum of 1 year and a maximum of 3 years or other length of time deemed appropriate by the Shire.
- Evaluation criteria must be determined and communicated in the application process by which applications will be assessed and accepted.
- Where a Panel is to be established, the Shire will endeavour to appoint at least three (3) suppliers to the Panel, or to each category within the Panel, on the basis of best 'value for money'.
- In each invitation to apply to become a pre-qualified supplier (through a procurement process advertised through a state-wide notice), the Shire must state the expected number of suppliers it intends to put on the panel.
- Should a Panel member leave the Panel, they may be replaced by the next ranked Panel member determined in the value for money assessment should the supplier agree to do so, with this intention to be disclosed in the detailed information set out under Regulation 24AD(5)(d) and (e) when establishing the Panel.

# Panel Purpose

The Shire may establish a Panel for the purpose of:



Trades Panel

to allow sub-contract assistance in operational requirements on an as-needed basis. Establishment of a Panel in this instance negates the requirement for quotes. A Trades Panel may include such categories as electrician, plumber or similar.

### Purchasing from a Panel

Each pre-qualified supplier appointed to the Panel (Supplier) provides a schedule of rates (Schedule) accepted by the Shire as part of their appointment to the Panel. This Schedule will be fixed for the term of the Panel and will ensure that each Supplier has been afforded an identical opportunity to quote for the supply requirements.

The Shire may award any quantity of work to any Supplier on the basis of their schedule and availability. A purchase order will be issued before works commence except urgent purchases for which a purchase order will be issued after works commence.

An urgent purchase is defined as an unanticipated purchase which is required in response to an urgent situation with immediate attention.

# Distributing Work Amongst a Support Panel

In considering the distribution of work amongst a Trades Panel, the Shire will consider the Supplier's:

- Accepted Schedule;
- Performance during the term of the Panel;
- Capability relative to the particular item of work;
- Response time and/or availability; and
- Vicinity to the work location.

### Panel Communication Agreement

The Shire will ensure clear, consistent, and regular communication between all parties to a Panel.

# Panel Record Keeping

All documentation and communication relating to the establishment of, and subsequent procurement from a Panel shall be processed through the Shire's internal record management system, as appropriate, to ensure an identifiable audit trail exists. This will include such items as the initial request for applications, all invitations to quote, clarification correspondence, responses received, and all procurement documentation.



### COUNCIL POLICY Administration

Title:	1.2.9 PRE-QUALIFIED SUPPLIERS POLICY
Adopted:	18 September 2019
Reviewed:	16 December 2020
Associated Legislation:	Local Government Act 1995
	Local Government (Functions and General) Regulations 1996
Associated Documents:	Purchasing Procedure
	Code of Conduct
Review Responsibility:	Finance and Administration Manager
Delegation:	N/A

# Objective:

The Shire will consider establishing a Panel for purchasing activity when all of the following factors apply:

- It determines that a range of similar goods or services are required to be purchased on a continuing and regular basis;
- The purchases are considered vital, but of low value, and may be needed prior to a purchase order being completed;
- There are numerous potential suppliers in the local and regional procurement-related market sector(s) that offer 'value for money';
- The purchasing activity under the intended Panel is considered to be of a low risk;
- The Panel will streamline and improve procurement processes; and
- It has the capacity to establish, manage the risks and achieve the benefits expected of the proposed Panel.

### Policy Statement:

The Shire is committed to developing and operating efficient, effective, economical and sustainable procedures for the procurement of all goods and services and adopting a value for money approach, which allows the best possible procurement outcome to be achieved.

The application of this policy is to be in conjunction with the Shire of Mingenew Code of Conduct and in compliance with the Shire's Purchasing Policy.


#### COUNCIL POLICY Finance

Title: Adopted:	1.3.1 PURCHASING POLICY 21 March 2018	
Reviewed:	19 May 2021	
Associated Legislation:	ocal Government Act 1995 s5.42, s5.44, s5.46, s6.2(4a), s6.8 ocal Government (Functions and General) Regulations 1996 Part 4 ocal Government (Financial Management) Regulations 1996 Part 4 state Records Act 2000	
Associated Documentation:	Shire of Mingenew Delegations Register Shire of Mingenew Code of Conduct	
Review Responsibility:	Governance Officer Finance and Administration Manager	
<b>Delegation:</b> NOTE: This policy is based on the WA	Chief Executive Officer LGA Model Purchasing Policy Template (as at Feb 2021) with some modifications	

Last Adopted: April 2020

1.3.1

### Policy Statement:

The Shire of Mingenew (the Shire) is committed to applying the objectives, principles and practices outlined in this Policy, to all purchasing activity and to ensuring alignment with the Shire's strategic and operational objectives.

#### 1. PURCHASING

#### 1.1 OBJECTIVES

The Shire's purchasing activities will:

- a) Achieve best value for money that considers sustainable benefits, such as; environmental, social and local economic factors;
- b) Foster economic development by maximising participation of local businesses in the delivery of goods and services;
- c) Use consistent, efficient and accountable purchasing processes and decision-making, including; competitive quotation processes, assessment of best value for money and sustainable procurement outcomes for all purchasing activity, including tender exempt arrangements;
- d) Apply fair and equitable competitive purchasing processes that engage potential suppliers impartially, honestly and consistently;
- e) Commit to probity and integrity, including the avoidance of bias and of perceived and actual conflicts of interest;
- f) Comply with the Local Government Act 1995, Local Government (Functions and General) Regulations 1996, other relevant legislation, Codes of Practice, Standards and the Shire's Policies and procedures;
- g) Ensure purchasing outcomes contribute to efficiencies (time and resources) for the Shire;
- Identify and manage risks arising from purchasing processes and purchasing outcomes in accordance with the Shire's Risk Management framework;

- i) Ensure records evidence purchasing activities in accordance with the State Records Act 2000 and the Shire's Record Keeping Plan;
- j) Ensure confidentiality that protects commercial-in-confidence information and only releases information where appropriately approved.

### 1.2 ETHICS & INTEGRITY

The Shire's Codes of Conduct apply when undertaking purchasing activities and decision making, requiring Council Members and employees to observe the highest standards of ethics and integrity and act in an honest and professional manner at all times.

### 1.3 VALUE FOR MONEY

The Shire will apply value for money principles in critically assessing purchasing decisions and acknowledges that the lowest price may not always be the most advantageous.

### 1.3.1 Assessing Value for Money

Value for money assessment will consider:

- a) All relevant Total Costs of Ownership (TCO) and benefits including; transaction costs associated with acquisition, delivery, distribution, and other costs such as, but not limited to; holding costs, consumables, deployment, training, maintenance and disposal;
- b) The technical merits of the goods or services being offered in terms of compliance with specifications, contractual terms and conditions and any relevant methods of assuring quality. This includes but is not limited to an assessment of compliances, the supplier's resource availability, capacity and capability, value-adds offered, warranties, guarantees, repair and replacement policies and response times, ease of inspection and maintenance, ease of after sales service, ease of communications, etc.
- c) The supplier's financial viability and capacity to supply without the risk of default, including the competency of the prospective suppliers in terms of managerial and technical capabilities and compliance history;
- d) A strong element of competition by obtaining a sufficient number of competitive quotations consistent with this Policy, where practicable;
- e) The safety requirements and standards associated with both the product design and the specification offered by suppliers and the evaluation of risk arising from the supply, operation and maintenance;
- f) The environmental, economic and social benefits arising from the goods, services or works required, including consideration of these benefits in regard to the supplier's operations, in accordance with this Policy and any other relevant Shire Policy including Local Economic Benefit; and
- g) Analysis and management of risks and opportunities that may be associated with the purchasing activity, potential supplier/s and the goods or services required.

#### 1.4 PURCHASING THRESHOLDS AND PRACTICES

1.4.1. Defining the Purchasing Value

The Shire will apply reasonable and consistent methodologies to assess and determine Purchasing Values, which ensure:

- a) The appropriate purchasing threshold and practice is applied in all purchasing activities; and
- b) Wherever possible, purchasing activity for the same category of supply is aggregated into single contract arrangements to achieve best value and efficiency in future purchasing activities where the requirements are able to be provided by a single supplier.

A category of supply can be defined as groupings of similar goods or services with common: supply and demand drivers; market characteristics; or suppliers.

### Strategic Purchasing Value Assessments

The Shire will periodically review recent past purchasing activity across its operations to identify categories of supply for which the Shire will have continuing need and which can be aggregated into single contract arrangements in order to achieve best value for money and efficiency in future purchasing activity.

The assessment of aggregated expenditure for the same category of supply capable of being supplied by a single supplier will determine the Purchasing Value threshold applicable to future purchasing activity.

### Individual Purchasing Value Assessments

In any case, where there is no relevant current contract, each purchasing activity is to assess the Purchasing Value based upon the following considerations:

- a) Exclusive of Goods and Services Tax (GST); and
- b) The estimated total expenditure for the proposed supply including the value of all contract extension options and where applicable, the total cost of ownership considerations.
- c) The appropriate length of a contract is to be determined based on market volatility, ongoing nature of supply, historical purchasing evidence and estimated future purchasing requirements.
- d) Requirements must not be split to avoid purchasing or tendering thresholds [F&G Reg. 12].

The calculated estimated Purchasing Value will determine the applicable threshold and purchasing practice to be undertaken.

## 1.4.2. Table of Purchasing Thresholds and Practices

#### Supplier Order of Priority

The Shire will consider and apply, where applicable, the following Supplier Order of Priority:

Priority 1:	<ul> <li>Existing Prequalified Supplier Panel or other Contract</li> <li>Current contracts, including a Panel of Prequalified Suppliers or contracted supplier, must be used where the Shire's supply requirements can be met through the existing contract.</li> <li>If the Shire does not have a current contract relevant to the required supply, then a relevant WALGA PSA may be used.</li> </ul>	
Priority 2:	Local Suppliers Where the Purchasing Value does not exceed the tender threshold and a relevant local supplier is capable of providing the required supply, the Shire will ensure that wherever	

	<ul><li>possible quotations are obtained from local suppliers permanently located within the District as a first priority, and those permanently located within surrounding Districts as the second priority.</li><li>If no relevant local supplier is available, then a relevant WALGA PSA may be used.</li></ul>			
Priority 3:	<b>Tender Exempt - WALGA Preferred Supplier Arrangement (PSA)</b> Use a relevant WALGA PSA regardless of whether or not the Purchasing Value will exceed the tender threshold.			
	However, if a relevant PSA exists but an alternative supplier is considered to provide best value, then the CEO, or an officer authorised by the CEO, must approve the alternative supplier. Reasons for not using a PSA may include:			
	<ul> <li>i. Local supplier availability (that are not within the PSA); or,</li> <li>ii. Social procurement – preference to use Aboriginal business or Disability Enterprise.</li> </ul>			
	If no relevant WALGA PSA is available, then a relevant State Government CUA may be used.			
Priority 4:	Tender Exempt - WA State Government Common Use Arrangement (CUA)Use a relevant CUA regardless of whether or not the Purchasing Value will exceed tender threshold.			
	However, if a relevant CUA exists, but an alternative supplier is considered to provide best value for money, then the proposed alternative supplier must be approved by the CEO, or an officer authorised by the CEO.			
	If no relevant CUA is available, then a Tender Exempt [F&G Reg.11(2)] arrangement may be used.			
Priority 5:	<b>Other Tender Exempt arrangement</b> [ <i>F&amp;G Reg. 11(2)</i> ] Regardless of whether or not the Purchasing Value will exceed the tender threshold, the Shire will investigate and seek quotations from tender exempt suppliers, and will specifically ensure that wherever possible quotations are obtained from a WA Disability Enterprise and / or an Aboriginal Owned Business that is capable of providing the required supply.			
Priority 6:	Other Suppliers Where there is no relevant existing contract or tender exempt arrangement available, purchasing activity from any other supplier is to be in accordance with relevant Purchasing Value Threshold and Purchasing Practice specified in the table below.			

## Purchasing Practice Purchasing Value Thresholds

The Purchasing Value, assessed in accordance with clause 1.4.1, determines the Purchasing Practice to be applied to the Shire's purchasing activities.

Purchase Value Threshold (ex GST)	Purchasing Practice	
Up to \$5,000 <i>(ex GST)</i>	Obtain at least one (1) verbal or written quotation from a suitable supplier in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1). The purchasing decision is to be evidenced in accordance with the Shire's internal procedures and its Record Keeping Plan.	
From \$5,001 and up to \$50,000 <i>(ex GST)</i>	<ul> <li>Seek at least two (2) verbal or written quotations from suitable suppliers in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</li> <li>If purchasing from a WALGA PSA, CUA or other tender exempt arrangement, a minimum of two (2) written quotations are to be obtained.</li> <li>The purchasing decision is to be based upon assessment of the supplier's response to: <ul> <li>a brief outline of the specified requirement for the goods; services or works required; and</li> <li>Value for Money criteria, not necessarily the lowest price.</li> </ul> </li> <li>The purchasing decision is to be evidenced in accordance with the Shire's internal procedures and its Record Keeping Plan.</li> </ul>	
From \$50,001 and up to \$100,000 <i>(ex GST)</i>	<ul> <li>Seek at least three (3) written quotations from suitable suppliers in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</li> <li>The purchasing decision is to be based upon assessment of the supplier's response to: <ul> <li>a detailed written specification for the goods, services or works required; and</li> <li>Value for Money criteria, not necessarily the lowest price.</li> </ul> </li> <li>The procurement decision is to be evidenced in accordance with the Shire's internal procedures and its Record Keeping Plan.</li> </ul>	
From \$100,001 and up to \$250,000 <i>(ex GST)</i>	<ul> <li>Seek at least three (3) written responses from suppliers by invitation under a formal Request for Quotation in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</li> <li>The purchasing decision is to be based upon assessment of the supplier's response to: <ul> <li>a detailed written specification for the goods, services or works required; and</li> <li>pre-determined selection criteria that assesses all best and sustainable value considerations.</li> </ul> </li> <li>The procurement decision is to be evidenced in accordance with the Shire's internal procedures and its Record Keeping Plan.</li> </ul>	
Over \$250,000 <i>(ex GST)</i>	<b>Tender Exempt</b> arrangements (i.e. WALGA PSA, CUA or other tender exemption under <i>F&amp;G Reg.11(2)</i> ) require at least three (3) written responses from suppliers by	

Purchase Value Threshold (ex GST)	Purchasing Practice	
Emergency Purchases <i>(Within Budget)</i> Refer to Clause 1.4.3	<ul> <li>invitation under a formal Request for Quotation in accordance with the Supplier Order of Priority detailed in clause 1.4.2(1).</li> <li><u>OR</u></li> <li>Public Tender undertaken in accordance with the <i>Local Government Act 1995</i> and relevant Shire Policy and procedures.</li> <li>The Tender Exempt or Public Tender purchasing decision is to be based on the supplier's response to: <ul> <li>A detailed specification; and</li> <li>Pre-determined selection criteria that assesses all best and sustainable value considerations.</li> </ul> </li> <li>The purchasing decision is to be evidenced in accordance with the Shire's internal procedures and its Record Keeping Plan.</li> <li>Where goods or services are required for an emergency response and are within scope of an established Panel of Pre-qualified Supplier or existing contract, the emergency supply must be obtained from the Panel or existing contract using relevant unallocated budgeted funds.</li> <li>If there is no existing Panel or contract, then clause 1.4.2(1) Supplier Order of Priority will apply wherever practicable.</li> <li>However, where due to the urgency of the situation; a contracted or tender exempt supplier is unable to provide the emergency supply <u>OR</u> compliance with this Purchasing Policy would cause unreasonable delay, the supply may be obtained from any supplier capable of providing the emergency supply. However, an emergency response and must be subject to due consideration of best value and sustainable practice.</li> <li>The rationale for policy non-compliance and the purchasing decision must be evidenced in accordance with the Shire's internal procedures and its Record Keeping Plan.</li> </ul>	
Emergency Purchases (No budget allocation available) Refer for Clause 1.4.3	<ul> <li>Where no relevant budget allocation is available for an emergency purchasing activity then, in accordance with s.6.8 of the <i>Local Government Act 1995</i>, the President must authorise, in writing, the necessary budget adjustment prior to the expense being incurred.</li> <li>The CEO is responsible for ensuring that an authorised emergency expenditure under s.6.8 is reported to the next ordinary Council Meeting.</li> <li>The Purchasing Practices prescribed for Emergency Purchases (within budget) above, then apply.</li> </ul>	
LGIS Services	The suite of LGIS insurances are established in accordance with s.9.58(6)(b) of the <i>Local Government Act 1995</i> and are provided as part of a mutual, where WALGA	

Purchase Value Threshold (ex GST)	Purchasing Practice
Section 9.58(6)(b) Local	Member Local Governments are the owners of LGIS. Therefore, obtaining LGIS insurance services is available as a member-base service and is not defined as a purchasing activity subject to this Policy.
Government Act	Should Council resolve to seek quotations from alternative insurance suppliers, compliance with this Policy is required.

## 1.4.3. Emergency Purchases

Emergency purchases are defined as the supply of goods or services associated with:

- A local emergency and the expenditure is required (within existing budget allocations) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets; OR
- b) A local emergency and the expenditure is required (with no relevant available budget allocation) to respond to an imminent risk to public safety, or to protect or make safe property or infrastructure assets in accordance with s.6.8 of the Local Government Act 1995 and Functions and General Regulation 11(2)(a); OR
- c) A State of Emergency declared under the Emergency Management Act 2005 and therefore, Functions and General Regulations 11(2)(aa), (ja) and (3) apply to vary the application of this policy.

Time constraints, administrative omissions and errors do not qualify for definition as an emergency purchase. Instead, every effort must be made to research and anticipate purchasing requirements in advance and to allow sufficient time for planning and scoping proposed purchases and to then obtain quotes or tenders, as applicable.

## 1.4.4. Inviting Tenders Though not Required to do so

The Shire may determine to invite Public Tenders, despite the estimated Purchase Value being less than the \$250,000 prescribed tender threshold, but only where an assessment determines that the purchasing requirement cannot be met through a tender exempt arrangement and the use of a public tender process will enhance; value for money, efficiency, risk mitigation and sustainable procurement benefits.

In such cases, the tender process must comply with the legislative requirements and the Shire's tendering procedures [F&G Reg.13].

## 1.4.5. Expressions of Interest

Expressions of Interest (EOI) will be considered as a prerequisite to a tender process [F&G Reg.21] where the required supply evidences one or more of the following criteria:

- a) Unable to sufficiently scope or specify the requirement;
- b) There is significant variability for how the requirement may be met;
- c) There is potential for suppliers to offer unique solutions and / or multiple options for how the purchasing requirement may be obtained, specified, created or delivered;

- d) Subject to a creative element; or
- e) Provides a procurement methodology that allows for the assessment of a significant number of potential tenderers leading to a shortlisting process based on non-price assessment.

All EOI processes will be based upon qualitative and other non-price information only.

### 1.4.6. Unique Nature of Supply (Sole Supplier)

An arrangement with a supplier based on the unique nature of the goods or services required or for any other reason, where it is unlikely that there is more than one potential supplier may only be permitted where the:

- a) purchasing value is estimated to be over \$5,000; and
- b) purchasing requirement has been documented in a detailed specification; and
- c) specification has been extensively market tested and only one potential supplier has been identified as being capable of meeting the specified purchase requirement; and
- d) market testing process and outcomes of supplier assessments have been evidenced in records, inclusive of a rationale for why the supply is determined as unique and why quotations / tenders cannot be sourced through more than one potential supplier.

An arrangement of this nature will only be approved for a period not exceeding one (1) year. For any continuing purchasing requirement, the approval must be re-assessed before expiry, to evidence that only one potential supplier still genuinely exists.

#### 1.4.7. Anti-Avoidance

The Shire will not conduct multiple purchasing activities with the intent (inadvertent or otherwise) of "splitting" the purchase value or the contract value, so that the effect is to avoid a particular purchasing threshold or the need to call a Public Tender. This includes the creation of two or more contracts or creating multiple purchase order transactions of a similar nature.

#### 1.4.8. Contract Renewals, Extensions and Variations

Where a contract has been entered into as the result of a publicly invited tender process, then Functions and General Regulation 21A applies.

For any other contract, the contract must not be varied unless

- a) The variation is necessary in order for the goods or services to be supplied and does not change the scope of the contract; or
- b) The variation is a renewal or extension of the term of the contract where the extension or renewal options were included in the original contract.

Upon expiry of the original contract, and after any options for renewal or extension included in the original contract have been exercised, the Shire is required to review the purchasing requirements and commence a new competitive purchasing process in accordance with this Policy.

## 2. SUSTAINABLE PROCUREMENT

The Shire is committed to implementing sustainable procurement by providing a preference to suppliers that demonstrate sustainable business practices (social advancement, environmental protection and local economic benefits).

The Shire will apply Sustainable Procurement criteria as part of the value for money assessment to ensure that wherever possible our suppliers demonstrate outcomes which contribute to improved environmental, social and local economic outcomes.

Sustainable Procurement can be demonstrated as being internally focussed (i.e. operational environmental efficiencies or employment opportunities and benefits relating to special needs), or externally focussed (i.e. initiatives such as corporate philanthropy).

Requests for Quotation and Tenders may include a request for Suppliers to provide information regarding their sustainable practices and/or demonstrate that their product or service offers enhanced sustainable benefits.

## 2.1. LOCAL ECONOMIC BENEFIT

The Shire promotes economic development through the encouragement of competitive participation in the delivery of goods and services by local suppliers permanently located within its District first, and secondly, those permanently located within its broader region. As much as practicable, the Shire will:

- a) consider buying practices, procedures and specifications that encourage the inclusion of local businesses and the employment of local residents;
- b) consider indirect benefits that have flow on benefits for local suppliers (i.e. servicing and support);
- c) ensure that procurement plans, and analysis is undertaken prior to develop Requests to understand local business capability and local content availability where components of goods or services may be sourced from within the District for inclusion in selection criteria;
- d) explore the capability of local businesses to meet requirements and ensure that Requests for Quotation and Tenders are designed to accommodate the capabilities of local businesses;
- e) avoid bias in the design and specifications for Requests for Quotation and Tenders all Requests must be structured to encourage local businesses to bid;
- f) consider the adoption of Key Performance Indicators (KPIs) within contractual documentation that require successful Contractors to increase the number of employees from the District first; and
- g) provide adequate and consistent information to local suppliers.

To this extent, a weighted qualitative criterion will be included in the selection criteria for Requests for Quotation and Tenders where suppliers are located within the boundaries of the Shire, or substantially demonstrate a benefit or contribution to the local economy.

The Shire has adopted a Regional Price Preference Policy, which will be applied when undertaking all tendering activities.

## 2.2. SOCIALLY SUSTAINABLE PROCUREMENT

The Shire will support the purchasing of requirements from socially sustainable suppliers such as Australian Disability Enterprises and Aboriginal businesses wherever a value for money assessment demonstrates benefit towards achieving the Shire's strategic and operational objectives.

A qualitative weighting may be used in the evaluation of Requests for Quotes and Tenders to provide advantages to socially sustainable suppliers in instances where the below tender exemptions are not exercised.

### Aboriginal Businesses

Functions and General Regulation 11(2)(h) provides a tender exemption if the goods or services are supplied by a person on the Aboriginal Business Directory WA published by the Chamber of Commerce and Industry of Western Australia, or Australian Indigenous Minority Supplier Office Limited (trading as Supply Nation), where the consideration under contract is \$250,000 or less, or worth \$250,000 or less.

The Shire will first consider undertaking a quotation process with other suppliers (which may include other registered Aboriginal Businesses as noted in F&G Reg.11(2)(h)) to determine overall value for money for the Shire.

Where the Shire makes a determination to contract directly with an Aboriginal Business for any amount up to and including \$250,000 (ex GST), it must be satisfied through alternative means that the offer truly represents value for money.

If the contract value exceeds \$50,000 (ex GST), a formal Request for Quotation will be issued to the relevant Aboriginal business. The rationale for making the purchasing decision must be recorded in accordance with the Shire's Record Keeping Plan.

#### Australian Disability Enterprises

Functions and General Regulation 11(2)(i) provides a tender exemption if the goods or services are supplied by an Australian Disability Enterprise.

The Shire will first consider undertaking a quotation process with other suppliers (which may include other Australian Disability Enterprises) to determine overall value for money for the Shire.

Where the Shire makes a determination to contract directly with an Australian Disability Enterprise for any amount, including an amount over the Tender threshold of \$250,000 (ex GST), it must be satisfied through alternative means that the offer truly represents value for money.

If the contract value exceeds \$50,000 (ex GST), a formal Request for Quotation will be issued to the relevant Aboriginal business. The rationale for making the purchasing decision must be recorded in accordance with the Shire's Record Keeping Plan.

## 2.3. ENVIRONMENTALLY SUSTAINABLE PROCUREMENT

The Shire will support the purchasing of recycled and environmentally sustainable products whenever a value for money assessment demonstrates benefit toward achieving the Shire's strategic and operational objectives.

Qualitative weighted selection criteria may be used in the evaluation of Requests for Quote and Tenders to provide advantages to suppliers which:

- a) demonstrate policies and practices that have been implemented by the business as part of its operations;
- b) generate less waste material by reviewing how supplies, materials and equipment are manufactured, purchased, packaged, delivered, used, and disposed; and

c) encourage waste prevention, recycling, market development and use of recycled/recyclable materials.

## 3. RECORD KEEPING

All Local Government purchasing activity, communications and transactions must be evidenced and retained as local government records in accordance with the State Records Act 2000 and the Shire's Record Keeping Plan.

In addition, the Shire must consider and will include in each contract for the provision of works or services, the contractor's obligations for creating, maintaining and where necessary the transferral of records to the Shire relevant to the performance of the contract.

## 4. PURCHASING POLICY NON-COMPLIANCE

The Purchasing Policy is mandated under the Local Government Act 1995 and Regulation 11A of the Local Government (Functions and General) Regulations 1996 and therefore the policy forms part of the legislative framework in which the Local Government is required to conduct business.

Where legislative or policy compliance is not reasonably able to be achieved, records must evidence the rationale and decision-making processes that substantiate the non-compliance.

Purchasing activities are subject to internal and external financial and performance audits, which examine compliance with legislative requirements and the Shire's policies and procedures.

If non-compliance with; legislation, this Purchasing Policy or the Code of Conduct, is identified it must be reported to the Chief Executive officer or the Finance and Administration Manager

A failure to comply with legislation or policy requirements, including compliance with the Code of Conduct when undertaking purchasing activities, may be subject to investigation, with findings to be considered in context of the responsible person's training, experience, seniority and reasonable expectations for performance of their role.

Where a breach is substantiated it may be treated as:

- a) an opportunity for additional training to be provided;
- b) a disciplinary matter, which may or may not be subject to reporting requirements under the Public Sector Management Act 1994; or
- c) where the beach is also identified as potentially serious misconduct, the matter will be reported in accordance with the Corruption, Crime and Misconduct Act 2003. The Shire of Mingenew (the "Shire") is committed to delivering the objectives, principles and practices outlined in this Policy, when purchasing goods, services or works to achieve the Shire's strategic and operational objectives.

This policy complies with the *Local Government (Functions and General) Regulations 1996* (The Regulations).



#### COUNCIL POLICY Finance

Title: Adopted:	1.3.7 REGIONAL PRICE PREFERENCE <2009
Reviewed:	February 2019
	March 2018- Inserted into Management Procedure 1.3.1.
	January 2020 – Clarified Midwest region boundary
	16 December 2020
Associated Legislation:	Local Government Act (1995) as amended;
	State Records Act 2000
	Local Government (Functions and General) Regulations 1996, Part 4A
Associated	Shire of Mingenew Code of Conduct
Documentation:	Shire of Mingenew Policy 1.3.1- Purchasing
	Shire of Mingenew Management Procedure 1.3.1- Purchasing
Review Responsibility:	Council
	Previous Policy Number/s – 3008

1.3.7

Objective:

- To ensure Shire of Mingenew residents and all relevant stakeholders are provided a fair and meaningful opportunity to participate and contribute to problem solving, planning and decisions made by the Council and its staff.
- To provide effective stakeholder engagement for productive relationships, improved dialogue and deliberation, and ultimately, better democracy.

#### Policy:

In order to promote sub-regional development, the Shire of Mingenew will provide a price preference to regional suppliers (located within the stipulated areas) when evaluating and awarding contracts with Council via the Tendering Process.

Any price preference provided will comply with part 4A of the Local Government (Functions and General) Regulations 1995 as amended.

Price preference will be given to all suppliers submitting conforming tenders for the supply of goods and services (including Construction (building) Services) to the Shire of Mingenew, unless Council resolves that this policy does not apply to a particular tender.

The following price preference will be given to suppliers submitting tenders assessed in relation to this policy:

<u>Goods and Services</u> – up to a maximum price reduction of \$50,000 unless a lower amount is stipulated in the tender document.

Stipulated Area-

1. 10% to all suppliers located within the Shire of Mingenew



- 2. 5% to all suppliers located within the Shires of Coorow, Carnamah, Perenjori, Three Springs, Morawa and Irwin
- 3. 2.5% to all suppliers located within the Midwest Region

<u>Construction (building) Services –</u> up to a maximum price reduction of \$50,000 unless a lower amount is stipulated in the tender document.

Stipulated Area-

- 1. 5% to all suppliers located within the Shire of Mingenew
- 2. 2.5% to all suppliers located within the Shires of Coorow, Carnamah, Perenjori, Three Springs, Morawa and Irwin.
- 3. 1% to all suppliers located within the Midwest Region

<u>Goods and Services, including Construction (building) Services tendered for the first time where Council</u> <u>previously supplied the Goods or Services</u> – up to a maximum price reduction of \$500,000 unless a lower amount is stipulated in the tender document.

Stipulated Area-

- 1. 10% to all suppliers located within the Shire of Mingenew
  - 2. 5% to all suppliers located within the Shires of Coorow, Carnamah, Perenjori, Three Springs, Morawa and Irwin
  - 3. 2.5% to all suppliers located within the Midwest Region

The Midwest Region incorporates the following 17 local governments: Carnamah, Chapman Valley, Coorow, Cue, Greater Geraldton, Irwin, Meekatharra, Mingenew, Morawa, Mount Magnet, Murchison, Northampton, Perenjori, Sandstone, Three Springs, Wiluna and Yalgoo.

Regional Price Preference will only be given to suppliers located within the stipulated areas for more than six months prior to the advertising date of the tender.

<u>Located within the stipulated areas</u> is defined as having a physical presence in the way of a shop, depot, outlet, headquarters or other premises where the goods or services specifically being provided are supplied from. This does not exclude suppliers whose registered business is located outside the stipulated area but undertake the business from premises within the stipulated area. An example is a franchisee of a multinational company.

Only those goods and services identified in the tender as being from a source located within the stipulated area will have the price preference applied when assessing the tender.

Price is only one factor that Council considers when evaluating a tender. There is nothing contained within this policy that compels Council to accept the lowest tender or any tender based on price offered.



# **REQUEST FOR TENDERS**

# RFT1 22-23

# Mingenew Tennis Clubhouse Replacement

# Deadline for lodgement of Tenders: 10:00am WST 4 July 2022

# CONTENTS

PART 1	OVERVIEW	7
1.1	Request for Tenders	7
1.2	Tender Documents	7
1.3	How to Prepare Your Tender	7
PART 2	CONDITIONS OF TENDERING	8
2.1	Definitions	8
2.2	Conditions of Tendering	8
2.3	Contact Officer	9
2.4	Lodgement of Tenders by Deadline	9
2.5	Form of Tender	9
2.6	Manner of Lodgement	9
2.7	Tenderlink Access	. 10
2.8	Disclaimer and acknowledgement	. 10
2.9	Confidentiality of Tender Information	. 10
2.10	Tender Validity Period	. 10
2.11	Alternative Tenders	. 11
2.12	Tenders to Inform Themselves	. 11
2.13	Warranties	. 12
2.14	Joint Tenders	. 12
2.15	Exclusion of liability	. 12
2.16	Alterations	. 12
2.17	Price Basis	. 13
2.18	In House Tenders	. 13
2.19	Risk Assessment	. 13
2.20	Tender Opening	. 13
2.21	Rejection of Tenders	. 14
2.22	Evaluation of Tenders	. 14
2.22	2.1 Clarification of Tenders	. 14
2.22	2.2 Evaluation Team	. 14
2.22	2.3 Evaluation Stages	. 14
2.22	2.4 Evaluation Stage One: Compliance Stage	. 15
2.22	6	
2.23	Principal's Policies	. 15

2.24	Acceptance of Tenders	15	
2.25	Notification and Formation of Contract		
2.26	Intellectual Property	16	
2.27	Confidentiality	17	
2.28	Canvassing of Officials	17	
2.29	Conflict of Interest	17	
2.30	Identify of the Tenderer	17	
2.31	Costs of Tendering		
2.32	Request for Debriefing	18	
PART 3	SPECIFICATIONS	19	
PART 4	GENERAL CONDITIONS OF CONTRACT	116	
4.1	Definitions	116	
4.2	Interpretation	123	
4.3	Order of Precedence	124	
4.4	Contractor's General Obligations	124	
4.5	Representatives	124	
4.6	Notices	125	
4.7	Complying with Legal Requirements	126	
4.8	Safety Obligations	126	
4.9	Assignment and Subcontracting	127	
4.10	Compliance with directions	127	
4.11	Indemnity	127	
4.12	Intellectual Property Rights	128	
4.13	Orders	129	
4.14	Conduct of Staff	130	
4.15	Plant and Equipment	130	
4.16	Time for Performance and Extensions of Time	130	
4.17	Liquidated Damages		
4.18	Variation	133	
4.19	Suspending this Contract	135	
4.20	Warranties	135	
4.21	Variation to Contract Terms	135	
4.22	Price Basis		
4.23	Currency		
4.24	Payment and Invoicing		
4.25	Confidential Information and Publicity	137	
RFT1 22-23 Mingenew Tennis Clubhouse Replacement			

4.26	Goods and Services Tax	138		
4.27	Consequential Loss			
4.28	Force Majeure Event13			
4.29	Damage to Property13			
4.30	Settlement of Disputes			
4.31	Termination of Contract	141		
4.32	Waivers and Amendments	142		
4.33	No Fettering of Principal's Powers	143		
4.34	Counting of Days	143		
4.35	No Partnership or Relationship	143		
4.36	Entire Agreement	143		
4.37	Rights and Remedies	144		
4.38	Reporting	144		
4.39	Agency	144		
4.40	Insurance	144		
4.40	0.1 General requirements	144		
4.40	0.2 Public liability insurance	147		
4.40	0.3 Workers compensation insurance	147		
4.40	0.4 Professional indemnity insurance	148		
4.40	0.5 Works insurance	148		
4.41	Industrial Awards	148		
4.42	Governing Law	149		
4.43	Proportionate Liability	149		
4.44	Construction Contracts Act	149		
4.45	Personal Property Securities Act	149		
4.46	Application of this Contract	151		
4.47	Restructure of the Principal	151		
4.48	Deduction of Charges or Debts	151		
4.49	Environmental Activities	151		
4.50	Severability			
4.51	Performance	152		
4.52	Site Risks	152		
4.53	Protection of People and Property	153		
4.54	Contractor Warranties	153		
4.55	Access to Site	154		
4.5	5.1 Possession	154		
RFT1 22-	RFT1 22-23 Mingenew Tennis Clubhouse Replacement			

4.5	5.2	Access for the Principal and Others	154
4.5	5.3	Minerals, fossils and other relics	154
4.5	5.4	Compliance with heritage requirements	155
4.56	Set	ting out the Works	155
4.5	6.1	Setting Out	155
4.5	6.2	Errors in Setting Out	155
4.5	6.3	Care of Survey Marks	155
4.57	Cor	nstruction Schedule	155
4.58	Ηοι	ırs of Work	156
4.59	Res	sponsibility for the Works	156
4.60	Cov	vering up of Works	156
4.61	Cle	aning Up	157
4.62	Pro	cedure for Completion Tests	157
4.63	Cor	npletion	158
4.64	Red	tification of Defects	159
4.65	Sec	surity	159
4.6	5.1	Provision of security	159
4.6	5.2	Recourse against security	159
4.6	5.3	Reduction and release of security	159
4.6	5.4	Interest	159
4.66	Cor	ntractor's Employee and Subcontractors	160
4.6	6.1	Personal Protective Equipment	160
4.6	6.2	Removal of Contractor employees	160
4.67	Bill	of Quantities	160
4.6	7.1	Priced bill of quantities	160
4.6	7.2	Quantities	160
4.6	7.3	Adjustment for Actual Quantities	161
Scheo	dule	1 - Contract Details	162
Scheo	dule	2 – Special Conditions	165
Scheo	dule	3 – Variation Form	166
PART 5	Т	ENDER FORM	167
5.1	Ter	iderer's Offer	167
5.2	Ter	der Documents	168
5.3	Eva	luation Criteria	168
5.3.	.1	Selection Criteria	168
5.3.		Compliance Criteria	168
RFT1 22-	RFT1 22-23 Mingenew Tennis Clubhouse Replacement		

5.3.3	Qualitative Criteria		
5.4 F	Price Schedule		
5.4.1	Price Considerations		
5.4.2	Price Basis		
5.4.3	GST		
5.4.4	Prices inclusive		
5.4.5	Breakdown of Tender Sum		
5.4.6	Project Timeline		
5.5 A	Additional Information		
Annexure A			
Formal	Formal Instrument of Agreement		

# PART 1 OVERVIEW

# 1.1 Request for Tenders

The Principal requests the submission of tenders by suitably qualified and experienced contractors for building construction works to replace the Mingenew Tennis Clubhouse which was destroyed by Tropical Cyclone Seroja.

A detailed description of the Principal's requirements is contained in Part 3 Specifications.

## **1.2 Tender Documents**

This Request for Tender is comprised of the following parts:

Part 1	Overview (Read and Keep)
Part 2	Conditions of Tendering (Read and Keep)
Part 3	Specifications (Read and Keep)
Part 4	General Conditions of Contract (Read and Keep)
Part 5	Tender Form (Complete and Return)
Annexure A	Formal Instrument of Agreement (Read and Keep)
Annexure B	Special Conditions of Contract (Read and Keep)

## 1.3 How to Prepare Your Tender

- (1) Carefully read all parts of this Request.
- (2) Ensure you understand the Requirements.
- (3) Complete the Tender Form contained in Part 5 in all respects and attach any associated documents.
- (4) Ensure the Tender Form are signed by the authorised Tenderer's representative
- (5) Lodge the Tender as required by **clause 2.6** before the Deadline.

# PART 2 CONDITIONS OF TENDERING

# 2.1 Definitions

In this Request, the following words and expressions have the meanings specified in the table below:

TERM	DEFINITION
Annexures	Any contract specification documents annexed to this Request.
Attachments	The documents attached by a Tenderer as part of a Tender.
Contact Officer	Means the person referred to in clause 2.3.
Contractor	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, including the executors or administrators, successors and assignments of such person or persons, corporation or corporations.
Deadline	The deadline for lodgement of Tenders.
General Conditions of Contract	Means the General Conditions of Contract as are contained in Part 4 of this Request.
Principal	Shire of Mingenew
Request	This Request for Tender comprising all Parts and Annexures
Requirements	All requirements, terms and conditions stipulated in this Request.
Selection Criteria	The Criteria used by the Principal in evaluating Tenders as stipulated in Part 5 of this Request.
Site	Site or sites on which works are proposed to be undertaken or goods or services provided pursuant to this Request
Special Conditions	The additional contractual terms contained in an Annexure labelled 'Special Conditions of Contract' (if applicable).
Specifications	The specifications contained in Part 3 of this Request.
Tender	The completed Tender Form, Response to the Selection Criteria and Attachments submitted by a Tenderer
Tender Documents	The documents referred to in clause 1.2
Tenderer	Someone who has or intends to submit a Tender to the Principal.

# 2.2 Conditions of Tendering

The Conditions of Tender are the conditions under which the Principal will receive and evaluate Tenders. The Principal may reject a Tender that does not comply with all terms of the Request.

# 2.3 Contact Officer

Tenderers should not rely on any information provided by any person other than the person listed below:

Name: Nils Hay

Phone: 08 9928 1102

Email: <u>ceo@mingenew.wa.gov.au</u>

Tenderers must direct all communications concerning this Request to the above contact.

The Principal reserves the right to:

- (a) not answer a question asked by a Tenderer; and
- (b) provide any answers to questions raised by a Tenderer to any other Tenderer, on a non-attributable basis.

## 2.4 Lodgement of Tenders by Deadline

- (1) Tenders must be received by the Principal by the Deadline.
- (2) The Deadline for this Request is 10:00am on Monday 4 July 2022 (Western Standard Time).
- (3) Tenderers should allow sufficient time for Tender lodgement, including time that may be required for any problem analysis and resolution prior to the Deadline.

## 2.5 Form of Tender

- (1) The Tenders must include the tender number and tender title and otherwise comply with the Conditions of Tendering and this Request.
- (2) The Tender document should only be signed by a representative of the Tenderer who is authorised to do so.
- (3) All pages must be numbered consecutively and the Tender must include an index. Any brochures or pamphlets must be attached to the Tender.
- (4) Tenderers are to assume that the Principal has no previous knowledge of the Tenderer's organisation, activities or experience. Tenderers should ensure that sufficient information is included in their Tender to thoroughly address the Requirements and the Selection Criteria.

## 2.6 Manner of Lodgement

(1) Tenders must be submitted electronically by:

- (a) Email to tenders@mingenew.wa.gov.au
- (2) In submitting their Tender electronically, Tenderers represent that they have taken reasonable steps to ensure that electronic Tender files are free of viruses, worms or other disabling features which may affect the Principal's provider portal and/or the Principal's computing environment. Responses found to contain viruses, worms or other disabling features may be excluded from the evaluation process.
- (3) Tenders submitted in any manner other than that described in subclause (1) **will not** be accepted.

# 2.7 Tenderlink Access

Not used.

# 2.8 Disclaimer and acknowledgement

Tenderers acknowledge that:

- (a) although the Principal has implemented security measures, the Principal does not warrant that unauthorised access to information and data transmitted via the internet by the Tenderer will not occur; and
- (b) lodgement of their Tender on time and in accordance with these Conditions of Tendering is entirely their responsibility; and
- (c) the Principal will not be liable for any loss, damage, costs or expenses incurred by Tenderers or any other person if, for any reason, a Tender or any other material or communication relevant to this Request is not received on time, is corrupted or altered or otherwise is not received as sent, cannot be read or decrypted, or has its security or integrity compromised.

# 2.9 Confidentiality of Tender Information

- (1) The Principal will treat all information provided in a Tender as confidential and will not use it other than for purposes of, or related to, the Tender evaluation or as otherwise required by law or this Request.
- (2) Documents and other information relevant to the contract may be disclosed when required by law under the *Freedom of Information Act 1992*, under a Court order or this Request.

# 2.10 Tender Validity Period

All Tenders will remain valid for:

(a) a period of ninety (90) days from the Deadline; or

(b) forty-five (45) days from the Principal's resolution for determining the outcome of this procurement process,

whichever is the later, unless extended on mutual agreement between the Principal and the Tenderer in writing.

# 2.11 Alternative Tenders

- (1) The term "Alternative Tender" within this Request shall mean:
  - (a) Tenders submitted and identified by a Tenderer as an "Alternative Tender";
  - (b) Tenders submitted other than in accordance with the Requirements; or
  - (c) Tenders not submitted using the Tender Form.
- (2) If a Tenderer believes that they can achieve a comparable outcome in a more costeffective manner, they are encouraged to submit an Alternative Tender.
- (3) Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases be clearly marked 'Alternative Tender'. The document must clearly specify wherever it deviates from the Requirements, and state the reasons for each deviation. It must demonstrate, in detail, how the Alternative Tender will benefit the Principal.
- (4) The Principal may in its absolute discretion reject any Alternative Tender as a nonconforming Tender.

## 2.12 Tenders to Inform Themselves

- (1) Tenderers will be deemed to have:
  - (a) examined this Request and any other information available in writing to Tenderers for the purpose of tendering;
  - (b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
  - (c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Requirements and of all matters and things necessary for the due and proper performance and completion of the work described therein;
  - (d) examined the Site and surroundings; and
  - (e) satisfied themselves they have a full set of the Tender Documents and all relevant Annexures.

# 2.13 Warranties

By submitting a Tender, a Tenderer warrants that:

- (a) all information contained in the Tender is accurate;
- (b) the Tender is in all respects an independent Tender; and
- (c) in the preparation of the Tender, no collusion has taken place between the Tenderer and any other Tenderer or, except to the extent specifically disclosed in the Tender, between the Tenderer and any other interested party.

# 2.14 Joint Tenders

Where a Tender is lodged in the names of two or more persons or corporations, either by way of a joint venture, partnership or otherwise, irrespective of the relationship between the parties, each person or corporation shall be jointly and severally bound by the terms of the Tender and, if the Tender is accepted, shall be jointly and severally liable under any resulting agreement with the Principal.

# 2.15 Exclusion of liability

Tenderers acknowledge and agree that the Principal will not be liable to any Tenderer on the basis of promissory estoppel, quantum meruit or other contractual, quasi contractual or restitutionary grounds whatsoever or in negligence as a consequence of any matter relating or incidental to a Tenderer's participation in this Request for Tender process including any circumstances where:

- (a) a tenderer is not invited to participate in any subsequent process following completion of this Request;
- (b) the Principal varies or terminates the Request;
- (c) the Principal decides not to contract for all or any of the Requirements; or
- (d) the Principal exercises or fails to exercise any of its other rights under or in relation to this Request.

## 2.16 Alterations

- (1) The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.
- (2) The Principal may issue an addendum to all registered Tenderers where matters of significance make it necessary to amend or supplement the issued Request documents before the Deadline.

(3) Any addendum will be issued through <u>http://mingenew.wa.gov.au/tenders</u>, or such other appropriate means that will reasonably ensure that all potential Tenderers are given fair and equal access to information relating to this Request.

# 2.17 Price Basis

The Principal is to receive tenders in which the tendered rates will remain fixed, unless other price variation provision is available in this Request documentation.

# 2.18 In House Tenders

The Principal does not intend to submit an in-house Tender.

## 2.19 Risk Assessment

- (1) The Principal may have access to and give consideration to:
  - (a) any risk assessment undertaken by any credit rating agency;
  - (b) any financial analytical assessment undertaken by any agency; and
  - (c) any information produced by the Bank, financial institution, or accountant of a Tenderer;

so as to assess that Tender and may consider such materials in the assessment of Tenders.

- (2) Tenderers may be required to provide to the Principal (or its nominated agent) upon request all such information as the Principal reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to satisfy the Requirements and meet their obligations under any proposed Contract. The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from the nominated agent may contact any Tenderer concerning the financial information that the Tenderer is required to provide.
- (3) The financial assessment is specifically for use by the Principal for the purpose of assessing Tenders and will be treated as strictly confidential.

# 2.20 Tender Opening

- (1) Tenders will be opened in the Principal's offices at the same day of Deadline. All Tenderers and members of the public may attend or be represented at the opening of Tenders.
- (2) The names of the persons who submitted the Tender by the Deadline will be read out at the Tender Opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

# 2.21 Rejection of Tenders

- (1) A Tender will be rejected without consideration in the event that:
  - (a) it is not submitted before the Deadline; or
  - (b) it is not submitted in the manner specified in the Request.
- (2) A Tender may be rejected without consideration in the event that it fails to comply with any Requirements of the Request.

# 2.22 Evaluation of Tenders

#### 2.22.1 Clarification of Tenders

- (1) Following the receipt of Tenders, the Principal, in its absolute discretion, may:
  - use any relevant information obtained in relation to a Tender (whether through this Request, previous experience with a Tenderer, it's nominated staff or sub-contractors or by independent inquiry) in the evaluation of Tenders;
  - (b) enter into discussions or negotiations for minor variations with any one or more Tenderers; and
  - (c) seek clarification or additional information from any Tenderer.
- (2) Tenderers must comply with any requests to provide additional information or clarification in relation to their Tender within the timeframe specified.
- (3) The Principal may include or exclude from consideration in the evaluation of Tenders any additional information provided by Tenderers, whether received in response to a request or otherwise.

#### 2.22.2 Evaluation Team

The Tenders will be evaluated by an evaluation team, which may include external experts, as selected by the Principal in its absolute discretion.

#### 2.22.3 Evaluation Stages

- (1) Unless otherwise determined by the Principal in its discretion, the evaluation process will have two consecutive stages comprising:
  - (a) Evaluation Stage One: Compliance Stage
  - (b) Evaluation Stage Two: Assessment Stage

as described further below.

#### PART TWO – READ AND KEEP THIS PART

#### 2.22.4 Evaluation Stage One: Compliance Stage

- (1) This stage will involve scrutinising the Tenders against compliance criteria referred in Part Five of this Request.
- (2) Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of 'No' against any criterion may eliminate the Tender from further consideration. It is Tenderer's responsibility to ensure that all documents to support their response to Compliance Criteria are provided.
- (3) Tenderers who do not meet the compliance criteria may not be evaluated for the next stage of evaluation (Evaluation Stage Two Selection Stage).

#### 2.22.5 Evaluation Stage Two: Assessment Stage

- (1) This stage will involve scrutinising the Tenders against selection criteria referred in Part 5 of this Request.
- (2) A scoring system will be used as part of the assessment of the selection criteria. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the relevant criterion. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Tender will be used as one of the factors in the final assessment of the selection criteria and in the overall assessment of value for money.
- (3) During the Assessment Stage the Tenderers may be short listed and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution offered and/or open premises for inspection where applicable.
- (4) Referees may also be contacted prior to the selection of the successful Tender.
- (5) Risk assessment of the Tenders will additionally form an integral part of the Assessment Stage.

## 2.23 **Principal's Policies**

The following policies of the Principal may also be considered in the Assessment Stage and may affect selection of a Tender:

Regional Price Preference Policy

The Principal's policies are available at the following link:

https://mingenew.wa.gov.au/public-documents/

## 2.24 Acceptance of Tenders

(1) The Principal may accept a Tender in whole or in part.

#### PART TWO – READ AND KEEP THIS PART

(2) The Principal is not bound to accept the lowest price Tender or the highest ranked Tender according to the Selection Criteria and may decline to accept any Tender.

## 2.25 Notification and Formation of Contract

- (1) No Tender is to be deemed accepted until the Principal has notified the successful Tenderer in writing that its Tender has been accepted.
- (2) Upon acceptance of a Tender by the Principal, the completed Tender Documents and any correspondence between the successful Tenderer and the Principal in which the Principal gives written notice of its acceptance of any minor variation to the Specifications shall constitute the contract between the Principal and the Tenderer.
- (3) The successful Tenderer shall then be required to execute a formal agreement in the form included in **Annexure A** with seven (7) days of receipt of the notice of acceptance.
- (4) All Tenderers will be advised of the Tender outcome in writing by the Principal within ten (10) working days of a Tender being accepted by the Principal.

# 2.26 Intellectual Property

- (1) The Request and such intellectual property rights as may exist in the information contained in the Request shall remain the property of the Principal. A Tenderer is only permitted to use the Request for the purpose of preparing a Tender in response and for the purpose of conducting any contract negotiations with the Principal.
- (2) The Tenderer authorises the Principal, its officers, employees, agents and advisers to adapt, modify, disclose, reproduce or do anything else necessary (in the Principal's sole opinion) to the whole or any portion of the Tender for the purposes of:
  - (a) Tender evaluation;
  - (b) negotiating and/or entering into a contract with any party for the delivery of the Principal's Requirements or similar requirements;
  - (c) managing a contract with a successful Tenderer (if any); or
  - (d) anything else related to the above purposes, including governmental and parliamentary auditing and reporting requirements.
- (3) All documents, materials, articles and information submitted by the Tenderer as part of, or in support of, the Tender, will be become, upon submission, the absolute property of the Principal, and will not be returned to the Tenderer at the conclusion of the this procurement process, provided that the Tenderer is entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

# 2.27 Confidentiality

- (1) The Tenderer must keep confidential all information concerning the Principal, received as a result of, or in connection with, the submission of a Tender which the Principal has indicated to Tenderers is confidential or which Tenderers know or ought to know is confidential.
- (2) The Principal reserves the right to require that information concerning the Principal, received by a Tenderer as a result of, or in connection with, the submission of a Tender (and copies of such information) be either destroyed by the Tenderer or alternatively returned to the Principal at any time. The Principal may also require that the Tenderer provide evidence (in a form satisfactory to the Principal) that any Principal's requirements in this respect have been fully complied with.

## 2.28 Canvassing of Officials

If the Tenderer, whether personally or by an agent, canvasses any of the Principal's councillors or officers (as the case may be) with a view to influencing the acceptance of any Tender made by it or any other Tenderer, then regardless of such canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit the Tender submitted by the Tenderer from consideration.

# 2.29 Conflict of Interest

- (1) Tenderers must not place themselves in a position which may, or does give rise to a conflict of interest between themselves and the Principal during the Tender Process.
- (2) If any actual or potential conflict of interest with the Principal arises at any time during the Tender Process, the Tenderer is to immediately notify the Principal in writing.
- (3) In the event of an actual or potential conflict of interest the Principal may, in its absolute discretion:
  - (a) resolve any actual or potential conflict of interest with a Tenderer; or
  - (b) refuse to consider the Tender lodged by such a Tenderer; or
  - (c) take any other action it considers appropriate.

## 2.30 Identify of the Tenderer

- (1) The identity of the Tenderer is fundamental to the Principal.
- (2) The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 5 Tender Form and whose execution appears on the Tender Form in Part 5 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

# 2.31 Costs of Tendering

The Principal will not be liable for payment to the Tenderer for any costs, losses or expenses incurred by the Tenderer in preparing their Tender.

# 2.32 Request for Debriefing

- (1) If requested to do so, the Principal will provide a debriefing for an unsuccessful Tenderer after either:
  - (a) a contract has been exchanged for the supply of the Requirements; or
  - (b) the Principal decides not to award a contract for the supply of the Requirements.
- (2) A Tenderer who would like a debriefing should contact the Contact Officer.

# PART 3 SPECIFICATIONS

See attached Construction Drawings.

# PART 4 GENERAL CONDITIONS OF CONTRACT

# PART A – GENERAL

## 4.1 Definitions

In this Contract, except where the context otherwise requires:

**'Approval'** means any certificate, licence, consent, permit, approval, authority or requirement of any Authority or any organisation having jurisdiction in connection with the provision of the Work under the Contract.

**'Australian Statistician'** means the person appointed as the Australian Statistician under the *Australian Bureau of Statistics Act 1975* (Cth) (and acting in that capacity).

**'Authority'** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

**'Business Days'** means a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December.

'Clause' means a clause of these General Conditions unless otherwise indicated.

**'Completion'** means that stage in the carrying out and completion of the Works when the Principal determines that the Works are complete and meet the requirements of this Contract except for Minor Defects and all certificates, documents, warranties, guarantees and other information which, in the Principal's opinion, are essential for the use, operation and maintenance of the Works have been supplied to the Principal.

**'Completion Certificate'** means in relation to Works, a certificate issued by the Principal under **clause 4.63** evidencing the Date of Completion.

'Completion Date' means the date for Completion specified in the Contract Details.

'Confidential Information' means all of the Principal's information which:

- (a) is disclosed or otherwise made available to, or acquired directly or indirectly by, the Contractor at any time;
- (b) relates to the Principal's or any Local Government's past, existing or future business, strategic plans or operations, finances, or customers (including any information that is derived from such information);
- (c) is in oral or visual form, or is recorded or stored in a Document, and includes this Contract,

but does not include information which:

#### PART FOUR - READ AND KEEP THIS PART

- (d) is or becomes generally and publicly available other than as a result of a breach of this Contract;
- (e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- (f) has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

**'Consequential Loss'** means any loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

'Construction Contracts Act' means the Construction Contracts Act 2004 (WA).

**'Construction Schedule'** means a written statement showing the dates by which, or the times within which, the various stages or portions of the works under contract are to be carried out or completed, which shall be deemed a Contract Document.

**'Consumer Price Index'** means the index published by the Australian Bureau of Statistics known as the table 2 index - 6401.0 (weighted average of eight cities for all groups) or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

**'Contamination'** has the meaning given to "contaminated" in section 4 of the *Contaminated Sites Act 2003.* 

**'Contract'** means the contract comprising:

- the Request;
- the Tender;
- all written variations and clarifications agreed by the Principal and the Tenderer;
- any letter of intention to award a contract to the successful Tenderer;
- the Letter of Acceptance;
- any Instrument of Agreement; and,
- the Purchase Order(s).

'Contract Details' means the contract information in Schedule 1 to these General Conditions.

**'Contract Price'** means the prices or rates specified as such in the Contract Details but excluding any additions or deductions, which may be required to be made pursuant to this Contract.

#### PART FOUR - READ AND KEEP THIS PART

**'Contractor'** means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assignments of such person or persons, corporation or corporations.

**'Contractor's Personnel'** means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor.

**'Contractor's Representative'** is the person named as such in the Contract Details or any replacement person notified to the Principal.

'Contractor's Technical Material' means all Technical Material which is:

- (a) prepared, or required to be prepared, by or on behalf of the Contractor under this Contract;
- (b) delivered, or required to be delivered, by or on behalf of the Contractor to the Principal under this Contract; or
- (c) incorporated into Technical Material described in paragraph (a) or (b) of this definition.

**'Date of Completion'** means the date determined by the Principal's Representative (acting reasonably) as the date upon which Completion was reached as may be evidenced in the Completion Certificate.

#### 'Defect' means:

- (a) any error, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Work under the Contract; or
- (b) any aspect of the Work under the Contract which is not in accordance with the requirements of this Contract,

and "Defective" shall have a corresponding meaning.

**'Defects Liability Period'** means the period of time beginning on the Date of Completion and ending on the expiry of the time stated in the Contract Details.

**'Design Documents'** means the drawings, specifications and other design documents required by this Contract and created (or, where the context requires, to be created) by the Contractor for the delivery of the Works in accordance with the Requirements of this Request.

**'Dispute'** means any dispute or difference between the Parties arising in connection with the subject matter of this Contract.

**'Document'** includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, drawing, specification, material or any other means by which information may be stored or reproduced.

#### PART FOUR - READ AND KEEP THIS PART

'Environment' has the same meaning as under the Environmental Protection Act 1986 (WA).

**'Force Majeure Event'** means any one of the following events which is beyond the control of a Party, could not have been reasonably foreseen by the affected Party and which prevents that Party from discharging an obligation under this Contract, which, in the case of the Contractor, is critical to the Contractor completing the Works by the Completion Date:

- (a) a civil war, insurrection, riot, fire, flood, explosion, earthquake, operation of the forces of nature of catastrophic proportion or an act of a public enemy;
- (b) a general strike or general industrial action of Western Australia wide application, which did not arise at the Contractor's premises and has not been caused by the Contractor; or
- (c) the enactment of any statute or regulation by the parliaments of the Commonwealth of Australia or Western Australia, which the Contractor could not have been aware of prior to the execution of this Contract,

but is not an event which arises from any of the following:

- (d) a breach of a contract, including this Contract, or Law by the Contractor;
- (e) negligence by the Contractor relating to the performance of its obligations under this Contract;
- (f) an occurrence that is a risk assumed by the Contractor under this Contract;
- (g) a shortage or delay in the supply of Goods and/or Services required for the provision of the Work under the Contract; or
- (h) wet or inclement weather.

'Framework Agreement' means a Contract designated as such in the Contract Details.

#### 'Good Industry Practice' means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a Professional Contractor;
- (b) compliance with applicable standards and codes being the standards and codes specified in the Contract or if not specified, the standards and codes as would be applied by a Principal in the circumstances; and
- (c) compliance with applicable Legal Requirements.

**'Goods'** means any goods or materials supplied or required to be supplied in the provision of the Work under the Contract.

**'GST'** means goods and services tax applicable to any taxable supplies as determined under the GST Law.
**'GST Law'** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax and includes any subordinate legislation in respect of these acts.

**'Insurance'** means the insurances which the Contractor is required to obtain under **clause 4.40** and the Contract Details.

**Insurance End Date** means the Date of Completion or such other date as specified by the Principal.

**'Intellectual Property Right'** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, semi conductor, circuit and other eligible layouts, copyright and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time.

**'Intended Purpose'** means the intended purpose of the Work under the Contract as stated in this Contract or as could be reasonably inferred from this Contract by a Professional Contractor.

**'Invoice'** means an invoice which meets all the requirements of a valid tax invoice for GST purposes under the GST Law.

#### 'Law' means:

- (a) any act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of Western Australia and any Local Government (including the Principal); and
- (b) any common or customary law and equity.

#### 'Legal Requirement' means:

- (a) Laws;
- (b) Approvals;
- (c) Requisitions; and
- (d) fees and charges payable in connection with the foregoing.

**'Liquidated Damages'** means the liquidated damages payable pursuant to **clause 4.17** in the amount described in the Contract Details.

**'Local Government'** means any local government established under the Local Government Act 1995 (WA) other than the Principal.

**'Loss'** means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Authority.

**'Minor Defects'** means Defects which do not prevent the Works from being reasonably capable of being used for their stated purpose and which can be rectified by the Contractor without prejudicing the convenient use of the Works by the Principal.

**'Order'** means a purchase order from the Principal to the Contractor which requires the supply of specific Work under the Contract under this Contract where this Contract is a Framework Agreement.

**'Person'** includes a natural person or persons, a corporation, a partnership, a board, a joint venture, an incorporated association, a government, a local government authority and an agency.

'Party' means the Principal and/or the Contractor (as the context requires).

**'Plant and Equipment'** means all materials, plant, equipment, tools, vehicles and machinery necessary and incidental to the performance of the Contractor's obligations under this Contract.

**'PPS Law'** means the PPSA and any amendment made at any time to the *Corporations Act* 2001 (Cth) or any other legislation as a consequence of the PPSA

'PPSA' means the Personal Property Securities Act 2009 (Cth).

'Principal' means [insert local government name].

**'Principal's Personnel'** means directors, employees, agents, contractors or subcontractors of the Principal but does not include the Contractor or the Contractor's Personnel.

**'Principal's Representative'** is the person named as such in the Contract Details or any replacement person notified to the Contractor.

**'Principal's Technical Material**' means any Technical Material provided by the Principal to the Contractor for the purposes of this Contract, or which is copied or derived from Technical Material so provided.

**'Professional Contractor'** means a contractor with skill and experience in, and the expertise and resources necessary to carry out and complete work of a similar nature to the Work under the Contract.

**'Progress Claim'** means a document in a form approved by the Principal evidencing the provision of the Works and which includes the information set out in the Contract Details.

**'RCTI Agreement'** means an agreement in the form provided by the Principal pursuant to which the Parties have agreed that the Principal will issue Recipient Created Tax Invoices in respect of all Goods and/or Services supplied in the provision of the Works.

'Recipient Created Tax Invoice (or RCTI)' has the meaning prescribed in the GST Law.

**'Requisition'** means any order, direction, requisition, notice or other requirement issued by an Authority in relation to the Work under the Contract or the Site;

**'Schedule of Rates'** means any schedule of rates included in the Tender accepted by the Principal.

'Security' means the security specified in Item 11 of the Contract Details.

**'Services'** means services required to be provided by the Contractor in undertaking the Work under the Contract.

'Site' has the meaning given in the Contract Details.

**'Special Conditions'** the additional contractual terms (if any) specified in Schedule 2 to these General Conditions.

**'Specification'** means the technical specification for the Work under the Contract contained in Part 3 of this Request.

'Start Date' has the meaning given in the Contract Details.

**'Subcontractor'** means any person engaged by the Contractor in connection with the provision of the Work under the Contract and includes consultants, subcontractors, suppliers and other contractors.

**'Tax'** means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST or stamp duty.

**'Technical Material'** includes plans, designs, drawings, engineering information, data, specifications, reports, processes, concepts, manuals, specifications, accounts and any other material specified in this Contract.

**'Tender'** means the offer submitted by the Contractor to supply the Work under the Contract and includes associated documentation.

**'Tenderer'** means a Person who offers to deliver the Principal's Requirements by submitting a Tender.

**'Variation'** means any change to the Work under the Contract, including any addition to, reduction in, omission from or change in the extent or quality of the Work under the Contract.

RFT1 22-23 Mingenew Tennis Clubhouse Replacement

**'Variation Form'** means a notice substantially in the form set out in Schedule 3 under which the Principal has directed a Variation in accordance with clause 4.18.

**'Wilful Misconduct'** means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this Contract.

**'Work under the Contract'** means all of the Goods (if any) and all of the Services (if any) and all of the Works (if any) the Contractor is required to provide, as specified in the Contract Details, in accordance with this Contract.

**'Works'** means any physical works to be carried out, completed and handed over by the Contractor in accordance with the Specification and this Contract, including Variations provided for by this Contract.

### 4.2 Interpretation

In this Contract (unless the context otherwise requires):

- (a) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';
- (d) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (e) words in the singular include the plural and vice-versa;
- a reference to any legislation or legislative provision includes any statutory modification or re- enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
- (i) headings are for convenience only and do not affect interpretation of this Contract;
- (j) a promise or undertaking on the part of 2 or more persons binds them jointly and severally; and

(k) no rule of construction applies to the disadvantage of a Party on the basis that the Party drafted this Contract or any part of it.

# 4.3 Order of Precedence

To the extent of any inconsistency between the several parts of this Contract, the following parts are listed in order of precedence:

- (a) the Conditions of Tendering;
- (b) the Specifications;
- (c) the Special Conditions;
- (d) the General Conditions of Contract; and
- (e) the Tender Form.

## 4.4 Contractor's General Obligations

The Contractor agrees with the Principal:

- (a) to perform its obligations under this Contract in a competent and professional manner and to ensure that all staff employed by the Contractor and subcontractors to perform required work are appropriately qualified, skilled and supervised to ensure that the services are provided or the contract completed in a timely and satisfactory manner;
- (b) to comply with any reasonable requests by the Principal in relation to the performance of the Contractor's obligations;
- (c) to accept responsibility for all matters in connection with the employment of its staff including all insurance cover required by law; and
- (d) at its own expense comply with the Requirements of this Request and all relevant Legal Requirements.

### 4.5 **Representatives**

- (1) Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.
- (2) The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute resolution procedure in **clause 4.30** or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.

(3) The Contractor's Representative is responsible for the quality, timeliness, cost and completion of the Work under the Contract in accordance with this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

### 4.6 Notices

- (1) Any notice or other communication under this Contract shall be in legible writing, in English and shall be given or served by:
  - (a) hand delivery or prepaid post to the address of the recipient specified in this Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
  - (b) facsimile transmission to the facsimile number of the recipient specified in this Contract or at such other number as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified number; or
  - (c) email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.
- (2) Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:
  - (a) if by delivery in person, when delivered to the address of the recipient;
  - (b) if by post, four Business Days from and including the date of postage;
  - (c) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
  - (d) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is regarded as received at 9.00am on the following Business Day.

(3) In this **clause 4.6**, reference to a recipient includes a reference to a recipient's officers, agents or employees.

# 4.7 Complying with Legal Requirements

- (1) The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Contractor's performance of this Contract and the delivery of the Work under the Contract.
- (2) Without limiting in any way the generality of the foregoing, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Work Health and Safety Act 2020* (WA) and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.
- (3) If a Legal Requirement is inconsistent with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Work under the Contract or the manner in which it must be undertaken, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and cost and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

### 4.8 Safety Obligations

- (1) The Contractor must perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety.
- (2) The Contractor must ensure that the Work under the Contract is undertaken and completed in a manner that is safe and without risks to any person, including by ensuring that the Contractor's Personnel undertake any work in a safe manner.
- (3) The Contractor must:
  - (a) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident, injury or property damage which occurs during delivery of the Work under the Contract and which is notifiable under any Legal Requirement; and
  - (b) provide the Principal with any further information when requested by the Principal.
- (4) The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the provision of the Work under the Contract.
- (5) The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this **clause 4.8**.

- (6) In performing its obligations under this Contract, the Contractor must ensure the health, safety and welfare of the following people when they are on, or immediately adjacent to, the Site over which it has control:
  - (a) the Principal's Personnel;
  - (b) the Contractor's Personnel; and
  - (c) the public.
- (7) The Contractor must comply with any order, notice, direction or other requirement issued by WorkSafe WA in relation to the Work under the Contract or the Site.
- (8) The Contractor shall additionally comply with any Health and Safety Instructions to Contractors contained in this Request.

# 4.9 Assignment and Subcontracting

- (1) The Contractor shall not:
  - (a) assign this Contract, or any part thereof or any payment thereunder; or
  - (b) subcontract the whole or any part of this Contract,

without the Principal's prior written approval, which may be withheld in the absolute discretion of the Principal.

- (2) The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under this Contract.
- (3) The Principal may, without the Contractor's consent, assign or novate this Contract or assign any payment or any other right, benefit or interest under this Contract to another local government.

## 4.10 Compliance with directions

The Contractor must, and must ensure the Contractor's Personnel, comply with all directions given by the Principal's Representative or any person authorised by Law in connection with the performance of the Contractor's obligations and delivery of the Work under the Contract.

## 4.11 Indemnity

- (1) The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:
  - (a) the Contractor undertaking the Works under the Contract;

- (b) any breach of any warranty or any of the other terms and conditions of this Contract by the Contractor or the Contractor's Personnel;
- (c) any Contamination;
- (d) any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel;
- (e) any breach of a Legal Requirement;
- (f) any breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty; and
- (g) any claim made by a third party against the Principal or the Principal's Personnel, to the extent that the claim arose out of the act or omission of the Contractor or the Contractor's Personnel,

except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.

(2) The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this **clause 4.11**.

### 4.12 Intellectual Property Rights

- (1) The Contractor warrants that the Work under the Contract and any design, documents or methods of working provided by the Contractor does not infringe any Intellectual Property Right.
- (2) The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.
- (3) All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under this Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.
- (4) Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Work under the Contract and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.
- (5) All Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.
- (6) The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Work under the Contract and any documentation provided pursuant to this Contract.

# 4.13 Orders

If this Contract is a Framework Agreement, the following sub-Clauses apply:

- (a) The Principal:
  - (i) may require the Contractor to provide Work under the Contract from time to time by giving the Contractor an Order; and
  - (ii) may order requirements of any one type or item of the Work under the Contract either in one single lot or instalments or in such quantities as may be required.
- (b) Within 5 Business Days after receipt of an Order the Contractor must give notice to the Principal if it:
  - disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
  - (ii) recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.
- (c) If the Contractor:
  - gives notice pursuant to subclause (b), the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or
  - does not give notice pursuant to subclause (b) the Contractor must perform its obligations under the Order in accordance with this Contract.
- If, pursuant to a notice issued under subclause (b), the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
  - (i) the contract price applicable to that Order and such contract price will deemed to be the Contract Price for that Order; and
  - (ii) the other information and requirements of the Order provided that such information and requirements fall within the scope of, and do not breach, the Framework Agreement.

RFT1 22-23 Mingenew Tennis Clubhouse Replacement

- (e) The Principal is not obliged to issue Orders or otherwise purchase Work under the Contract.
- (f) The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Work under the Contract undertaken prior to the date the cancellation is notified to the Contractor.

## 4.14 Conduct of Staff

The Contractor must ensure that the Contractor's Personnel:

- (a) conduct themselves towards members of the public in a civil and inoffensive manner;
- (b) do not seek or demand any fee, reward or gratuity in respect of the performance of the Works separate from or additional to the Contract Price payable to the Contractor;
- (c) perform the Works in a careful manner and with as little disturbance as is practicable;
- (d) do not cause any damage to any property; and
- (e) obey all relevant Acts, regulations and local laws.

## 4.15 Plant and Equipment

- (1) The Contractor must provide (at its cost) all Plant and Equipment, labour and haulage necessary for performance of the Contractor's obligations under this Contract.
- (2) The Contractor must ensure that all Plant and Equipment and any other items which the Contractor uses or supplies in conjunction with delivery of the Work under the Contract are of merchantable quality, comply with this Contract and all Legal Requirements, and are fit for their usual and intended purpose.
- (3) The Contractor is responsible for any loss or damage to its Plant and Equipment sustained in the course of undertaking the Work under the Contract.

### 4.16 Time for Performance and Extensions of Time

- (1) The Contractor must achieve Completion of the Work under the Contract by the Completion Date. In this respect time shall be of the essence under this Contract.
- (2) Subject to subclauses (4), (5) and (6), if the Works are unlikely to be completed by the Completion Date the Contractor is entitled to an extension to the Completion Date if the delay is due to:
  - (a) breach by the Principal of its obligations under this Contract;

- (b) delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;
- (c) a Force Majeure Event occurring before the Completion Date;
- (d) suspension of this Contract under **clause 4.19**, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or
- (e) a Variation being granted under **clause 4.18**.
- (3) The Contractor may only claim an extension to the Completion Date if the Contractor:
  - (a) could not reasonably have been expected to foresee the delay at the date of signing this Contract;
  - (b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and
  - (c) the Contractor or the Contractor's Personnel did not cause the delay, whether by breach of this Contract or otherwise.
- (4) The Contractor's claim for an extension to the Completion Date must:
  - (a) be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen; and
  - (b) include the facts on which the claim to the extension to the Completion Date is based.
- (5) If the Principal's Representative reasonably considers that:
  - (a) the claim for an extension of time relates to an event listed in subclause (2); and
  - (b) subclauses (3) and (4) have been satisfied,

the Principal must notify the Contractor within 10 Business Days of the claim for an extension of time (or such other time agreed by the Parties) that an extension of time to the Completion Date is granted. The notice must include the period of extension granted by the Principal, which will be reasonable having regard to the nature of the event specified in subclause (2) (as determined by the Principal, acting reasonably).

- (6) The Principal may by written notice to the Contractor direct an extension of time to the Completion Date at:
  - (a) any time that the Principal directs a Variation; or

(b) at any other time at the absolute discretion of the Principal,

notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Completion Date. The Contractor acknowledges that the mechanism in this subclause (6) is a discretionary right of the Principal which may be exercised by the Principal for the sole benefit of the Principal and does not:

- (c) impose any obligations on the Principal;
- (d) to the maximum extent permitted by Law, give rise to any duty to act in good faith;
- (e) in any way constitute a waiver or relaxation of any of the requirements under this **clause 4.16**; or
- (f) entitle the Contractor to claim any Loss of whatever nature arising out of, or in connection with, any extension of time granted by the Principal in accordance with this subclause (6).
- (7) If the Principal, acting reasonably considers that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the claim for extension of time that the Completion Date remains unchanged.
- (8) If the Contractor fails to obtain approval of the Principal to a requested extension of time, the Contractor will have no entitlement to an extension of time of the Completion Date.
- (9) If an extension of time is granted in accordance with this clause 4.16, provided that those costs are not also reimbursable pursuant to clauses 4.18 or 4.19, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay, but without regard to overheads, profit or any other cost, loss, expense or damage.

## 4.17 Liquidated Damages

- (1) Subject to clauses 4.16, 4.18 and 4.19, if the Contractor does not perform or provide the Works by the Completion Date, the Contractor must pay to the Principal, Liquidated Damages for every day after the Completion Date to and including the earliest of:
  - (a) the date the Works achieve Completion; or
  - (b) termination of this Contract.
- (2) If an extension of time is granted in accordance with **clause 4.16** after the Contractor has paid or the Principal has set off the Liquidated Damages payable under

subclause (1), the Principal shall repay to the Contractor such of those Liquidated Damages as represent the days the subject of the extension of time.

- (3) The payment of Liquidated Damages will not relieve the Contractor from any of its obligations and liabilities under this Contract.
- (4) Liquidated Damages shall become due upon the issue of a notice by the Principal setting out the amount of Liquidated Damages payable by the Contractor to the Principal.
- (5) The Principal may recover the amount of Liquidated Damages:
  - (a) on demand from the Contractor; or
  - (b) by deducting such amount from any amount owed to the Contractor by the Principal,

after the lapse of the Completion Date.

(6) The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this **clause 4.17** represent the Principal's genuine pre-estimate of the damages likely to be suffered by it if the Work under the Contract is not supplied and/or completed by the relevant Date for Completion and such sums shall not be construed as a penalty.

### 4.18 Variation

- (1) A direction to the Contractor to perform a Variation may only be effected in accordance with this **clause 4.18**.
- (2) If the Principal or the Principal's Representative requests the Contractor must prepare and submit a variation proposal addressing any proposed Variation ('Variation Proposal'). The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal. The Contractor must submit the Variation Proposal to the Principal within five Business Days (or within such other period as the Parties agree) of the Principal's request for the proposal.
- (3) If a Variation requires the omission of Work under the Contract, the Principal's Representative may have the omitted Work under the Contract provided by others or not as the Principal sees fit.
- (4) The Variation Proposal must specify:
  - (a) the effect the Contractor anticipates the proposed Variation will have on the Completion Date and the Contract Price (if any); and
  - (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.

RFT1 22-23 Mingenew Tennis Clubhouse Replacement

- (5) Following receipt of the Variation Proposal by the Principal, subject to subclause (2), the Parties must seek to agree on the price for the Variation and the impact of the Variation on the relevant Completion Date.
- (6) The Principal or the Principal's Representative is not obliged to direct a Variation after receiving the Variation Proposal from the Contractor.
- (7) The Contractor acknowledges and agrees that, subject to subclause (10), the Principal or the Principal's Representative may direct the Contractor in accordance with subclause (13) to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the relevant Completion Date.
- (8) The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with subclause (13).
- (9) If the Parties agree on the details in the Variation Form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.
- (10) If the Parties are unable to agree on:
  - (a) the price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
    - (i) if this Contract prescribes rates or prices to be applied in respect of the Works, those rates or prices must be used; or
    - (ii) if subclause 10(a)(i) does not apply, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and
  - (b) the impact of the Variation on the Completion Date,

then the Principal's Representative must determine a reasonable impact and amend the relevant Completion Date by notice in writing to the Contractor.

- (11) A Variation does not invalidate this Contract.
- (12) The Contractor may request that the Principal direct a Variation and the Principal or the Principal's Representative may, in its absolute discretion, direct a Variation under this **clause 4.18** or elect not to direct a Variation.
- (13) A direction is not a Variation unless a Variation Form has been signed by the Principal.

# 4.19 Suspending this Contract

- (1) The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
- (2) When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
- (3) Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Loss.
- (4) If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with subclause (1) (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Completion Date are extended by the period of that suspension.
- (5) The remedies set out in subclauses (3) and (4) are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

## 4.20 Warranties

The Contractor shall obtain all warranties specified in this Contract including any warranties that are obtained by any Subcontractor, and shall ensure that the Principal will have the benefit of the warranties.

## 4.21 Variation to Contract Terms

None of the terms of this Contract shall be varied, waived, discharged or released either under any Legal Requirement, except by the express written agreement of the Principal.

### 4.22 Price Basis

- (1) Unless stated elsewhere in this Request, the Contract Price for the Work under the Contract shall be fixed for the term of the Contract and not subject to rise and fall.
- (2) The Contract Price for the Work under the Contract should be stated in the following terms:
  - (a) price excluding Goods and Services Tax (GST);
  - (b) Goods and Services Tax amount; and

RFT1 22-23 Mingenew Tennis Clubhouse Replacement

- (c) total price including GST.
- (3) Where no stipulation is made as to GST, the Contract Price shall be deemed to include GST, unless clarification is provided to the Principal by the Tenderer prior to acceptance of Tender.
- (4) Unless otherwise indicated the Contract Price shall include all disbursements, allowances, sites visits, printing, plotting, delivery, and all applicable fees, levies, duties, taxes and charges. Any charge not stated in the Tender as being additional, and accepted by the Principal as such, will not be allowed as a charge for any transaction under any resultant Contract.

# 4.23 Currency

In this Contract, a reference to "\$" or "dollars" is a reference to Australian dollars.

## 4.24 Payment and Invoicing

- (1) Subject to **clause 4.48**, in consideration of the Contractor providing the Work under the Contract the Principal shall pay to the Contractor the Contract Price in accordance with this clause.
- (2) As soon as reasonably practicable following the end of each calendar month (or as otherwise agreed by the Parties), the Contractor must provide to the Principal a Progress Claim or if the Principal directs, an Invoice.
- (3) A Progress Claim and any Invoice must include all details set out in the Contract Details.
- (4) Upon approval of a Progress Claim or Invoice by the Principal:
  - (a) if the Contractor has entered into an RCTI Agreement, the Principal will, generate a Recipient Created Tax Invoice. References to 'Invoice' in the remainder of this clause should be taken to include RCTI where applicable; or
  - (b) if the Contractor has not entered into an RCTI Agreement, the Contractor will submit an Invoice, in respect of the Work under the Contract that is the subject of the approved Progress Claim or Invoice.
- (5) Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Progress Claims or Invoices that comply with subclause (3) within 20 Business Days (or such other period as the Principal's Representative and Contractor agree) of their generation or receipt (as the case may be), except where the Principal:
  - (a) is required by any Legal Requirement to pay within a shorter time frame, in which case the Principal must pay within that time frame;

- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
- (c) disputes the Progress Claim or Invoice, in which case:
  - to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Progress Claim or Invoice pending resolution of the Dispute; and
  - (ii) if the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.
- (6) A payment made pursuant to this Contract will not be taken or construed as proof or admission that the Work under the Contract the subject of the Progress Claim or Invoice was to the satisfaction of the Principal, but will only be taken to be payment on account.
- (7) Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid this Contract.
- (8) The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price.

### 4.25 Confidential Information and Publicity

- (1) The Contractor must not advertise, publish or release to the public:
  - (a) any Confidential Information; or
  - (b) other information concerning the Work under the Contract, or this Contract, without the prior written approval of the Principal.
- (2) The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:
  - (a) use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or
  - (b) disclose the Confidential Information:
    - (i) other than (to the extent they require the information to enable the Contractor to fulfil its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or
    - (ii) where disclosure is required by Law (including disclosure to any stock exchange).
- (3) The rights and obligations under this **clause 4.25** continue after the Completion Date Date.
- RFT1 22-23 Mingenew Tennis Clubhouse Replacement

## 4.26 Goods and Services Tax

- (1) Any reference in this Clause to a term defined or used in the *A New Tax System* (*Goods and Services Tax*) *Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (2) Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply ('GST Exclusive Consideration') except as provided under this Clause.
- Any amount referred to in this Contract (other than an amount referred to in subclause
  (8)) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (4) To the extent that GST is payable in respect of any supply made by a Party ('Supplier') under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (5) The recipient must pay the additional amount payable under subclause (4) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (6) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under subclause (4) or at such other time as the Parties agree.
- (7) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under subclause (5), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (8) If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with subclause (4).

# 4.27 Consequential Loss

In relation to Consequential Loss:

- (a) subject to clause 4.11 and subclause (b) but notwithstanding any other clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by Law; and
- (b) subclause (a) does not exclude liability of the Contractor for Consequential Loss, if, but for subclause (a) the Contractor would have insurance cover for that Consequential Loss under an Insurance.

## 4.28 Force Majeure Event

- (1) A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under this Contract ('Affected Obligations') and must either:
  - (a) to the extent practicable, specify in the notice the length of delay in the Completion Date that will result from the Force Majeure Event; or
  - (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.
- (2) The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- (3) The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- (4) If a Force Majeure Event continues to affect the supply of any Goods and/or Services or construction of the Works for a continuous period of 180 days, the Principal may terminate this Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of this Contract being terminated.

## 4.29 Damage to Property

- (1) If the Contractor or the Contractor's Personnel damage property, including property on or adjacent to the Site, the Contractor must promptly:
  - (a) make good the damage; and
  - (b) pay any compensation which the Contractor is required to pay under the Contract or under any Legal Requirement.
- (2) If the Contractor fails to comply with an obligation under subclause (1), the Principal may, in addition to any other remedy which the Principal may have, perform or have

performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.

### 4.30 Settlement of Disputes

- (1) In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute (**'Notice of Dispute'**).
- (2) The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:
  - (a) alleged facts on which the claim is based;
  - (b) legal basis on which the claim is made; and
  - (c) relief that is claimed.
- (3) Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:
  - (a) its position in relation to the Dispute; and
  - (b) the basis for its position.
- (4) Within 10 Business Days of receipt of the response referred to in subclause (3), the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.
- (5) If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with subclause (4), either Party may initiate proceedings in a court of competent jurisdiction.
- (6) Either Party may, with the agreement of the other Party, at any time, refer the Dispute to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with this Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.
- (7) The matter in dispute must be referred for resolution by a person of appropriate qualifications and experience agreed between the parties. Failing agreement, the matter in dispute must be determined under the provisions of the Commercial *Arbitration Act 2012*.
- (8) The independent expert's or arbitrator's decision, including any decision as to an expense arising from the dispute, is final and binding on the parties.
- (9) Except to enforce this clause, or to seek an urgent interim determination, a party must not commence or maintain an action by way of legal proceedings relating to the dispute until it has been dealt with as provided in this clause.

# 4.31 Termination of Contract

- (1) If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under this Contract or under any applicable Legal Requirement.
- (2) The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than 10 Business Days written notice to the Contractor. The Principal shall pay to the Contractor:
  - (a) the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and
  - (b) the cost of materials and equipment reasonably ordered by the Contractor for the construction of the Works or provision of the Goods and/or Services and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,

and shall have no further liability to the Contractor.

- (3) If the Contractor:
  - (a) subject to clause 4.28, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
  - (b) (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;
  - (c) (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
  - (d) assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;

- (e) or any Contractor's Personnel, are found guilty of any criminal act related to the Goods and/or Services that may bring the Principal into disrepute;
- (f) includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- (g) or the Contractor's Personnel:
  - (i) cause a safety issue, condition or any risk to health in breach of this Contract; and
  - the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,

then the Principal may by notice in writing to the Contractor immediately terminate this Contract and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete this Contract.

- (4) The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in subclause (3) and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.
- (5) When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.
- (6) The termination of this Contract does not affect:
  - (a) any rights of the Parties accrued before the Completion Date; and
  - (b) the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after the End Date.

### 4.32 Waivers and Amendments

- (1) This Contract may only be amended, or its provisions waived, in writing by the Parties.
- (2) No forbearance, delay or indulgence by the Principal in enforcing the provisions of this Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

# 4.33 No Fettering of Principal's Powers

It is acknowledged and agreed that this Contract does not fetter or restrict the power or discretion of the Principal in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Contractor.

# 4.34 Counting of Days

Where under any provision of this Contract any notice is to be given, any payment made or anything else must be done in a stated period of days, the stated number of days will exclude Saturdays, Sundays and public holidays. The days comprising any period of days computed in accordance with this clause are deemed to be consecutive if interrupted only by days which are not to be taken into account under this clause.

# 4.35 No Partnership or Relationship

- (1) Nothing in the Contract shall be deemed to constitute a relationship between the Principal and the Contractor, or any employee of the Contractor, other than the relationship of principal and independent contractor (or principal of an independent contractor and the employee of such a contractor as the case may be).
- (2) Without limiting the generality of subclause (1), the Contract shall not be construed as creating between the Principal and the Contractor, or between the Principal and any employee of the Contractor, a relationship of:
  - (a) master and servant;
  - (b) principal and agent; or
  - (c) employment or trust.
- (3) The Contractor must not hold itself, or its employees or agents, out to be employees or agents of the Principal, and the Contractor indemnifies the Principal, and must keep the Principal indemnified against any Claim incurred as a result of doing so.

## 4.36 Entire Agreement

- (1) To the extent permitted by Law, this Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of this Contract.
- (2) To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Principal in respect of the Works, those terms and conditions will be of no legal effect and will not constitute part of this Contract.

# 4.37 Rights and Remedies

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether under a Legal Requirement or this Contract.

# 4.38 Reporting

The Contractor must keep the Principal fully informed on all aspects of the delivery of the Works and must supply on request:

- (a) progress reports on the performance of the Contractor's obligations in such detail as will allow the Principal to ascertain whether such is in conformity with this Contract; and
- (b) the Contractor's Technical Material, reports, data and a detailed supply program, relating to the Works under the Contract.

# 4.39 Agency

The Contractor must not:

- (a) hold itself out as being an agent of the Principal or being in any other way entitled to make any contract on behalf of the Principal or to bind the Principal to the performance, variation, release or discharge of any obligation; or
- (b) hold out its employees or agents, or allow its employees or agents to hold themselves out, as being employees or agents of the Principal.

### 4.40 Insurance

#### 4.40.1 General requirements

- (1) The Contractor must, at its own cost and expense, as a minimum procure and maintain the Insurance:
  - (a) on the terms and conditions set out in this clause and otherwise on terms acceptable to the Principal; and
  - (b) from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency and approved by the Principal which either:
    - (i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or

- (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
- (2) The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
- (3) Without limiting subclause (1), the Contractor must:
  - (a) pay all premiums and all deductibles applicable to the Insurance when due; and
  - (b) promptly reinstate any Insurance required under this **clause 4.40** if it lapses or if cover is exhausted.
- (4) To the extent available at the times of placement and each renewal, each Insurance must:
  - (a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
  - (b) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (c) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
  - (d) provide, where the Principal is entitled to cover under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance; and,
  - (e) state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.
- (5) The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.
- (6) The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.
- (7) The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
- (8) The Contractor must ensure that its subcontractors are insured as required by this **clause 4.40**, as appropriate (including as to amounts of insurance and type of

insurance) given the nature of work to be performed by them, as if they were the Contractor.

- (9) The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal current and updated Certificates of Insurance or the terms and conditions (including schedules) of the Insurances, to demonstrate compliance with this Contract. Nothing in this clause will be construed as providing the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- (10) If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the Principal may, but is not obliged to procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.
- (11) Whenever a claim is made under any of the Insurance, the Contractor is liable for any excess or deductible payable as a consequence.
- (12) The Contractor must:
  - inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
  - (b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.
- (13) The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.
- (14) The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2004 Risk Management.
- (15) Insurances shall be provided in the amount and in accordance with any details stipulated in the Contract details and otherwise in accordance with this **clause 4.40**.

#### 4.40.2 Public liability insurance

- (1) Unless otherwise stipulated by the Principal, the Contractor must maintain public liability insurance. The public liability policy must:
  - (a) be endorsed to note the Principal for their respective rights and interests in relation to this Contract;
  - (b) be for an amount of not less than \$50 million for any one event and unlimited in the amount of occurrences;
  - include a cross liability endorsement extending the policy to operate in the same manner as if there was a separate policy of insurance covering each Party insured (without increasing the deductibles or reducing the overall limit of indemnity);
  - (d) cover the liability of the Contractor, the Contractor's Personnel and the Principal in respect of:
    - (i) loss of, damage to, or loss of use of, any real or personal property; and
    - the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers compensation policy),

arising out of or in connection with the performance of this Contract by the Contractor; and

- (e) be endorsed:
  - to cover the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract;
  - (ii) to cover sudden and accidental pollution; and
  - (iii) to provide waiver of subrogation in favour of the Principal in relation to this agreement where the Principal is not a named insured.

#### 4.40.3 Workers compensation insurance

(1) The Contractor shall insure against statutory and common law liability for death of or injury to persons employed by the Contractor. The insurance cover shall be obtained prior to the Start date and shall be maintained until completion of all Work under the Contract. The insurance policy or policies shall be extended to provide indemnity for the Principal's statutory liability to the Contractor's employees. (2) In the event that the Contractor is a sole trader and no workers compensation policy is in place, the contractor must insure against the loss of income and illness by the purchase of income protection or salary continuance policy.

### 4.40.4 Professional indemnity insurance

- (1) Unless otherwise stipulated by the Principal, the Contractor must maintain professional indemnity insurance. The professional indemnity policy must:
  - be for not less than \$5M in respect of any one claim and not less than \$5M in the aggregate for all claims arising in any one 12 month period of insurance;
  - (b) include one full automatic reinstatement of the limit of liability;
  - (c) cover liability arising from any act or omission in connection with or arising out of the professional activities and duties under this Contract; and
  - (d) cover claims in respect of this Contract under the *Competition and Consumer Act 2010* (Cth), *Fair Trading Act 2010* (WA) and any similar legislation in any other state or territory, insofar as they relate to the provision of professional advice.

#### 4.40.5 Works insurance

- (1) The Contractor in the joint names of the Contractor, the Principal and all subcontractors (insured) for their respective rights and interests must have or effect insurance under a contractors all risk insurance policy or policies which must cover the whole of the Works including any associated temporary works and including material incorporated or to be incorporated in there, the property of the insured or for which they are responsible and while on or adjacent to the Site regarding loss, destruction or damage of or to the property insured for the full reinstatement and replacement cost.
- (2) The sum insured must consider the full Contract Sum with an amount for escalation costs as incurred during any period of reinstatement and replacement during the period up to the Date of Completion of the Works.

## 4.41 Industrial Awards

- (1) With respect to all work done in Western Australia under this Contract, the Contractor shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Work under the Contract.
- (2) Failure by the Contractor to comply with subclause (1) hereof shall entitle the Principal by notice in writing to the Contractor to immediately terminate this Contract, but without prejudice to any other rights or remedies of the Principal.

# 4.42 Governing Law

This Contract and any dispute arising out of or in connection with it or its subject matter or formation including non-contractual disputes shall be governed by, construed and take effect in accordance with the Laws of the State of Western Australia and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes).

# 4.43 **Proportionate Liability**

Each Party agrees that Part 1F of the *Civil Liability Act 2002* (WA), to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- (a) this Contract; and
- (b) any of the Contractor's Subcontractors or the Subcontractor's personnel.

# 4.44 Construction Contracts Act

- (1) The Contractor must promptly and without delay, give the Principal's Representative a copy of any written communication of whatever nature in relation to the Construction Contracts Act that the Contractor gives to the Principal or receives from a Subcontractor.
- (2) If the Principal's Representative becomes aware that a Subcontractor engaged by the Contractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Principal may in its absolute discretion pay the Subcontractor such money that may be owing to the Subcontractor in respect of that work and any amount paid by the Principal will be a debt due from the Contractor to the Principal.
- (3) The Contractor must ensure that none of its subcontracts contain terms which are prohibited by the *Construction Contracts Act*.

# 4.45 Personal Property Securities Act

- (1) For the purposes of this **clause 4.45**:
  - (a) the 'Principal's Personal Property' means all personal property the subject of a security interest granted under this Contract; and
  - (b) words and phrases used in this **clause 4.45** that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

- (2) If the Principal determines that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
  - (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
  - (c) enabling the Principal to exercise rights in connection with the security interest.
- (3) The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- (4) The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
  - (a) if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
  - (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.
- (5) The Contractor must not:
  - (a) create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
  - (b) sell, lease or dispose of its interest in the Principal's Personal Property;
  - (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
  - (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Works; or
  - (e) change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

- (6) Everything the Contractor is required to do under this **clause 4.45** is at the Contractor's expense.
- (7) Neither the Principal 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. This **clause 4.45** does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

# 4.46 Application of this Contract

This Contract applies to the performance of the Contractor's obligations under this Contract whether performed before, on or after the Start Date.

# 4.47 Restructure of the Principal

If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined the Principal or the successors of the Principal under the restructure.

# 4.48 Deduction of Charges or Debts

- (1) Without limiting the Principal's rights under this Contract any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal and if such moneys are insufficient for this purpose, then from the Contractor's security or retention under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.
- (2) The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

## 4.49 Environmental Activities

Without limiting clause 4.7, the Contractor must in providing the Work under the Contract:

- (a) ensure that any Work under the Contract affecting the Environment is carried out in accordance with the *Local Government Act 1995* (WA) or other relevant Legal Requirements, including the *Environmental Protection Act 1986* (WA); and
- (b) complies with all Approvals and conditions of such Approvals.

# 4.50 Severability

In the event any part of this Contract is held by a court of law to be invalid or unenforceable, that part shall be:

- (a) read down, if possible, so as to be valid and enforceable; or
- (b) severed from this Contract to the extent of the invalidity or unenforceability,

and the remainder of this Contract shall not be affected by such invalidity or unenforceability.

# PART B – Works

### 4.51 Performance

- (1) The Contractor must at its cost perform and complete the Works (including all design, mobilisation and demobilisation) by the Completion Date and in accordance with:
  - (a) this Contract;
  - (b) Good Industry Practice; and
  - (c) all Legal Requirements.
- (2) The Contractor must ensure that the Works when Completed will be fit for the Intended Purpose and in accordance with the Requirements including the Specifications of this Request.
- (3) The Contractor must provide all labour, tools, plant, materials and services for the proper completion of the Works to ensure completion with all due expedition. The Contractor must remain responsible for all construction techniques, methods, sequences and procedures.
- (4) Unless otherwise provided in the Contract, the Contractor shall use suitable new materials and proper and tradesmanlike workmanship in constructing the Works.

## 4.52 Site Risks

- (1) The Contractor warrants that before the Start Date the Contractor has had access to the Site, carried out its own inspections of the Site and the Environment, and has conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of:
  - (a) the Site and the Environment; and
  - (b) all risks and contingencies associated with the Site and the Environment,

or has chosen not to carry out any inspections or conduct its own enquiries, as the case may be, in which case the Contractor acknowledges that there will be no

adjustment to the Contract Price or Completion Date, except as expressly stated in this Contract.

- (2) The Contractor accepts sole responsibility for, and assumes the risk of, all Loss, delay and disruption arising out of the physical conditions and characteristics of the Site and the Environment.
- (3) Without limiting subclauses (1) and (2), the Contractor accepts sole responsibility for, and assumes the risk of, all Loss, delay and disruption arising out of, or in connection with, all Contamination in, under or around the Site and the Environment which came into existence after the Start Date.

## 4.53 **Protection of People and Property**

- (1) The Contractor shall in undertaking the Works:
  - (a) take all measures necessary to protect people and property;
  - (b) avoid unnecessary interference with the passage of people and vehicles; and
  - (c) prevent nuisance and unreasonable noise and disturbance.
- (2) If the Contractor damages property, the Contractor shall promptly rectify the damage at its own cost and pay any compensation which the law requires the Contractor to pay.
- (3) If the Contractor fails to comply with an obligation under this clause, the Principal, after the Principal's Representative has given reasonable written notice to the Contractor and in addition to the Principal's other rights and remedies, may engage a third party contractor to undertake any required works. The cost thereby incurred shall be reimbursed by the Contractor to the Principal.
- (4) If urgent action is necessary to protect the Works, other property or people and the Contractor fails to take the action required, in addition to any other remedies of the Principal, the Principal's Representative may undertake the necessary action. The costs of such remedial actions undertaken by the Principal shall be reimbursed from the Contractor to the Principal and may be deducted from any payments due to the Contractor or from retention or security monies.

## 4.54 Contractor Warranties

The Contractor represents and warrants to the Principal that the Contractor will:

 (a) at all times, be suitably qualified and experienced, and must exercise the skill, care and diligence to be expected of a Professional Contractor in the delivery and Completion of the Works (including all design);

- (b) develop and complete the Design Documents so that the Design Documents are accurate, suitable, appropriate and adequate for the Intended Purpose taking into account the Site and the Environment; and
- (c) perform and complete the Works in accordance with the Design Documents so that when completed, the Works will be fit for the Intended Purpose and be in accordance with this Contract.

### 4.55 Access to Site

#### 4.55.1 Possession

- (1) The Principal shall, before the Start Date, give the Contractor possession of sufficient area of the Site for commencement of the Works on the Site. If the Principal has not given the Contractor possession of the whole Site, the Principal shall give the Contractor possession of such further portions of the Site as may, from time to time, be necessary for carrying out the Works.
- (2) Possession of the Site shall confer in the Contractor a right to only such use and control of the Site as is necessary to enable the Contractor to carry out Work under the Contract and shall exclude camping, residential purposes and any purpose not connected with the Work under the Contract, unless approved by the Principal's Representative.

### 4.55.2 Access for the Principal and Others

- (1) The Principal and the Principal's Personnel may at any time after written or verbal notice to the Contractor, have access to any part of the Site for any purpose. The Contractor shall permit persons engaged by the Principal to carry out work on the Site other than the Works and shall cooperate with them. The Principal shall give to the Contractor the names and roles of the persons so engaged.
- (2) The Contractor shall at all reasonable times give the Principal's Representative access to the Works.
- (3) The Principal shall ensure that none of the persons referred to in this subclause impedes the Contractor.

#### 4.55.3 Minerals, fossils and other relics

Valuable minerals, fossils, articles or objects of antiquity or of anthropological or archaeological interest, treasure trove, coins and articles of value, found on the site shall be and remain the property of the Principal. Immediately upon the discovery of these things the Contractor shall:

- (a) take precautions to prevent their loss, removal or damage; and
- (b) give the Principal written notice of the discovery.

#### 4.55.4 Compliance with heritage requirements

- Where the Principal has notified the Contractor that the works are subject to section 18 of the *Heritage of Western Australia Act 1990* conditions, or other requirements, the Contractor shall comply with these requirements.
- (2) All costs so incurred by the Contractor shall be assessed by the Principal and added to the Contract Price, except for any requirements already included in the Specifications.

### 4.56 Setting out the Works

#### 4.56.1 Setting Out

The Principal shall give the Contractor the data, survey marks and like information necessary for the Contractor to set out the Works, together with those survey marks specified in the Contract. Thereupon the Contractor shall set out the Works in accordance with the Contract.

#### 4.56.2 Errors in Setting Out

- (1) The Contractor shall rectify every error in the position, level, dimensions or alignment of any Works after promptly notifying the Principal and unless the Principal within 3 days directs otherwise.
- (2) If the error was caused by incorrect data, survey marks or information given by the Principal, the cost incurred by the Contractor in rectifying the error shall be assessed by the Principal and added to the Contract Price.

#### 4.56.3 Care of Survey Marks

- (1) The Contractor shall keep in their true positions all survey marks supplied by the Principal.
- (2) The Contractor shall reinstate any survey mark disturbed, after promptly notifying the Principal and unless the Principal's Representative within 3 days directs otherwise.
- (3) If the disturbance was caused by the Principal, its agent, or representative, the cost incurred by the Contractor in reinstating the survey mark shall be assessed by the Principal's Representative and added to the Contract Price.

## 4.57 Construction Schedule

- (1) The Contractor shall give the Principal reasonable advance notice of when the Contractor needs information, materials, documents or instructions from the Principal.
- (2) The Principal and the Principal's Representative shall not be obliged to give any information, materials, documents or instructions earlier than the Principal or
#### PART FOUR - READ AND KEEP THIS PART

Principal's Representative, as the case may be, should reasonably have anticipated at the date of acceptance of tender.

- (3) The Principal's Representative may direct in what order and at what time the various stages or portions of the Works shall be carried out. If the Contractor can reasonably comply with the direction, the Contractor shall do so. If the Contractor cannot reasonably comply, the Contractor shall give the Principal's Representative written notice with the reasons.
- (4) The Contractor shall give the Principal a construction schedule for completion of the Requirements within 10 days of commencement of the Contract. The construction schedule shall show the dates by which, or the times within which, the various stages or portions of the works under contract are to be carried out or completed and shall be deemed a Contract document. The construction schedule shall include times for inspection of the Works by the Principal and the Contractor shall provide sufficient notice to the Principal's Representative to allow Principal's reasonable time to arrange inspections.
- (5) The Contractor shall not, without reasonable cause, depart from the construction schedule.

#### 4.58 Hours of Work

The normal hours of work on the Site shall be between 7:00am - 5:00pm on weekdays (i.e. Mondays to Fridays) excluding public holidays. Prior approval of the Principal's Representative must be obtained should the Contractor wish to work outside these hours and the Principal's representative's refusal of any such request shall not constitute any grounds whatsoever for a claim for additional time or costs.

### 4.59 Responsibility for the Works

The Contractor shall be responsible for care of the Works, and for any plant or equipment brought onto the Site by a Subcontractor, from the Start Date until the Date of Completion, at which time responsibility for the care of the Works shall pass to the Principal. If loss or damage occurs to the Works during the period for which the Contractor is responsible for care of the Works, the Contractor shall at its cost, rectify such loss or damage, save that the Contractor shall not be responsible for any loss or damage caused by or arising from any negligent act or omission of the Principal or the Principal's Personnel.

## 4.60 Covering up of Works

(1) The Contractor is to give the Principal sufficient notice of its intention to cover up any Works, in order to allow the Principal reasonable time to arrange prior inspection. If this is not given, the Principal may direct for the works to be uncovered for inspection and subsequently made good. Any attributable costs or delay shall be borne by the Contractor. (2) Where reasonable notice of the Contractor's intention to cover up Works has been given, and the Principal subsequently requires Works to be uncovered for inspection, then any attributable costs or delay will be borne by the Principal, except where the inspection or test shows that the work, materials or goods are not in accordance with the requirement of the contract, in which case the costs and delay will be borne by the Contractor.

### 4.61 Cleaning Up

- (1) The Contractor shall keep the Site and the Works clean and tidy at all times and regularly remove rubbish and surplus material.
- (2) Within 14 days after the Date of Completion, the Contractor shall remove temporary works and construction plant. The Principal's Representative may extend the time to enable the Contractor to perform remaining obligations.
- (3) If the Contractor fails to comply with the preceding obligations in this clause, the Principal's Representative may direct the Contractor to rectify the non-compliance and the time for rectification.
- (4) If:
  - (a) the Contractor fails to comply with such a direction; and
  - (b) that failure has not been made good within 5 days after the Contractor receives written notice from the Principal's Representative that the Principal intends to have the subject work carried out by others,

the Principal may have that work so carried out and the Principal's Representative shall certify the cost incurred as moneys due from the Contractor to the Principal. The rights given by this paragraph are additional to any other rights and remedies.

### 4.62 **Procedure for Completion Tests**

- (1) The Contractor must prepare and perform the Completion tests where required by this Contract or the Specifications. The Contractor will be fully responsible for the proper conduct and results of the Completion tests.
- (2) The Contractor must provide to the Principal full and substantiated test results for all Completion tests by the earlier of:
  - (a) 5 Business Days after completion of the relevant test; or
  - (b) the date required (if any) under the Specification or Construction Program.
- (3) Except:
  - (a) with the prior written consent of the Principal; or

#### PART FOUR - READ AND KEEP THIS PART

(b) to the extent necessary to comply with subclause (4)(a),

the Contractor must not adjust (and will not allow the adjustment of) any part of the Works following completion of any Completion test.

- (4) If the whole or any part of the Works fails to pass a Completion test, the Contractor must:
  - promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects, failures, imperfections or other faults as may be required to ensure that all Completion tests are satisfied;
  - (b) be responsible for all costs and expenses incurred or sustained (including the cost of the Completion tests being borne by the Contractor); and
  - (c) if so required by the Principal, submit to the Principal for its review, details of the work which it proposes to execute.
- (5) If the Contractor fails to perform any Completion test in accordance with this Contract:
  - (a) the Principal is to provide notice to the Contractor stating:
    - (i) the Contractor's failure to perform the Completion test; and
    - that the Contractor has 5 Business Days, or as otherwise agreed with the Principal at the Principal's absolute discretion, from the date of the notice to perform the Completion test;
  - (b) if the Contractor fails to satisfy the requirement in subclause 5(a)(ii), the Principal may perform that Completion test at a date and time determined by the Principal; and
  - (c) the cost incurred by the Principal in performing that Completion test will be a debt due and payable immediately from the Contractor to the Principal.

### 4.63 Completion

- (1) The Contractor must give the Principal at least 21 days written notice of the date on which the Contractor anticipates that Completion will be achieved. When the Principal is satisfied that Completion has been achieved, the Principal must issue a Completion Certificate for the Works.
- (2) On the issue of the Completion Certificate, the Principal will take over the Works.
- (3) Subject to **clause 4.48**, the Principal must pay the Contractor (or the Contractor must pay the Principal, as the case may be) within 28 days after the issue of the Completion Certificate, the amount stated in that certificate as being due by the Principal (or by the Contractor, as the case may be).

(4) The issue of a Completion Certificate does not constitute approval of any work or other matter and does not prejudice any claim by the Principal.

## 4.64 Rectification of Defects

- (1) The Principal may, at any time up to Completion and during the Defects Liability Period, conduct performance reviews of the Works. The Principal may notify the Contractor of any failure by the Contractor to comply with this Contract.
- (2) The Contractor must, within a reasonable time (but no later than 30 days), from receipt of a notice from the Principal, rectify any Defect notified to the Contractor before or at Completion, or during the Defects Liability Period.
- (3) If the Contractor fails to rectify any Defect in accordance with this **clause 4.64**, the Principal may rectify the Defect and any resulting liability incurred by the Principal in so doing will be a debt due from the Contractor to the Principal.
- (4) The Defects Liability Period applicable to any work performed for the purposes of rectifying Defects, is the period commencing on the date of completion of that remedial work and ending on the expiry of the period stated in the Contract Details.

#### 4.65 Security

#### 4.65.1 **Provision of security**

Security shall be provided by the Contractor to the Principal in accordance with the Contract Details. Retention monies may be retained by the Principal as security where stated in the Contract Details.

#### 4.65.2 Recourse against security

The Principal may have recourse against the Security where monies due and payable under the Contract have remained unpaid after the time for payment and where at least 5 days have elapsed since that party notified the other party of intention to have recourse.

#### 4.65.3 Reduction and release of security

Upon the issue of a Completion Certificate by the Principal, the Principal's entitlement to Security shall be reduced to 50% of the original Security amount, and the reduction shall be released and returned within 14 days to the Contractor. A party's entitlement to Security shall cease after the final Defects Liability Period has lapsed and the Principal shall then release and return forthwith any remaining Security to the Contractor.

#### 4.65.4 Interest

Interest earned on Security not required to be held in trust shall belong to the party holding the Security.

## 4.66 Contractor's Employee and Subcontractors

#### 4.66.1 Personal Protective Equipment

The Contractor must ensure that:

- (a) all its employees or Subcontractors are provided with and wear during the performance of the Works appropriate personal protective equipment for each task, including coloured safety vests or jackets, approved by the Principal and in accordance with AS 1742.3, SAA HB81, AS/NZS 1906.4; and
- (b) any clothing referred to above is to be kept in a neat and tidy condition by its employees and Subcontractors.

#### 4.66.2 Removal of Contractor employees

The Principal may direct the Contractor to have removed, within a stated time, from the Site or from any activity of Work under the Contract, any person employed to undertake the Work under the Contract who, in the Principal's opinion, is incompetent, negligent, or guilty of misconduct.

### 4.67 Bill of Quantities

#### 4.67.1 Priced bill of quantities

- (1) Where a bill of quantities is to be priced:
  - (a) all items included in the bill of quantities shall be priced and extended by the Contractor and the prices as extended shall on addition equal the sum accepted by the Principal for carrying out the whole of the work to which the bill of quantities relates;
  - (b) the Contractor shall lodge the bill of quantities so priced and extended with the Superintendent within 14 days of contract signing or such further time as may be directed by the Principal; and
  - (c) notwithstanding any other provision of the Contract, the Contractor shall not be entitled to payment until the Contractor has lodged the bill of quantities so priced and extended.
- (2) If the aggregate amount in a priced bill of quantities does not equal the sum accepted for the work, the subject of the bill of quantities, the Principal shall (unless the parties agree within 7 days of notification) determine an appropriate correction of errors and inconsistencies in rates and prices therein, so that the aggregate amount equals such sum.

#### 4.67.2 Quantities

A written order from the Principal is not required for any increase or decrease in the quantity of any work, where it results only from the actual quantities being different to those provisional quantities stated in the Bill of Quantities and not from any direction of the Principal. Where such changes in quantity arise the final measure and value will be completed by the Principal.

#### 4.67.3 Adjustment for Actual Quantities

- (1) Where, otherwise than by reason of a direction to vary the Works, the actual quantity of an item required to perform the Contract is greater or less than the quantity shown in a bill of quantities which forms part of the Contract or schedule of rates variations shall apply as follows:
  - (a) where the Principal accepted a lump sum for the item, the difference shall not be a deemed variation; and
  - (b) where the Principal accepted a rate for the item, the rate shall apply.
- (2) If such a bill of quantities or schedule of rates omits an item which should have been included the item shall be a deemed variation.
- (3) Notwithstanding the preceding provisions of this subclause in respect of a bill of quantities, a variation shall not be deemed for actual quantities of an item pursuant to paragraph (a), or for an omitted item or any adjustment made for actual quantities of an item pursuant to paragraph (b), if the difference, the value of the omitted item or the adjustment respectively is less than \$400.

# Schedule 1 - Contract Details

Item 2

Item 3

Item 4

Item 5

Item 6

Item 7

Item 8

# Item 1 Principal's Representative

Name: Position: Phone: Email: Address:	Chief Executive Officer 08 9928 1102 ceo@mingenew.wa.gov.au 21 Victoria Rd, Mingenew WA 6522
Contracto	r's Representative
[ <mark>insert detail</mark>	]
Start Date	1
[ <mark>insert detail</mark>	]
Completic	on Date
[ <mark>insert detail</mark>	]
Contract F	Price
As stipulated	in the Tender accepted by Principal.
Works un	der the Contract
As stipulated	in the Specification.
Defects Li	ability Period
[ <mark>insert detail</mark> ]	
Insurance	1
Public liability	insurance in accordance with clause 4.41.2
Workers com	pensation insurance in accordance with clause 4.41.3
Professional i	indemnity insurance in accordance with clause 4.41.4

Works insurance in accordance with clause 4.41.5

[Insert any additional detail]

### Item 9 Progress Claims

Progress Claims shall be submitted at the end of each month.

#### PART FOUR - READ AND KEEP THIS PART

Progress Claims and Invoices must be addressed to the Principal's Representative and must clearly state the following information:

- (a) Contract Number;
- (b) Date of Issue
- (c) Date on which the Goods and/or Service or Works was provided;
- (d) Detailed description of Goods and/or Service or Works provided;
- (e) Contractor's ABN or ACN;
- (f) Contractor's contact details;
- (g) Progress Claim or Invoice reference number
- (h) Purchase Order Number (Invoice only);
- (i) Aggregate amount claimed and paid to date in preceding Invoices;
- (j) Discount items; and
- (k) GST inclusive and exclusive amounts.

#### Item 10 Liquidated Damages

#### [<mark>insert amount</mark>]

#### Item 11 Security

Security shall be provided by the Contractor within 7 days of the Start Date:

- (a) by way of cash or bank bond or bank guarantees in a form satisfactory to the Principal;
- (b) where bank guarantees are required the Contractor shall provide two guarantees, each for half the value of the security; and
- (c) in an amount equal to 10% of the total value of the Contract Price;

Where retention is permitted by the Principal as a form of security, retention shall be by way of 10% of monies payable withheld by the Principal against each invoice until the total retention of 10% of the total value of the Contract price is held.

# Item 12 Date of Site Availability

14 days from acceptance of the Tender by the Principal , unless otherwise specified.

### Item 13 Framework Agreement

This Contract is not a Framework Agreement

# Schedule 2 – Special Conditions

# Schedule 3 – Variation Form

## PART 5 TENDER FORM

#### 5.1 Tenderer's Offer

The Chief Executive Officer Shire of Mingenew 21 Victoria Road, Mingenew WA 6522	
I/We (Registered Entity Name):	
of: (Registered Street Address):	
Phone:	_ Fax:
ABN:	
	ACN:
Email:	

#### In response to this Request for Tender:

I/We agree that I am/We are bound by, and will comply with this Request and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this Request signed and completed.

The tendered price is valid up to ninety (90) calendar days from the date of the tender closing or forty-five (45) days from the Council's resolution for determining the Tender, whichever is the later unless extended on mutual agreement between the Principal and the Tenderer in writing.

I/We agree that there will be no cost payable by the Principal towards the preparation or submission of this Tender irrespective of its outcome.

The tendered consideration is as provided under the schedule of rates of prices in the prescribed format and submitted with this Tender.

Signature of authorised signatory of Tenderer:
Name of authorised signatory:
Authorised signatory position:
Authorised signatory phone:
Authorised signatory postal address:
Authorised signatory email address:

## 5.2 Tender Documents

Tenderers should submit the following documents:

- This Part 5 (Tender Form); and,
- Tenderer response to Request for Tender including requirements in Part 3 (Specifications).

A Tender may be rejected at the absolute discretion of the Principal if Part 5 is not completed and returned.

A Tender must contain all the information and details required by this Request.

### 5.3 Evaluation Criteria

#### 5.3.1 Selection Criteria

- (1) Tenders will be assessed with the following qualitative and compliance criteria to determine the most advantageous outcome to the Principal. Although price is considered, the Tender containing the lowest price will not necessarily be accepted, nor will the Tender ranked the highest on the qualitative criteria.
- (2) Additional information requested in Section 5 below will be reviewed during the review process and any anomalies may result in additional information being requested from the Tenderer, and in extreme cases, may result in a rejected tender.

#### 5.3.2 Compliance Criteria

These criteria will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Tender from consideration.

Description of Compliance Criteria	Yes/No
Compliance with the Specification contained in the Request.	Yes/No
Compliance with the Conditions of Tendering.	Yes/No
Compliance with all necessary licences and registrations	Yes/No
Compliance with the Tender Deadline	Yes/No
Compliance with and completion of the Price Schedule.	Yes/No

#### 5.3.3 Qualitative Criteria

- (1) In determining the most advantageous quote, the Evaluation Panel will score each Tender against the qualitative criteria.
- (2) Before responding to the following qualitative criteria, Tenderers must note the following:

- (a) it is essential that Tenders address each qualitative criterion;
- (b) all information relevant to answers is to be contained within the response to each criterion;
- (c) respondents are to assume that the Evaluation Panel has no previous knowledge of the respondent's organisation, its activities or experience;
- (d) respondents are to provide full details for any claims, statements or examples used to address the qualitative criteria;
- (e) respondents are to address each issue outlined within a qualitative criterion; and
- (f) failure to provide the specified information may result in elimination from the Tender evaluation process or a low score.
- (3) The qualitative criteria for this Request are as follows:

Description of Qualitative Criteria	Weighting	Tick if document(s) demonstrating compliance attached
<ul> <li>Relevant Experience</li> <li>Demonstrate experience and skill in all aspects of the design of projects of a similar nature displaying high quality outcomes, with emphasis on provision of works and construction practices as detailed in the Specification.</li> <li>Provide details of each project;</li> <li>Outline key design principles and objectives;</li> <li>Include photo records and location details of each construction project (if applicable);</li> <li>Provide the scope of the Tenderer's involvement including details of outcomes;</li> <li>Provide details of safety management systems and evidence of safe work practices; and</li> <li>Demonstrate competency and sound judgement.</li> </ul>	15%	
<ul> <li>Technical Skills and Experience of Key Personnel</li> <li>Demonstrate key personnel's experience in completing similar works and their skills and experience to be used on this project, including as a minimum:</li> <li>Their role in the performance of the Contract; and</li> <li>Qualifications.</li> </ul>	15%	
<ul> <li>Resources</li> <li>Demonstrate the ability to supply and sustain the necessary resources, including:</li> <li>Personnel;</li> <li>Subcontractors;</li> <li>Plant, equipment and materials; and</li> <li>Any contingency measures or back up resources.</li> </ul>	15%	
<ul> <li>Demonstrated Understanding</li> <li>A project schedule/timeline (where applicable);</li> <li>The process for the construction of Works (as applicable);</li> <li>Supply details and provide an outline of your proposed methodology.</li> </ul>	15%	

## 5.4 Price Schedule

#### 5.4.1 Price Considerations

- (1) Criteria on which a quantitative assessment shall be made are:
  - (a) the lump sum or schedule of rates pricing as required by this Request;
  - (b) rise and fall, if part of this Request; and
  - (c) disbursements, allowances, hourly rates and other costs provided by the Tenderer which may impact on the overall value for money, if part of this Request.
- (2) Where a price is fixed the quantitative criteria shall be assessed against the amount of goods or services provided (where applicable).

The weighted cost criteria for this Request are as follows:

Criteria	Weighting	Tick if Price Schedule attached
Tendered price	40%	

#### 5.4.2 Price Basis

All prices for construction of the Works offered under this Request shall be fixed for the term of the Contract from the date of acceptance of the Tender.

#### 5.4.3 GST

- (1) The quoted price for the Work under the Contract should be stated in the following terms:
  - (a) Price excluding Goods and Services Tax (GST);
  - (b) Goods and Services Tax amount; and
  - (c) Total price including GST.
- (2) Where no stipulation is made as to GST, the Contract Price shall be deemed to include GST, unless clarification is provided to the Principal by the Tenderer prior to acceptance of Tender.

#### 5.4.4 Prices inclusive

Unless otherwise indicated, prices tendered shall include recruitment, administration and induction and all applicable levies, duties, taxes and charges. Any charge not stated in the quote, as being additional, will not be allowed as a charge for any transaction under any resultant Contract.

#### 5.4.5 Breakdown of Tender Sum

Please provide a breakdown of your tender sum. If required, utilise additional pages.

#### 5.4.6 Project Timeline

Please provide an indicative project timeline, assuming that successful tenderers will be notified by Friday 29 July 2022.

# 5.5 Additional Information

Organisation Profile	
Attach a copy of your organisational structure and provide background information on your company and label it Organisation Structure	Tick if Attached
If companies are involved, attach their current ASIC company extracts search including latest annual return and label it "ASIC Company Extracts"	Tick if Attached
Referees	
Attach details of your referees and label it " <b>Referees</b> ". You should give examples of your work provided for your referees where possible.	Tick if Attached
Agents	
Are you acting for another party?	Yes / No
If Yes, attach details (including name and address) of your principal and label it <b>"Agents"</b>	Tick if Attached
Trusts	
Are you acting as a trustee of a trust?	Yes / No
If Yes, in an attachment labelled " <b>Trusts":</b>	
a) Give the name of the trust and include a copy of the trust deed (and any	Tick if Attached
related documents); and b) If there is no trust deed, provide the names and addresses of beneficiaries.	
Subcontractors	
Do you intend to subcontract any of the requirements?	Yes / No
If Yes, In an attachment labelled " <b>Subcontractors</b> " provide details of the subcontractor(s) including:	
<ul> <li>a) The name, address and the number of people employed; and</li> <li>b) The requirements that will be subcontracted</li> </ul>	Tick if Attached

Conflicts of Interest	
Will any actual or potential conflict of interest in the performance of your obligations under this contract exist if you are awarded the contract, or are any such conflicts of interest likely to arise during the Contract	Yes / No
If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it " <b>Conflicts of Interest</b> "	Tick if Attached
Health and Safety Instructions to Contractors	
Do you have a documented Work Health and Safety Management system?	Yes / No Tick if Attached
Financial Position	
Are you presently able to pay all your debts in full as and when they fall due?	Yes / No
Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?	Yes / No
If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?	Yes / No
In order to demonstrate your financial ability to undertake this contract, in an attachment labelled " <b>Financial Position</b> " include a profit and loss statement and the latest financial return for you and each of the other proposed contracting entities, together with a list of financial referees from your bank and/or accountant.	Tick if Attached
Insurances	
The insurance requirements for this Request are stipulated in the Annexure. Respondents are to supply evidence of their insurance coverage in a format as outlined below or in an attachment labelled " <b>Insurance Coverage</b> ". A copy of the Certificate of Currency is to be provided to the Principal within ten (10) days of acceptance.	Tick if Attached
Alternative Tenders	
Are you submitting an Alternative Tender, in line with s2.11?	Yes / No
	Tick if Attached

# Annexure A

# **Formal Instrument of Agreement**

 THIS AGREEMENT made this \_\_\_\_\_\_ day of \_\_\_\_\_\_ 20 .

 BETWEEN ('the Contractor') [Insert Contractor's name]

 [Insert Contractor's address]

 ABN [insert Contractor's ABN]

 AND ('the Principal')

 [Insert local government name]

 [Insert local government address]

 Phone:

 Email:

 ABN:

## Background

- A. The Principal issued a Request for Tender No. RFT1 22-23 for Mingenew Tennis Clubhouse Replacement (Request).
- B. The Contractor submitted a Tender dated [XX] in response to the Request (Tender).
- C. The Principal has accepted the Tender.

## **Operative Part**

NOW THIS AGREEMENT WITNESSES and the parties hereto mutually agree as follows: -

#### 1. Contract Documents

The following documents shall be deemed to form and be read and construed as part of the Contract confirmed by this Agreement:

- (a) the Request including but not limited to:
  - (i) the Conditions of Tendering;
  - (ii) the Specifications;
  - (iii) the General Conditions of Contract; and
  - (iv) the Annexures.
- (b) the Tender including but not limited to the Tender Form.
- (c) this Formal Instrument of Agreement.

Words and expressions used in this Agreement shall have the meaning given to them in the Request, unless otherwise stated.

#### 2. Contractor Obligations

In consideration of the matters agreed by the Principal in this Agreement, the Contractor will complete the Work under the Contract as described in the Request in conformity in all respects with the provisions of the Contract and will perform, fulfil, comply with, submit to and observe by or on the part of the Contractor those provisions.

#### 3. Principal Obligations

In consideration of matters agreed by the Contractor in this Agreement, the Principal will make payments to the Contractor in accordance with the provisions of the Contract and will perform, fulfill comply with, submit to and observe all provisions, conditions, stipulation's and requirements and all matters and things expressed or shown in or reasonably inferred from the Contract and which are to be performed, fulfilled, complied with, submitted to or observed by or on the part of the Principal.

#### 4. Obligations joint and several

If any party to this Agreement consists of one or more persons and/or one or more Corporations, or two or more persons and/or two or more corporations, this Agreement shall bind such persons or Corporations (as the case may be) and their respective Executors, Administrators, Successors and Assignees, or permitted Assignees (in the case of the Contractor) jointly and severally and the persons and/or Corporations included in the term "Contractor" or the "Principal" in this Agreement, shall jointly be entitled to the benefit of the Contract and the Contract shall be read and construed accordingly.

#### 5. Entire agreement

This Agreement shall take effect according to its tenor, notwithstanding any prior Agreement in conflict or at variance with it, or any correspondence or documents relating to the subject matter of the Agreement which may have passed between the parties to the Agreement prior to its execution.

#### 6. Contractor default

Where the Contractor is unable or fails (for whatever reason except for acts of God or acts of war) to provide and complete the Work under the Contract during the period of this Contract, the Principal reserves the right to engage an independent contractor to have the Work under the Contract completed, and if the cost of the Work under the Contract provided by the independent contractor is more than the original tendered price, then the original Contractor will be debited with such costs.

#### 7. Warranties

Each party represents and warrants to the other party that:

- (a) it has full power and authority to execute the Contract and to perform its obligations under the Contract;
- (b) the Contract has been duly executed by it; and
- (c) the obligations undertaken by it and set out in the Contract are enforceable against it in accordance with their terms.

#### Executed as a Contract between

The Principal:

Chief Executive Officer On behalf of the Shire of Mingenew

The Contractor:

**EXECUTED BY** [*insert company name*] pursuant to Section 127 of the *Corporations Act*:

Name of Director

Signature of Director

Name of Director/Secretary

Signature of Director/Secretary

# **PROPOSED CLUB ROOMS FOR THE MINGENEW TENNIS CLUB**

PROJECT

GENERAL NOTES: G1. DRAWINGS TO READ IN CONJUNCTION WITH ALL

OTHER RELEVANT CONSULTANT'S DRAWINGS & SPECIFICATIONS. G2. THE BUILDER &/OR CONTRACTORS & THEIR SUB-CONTRACTORS SHALL ENSURE ALL WORK COMPLIES WITH THE LATEST B.C.A. & A.S./N.Z.S. CODES (& AMENDMENTS) & B.C.A. REQUIREMENTS. G3. ANY DISCREPANCIES BETWEEN THIS ARCHITECTURAL DOCUMENTATION & STRUCTURAL DOCUMENTATION WITH STRUCTURAL IMPLICATIONS TO BE CLARIFIED WITH ENGINEER PRIOR TO PRICING/DETAILING/ CONSTRUCTION. ALL OTHER DISCREPANCIES TO BE CLARIFIED WITH ARCHITECT. G4. DO NOT SCALE OFF THESE DRAWINGS OR SKETCHES. ALL DIMENSIONS TO BE TAKEN DIRECTLY FROM THE CURRENT ARCHITECTURAL DRAWINGS. G5. ALL FINISHINGS (INCLUSIVE OF BUT NOT LIMITED TO NONSTRUCTURAL TIMBER/STEEL STUD FRAMING, BULKHEADS, WALL & ROOF CLADDING SYSTEMS, GUTTERS, FLASHINGS, GLAZING SYSTEMS, ETC) TO BE IN ACCORDANCE WITH ARCHITECTURAL DRAWINGS & SPECIFICATIONS. PROVIDE ALL ADDITIONAL FRAMING, SUPPORTS, BRACKETS & THE LIKE TO FIX DOOR & WINDOW FRAMING, CLADDING, LOUVRES, SCREENS, SIGNAGE, DECORATIVE PANELS, ETC. AS REQUIRED. REFER TO ARCHITECTURAL DETAILS. G6. ALL THIRD PARTY/PROPRIETARY PRODUCTS ARE TO BE INSTALLED STRICTLY IN ACCORDANCE WITH SUPPLIER'S/MANUFACTURER'S SPECIFICATIONS & DETAILS.

G7. THE BUILDER SHALL ALLOW & BE RESPONSIBLE FOR MAINTAINING ADEQUATE TEMPORARY PROPPING &/OR BRACING TO ALL PARTS OF THE WORK, WHETHER SHOWN ON THESE DRAWINGS OR NOT, DURING ALL STAGES OF CONSTRUCTION &/OR DEMOLITION AS REQUIRED. THE BUILDER IS TO ALLOW FOR THE ENGAGEMENT OF THEIR OWN ENGINEER TO PROVIDE CERTIFIED ADVICE AS REQUIRED BY BUILDER.

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	SHEET #		Е
	1 OF 9	COVER SHEET	
	2 OF 9	SITE PLAN	_
	3 OF 9	SETOUT PLAN	
	4 OF 9	FLOOR PLAN	
	5 OF 9	ELEVATIONS	F
	6 OF 9	SECTIONS & DETAILS	
	7 OF 9	KITCHEN LAYOUTS	
	8 OF 9	TOILET LAYOUTS	_
	9 OF 9	ELECTRICAL PLAN	
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			SUBBOARD	ELECTRICAL NOTE:
<ul> <li>LIGHT FITTING (AS NOMINATED ON PLAN)</li> <li>LOW VOLTAGE LED DOWN LIGHTS (REFER 1</li> </ul>		\$	SINGLE SWITCH & LINE	<ul> <li>THE BUILDER TO LIAISE WITH COMMENCEMENT OF WORKS</li> </ul>
48W LED TRI WITH DIFFUSER 1200 LONG		۰ ۲۰۰۰	2 OR 3 WAY SWITCH AS NOTED ON PLAN	<ul> <li>IT IS THE BUILDERS RESPONS DESIGN COMPLIES WITH THE</li> </ul>
WALL MOUNTED LIGHTING FIXTURE ( IP65 N	ON METAL )	>	TELEPHONE OUTLET	<ul> <li>ALL DOWNLIGHTS TO BE FITTED OR THE FITTINGS THEMSELVES</li> </ul>
WALL MOUNTED LED SECURITY LIGHTING FI	KTURE WITH SENSOR (IP65 NON METAL)	■ PH	DATA OUTLET	
EXHAUST FAN (DRAFTSTOPPA TO BE FITTE	D)	(-) тv	T.V SOCKET	
GPO'S TO BE MOUNTED ABOVE F.L UNLESS NOT			1200 DIA. CEILING SWEEP FAN - WITH REMOTE SWITCH	
USB - COMBINATION OL	ITLET			_
↓ 4 GANG G.P.O		⊙ <sub>SA</sub>	SMOKE ALARMS TO BE HARD WIRED & INTERCONNECTED INSTALLED ACCORDANCE WITH THE BCA & AS3786:2014	&
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# PROPOSED TENNIS CLUB BRIDIE STREET, MINGENEW

DRAWING INDEX			
SHEET	TITLE		
S1 GENERAL NOTES			
S2 FOOTING & GROUND SLAB PLAN			
S3 FOOTING & GROUND SLAB & TIMBER POST DETAILS			
S4	WALL BRACING PLAN		
S5 WALL BRACING DETAILS			
S6	ROOF PLAN		
S7	ROOF HOLDING DOWN DETAILS		

CLIENT:

**јов no:** 21-5670

#### GENERAL NOTES

- ALL STRUCTURAL DRAWINGS SHALL BE READ IN CONJUNCTION WITH ARCHITECTURAL AND OTHER CONSULTANTS DRAWINGS AND SPECIFICATIONS. ANY DISCREPANCIES SHALL BE REPORTED PRIOR TO FABRICATION AND CONSTRUCTION. CHECK ALL DIMENSIONS ON SITE. REPORT ALL DISCREPANCIES.
- DIMENSIONS SHALL NOT BE SCALED FROM DRAWINGS
- ALL STANDARDS REFERRED TO SHALL BE CURRENT PUBLICATIONS INCLUDING THEIR LATEST REVISIONS.
- DIMENSIONS ON THE STRUCTURAL DRAWINGS ARE EXCLUSIVE OF FINISHES THE CONTRACTOR IS RESPONSIBLE FOR THE CONSTRUCTION METHOD AND MAINTENANCE OF SAFETY DURING THE CONSTRUCTION, SHOULD ANY FLEMENT PRESENT ITSELF TO BE DIFFICULT WITH RESPECT TO CONSTRUCTABILITY OR SAFETY, THE ENGINEER IS TO BE NOTIFIED IMMEDIATELY TO ALLOW FOR DIRECTION TO BE GIVEN PRIOR TO PROCEEDING WITH WORKS.
- ALL WORKS TO CONFORM TO THE NATIONAL CONSTRUCTION CODE "NCC". THE STRUCTURE HAS BEEN DESIGNED TO MEET THE REQUIREMENTS OF THE RELEVANT CODE/STANDARD PROVISIONS FOR THE STRUCTURE IN ITS SERVICE CONDITION. THE CONTRACTOR IS RESPONSIBLE FOR THE STABILITY OF THE STRUCTURE & ADJACENT STRUCTURES DURING THE CONSTRUCTION PROCESS AND IS RESPONSIBLE TO ENSURE THAT NO STRUCTURAL ELEMENT IS IN ANY WAY OVERSTRESSED DURING THE CONSTRUCTION PROCESS. ANY TEMPORARY BRACING/SUPPORT WHICH IS REQUIRED IS TO BE DESIGNED AND INSTALLED BY PPROPRIATE SUB-CONTRACTORS
- THIS OFFICE DOES NOT ACCEPT ANY RESPONSIBILITY FOR THE DESIGN NOMINATION. SPECIFICATION OR INSTALLATION OF ANY TEMPORARY RETAINING OR UNDERPINNING WORKS INCLUDING BUT NOT LIMITED TO GROUT INJECTION SHORING OR SHEET PILING AS THIS IS CARRIED OUT BY SPECIALIST CONSULTANTS AND SUBCONTRACTORS. CONTRACTOR SHALL ENSURE THAT THE STRUCTURE AND ADJACENT STRUCTURES
- ARE NOT UNDERMINED OR SURCHARGED. WATERPROOFING OF STRUCTURAL ELEMENTS AS REQUIRED IS TO BE DESIGNED,
- NOMINATED, SPECIFIED & INSTALLED BY SPECIALIST SUBCONTRACTORS OR TH BUILDER. THIS OFFICE ACCEPTS NO RESPONSIBILITY FOR THE WATERPROOFING OF TRUCTURES
- THE DESIGN NOMINATION & SPECIFICATION OF SITE DRAINAGE IS THE
- RESPONSIBILITY OF THE BUILDER OR SPECIALIST SUB CONSULTANTS 13. ALL CONSTRUCTION SHALL BE UNDERTAKEN BY COMPETENT AND SUITABLY
- OUALIFIED PERSONS UNLESS DRAWINGS ARE ISSUED "REV 0 - ISSUED FOR CONSTRUCTION" THEY ARE NOT TO BE USED FOR CONSTRUCTION AND ARE FOR ADVICE AND REVIEW ONLY. 14

#### FOOTINGS

- COMPACT ALL GRADES BELOW FOOTINGS AND SLAB ON GROUND TO ACHIEVE A MINIMUM PERTH SAND PENETROMETER (PSP) READING IN ACCORDANCE WITH AS1289.6.3.3 OF SINGLE STOREY: 6 BLOWS PER 300mm
  - MULTI STOREY: 7 BLOWS PER 300mm
- ALL EARTHWORKS SHALL BE IN ACCORDANCE WITH AS3798 "GUIDELINES ON EARTHWORKS FOR COMMERCIAL AND RESIDENTIAL DEVELOPMENTS".
- THE FOOTING DETAIL RECOMMENDED REQUIRES ONGOING MAINTENANCE OF THE SITE TO ENSURE ITS STRUCTURAL PERFORMANCE. REFER TO CSIRO PUBLICATION 0-91 "GUIDE TO HOME OWNERS ON FOUNDATION MAINTENANCE AND FOOTIN PERFORMANCE" FOR DETAILS. THESE RECOMMENDATIONS AND FOOTING DETAILS. PROVIDED ARE BASED ON PERFORMANCE AS DEFINED IN AS2870. MINOR FOUNDATION MOVEMENT IS TO BE EXPECTED WHICH CAN RESULT IN CRACKING RELATING TO DAMAGE CATEGORY '2'. THIS IS DEEMED TO BE NON-STRUCTURAL CRACKING
- ALL SAND SHALL BE CLEAN WELL GRADED SAND AND SHALL BE COMPACTED IN 300mm LAYERS. ALL SAND FILL SHALL BE CLEAN, FREE DRAINING, WELL GRADED SAND WITH NO MORE THAN 5% PASSING A 75  $\mu M$  SIEVE. WHERE ENGINEER CONTROLLED FILL IS REQUIRED, THE SAND IS TO BE COMPACTED IN LAYERS OF 300mm TO ACHIEVE AT LEAST 7 PSP BLOWS FROM 150mm-450mm, 7 PSP BLOWS FROM 450mm-750mm AND 8PSP BLOWS FROM 750mm-1050mm. POUR LOWER LEVEL FOOTINGS FIRST. DIFFERENCE IN FOUNDING LEVEL OF
- ADJACENT FOOTINGS SHALL NOT EXCEED HALF OF THE CLEAR DISTANCE BETWEEN THEM
- STEP FOOTINGS 514 (MAX) TO SUIT SITE LEVELS U.N.O.
- ALL FOOTINGS AND GROUND SLABS ARE TO BE BUILT IN ACCORDANCE WITH AS2870 RESIDENTIAL SLABS AND FOOTINGS
  - AS3798 GUIDELINES ON EARTHWORKS FOR COMMERCIAL AND RESIDENTIAL DEVELOPMENTS.
- WHERE SERVICE PIPES PASS THROUGH THE FOOTINGS, SPECIFIED TOTAL THICKNESS OF ALL CONCRETE IS ALWAYS TO BE MAINTAINED. FOR CLASS 'M' & 'H1' SITES, PROVIDE A CLOSED CELL POLYETHYLENE PACKING OF AT LEAST 20mm AROUND ALL SERVICES PASSING THROUGH CONCRETE, FOR CLASS 'H2' & 'E' SITES PROVIDE A CLOSED CELL POLYETHYLENE PACKING OF AT LEAST 40mm AROUND ALL SERVICES PASSING THROUGH CONCRETE. VERTICAL PENETRATIONS DO NOT REQUIRE

#### MASONRY

- BRICKWORK SHALL COMPLY WITH AS3700 & AS4773. LOAD BEARING BRICKWORK SUPPORTING SUSPENDED FLOORS TO HAVE A MINIMUM
- UNCONFINED CHARACTERISTIC STRENGTH f'uc: 12MPa. MORTAR TO BE M3. USE M4 WHEN LOCATED WITHIN 1km OF THE OCEAN OR WHEN IN DPC (DAMP PROOF COURSE).
- MASONRY ABUTTING STEEL OR CONCRETE SHALL BE RESTRAINED USING 32 x 1.2mm STEEL STRAPS 300 LONG POWER FIXED AT THE LESSER OF EVERY 4TH COURSE OR 600mm VERTICALLY. ALTERNATIVELY, PROVIDE R6 RODS CRIMPED AND WELDED AT 300 CRS TO BOTH SIDES OF STEELWORK. PROVIDE BRICK TIES AS PER NOTE 5.
- APPROVED WALL TIES ARE TO COMPLY WITH AS3700, AS/NZS2699.1 & AS4773.1 LOAD BEARING BRICKWORK SHALL NOT BE HORIZONTALLY OR DIAGONALLY CHASED
- OR CUT WITHOUT PRIOR APPROVAL OF THE ENGINEER.
- ALL EXPANSION JOINTS TO BE PROVIDED IN ACCORDANCE WITH AS3700, PROVIDE 15mm WIDE VERTICAL EXPANSION JOINT TO THE EXTERNAL LEAF OF MASONRY WALLS GREATER THAN 12m LONG OR 10m LONG FOR PARAPET WALLS, USE EXPANSION BRICK TIES ACROSS THE JOINT INSTALLED EVERY 4 TH COURSE VERTICALLY. FILL JOINT WITH FLEXIBLE FILLER

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CONSULTING ENGINEERS

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#### FORMWORK

- ALL FORMWORK SHALL COMPLY WITH AS3610 FORMWORK STRIPPING TIMES (MINIMUM DAYS)
- WALLS AND COLUMNS 3 DAYS BEAMS, SLABS & STAIRS 10 DAYS
- IMMEDIATELY AFTER STRIPPING, PROGRESSIVELY BACK PROP SLAB AND BEAMS. PLACE PROPS AT 1/4 POINTS OF BEAM SPANS, AND AT 2.4m CRS FOR SLAB.
- DE-PROP WHEN SLAB IS 28 DAYS OLD. THIS CAN BE REDUCED TO 21 DAYS PROVIDED
- fc IS REACHED (TESTED IN ACCORDANCE WITH AS1012.9).
- BETWEEN 10 & 21 DAYS, WHILE PROPPED, CONSTRUCTION MATERIALS MAYBE
- LOADED ON TOP OF SLAB AT THE LOCATIONS OVER WALLS OR PROPS BELOW. CONSTRUCTION OF WALLS OVER SHALL ONLY COMMENCE ONCE SLAB IS FULLY DE-PROPPED ALL FORMWORK TO COMPLY WITH AS3610. THE DESIGN CERTIFICATION,
- CONSTRUCTION AND PERFORMANCE OF FORMWORK AND FORMWORK SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR AND SHALL BE CARRIED OUT IN ACCORDANCE WITH THE RELEVANT STANDARDS

#### CONCRETE

ALL CONCRETE SHALL BE IN ACCORDANCE WITH AS3600

CONCRETE QUALITY; REFER TO TABLE						
ELEMENT	GRADE OF CONCRETE f'c (MPa)	MAX. AGGREGATE. SIZE (mm)	SLUMP (mm)			
FOOTINGS	N20	20	80			
SLAB ON GROUND - INTERNAL	N20	20	80			
SLAB ON GROUND - EXTERNAL	N40	20	80			
SUSPENDED SLAB - INTERNAL	N32	20	80			
SUSPENDED SLAB - EXTERNAL	N40	20	80			
COLUMNS	N40	14	80			

- INTERNAL PROTECTED FROM WEATHER, CONTAINED WITHIN THE MAIN BUILDING BY WALLS & ROOF FTC
- EXTERNAL EXPOSED/OPEN TO WEATHER EG: UNDERSIDE OF EXTERNAL CANTILEVER, BALCONY SLABS, SLAB OVER ALFRESCO AREAS ETC. ALL CEMENT SHALL CONFORM TO AS 3972, ALL CEMENT TO BE USED GENERAL
- PURPOSE CEMENT "TYPE GP". BLENDED CEMENTS "TYPE GB" SHALL NOT BE USED WITHOUT THE PRIOR WRITTEN APPROVAL OF THE ENGINEER.
- BUILD ALL FORMWORK FROM ARCHITECTURAL DRAWINGS. CONFIRM ANY CAST-IN ITEMS SUCH AS BOLTS. ANGLES, TIES, FLASHING, PLUMBING AND ELECTRICAL
- ALL CONCRETE SHALL BE VIBRATED BY AN APPROVED IMMERSION TYPE VIBRATOR 5 THE FINISHED CONCRETE SHALL COMPLETELY FILL THE FORMWORK, ENCASE ALL REINFORCEMENT AND ENSURE SEGREGATION OF THE CONCRETE DOES NOT OCCUR POUR BEAMS AND SLABS MONOLITHICALLY.
- CONSTRUCTION JOINT LOCATIONS SHALL BE APPROVED BY THE ENGINEER. CAST-IN CONDUITS SHALL HAVE A MINIMUM 25mm CONCRETE COVER AND SHALL BE
- PLACED BETWEEN, NOT OUTSIDE, THE LAYERS OF REINFORCEMENT. WHERE CONCRETE BEARS ON BRICKWORK, PROVIDE TWO LAYERS OF APPROVED
- BOND BREAKER BETWEEN WALLS AND SUSPENDED SLAB (ALSO APPLICABLE TO WALLS OVER SUSPENDED SLAB) U.N.O. 10.
  - ALL CONCRETE SHALL BE MOIST CURED FOR 7 DAYS BY EITHER: CONTINUOUS WATER PONDING
    - WET HESSIAN
    - APPROVED CURING MEMBRANE
- CURING COMPOUNDS ARE PERMITTED, PROVIDED THAT THEY COMPLY WITH AS3799 AND DO NOT EFFECT THE FLOOR FINISHES. THE USE OF PVA BASED COMPOUNDS IS NOT RECOMMENDED.
- 11. ALL REINFORCEMENT SHALL BE INSPECTED AND APPROVED BY THE ENGINEER BEFORE POURING CONCRETE.
- 12. ADMIXTURES SHALL NOT BE USED WITHOUT WRITTEN APPROVAL FROM THE DESIGN ENGINEER.
- UNLESS STATED ON THE ATTACHED PLANS, IT IS ASSUMED THAT POLISHED, HONED OR EXPOSED FINISHES WILL NOT BE USED TO CONCRETE SURFACES. REFER TO THIS OFFICE FOR FURTHER ADVICE IF USING ANY OF THE FINISHES STATED ABOVE.

#### STRUCTURAL STEEL

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- STEELWORK SHALL COMPLY WITH AS4100. U.O.N. USE 2-M16 8.8/S BOLTS AND 10mm THICK PLATE FOR EACH CONNECTION.
- ALL HOLLOW SECTIONS SHALL BE FULLY SEALED USING 3mm SEAL PLATES. DRY PACK BENEATH ALL BASE PLATES USING 2:1 SAND/CEMENT STIFF MORTAR. WELDING SHALL COMPLY WITH AS/NZS1554 AND SHALL HAVE A MINIMUM WELD
- CATEGORY OF GENERAL PURPOSE (GP). USE E48XX OR W50X WELDING CONSUMABLES U.N.O. UNOUSE 6mm CONTINUOUS EILLET WELD AT ALL WELDED IOINTS, EULLISTRENGTH
- BUTT WELD (F.S.B.W) TO BE GP WELDED CATEGORY U.N.O. ALL SITE WELDING TO BE PERFORMED BY OUALIFIED PERSONS
- TOUCH UP ALL SITE WELDS WITH 2 COATS OF 'COLD GALV' ZINC RICH PAINT.
- ALL SURFACE TREATMENT OF STRUCTURAL STEEL SHALL COMPLY WITH AS/NZS2312 AND THE NATIONAL CONSTRUCTION CODE "PROTECTIVE COATINGS". ALL STEEL
- BUILT INTO MASONRY SHALL ALSO COMPLY WITH AS/NZ52699. ALL STEELWORK IN CONTACT WITH GROUND TO BE SUITABLY TREATED IN ACCORDANCE WITH THE NATIONAL CONSTRUCTION CODE & CORROSIONS SPECIALISTS RECOMMENDATIONS. CONTACT THIS OFFICE FOR FURTHER ADVICE. MINIMUM GRADE OF STEEL SHALL BE
- STRUCTURAL STEEL GRADE 300 IN ACCORDANCE WITH AS/N7S3679 HOLLOW SECTIONS - CHS TO COMPLY WITH AS/NZS 1163-C250L0/C350L0
- RHS/SHS TO COMPLY WITH AS/NZS1163-C450L0 - GRADE 300 IN ACCORDANCE WITH AS/NZS3678 PLATE
- FLAT BAR - GRADE 250 IN ACCORDANCE WITH AS/N7S3679 PROVIDE MINIMUM 200 CFW (CONTINUOUS FILLET WELD), TO BOTH SIDES OF WEB
- 12. OF T-BAR AT BOTH ENDS. UNLESS SPECIFIED OTHERWISE, LINTELS & SHELF LINTELS TO COMPLY WITH AS4100, 13.
- AS3700, AS4773, AS/NZS2699.3 AND THE NATIONAL CONSTRUCTION CODE

S.H. ISSUED FOR CONSTRUCTION

CHECK DESCRIPTION

#### 14 LINEESS NOTED OTHERWISE LINTELS BELOW SUSPENDED FLOORS SHALL BE SCHEDULED AS NOMINATED BELOW.

MEMBER	MAX SPAN (mm)	MIN. END BEARING (mm)
	(11111)	
100 x 75 x 8.0 UA	1500	150
125 x 75 x 8.0 UA	2000	150
150 x 90 x 8.0 UA	2500	230
150 x 100 x 10 UA	3000	230

#### TIMBER

- TIMBER SHALL BE IN ACCORDANCE WITH: AS1684 & AS1720
- NATIONAL CONSTRUCTION CODE
- ALL STRUTTING BEAMS ARE TO BE LATERALLY RESTRAINED AT POINT OF LOADING AND AT ENDS TO AS1684.
- U.N.O ALL LVL BEAMS ARE ASSUMED TO BE WESBEAM, TILLINGS SMARTFRAME LVL15, HYSPAN OR EQUIVALENT.
- 4 ALL TIMBER TO CONFORM TO THE REQUIRED HAZARD CLASS IN ACCORDANCE WITH AS1684.

#### MINIMUM STRESS GRADES ON TIMBER U.N.O:

TIMBER	GRADE	JOINT GRADE
SOFTWOOD	MGP10	JD5
HARDWOOD	F14	J3

FRNAL TIMBER IS REGULARLY INSPECTED AND APPROPRIATELY MAINTAINED OVER ITS LIFE BY SUITABLY OUALIFIED PERSONS

- TERMITE TREATMENT IN ACCORDANCE WITH AS3660.
- TIMBER TO TIMBER ROOF BEAM CONNECTION TO BE MIN. 5PL ANGLE CLEAT, 2-M10 BOLTS EACH BEAM OR APPROVED PROPRIETARY ANGLE. ALL PROPRIETARY CONNECTORS ARE TO BE INSTALLED IN ACCORDANCE WITH THE
- MANUFACTURES RECOMMENDATIONS.

#### REINFORCEMENT

STEEL NOTATION

10

11

 UT - UPPER TOP UB - UPPER BOTTOM

IT - LOWER TOP

LB - LOWER BOTTOM

FLEMENT

ROUND SLAB (TOP COVER)

DLUMN (CONCRETE & FRC)

LOCATION

177

JSPENDED SLAB

DNCRETE BEAM

U.N.O. CLEAR COVER TO REINFORCEMENT SHALL BE:

- SYMBOLS DENOTED IN DRAWINGS FOR GRADE AND STRENGTH OF REINFORCEMENT SL & RL - GRADE 500 WELDED WIRE REINFORCING MESH TO AS/NZS4671
   L - GRADE 500 STEEL REINFORCING WIRE TO AS/NZS4671.
  - N -
  - GRADE 500 HOT ROLLED DEFORMED REINFORCING BAR TO AS/NZS4671 GRADE 250 R PLAIN BAR TO AS/NZS4671. • R -
  - GRADE 500 L COLD DRAWN ROUND WIRE TO AS/NZS4671. W/ -
- SPLICE REINFORCEMENT IN ACCORDANCE WITH AS3600. MESH SHALL BE LAPPED SO THAT THE TWO OUTERMOST MAIN WIRES OF ONE SHEET OVERLAP THE TWO MOST OUTERMOST MAIN WIRES OF THE OTHER SHEET.



 THE SPLICE LENGTH OF BARS SHALL BE AS GIVEN IN THE FOLLOWING TABLE, EXCEPT WHERE OTHER DIMENSIONS ARE STATED ON THE ACTUAL DETAILS. ORMED BARS (mm).

BASIC TENSILE L	AP LENGTH	FOR GRADE	500N	DEFC

f'c	EXP			BAR	TYPE		
(Mpa)	CLASS	N12	N16	N20	N24	N28	N32
<sup>&gt;</sup> 32	≥ A1	500	750	1000	1250	1500	1750

....

PROVIDE STANDARD HOOKS OR COGS TO BAR ENDS IN ACCORDANCE WITH AS3600. ALL REINFORCEMENT SHALL BE ADEQUATELY AND ACCURATELY TIED AND SUPPORTED ON PLASTIC, OR PLASTIC TIPPED CHAIRS. FULL PLASTIC CHAIRS ARE TO

ALL REINFORCEMENT TO SLAB ON GROUND SHALL BE SUPPORTED BY PLASTIC BAR CHAIRS AT 600 CRS MAX. TO MAINTAIN TOP COVER.

REINFORCING SHALL NOT BE BENT OR HEATED ON SITE WITHOUT APPROVAL FROM THE DESIGN ENGINEER. INCLUDED LUGS TO CAST IN ELEMENTS.

THE REINFORCEMENT SPECIFIED WILL ASSIST IN CONTROLLING CRACKING OF THE CONCRETE BUT WILL NOT PREVENT FROM IT OCCURRING,.

INTERNAL

25

DR ENVIRONMENTAL CLASSIFICATION OF "SEVERE", FULL PLASTIC CHAIRS HOULD BE USED FOR ALL EXTERNAL CONCRETE

I.O REOUIRED COVER INCLUDES TOP, BOTTOM & SIDE COVER

PROPOSED TENNIS CLUB

BRIDIE STREET, MINGENEW

REQUIRED COVER (mm)

FER TO SUSPENDED SLAB PL/ COVER REQUIREMENTS

REFER TO SUSPENDED SLAB PLAN FOR

COVER REQUIREMENT

40 TO FITMENTS

EXTERNAL

45

SLAB PLAN FO

CLIENT

TITLE

TP DRAFTING

GENERAL NOTES

- BE FOR EXTERNAL CONCRETE WHEN LOCATED WITHIN 1km OF THE COAST. THE FIRST CONCRETE BEAM LIGATURE SHALL BE POSITIONED NO MORE THEN 50mm
- FROM ANY ADJACENT SUPPORT FACE. THE FIRST CONCRETE COLUMN TIE SHALL BE PLACED NO MORE THAN 50mm FOR ANY ADJACENT SUPPORT FACE

ALL MECHANICAL AND CHEMICAL ANCHORS SHALL BE INSTALLED IN STRICT ACCORDANCE WITH THE MANUFACTURER'S SPECIFICATIONS THE FOLLOWING TABLE PROVIDES MINIMUM ANCHOR CAPACITY REQUIREMENTS FOR UNCRACKED SUBSTRATES

MINIMUM WORKING LOAD ANCHOR CAPACITY					
BRICKWORK SUBSTRATE	SHEAR (kN)	TENSION (kN)			
MEDIUM DUTY	2.5	2.5			
CONCRETE SUBSTRATE	SHEAR (kN)	TENSION (kN)			
MEDIUM DUTY	9	7			
HEAVY DUTY	18	17			

ANCHORS

MAINTENANCE

ALL STRUCTURES ARE REQUIRED TO BE INSPECTED & MAINTAINED BY SUITABLY QUALIFIED PERSONS DURING THEIR LIFE TO ENSURE THEY REMAIN SERVICEABLE & FIT FOR USE. THIS INCLUDES BUT IS NOT LIMITED TO SITE DRAINAGE, SIGNS OF CORROSION, CRACKING, EXCESSIVE DEFLECTION OR ANY OTHER INDICATION OF STRUCTURAL DISTRESS.

FOR 'S' SLIGHTLY REACTIVE SITES & GREATER, THE BUILDER / OWNER IS TO NOTIFY THE ENGINEER PRIOR TO PLANTING TREES OR SHRUBS WITHIN 2.5m OF THE BUILDING OR A DISTANCE EQUAL TO THE ANTICIPATED MAXIMUM HEIGHT OF THE TREE AS THIS WALL ALTER THE FOOTING DESIGN.

	DESIGN CRITERIA	
IMPORTANCE LE	VEL	2
IN ACCORDANCE WITH T	THE NATIONAL CONSTRUCTION CODE	Z
SITE CLASSIFICA	TION	
IN ACCORDANCE WITH A	AS2870. BUILDER TO CONFIRM	S
WIND CLASSIFIC	ATION	
IN ACCORDANCE WITH A	<b>\</b> \$4055	
WIND REGION	В	N3
TERRAIN CATEGORY	TC2	INO
SHIELDING	NS	
TOPOGRAPHY	ТО	
DURABILITY CLA	ASSIFICATION	51
FOR COMPONENTS BUIL AS3700 AND AS2699	T INTO MASONRY IN ACCORDANCE WITH	R1
ENVIRONMENT	AL CLASSIFICATION	
3.4.4.4 OF THE NATIONA	EELWORK IN ACCORDANCE WITH SECTION AL CONSTRUCTION CODE. FOR STRUCTURES ND 10 REFER TO AS2312.	MODERATE
IMPOSED ACTIO	NS	
IN ACCORDANCE WITH A	\$S1170.1	
GENERAL AREAS	1.5kPa	
BALCONIES	2.0kPa	
ROOF (NON TRAFFICABL	E) 0.25kPa	
EARTHQUAKE D	ESIGN CATEGORY	NI/A
IN ACCORDANCE WITH A	4S1170.4	
HAZARD FACTOR	Z = 0.09	
STRUCTURE	RESIDENTIAL STRUCTURE (HOUSE) < 8.5r	m HEIGHT
IN ACCORDANCE WITH A HAZARD FACTOR	AS1170.4 Z = 0.09	N/A 11 HEIGHT



FOOTING & GROUND SLAB PLAN

FOOTING SCHEDULE					
PAD A         600 x 600 x 400 DEEP         MASS CONCRETE					

COLUMN SCHEDULE					
SC1	89 x 89 x 3.5 SHS REFER TO DET				
TP1	120 x 120 GL13 TIMBER POST	REFER TO DETAIL			

F	FOOTING AND EXPOSED GROUND SLAB NOTES					
1.	PROVIDE 100mm GROUND SLAB, REINFORCED WITH SL82 MESH. 30 TOP COVER					
2.	RE-ENTRANT REINFORCEMENT: 4-N16 x 2000 LONG, CENTRAL AT ALL RE-ENTRANT CORNERS.					
3.	PROVIDE 2 LAYERS OF D.P.M.					
4.	MINIMUM CONCRETE SPECIFICATIONS OF S32/14/80 IS TO BE USED FOR GROUND SLABS					
5.	FINAL DRYING BASIC SHRINKAGE STRAIN 500 MICROSTRAIN					
6.	IT IS RECOMMENDED THAT THE CONCRETE MANUFACTURER/SUPPLIER IS TO BE CONSULTED FOR THE USE OF ADDITIVES/PLASTICISERS FOR CONCRETE SLABS WITH EXPOSED FINISHES.					

7. STEP FOOTING TO SUIT SITE LEVELS.



						LOCATION PROPOSED TENNIS CLUB	CLIENT TP DRAFTING
						BRIDIE STREET, MINGENEW	<b>TITLE</b> FOOTING & GROUND SLAB PLAN
0	22-01-22	L.E	A.L	S.H.	ISSUED FOR CONSTRUCTION		
REV	ISSUE DATE	DRAWN	ENG.	CHECK	DESCRIPTION	178	

WET AREA SET DOWN TO ARCH'L






WALL BRACING PLAN

#### TIMBER STUD WALL FRAMING NOTES

- 1. ALL WALL FRAMING MEMBERS TO BE IN ACCORDANCE WITH AS1684 2. FIX WALL FRAME BOTTOM PLATE TO FLOOR STRUCTURE WITH:

  - TO CONCRETE SLAB: N1 / N2 WIND CLASSIFICATION: 1-M10 BOLT OR 1x75mm MASONRY NAIL (HAND DRIVEN
- AT FLA WIND CLOSEN CATION CAN BE AND A CONTRACT AND A
- THEREAFTER. PROVIDE DOUBLE-PLATE FOR INTERNAL WALLS; TO TIMBER SUB-FRAME:
- N1 / N2 WIND CLASSIFICATION: 1/14g TYPE 17 SCREWS x 120 LONG AT CORNERS & 1200 CRS THEREAFTER;
  N3 WIND CLASSIFICATION: 2/14g TYPE 17 SCREWS x 120 LONG AT CORNERS & 1200
- CRS. THEREAFTER:
- REFER TO BRACING WALL DETAILS FOR ADDITIONAL FLOOR CONNECTION DETAIL. AT BRICK VENEER WALLS, PROVIDE CAVITY BRICK TIES AT 4c VERTICALLY AND 600 HORIZONTALLY. REFER GENERAL NOTES FOR TIE TREATMENT.
- 4. STRUTTING BEAMS TO BE SUPPORTED ON DOUBLE STUDS OR STIFFENED WALL PLATE AS PER AS1684.
- 5. DO NOT STRUT ROOF FRAME ONTO WALLS NOT SUPPORTED BY BEAMS OR DOUBLE JOISTS BELOW.





SCALE AT A3 1:100

S4 OF 7







							LOCATION PROPOSED TENNIS CLUB	CLIENT TP DRAFTING
							BRIDIE STREET, MINGENEW	TITLE
CONSULTING ENGINEERS								ROOF PLAN
9444 0171   reception@lalli.com.au   www.lalli.com.au   1/55 Howe street, Osborne Park	0	22-01-22	L.E	A.L	S.H.	ISSUED FOR CONSTRUCTION		
© Marema Nominees PTY LTD	REV	ISSUE DATE	DRAWN	ENG.	CHECK	DESCRIPTION	182	







# NCC 2019 Volume 1

# DtS Provisions Part J1, J3, J7 & J8 Commercial Buildings - Class 3, 5 to 9

CLIENT:	TP Drafting
PROJECT ADDRESS:	MINGENEW TENNIS CLUB CLUBROOMS Bride Street, Mingenew WA 6522
NCC CLIMATE ZONE:	4
JOB NUMBER:	65492
<b>REVISION</b> :	A
DATE:	6/02/2022
PREPARED BY:	Debbie Bute

# YOUR TRUSTED THERMAL EXPERTS



# NCC Deemed to Satisfy Elemental Provisions Requirements

Performance Requirements JP1 is satisfied by complying with -

- (a) for reducing the heating or cooling loads -
  - (i) of sole-occupancy units of a Class 2 building or a Class 4 part of a building, J0.2 to J0.5; and
  - (ii) of a Class 2 to 9 building, other than the sole-occupancy units of a Class 2 building or Class 4 part of a building, Parts J1 and J3: and
- (b) for air-conditioning and ventilations, Part J5; and
- (c) for artificial lighting and power, Part J6; and
- (d) for heated water supply and swimming pool and spa pool plans, Part J7; and
- (e) for facilities for monitoring, Part J8.

# Part J1 - Building Fabric

# Part J1.1 Application of the Part

The Deemed-to-Satisfy Provisions of this Part apply to building elements forming the envelope of a Class 2 to 9 building other than J1.2(e), J1.3, J1.4, J1.5 and J1.6(a) which do not apply to a Class 2 sole-occupancy unit or a Class 4 part of a building.

#### Part J1.2 - Thermal Construction - General

(a) Where required, insulation must comply with AS/NZS 4859.1 and be installed so that it -

- abuts or overlaps adjoining insulation other than at supporting members such as studs, noggings, joists, furring channels and the like where the insulation must be against the member; and
- forms a continuous barrier with ceilings, walls, bulkheads, floors or the like that inherently contribute to the thermal (ii) barrier: and
- (iii) does not affect the safe or effective operation of a service or fitting.
- (b) Where required, reflective insulation must be installed with
  - the necessary airspace to achieve the required R-Value between a reflective side of the reflective insulation and a building
  - lining or cladding; and
  - (ii) the reflective insulation closely fitted against any penetration, door or window opening; and
  - (iii) the reflective insulation adequately supported by framing members; and
  - (iv) each adjoining sheet of roll membrane being -
    - (A) overlapped not less than 50 mm; or
    - (B) taped together.
- (c) Where required, bulk insulation must be installed so that -
  - (i) it maintains its position and thickness, other than where it is compressed between cladding and supporting members,
  - water pipes, electrical cabling or the like; and
  - (ii) in a ceiling, where there is no bulk insulation or reflective insulation in the wall beneath, it overlaps the wall by not less than 50 mm.
- (d) Roof, ceiling, wall and floor materials, and associated surfaces are deemed to have the thermal properties listed in Specification J1.2.
- (e) The required Total R-Value and Total System U-Value, including allowance for thermal bridging, must be -
  - (i) calculated in accordance with AS/NZS 4859.2 for a roof or floor; or
  - (ii) determined in accordance with Specification J1.5a for wall-glazing construction; or
  - (iii) determined in accordance with Specification J1.6 or Section 3.5 of CIBSE Guide A for soil or sub-floor spaces.

# Part J1.3 - Roof and Ceiling Construction

- (a) A roof or ceiling must achieve a Total R-Value greater than or equal to J1.3 requirements for the direction of heat flow.
- (b) In climate zones 1, 2, 3, 4, 5, 6 and 7, the solar absorptance of the upper surface of a roof must be not more than 0.45.



# Part J1.4 - Roof Lights must have -

- (a) a total area of not more than 5% of the floor area of the room or space served; and
- (b) transparent and translucent elements, including any imperforate ceiling diffuser, with a combined performance of -
  - (i) for Total system SHGC, in accordance with Table J1.4; and
  - (ii) for Total system U-Value, not more than U3.9

# Part J1.5 - Walls and Glazing

(a) The Total System U-Value of wall-glazing construction must not be greater than values shown in below table for each building class:

- (b) The Total System U-Value of display glazing must not be greater than U5.8
- (c) The Total System U-Value of wall-glazing construction must be calculated in accordance with Specification J1.5a.
- (d) Wall components of a wall-glazing construction must achieve a minimum Total R-Value of -
  - (i) where the wall is less than 80% of the area of the wall-glazing construction, R1.0; or
  - (ii) where the wall is 80% or more of the area of the wall-glazing construction in accordance with Table J1.5a.
- (e) The solar admittance of externally facing wall-glazing construction must not be greater than values specified in Table J1.5b or J1.5c.
- (f) The solar admittance of a wall-glazing construction must be calculated in accordance with Specification J1.5a.

# Part J1.6 Floors

- (a) A floor must achieve the Total R-Value specified in Table J1.6. Calculations for compliance shown below.
- (b) A floor must be insulated around the vertical edge of its perimeter with insulation having an R-Value greater than or equal to 1.0 when the floor -
  - (i) is a concrete slab-on-ground in climate zone 8; or
  - (ii) has an in-slab or in-screed heating or cooling system, except where used solely in a bathroom, amenity area or the like.
- (c) Insulation required by (b) for a concrete slab-on-ground must -
  - (i) be water resistant; and
  - (ii) be continuous from the adjacent finished ground level -
    - (A) to a depth not less than 300 mm; or
    - (B) for the full depth of the vertical edge of the concrete slab-on-ground.

# Part J3 - Building Sealing

# Part J3.1 Application of the Part

The Deemed-to-Satisfy Provisions of this Part apply to building elements forming the envelope of a Class 2 to 9 building, other than

- (a) a building in climate zones 1, 2, 3 and 5 where the only means of air-conditioning is by using an evaporative cooler; or
- a permanent building opening, in a space where a gas appliance is located, that is necessary for the safe operation of a gas (b) appliance; or
- (c) a building or space where the mechanical ventilation required by Part F4 provides sufficient pressurisation to prevent infiltration.

# Part J3.2 Chimneys and Flues

Chimney or flue of an open solid-fuel burning appliance must be provided with a damper or flap that can be closed to seal the chimney or flue.

# Part J3.3 Roof Lights

(a) A roof light must be sealed, or capable of being sealed, when serving -

- (i) a conditioned space; or
- (ii) a habitable room in climate zones 4, 5, 6, 7 or 8.



# Part J3.3 Roof Lights (continued)

(b) A roof light required by (a) to be sealed, or capable of being sealed must be constructed in with -

- (i) an imperforate ceiling diffuser or the like installed at the ceiling or internal lining level; or
- (ii) a weatherproof seal; or
- (iii) a shutter system readily operated either manually, mechanically or electronically by the occupant.

# Part J3.4 Windows and Doors

(a) All doors, operable windows or the like must be sealed in accordance with J3.4(a)

- (b) The requirements of (a) do not apply to -
  - (i) a window complying with AS 2407; or
  - (ii) a fire door or smoke door; or
  - (iii) a roller shutter, roller shutter grille or other security door or device installed only for out-of-hours security.
- (c) A seal to restrict air infiltration -
  - (i) for the bottom edge of a door, must be a draft protection device; and
  - (ii) for the other edges of a door or the edges of an openable window or other such opening, must be a foam or rubber compression strip, fibrous seal or the like

(d) The main entrance to the building opens into a conditioned space more than 50m2 and will be fitted with a self-closing door, rapid roller door, revolving door or the like or will be provided with an airlock.

- (ii) Café, restaurants or open shop front will have a 3m deep unconditioned zone between the main entrance, including an open front, and the conditioned space and all other entrances will be fitted with self-closing doors
- (e) Loading dock entrance, if leading to a conditioned space, must be fitted with a rapid roller door or the like.

# Part J3.5 Exhaust Fans

(a) Exhaust fans will be fitted with a sealing device such as a self-closing damper or the like when servicing -

- (i) a conditioned space; or
- (ii) a habitable room in climate zones 4, 5, 6, 7 or 8.

# Part J3.6 Construction of ceilings, walls and floors

- (a) Ceilings, walls, floors and any opening such as window frames, door frame, roof light frame or the like must be constructed to minimise air leakage in accordance with (b) when forming part of -
  - (i) the envelope; or
  - (ii) in climate zones 4, 5, 6, 7, or 8.
- (b) Construction required by (a) must be -
  - (i) enclosed by internal lining systems that are close fitting at ceiling, wall and floor junctions; or
  - (ii) sealed at junctions and penetrations with -
    - (A) close fitting architrave, skirting or cornice; or
    - (B) expanding foam, rubber compressible strip, caulking or the like.
- (c) The requirements of (a) do not apply to openings, grilles or the like required for smoke hazard management.

# Part J3.7 Evaporative coolers

An evaporative cooler must be fitted with a self-closing damper or the like -

- (a) when serving a heated space; or
- (b) in climate zones 4, 5, 6, 7 or 8.

# Part J5 - Air-conditioning and ventilation systems

Compliance calculations not included in this report. Seek compliance by electrical and mechanical engineer

# Part J6 - Artificial lighting and power

Compliance calculations not included in this report. Seek compliance by electrical and mechanical engineer



# Part J7 - Heated water supply and swimming pool and spa pool plans

# Part J7.3 & J7.4 Swimming and Spa pool heating and pumping

- (a) Heating for a swimming or spa pool must be by -
  - (i) a solar heater; or
  - (ii) a heater using reclaimed heat from another process such as reject heat from a refrigeration plant; or
  - (iii) a geothermal heater; or
  - (iv) a gas heater that -
    - (A) if rated to consume 500 MJ/hour or less, achieves a minimum gross thermal efficiency of 86%; or

(B) if rated to consume more than 500 MJ/hour, achieves a minimum gross thermal efficiency of 90%; or

- (v) a heat pump; or
- (vi) a combination of (i) to  $(\vee)$ .
- (b) Where some of all of the heating required but (a) is by a gas heater or a heat pump, the swimming pool must have -
  - (i) a cover with a minimum R-Value of 0.05; and
  - for a swimming pool a time switch to control operation of the heater
  - " for a spa pool a push button and a time switch to control operation of the heater.
- (c) A time switch must be provided to control the operation of a circulation pump for a swimming pool or a spa pool having a capacity of 680L or more.
- (d) Where required, a time switch must be capable of switching electric power on and off at variable pre-programmed times and variable pre-programmed days.
- (e) Pipework carrying heated or chilled water for a swimming pool must comply with the insulation requirements of J5.8.

## Part J7.4 Spa pool pumping

- (c) A time switch must be provided to control the operation of a circulation pump for a spa pool having a capacity of over 680L
- (d) Where required, a time switch must be capable of switching electric power on and off at variable pre-programmed times and variable pre-programmed days.
- (e) Pipework carrying heated or chilled water for a swimming pool must comply with the insulation requirements of J5.8.

# Part J8 - Facilities for energy monitoring

- (a) A building or sole-occupancy unit with a floor area of more than 500 m2 must have an energy meter configured to record the time-of-use consumption of gas and electricity.
- (b) A building with a floor area of more than 2,500m2 must have energy meters configured to enable individual time-of-use energy consumption data recording, in accordance with (c), of the energy consumption of J8.3 (i) to (vi.
- (c) Energy meters required under J8.3(b) must be interlinked by a communication system that collates the time-of-use energy consumption data to a single interface monitoring system where it can be stored, analysed and reviewed.
- (d) The provisions of J8.3(b) do not apply to a Class 2 building with a floor area of more than 2,500m2 where the total area of the common areas is less than 500 m2.

Part 1.2.2 Evidence of Suitability (b) (i) Appropriately Qualified Person :					
Signed					
Debbie Bute					
Leading Energy   ESD   Technical Manager	Email: admin@leadingenergyesd.com.au				

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## 2019 DtS Part J1 COMPLIANT CONSTRUCTION BUILD SPECIFICATION

J1.3 Roof and Ceiling Construction							
Construction Type	R-Value & Solar absorptance	Added Insulation	Total R-Value Required	DtS Outcome			
Metal Skillion roof with flat plasterboard ceilings	0.22 - no air gap Light Roof - SA < 0.45	R4.0 Insulation	R3.7 downwards	tR4.22 COMPLIES			

J1.4 Roof Lights						
Roof Light Type & Location	Area of space served (%)	System U-Value	System SHGC	DtS Outcome		
N/A				N/A		



J1.6 Floors					
Construction Type	R-value of soil	Added Insulation	Total R-Value Required	DtS Outcome	
Concrete slab on Ground	R0.5	R1.5 Insulation	R2.0	tR2.0 COMPLIES	

#### YOUR TRUSTED THERMAL EXPERTS



G3. ANY DISCREPANCIES BETWEEN THIS ARCHITECTURAL DOCUMENTATION & STRUCTURAL DOCUMENTATION WITH STRUCTURAL IMPLICATIONS TO BE CLARIFIED WITH ENGINEER PRIOR TO PRICING/DETAILING/ CONSTRUCTION. ALL OTHER DISCREPANCIES TO BE CLARIFIED WITH ARCHITECT. G4. DO NOT SCALE OFF THESE DRAWINGS OR SKETCHES. ALL DIMENSIONS TO BE TAKEN DIRECTLY FROM THE CURRENT ARCHITECTURAL

DRAWINGS. G5. ALL FINISHINGS (INCLUSIVE OF BUT NOT LIMITED TO NONSTRUCTURAL

TIMBER/STEEL STUD FRAMING, BULKHEADS, WALL & ROOF CLADDING SYSTEMS, GUTTERS, FLASHINGS, GLAZING SYSTEMS, ETC) TO BE IN ACCORDANCE WITH ARCHITECTURAL DRAWINGS & SPECIFICATIONS. PROVIDE ALL ADDITIONAL FRAMING, SUPPORTS, BRACKETS & THE LIKE TO FIX DOOR & WINDOW FRAMING, CLADDING, LOUVRES, SCREENS, SIGNAGE, DECORATIVE PANELS, ETC. AS REQUIRED. REFER TO ARCHITECTURAL DETAILS. G6. ALL THIRD PARTY/PROPRIETARY PRODUCTS ARE TO BE INSTALLED STRICTLY IN ACCORDANCE WITH SUPPLIER'S/MANUFACTURER'S SPECIFICATIONS & DETAILS.

G7. THE BUILDER SHALL ALLOW & BE RESPONSIBLE FOR MAINTAINING ADEQUATE TEMPORARY PROPPING &/OR BRACING TO ALL PARTS OF THE WORK, WHETHER SHOWN ON THESE DRAWINGS OR NOT, DURING ALL STAGES OF CONSTRUCTION &/OR DEMOLITION AS REQUIRED. THE BUILDER IS TO ALLOW FOR THE ENGAGEMENT OF THEIR OWN ENGINEER TO PROVIDE CERTIFIED ADVICE AS REQUIRED BY BUILDER.

11

	SHEET #		Е			
	1 OF 9	COVER SHEET				
	2 OF 9	SITE PLAN	_			
	3 OF 9	SETOUT PLAN				
	4 OF 9	FLOOR PLAN				
	5 OF 9	ELEVATIONS	F			
	6 OF 9	SECTIONS & DETAILS				
	7 OF 9	KITCHEN LAYOUTS				
	8 OF 9	TOILET LAYOUTS				
	9 OF 9	ELECTRICAL PLAN				
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# **GENERAL CONDITIONS OF CONTRACT**

# FOR THE UNDERTAKING OF A WASTE COLLECTION AND DISPOSAL SERVICES

Cleanaway Operations Pty Ltd Level 4, 441 St Kilda Road, Melbourne, Victoria 3004

ABN 40010745383

# TABLE OF CONTENTS

OPERA		5
1	DEFINITIONS	5
2	INTERPRETATION	16
3	BUSINESS DAYS	16
4	SCHEDULES THAT FORM PART OF THE CONTRACT	16
5	ORDER OF PRECEDENCE	16
6	SEVERABILITY	17
7	NOTICES	17
8	CONTRACTOR TO HAVE INFORMED ITSELF	18
9	COMPLYING WITH LEGAL REQUIREMENTS	18
10	SAFETY OBLIGATIONS	18
11	ENVIRONMENTAL MANAGEMENT	20
12	CONTRACTOR'S PERSONNEL	21
13	ASSIGNMENT AND SUBCONTRACTING	21
14	INDEMNITY	22
15	INTELLECTUAL PROPERTY RIGHTS	22
16	ORDERS	23
17	QUALITY OF GOODS	24
18	QUALITY OF SERVICES	24
19	SUPPLY OF GOODS AND SERVICES	25
20	PLANT AND EQUIPMENT	25
21	RECORDS, REPORTING AND AUDITS	26
22	REPRESENTATIVES	26
23	VARIATION	27
24	SUSPENDING THE CONTRACT	28
25	STEP-IN	28
26	WARRANTIES	29
27	VARIATION TO CONTRACT TERMS	29
28	PRICE BASIS	30
29	INVOICING AND PAYMENT	30
30	KEY PERFORMANCE INDICATORS	31
31	CONFIDENTIAL INFORMATION AND PUBLICITY	31
32	GOODS AND SERVICES TAX	32
33	CONSEQUENTIAL LOSS	32
34	LIMITS ON LIABILITY	33
35	FORCE MAJEURE EVENT	33
36	SETTLEMENT OF DISPUTES	34
37	TERMINATION OF CONTRACT	34
38	WAIVERS AND AMENDMENTS	35
39	ENTIRE AGREEMENT	35

40	RIGHTS AND REMEDIES	35
41	CONSENTS	36
42	INSURANCE	36
43	INDUSTRIAL AWARDS	39
44	GOVERNING LAW	39
45	PROPORTIONATE LIABILITY	40
46	PERSONAL PROPERTY SECURITIES ACT	40
47	APPLICATION OF THE CONTRACT	41
48	RESTRUCTURE OF THE PRINCIPAL	41
49	FAILURE TO PROVIDE GOODS AND PERFORM SERVICES	41
50	DELIVERY OF WASTE TO A FACILITY	42
51	COMMUNITY ENGAGEMENT	42
52	CALL CENTRE	43
Schedu	le 1 – General Contract Specifics	
Schedu	le 3 – Bin Services	51
2	APPLICATION OF THIS SCHEDULE	51
3	SERIAL NUMBERS	51
4	RETRIEVAL AND REPLACEMENT	51
5	AFFIXATION OF NOTICES	51
Schedu	le 4 – Collection Services	
1	APPLICATION OF THIS SCHEDULE	52
2	COLLECTION SERVICES	52
3	TIME AND FREQUENCY FOR COLLECTION SERVICES	52
4	COLLECTION SCHEDULE	52
5	COLLECTION OF WASTE	53
6	COLLECTION VEHICLES	54
7	DELIVERY OF WASTE TO THE FACILITY	55
8	ADDITIONAL REPORTING	56
9	COMPLAINTS	56
10	NOTIFICATIONS	56
11	PROMOTIONAL MATERIAL	57
12	ADVERTISING	57
13	WASTE LEVY	57
14	TITLE TO BINS	57
Schedul	e 5 – Landfill Management Services and Transfer Station Services	
Schedul	e 6 – Recyclables Sorting Services and Green Waste Processing Services	<b>.</b> 60
	used (Recyclables Sorting Services and Green Waste Processing Services re de with the Principal).	sponsibilities 60
	used (Recyclables Sorting Services and Green Waste Processing Services re-	sponsibilities
	de with the Principal).	60
	e 7 – Standards and Procedures	
Schedul	e 8 – KPIs	61

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PAGE 3 FOR THE SUPPLY OF WASTE DISPOSAL GOODS AND SERVICES

Schedule 9 – Collection Area*	62
Schedule 10 – Specification	63
Schedule 11 – Contract Price Schedule	65
Schedule 12 – Variation Form	67
Schedule 13 – System and Plan Requirements	68

# DATE 17 July, 2019

## PARTIES

Shire of Mingenew of 21 Victoria Street, Mingenew, WA, 6522 [ABN# 41 454 990 790] ('Principal'); and

Cleanaway Operations Pty Ltd of Level 4, 441, St Kilda Road, Melbourne VIC 3004 [ABN# 40 010 745 383] ('Contractor').

#### BACKGROUND

- (a) The Principal wishes to engage the Contractor for the supply of Goods and/or Services set out in Item 1 of the General Contract Specifics.
- (b) The Contractor has agreed to supply the Goods and/or Services to the Principal on the terms of the Contract.

The Parties agree as follows:

# **OPERATIVE PART**

# 1 DEFINITIONS

1.1 In the Contract, defined terms have the meaning set out below (except where the context otherwise requires):

'Acceptance' has the meaning given in Schedule 2.

**'Approval'** means any certificate, licence, consent, permit, approval, authority or requirement of any Legal Requirement or any organisation having jurisdiction in connection with the provision of the Goods and/or Services.

'Approved Purpose' means the performance by the Contractor of:

- (a) the Landfill Management Services in respect of the Landfill Facility; and/or
- (b) the Transfer Station Services in respect of the Transfer Station,

and for no other purpose.

**'Australian Statistician'** means the person appointed as Australian Statistician under the *Australian Bureau of Statistics Act 1975* (Cth) (and acting in that capacity).

**'Authority'** means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

**'Bin Services'** means a service for the provision, delivery, repair and maintenance of Bins for the Term, as further described in the Bin Services Specification.

**'Bin Services Specification'** means the technical specification for provision of Bin Services (if any) described in Schedule 10.

**'Bins'** means all of the bins or receptacles supplied by the Principal or the Contractor (as the case may be) under the Contract (if any) and, if Goods form part of the Contract, all of the Goods.

'Bulk Waste' means Household Junk or Green Waste (or both).

**'Business Days'** means a day that is not a Saturday, Sunday, a public holiday in Western Australia, or 27, 28, 29, 30 or 31 December.

**'Carbon Scheme'** means any requirement imposed by Law or any Authority relating to greenhouse gas emissions, including:

- (a) the *Clean Energy Act 2011* (Cth) and 17 related Acts passed by the Senate on 8 November 2011;
- (b) the National Greenhouse and Energy Reporting Act 2007 (Cth); and
- (c) any other any Law relevant or related to the operation of the carbon price mechanism under the *Clean Energy Act 2011* (Cth).

'Clause' means a clause of this document (including the Included Schedules).

'Collected Material' means Waste collected in the course of the Collection Services.

**'Collection Area'** means the area (if any) nominated as such in Item 3 of the Collection Contract Specifics and Schedule 9.

**'Collection Contract Specifics'** means the contract information identified as such in Attachment 1 of Schedule 4.

**'Collection Day'** means Monday to Friday excluding Christmas Day, New Year's Day and Good Friday.

**'Collection Schedule'** means the schedule for the provision of Collection Services as determined by the parties in accordance with Clause 4 of Schedule 4.

**'Collection Services**' mean the collection of Waste described in Item 1 of the Collection Contract Specifics as further described in the Collection Services Specification.

**'Collection Services Specification'** means the specification for the Collection Services described in Schedule 10 (if any).

**'Collection Vehicle'** means a vehicle used by the Contractor to perform the Collection Services.

'Confidential Information' means all of the Principal's information which:

- (a) is disclosed or otherwise made available, or acquired directly or indirectly by the Contractor at any time;
- (b) relates to the Principal's or any Local Government's past, existing or future business, strategic plans or operations, finances or customers (including any information that is derived from such information); and
- (c) is in oral or visual form, or is recorded or stored in a Document,

and includes the Contract, but does not include information which:

- (d) is or becomes generally and publicly available other than as a result of a breach of the Contract;
- (e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- (f) has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

**'Consequential Loss'** means any loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

**'Consumer Price Index'** means the index published by the Australian Bureau of Statistics for Western Australia or if that index is suspended or discontinued, the index substituted for it by the Australian Statistician.

**'Contamination'** means any event that arises in connection with the Services which has resulted in or has the potential to result in land, water or a site being "contaminated" (as that term is defined in the *Contaminated Sites Act 2003* (WA)).

**'Contract Price'** means the prices or rates specified as such in Item 18 of the General Contract Specifics (Schedule 1) but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

'Contract Specifics' means the:

- (a) General Contract Specifics;
- (b) Goods Contract Specifics;
- (c) Collection Contract Specifics;
- (d) Landfill Management and Transfer Station Contract Specifics; and
- (e) Recyclables Sorting and Green Waste Processing Contract Specifics,

to the extent that they form part of the Contract.

**'Contractor Maximum Liability Amount'** means the amount specified as such set out in Item 21 of the General Contract Specifics (Schedule 1).

**'Contractor's Personnel'** means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representative of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor.

**'Contractor's Property'** means all fixtures, fittings and any Plant and Equipment or other property that is not Principal Supplied Plant and Equipment or is not otherwise owned by the Principal and which the Contractor constructs on, or fixes to, the Licensed Area or brings on to the Licensed Area.

**'Contractor's Representative'** is the person named as such in Item 16 of the General Contract Specifics or any replacement person notified to the Principal.

**'Date for Delivery'** means the date or dates the Goods are to be delivered to the Delivery Point in full as set out in the Goods Contract Specifics (Attachment 1).

'Deduction' has the meaning given in Clause 30.1.

**'Defective Goods'** means Goods of an inferior quality or which are otherwise inconsistent with the Contract.

**'Defects Liability Period'** has the meaning given in the Goods Contract Specifics (Attachment 1).

'Delivered Material' means:

- (a) if the Contractor is providing Collection Services, Collected Material; or
- (b) if the Contractor is not providing Collection Services, waste delivered by the Principal's waste collection service provider, the Principal or third parties (including members of the public) to the relevant Facility or the Contractor if the Contractor is providing Transfer Station Services.

'Delivery Point' means the:

- (a) Residential (and selected Commercial, Industrial, or "Town-site" Rural) Tenements; or
- (b) other place nominated by the Principal's Representative in accordance with Clause 3.1(b) of Schedule 4,

as may be updated by the Principal during the Term.

**'Dispute'** means any dispute or difference between the Parties arising in connection with the subject matter of the Contract.

**'Document'** includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, drawing, specification, material or any other means by which information may be stored or reproduced.

'End Date' has the meaning given in Item 10 of the General Contract Specifics.

'EMP' has the meaning given to that term in Clause 11.3(c).

'EMS' has the meaning given to that term in Clause 11.3(d).

**'Environment'** has the same meaning as given in the *Environmental Protection Act* 1986 (WA).

**'Environmental Incident'** means any event that arises in connection with the Services which has resulted or results in any actual or potential adverse impact on the Environment.

**'Excluded Waste'** means any waste that the Landfill Facility, the Transfer Station, the Recyclables Facility or the Green Waste Facility (as the case may be) is not licensed to accept by Law.

**'Extended Period'** means the period specified as such in Item 11 of the General Contract Specifics.

**'Facility'** means the Landfill Facility, Transfer Station, Recyclables Facility or Green Waste Facility (as applicable) and **'Facilities**' means two (2) or more of these.

'Facility Operator' means the operator of the relevant Facility.

**'Force Majeure Event'** means any one of the following events which is beyond the control of a Party, could not have been reasonably foreseen by the affected Party and which prevents that Party from discharging an obligation under the Contract, which, in the case of the Contractor, is critical to the Contractor delivering the Goods or providing the Services (or both, as may be applicable) in accordance with the Contract:

- (a) a civil war, insurrection, riot, fire, flood, explosion, earthquake, operation of the forces of nature of catastrophic proportion or an act of a public enemy;
- (b) a general strike or general industrial action of Western Australia wide application, which did not arise at the Contractor's premises and has not been caused by the Contractor; or
- (c) the enactment of any statute or regulation by the parliaments of the Commonwealth of Australia or Western Australia, which the Contractor could not have been aware of prior to the execution of the Contract,

but is not an event which arises from any of the following:

- (d) a breach of a contract, including the Contract, or Law by the Contractor;
- (e) negligence by the Contractor relating to the performance of its obligations under the Contract;
- (f) an occurrence that is a risk assumed by the Contractor under the Contract;
- (g) a shortage or delay in the supply of Goods and/or Services required under the Contract; or
- (h) wet or inclement weather.

**'Framework Agreement'** means a Contract for Collection Services or Bin Services (or both) designated as a 'Framework Agreement' in Item 7 of the General Contract Specifics.

'General Contract Specifics' means the contract information contained in Schedule 1.

#### 'Good Industry Practice' means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that reasonably would be expected from a reputable and prudent contractor in performing work similar to the relevant Services and under conditions comparable to those applicable to the Contract; and
- (b) compliance with applicable standards and codes, being the standards and codes specified in the Contract or, if the Contract does not specify the applicable standards and codes, those standards and codes as would ordinarily be applied by a principal in the circumstances.

**'Goods'** means the goods specified as such in Item 12 of the General Contract Specifics (including any part of the goods so identified and particularised).

'Goods and/or Services' means all of the Goods (if any) and all of the Services (if any) specified in Items 12 and 13 of the General Contract Specifics.

'Goods Contract Specifics' means the contract information identified as such in Attachment 1 of Schedule 2.

**'Goods Specification'** means the technical specification for the Goods (if any) described in Schedule 10.

#### 'Green Waste' means:

- (c) for the purposes of the Collection Services, if that service applies, garden waste and any other materials identified as such in Item 6 of the Collection Contract Specifics; and
- (d) for the purposes of the Green Waste Processing Services, if that service applies, garden waste and any other materials identified as such in the Recyclables Sorting and Green Waste Contract Specifics.

#### 'Green Waste Facility' means:

- (a) if Green Waste Processing Services do not form part of the Contract, the resource recovery facility to which the Contractor must deliver Green Waste as may be directed by the Principal from time to time; or
- (b) if Green Waste Processing Services form part of the Contract, the resource recovery facility owned and operated by the Contractor at which the Green Waste Processing Services are performed.

**'Green Waste Processing Services'** means the processing of Green Waste and derivation of products from Green Waste, as may be further described in the Green Waste Processing Specification.

**'Green Waste Processing Specification'** means the technical specification for the Green Waste Processing Services described in Schedule 10.

**'GST'** means goods and services tax applicable to any taxable supplies as determined under the GST Law.

**'GST Law'** means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and any related Act imposing such tax and includes any subordinate legislation in respect of these Acts.

**'Household Junk'** means electrical goods and white goods and other items identified as such in Item 7 of the Collection Contract Specifics.

#### 'Included Schedules' means:

- (a) if Goods form part of the Contract, Schedule 2;
- (b) if Bin Services form part of the Contract, Schedule 2 and Schedule 3;
- (c) if Collection Services form part of the Contract, Schedule 4;
- (d) if Landfill Management Services or Transfer Station Services (or both) form part of the Contract, **Schedule 5**; and if Recyclables Sorting Services or Green Waste Processing Services (or both) form part of the Contract, **Schedule 6**
- (e) Schedule 6.

'Initial Term' means the term specified as such in Item 8 of the General Contract Specifics.

**'Insolvency Event'** means the happening of any one of the following events with respect to the Contractor:

- (a) the Contractor goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal five Business Days prior written notice of such reconstruction or amalgamation);
- (b) the Contractor is otherwise dissolved;
- (c) a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed;
- (d) if the Contractor enters into any composition or scheme of arrangement with its creditors;
- (e) if an inspector or like official is appointed to examine the affairs of the Contractor; or
- (f) the Contractor enters into voluntary or other external administration.

**'Insurance'** means the insurances which the Contractor is required to obtain under Clause 42 and Items 24, 25, 27 and 29 of the General Contract Specifics.

**'Insurance End Date'** means the date set out in Items 23, 26 and 28 of the General Contract Specifics as an Insurance End Date for a specific Insurance.

**'Intellectual Property Right'** means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, semi conductor, circuit and other eligible layouts, copyright and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time.

**'Invoice'** means an invoice which meets all the requirements of a valid tax invoice for GST purposes under the GST Law.

'Item' means an Item specified in the Contract Specifics.

**'Key Performance Indicators'** or **'KPIs'** means the key performance indicators (if any) described in Schedule 8.

#### 'Landfill Facility' means:

- (a) if Landfill Management Services do not form part of the Contract, the landfill facility to which the Contractor must deliver Delivered Material or Residue (or both) as may be directed by the Principal from time to time; or
- (b) if Landfill Management Services form part of the Contract, the landfill facility identified in Landfill Management and Transfer Station Contract Specifics owned by the Principal that the Contractor must operate and manage.

**'Landfill Management and Transfer Station Contract Specifics'** means the contract information identified as such in Attachment 1 of **Schedule 5**.

**'Landfill Management Services'** means the landfill waste management services performed at the Landfill Facility, as further described in the Landfill Management Specification.

**'Landfill Management Specification'** means the technical specification for the Landfill Management Services described in Schedule 10.

'Law' means:

- (a) any act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of Western Australia and any Local Government (including the Principal); and
- (b) any common or equitable law.

#### 'Legal Requirement' means:

- (a) Laws;
- (b) Approvals; and
- (c) fees and charges payable in connection with the foregoing.

'Licence' means the licence granted by the Principal to the Contractor.

#### 'Licenced Area' means:

- (a) the Landfill Facility;
- (b) the Transfer Station; or
- (c) if the Principal is the registered proprietor of the Landfill Facility and the Transfer Station, both of those areas.

**'Local Government'** means any local government established under the *Local Government Act 1995* (WA) other than the Principal.

**'Loss'** means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Authority.

'Main Roads' has the meaning given to it in the *Main Roads Act 1930* (WA) or as otherwise described in the Collection Contract Specifics.

'Maximum Capacity' means the maximum capacity of the Landfill Facility permitted by Law.

**'Maximum Compaction Rate'** means the maximum compaction rate specified in the Recyclables Sorting and Green Waste Processing Contract Specifics.

**'Maximum Tonnage'** means the maximum volume of Delivered Material that the Transfer Station, Recyclables Facility or Green Waste Facility (as the case may be) can accept in the course of one day, as described in the Landfill Management and Transfer Station Contract Specifics or the Recyclables Sorting and Green Waste Processing Contract Specifics (whichever relevant).

**'OH&S Management System'** means an occupational health and safety management system to identify hazards in respect of health and safety, assess risks associated with those hazards and implement measures to eliminate or mitigate those risks that meets the requirements (if any) set out in Schedule 13.

#### 'Opening Hours' means:

- (a) with respect to Collection Services, the hours that the Landfill Facility, Transfer Station, Recyclables Facility or Green Waste Facility (as the case may be) will accept Collected Waste and Delivered Material as set out in Item 12 of the Collection Contract Specifics; and
- (b) with respect to Landfill Management Services or Transfer Station Services (as the case may be), the hours that the Landfill Facility or Transfer Station (as the case may be) must accept Collected Waste and Delivered Material as set out in the Landfill Management and Transfer Station Contract Specifics.

**'Operational Plan'** means the plan of that name setting out the day to day operation and management of the relevant Services and prepared by the Contractor in accordance with the requirements (if any) set out in Schedule 13.

**'Order'** means a purchase order from the Principal to the Contractor which requires the supply of specific Goods and/or Services under the Contract if the Contract is a Framework Agreement.

**'Over-compaction Charge'** means the charge specified as such in the Recyclables Sorting and Green Waste Processing Contract Specifics.

**'Party'** means the Principal or the Contractor (or both) (as the context requires), and **Parties** means both of them.

**'Plant and Equipment'** means all materials, plant, equipment, tools, vehicles and machinery necessary and incidental to the performance of the Contractor's obligations under the Contract, including Collection Vehicles.

**'PPS Law'** means the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

'PPSA' means the Personal Property Securities Act 2009 (Cth).

**'Principal Maximum Liability Amount'** means the amount specified as such in Item 22 of the General Contract Specifics.

**'Principal Supplied Plant and Equipment'** means Plant and Equipment which the Principal states in Item 14 of the General Contract Specifics it will supply for the Contractor's use for providing the Services.

**'Principal's Personnel'** means directors, employees, agents, contractors or subcontractors of the Principal but does not include the Contractor or the Contractor's Personnel.

**'Principal's Representative'** is the person named as such in Item 15 of the General Contract Specifics or any replacement person notified to the Contractor.

**'Professional Contractor'** means a contractor with skill and experience in, and the expertise and resources necessary to complete the provision of goods the same as or of a similar nature to the Goods and the performance of services the same as or of a similar nature to the Services.

**'Quality System'** means the quality control system operated by the Contractor for the provision of the relevant Services that meets the requirements (if any) set out in Schedule 13.

'Recyclables' means:

- (a) for the purposes of the Collection Services, if that services applies, paper, glass, cans, plastics and any other item identified as such in Item 8 of the Collection Contract Specifics; and
- (b) for the purposes of the Recyclables Sorting Services, if that service applies, paper, glass, cans, plastics and any other item identified as such in the Recyclables Sorting and Green Waste Processing Contract Specifics.

'Recyclables Facility' means:

- (a) if Recyclables Sorting Services do not form part of the Contract, the resource recovery facility to which the Contractor must deliver Recyclables as may be directed by the Principal from time to time; or
- (b) if Recyclables Sorting Services form part of the Contract, the resource recovery facility owned and operated by the Contractor at which the Recyclables Sorting Services are performed.

**'Recyclables Sorting and Green Waste Processing Contract Specifics'** means the contract information identified as such in Attachment 1 of Schedule 6.

**'Recyclables Sorting Services'** means the separation of Recyclables from Residue in the Delivered Material and the sorting of Recyclables, ready for distribution to recyclable markets, as further described in the Recyclables Sorting Specification.

**'Recyclables Sorting Specification'** means the technical specification for the Recyclables Sorting Services described in Schedule 10.

'Representative' means the Principal's Representative or the Contractor's Representative.

'Residential Tenement' means a Tenement which is used for residential purposes.

'Residue' means any Delivered Material which is not:

- (a) a Recyclable (if Recyclables Sorting Services or Transfer Station Services apply (or both); or
- (b) Green Waste (if Green Waste Processing Services apply).

'Review Date' means each 12 month anniversary of the execution of the Contract.

'Schedule of Rates' means the contract price schedule described in Schedule 11.

**'Services'** means the services identified in Item 13 of the General Contract Specifics which may include:

- (a) Bin Services;
- (b) Collection Services;
- (c) Landfill Management Services;
- (d) Transfer Station Services,
- (e) Recyclables Sorting Services; and
- (f) Green Waste Processing Services,

and includes any part of the services so identified and particularised and any ancillary services required to perform the Services listed in paragraphs (a) to (f).

**'Specification'** means each of the technical specifications set out in Schedule 10 for each of the Goods and/or Services identified in Items 12 and 13 of the General Contract Specifics.

'Standards and Procedures' means the documents listed in

**Schedule 7** and any other guidelines, rules, requirements or site specific conditions which the Principal makes available to the Contractor from time to time.

'Start Date' has the meaning given in Item 9 of the General Contract Specifics.

'State of Emergency' has the meaning given in Clause 49.

'Step-In Event' has the meaning given in Clause 25.2.

**'Subcontractor'** means any person engaged by the Contractor in connection with the Goods and/or Services and includes consultants, subcontractors, suppliers and other contractors.

**'Tax'** means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST or stamp duty.

'Tender' has the meaning given to it in the Waste Panel Contract.

'Tenement' means:

- (a) a building; or
- (b) part of a building,

within the Collection Area, which is separately assessed for rating purposes by the Principal.

**'Term'** means the period of time between (and including) the Start Date and continuing for the Initial Term, and if applicable the Extended Period, unless terminated earlier.

**'Transfer Station'** means the transfer station identified in the Landfill Management and Transfer Station Contract Specifics.

**'Transfer Station Services'** means the management and operation of the Transfer Station and sorting of Delivered Material, as further described in the Transfer Station Specification.

**'Transfer Station Specification'** means the technical specification for the Transfer Station Services described in Schedule 10.

**'Variation'** means any change to the Goods and/or Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Goods and/or Services.

**'Variation Form'** means a written notice substantially in the form set out in Schedule 12 under which the Principal has directed a Variation in accordance with Clause 23.

**'Waste'** means the waste to be collected by the Contractor as part of the Collection Services, as set out in the relevant Specification, which may include:

- (a) municipal solid waste;
- (b) commercial waste;
- (c) Green Waste;

- (d) Recyclables; and
- (e) Bulk Waste.

**'Waste Panel Contract'** means the contract between the Western Australian Local Government Association and the Contractor in respect of the inclusion of the Contractor on a panel for the provision of Goods and/or Services to local governments.

**'Wilful Misconduct'** means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of the Contract.

# 2 INTERPRETATION

In the Contract (unless the context otherwise requires):

- (a) a reference to the Contract means the Contract as amended, novated, supplemented, varied or replaced from time to time;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';
- (d) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (e) words in the singular include the plural and vice-versa;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to a clause, annexure, attachment or schedule is a reference to a clause, annexure, attachment or schedule to the Contract;
- (h) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (i) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, a calendar month, a calendar quarter or a calendar year;
- (j) headings are for convenience only and do not affect interpretation of the Contract;
- (k) a promise on the part of two or more persons binds them jointly and severally; and
- (I) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward the Contract or any part of it.

# 3 BUSINESS DAYS

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

# 4 SCHEDULES THAT FORM PART OF THE CONTRACT

- (a) Schedules 2 to 6 form part of the Contract to the extent that the relevant schedule is an Included Schedule.
- (b) Schedule 1 and Schedules 7 to 13 form part of the Contract.

# 5 ORDER OF PRECEDENCE

To the extent of any inconsistency between the several parts of the Contract, the following parts are listed in order of precedence:

- (a) the Contract Specifics;
- (b) Clauses 1 to 52 and the Included Schedules;
- (c) any other schedules, attachments or annexures to the Contract; and
- (d) any Order.

# 6 SEVERABILITY

Should any part of the Contract be invalid or unenforceable, that part shall be:

- (a) read down, if possible, so as to be valid and enforceable; and
- (b) severed from the Contract to the extent of the invalidity or unenforceability,

and the remainder of the Contract shall not be affected by such invalidity or unenforceability.

# 7 NOTICES

7.1 Any notice or other communication under the Contract shall be in legible writing, in English and signed and shall be given or served by:

- hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
- (b) facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified number; or
- (c) email to the email address of the recipient specified in the Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.
- 7.2 Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:
  - (a) if by delivery in person, when delivered to the address of the recipient;
  - (b) if by post, six Business Days from and including the date of postage;
  - (c) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
  - (d) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is regarded as received at 9.00am on the following Business Day.

- 7.3 In this Clause 7, reference to a recipient includes a reference to a recipient's officers, agents or employees.
- 7.4 A notice or other communication must not be given by electronic means of communication (other than facsimile and email as permitted in Clause 7.1).
- 7.5 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.
# 8 CONTRACTOR TO HAVE INFORMED ITSELF

8.1 The Contractor shall be deemed to have:

- (a) examined carefully the Contract and any other information made available by the Principal to the Contractor in connection with the Contract (whether before or after the date of the Contract);
- (b) examined the Delivery Points, the Collection Area and Facilities (as applicable) and surroundings thereof (if applicable);
- (c) examined and to be aware of all risks, conditions, contingencies and other circumstances relevant to the performance of its obligations under the Contract;
- (d) satisfied itself as to the correctness and sufficiency of its Tender and that the Contract Price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the Contract; and
- (e) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Tender and which was provided or obtainable by the making of reasonable enquiries.
- 8.2 Failure by the Contractor to do all or any of the things it is deemed to have done under this Clause 8 will not relieve the Contractor of its obligation to perform and complete the Contract in accordance with the Contract.

### 9 COMPLYING WITH LEGAL REQUIREMENTS

- 9.1 The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Goods and/or Services and/or the performance of the Contract.
- 9.2 Without limiting in any way the generality of the foregoing or Clause 10, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984* (WA) and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to the Contract.
- 9.3 If a Legal Requirement is at variance with a term of the Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Goods and/or Services and/or the way in which they must be provided, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

# 10 SAFETY OBLIGATIONS

- 10.1 The Contractor must perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety, including by ensuring that the Contractor's Personnel behave in a safe manner.
- 10.2 The Contractor must supply or arrange to be supplied (at its own cost) all things necessary to ensure the Services are carried out and the Goods are provided in a manner that is safe and without risks to health.
- 10.3 The Contractor must ensure that the Services are performed and the Goods are provided in a manner that is safe and without risks to any person.

- 10.4 Except as otherwise provided in the General Contract Specifics, the Contractor must:
  - (a) prepare, establish, implement and maintain an OH&S Management System that is compliant with all Legal Requirements applicable to work health and safety;
  - (b) ensure that the Contractor's Personnel are familiar with the OH&S Management System; and
  - (c) ensure that the provision of the Goods and/or Services is in accordance with the requirements of the OH&S Management System.
- 10.5 The Contractor must:
  - (a) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident or incident which is notifiable to an Authority under any Legal Requirement which:
    - (i) occurs during the provision of the Goods and/or Services; or
    - (ii) is associated with the Goods and/or Services; and
  - (b) provide the Principal with any further information when requested by the Principal.
- 10.6 In performing its obligations under the Contract, the Contractor must ensure the health, safety and welfare of any person that might be exposed to a risk to their health and safety associated with the Goods and/or Services, including:
  - (a) if Collection Services form part of the Contract, the following people when they are on, or immediately adjacent to any Collection Vehicle:
    - (i) the Principal and the Principal's Personnel;
    - (ii) the Contractor's Personnel; and
    - (iii) if the Contactor is not the Facility Operator, the Facility Operator and the Facility Operator's personnel; and
    - (iv) the public; and
  - (b) if Collection Services, Landfill Management Services, Transfer Station Services, Recyclables Processing Services or Green Waste Processing Services (as the case may be) form part of the Contract, the following people when they are on, or immediately adjacent to a Facility:
    - (i) the Principal and the Principal's Personnel;
    - (ii) the Contractor's Personnel; and
    - (iii) if the Contractor is the Facility Operator of that Facility, the public.
- 10.7 The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to the Contract or the Goods and/or Services.
- 10.8 The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this Clause 10.
- 10.9 If the Principal observes or becomes aware of a condition that breaches this Clause 10, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction and modify the Contractor's method of work in order to avoid that condition arising.
- 10.10 The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under Clause 10.8 or 10.9 does not relieve the Contractor from complying with its obligations under this Clause 10.

### 11 ENVIRONMENTAL MANAGEMENT

- 11.1 The Contractor must ensure that in providing each of the relevant Services, it:
  - (a) does not cause or contribute to an Environmental Incident or Contamination;
  - (b) complies with all Legal Requirements concerning the Environment;
  - (c) minimises any impact on the Environment;
  - (d) immediately notifies the Principal of, and remedies as soon as practicable:
    - (i) any non-compliance with the requirements of any Legal Requirements concerning the Environment;
    - (ii) any Environmental Incident or Contamination; or
    - (iii) the receipt of any notice, order or communication received from an Authority under any Legal Requirement concerning the Environment or otherwise related to any Environment matter concerning the Services.
- 11.2 The Contractor is responsible for all costs related to an Environmental Incident or Contamination, including the cost of undertaking any remedial action.
- 11.3 The Contractor must:
  - (a) except as otherwise provided in the Contract, obtain, maintain and comply with all Approvals required under any Laws governing environmental controls for the carrying out of the Services (at its own cost);
  - (b) operate all Plant and Equipment in compliance with the *Environmental Protection* (*Noise*) *Regulations* 1997 (WA);
  - (c) except as otherwise provided in the General Contract Specifics, prepare, establish, implement and maintain an Environmental Management System ('EMS') certified as complying with the requirements of AS/NZS ISO 14001 and any further requirements set out in Schedule 13;
  - (d) except as otherwise provided in the General Contract Specifics, prepare, establish, implement and maintain an Environmental Management Plan for each of the relevant Services ('EMP') that meets the requirements (if any) set out in Schedule 13;
  - (e) provide the EMP (if any) to the Principal's Representative for approval at least 21 days prior to the Start Date; and
  - (f) undertake the Services in accordance with the EMS and EMP (if any) referred to in Clause 11.3(c) to 11.3(d).
- 11.4 The Contractor must ensure that, if it is the Facility Operator, the relevant Facility is:
  - (a) operated in a manner which does not cause an unreasonable emission to be emitted from the Facility and minimises any nuisance (by way of odour, noise, litter, pest infestation or any other cause) to owners or occupiers of adjoining or nearby land;
  - (b) operated in accordance with the Operational Plan, the OH&S Management System, the EMP, the EMS and the Quality System (whichever applicable according to the General Contract Specifics); and
  - (c) maintained in a manner which is as clean and tidy as is possible having regard to the nature of the operations which the Contractor is required to conduct under the Contract.

### 12 CONTRACTOR'S PERSONNEL

12.1 The Contractor must ensure that the Contractor's Personnel:

- (a) conduct themselves towards members of the public in a civil and inoffensive manner;
- (b) do not seek or demand any fee, reward or gratuity in respect of the performance of the Services or delivery of the Goods;
- (c) perform the Services and deliver the Goods in a careful and clean manner and with as little noise and disturbance as is practicable;
- (d) do not cause any damage to any property;
- (e) obey all relevant Legal Requirements; and
- (f) drive on the correct side of any road and avoid the obstruction of traffic when performing the Services or delivering the Goods.
- 12.2 The Contractor must ensure that the Contractor's Personnel:
  - (a) do not consume any alcoholic beverage or take any illegal substance;
  - (b) do not have a blood alcohol reading in excess of the legal limit; and
  - (c) are not under the influence of any drug which could impede his or her ability to safely or efficiently perform the Service or deliver the Goods,

while performing the Services, delivering the Goods or any related activities.

### 13 ASSIGNMENT AND SUBCONTRACTING

- 13.1 The Contractor shall not:
  - (a) assign the Contract, or any part thereof or any payment thereunder; or
  - (b) subcontract the whole or any part of the Contract,

without the Principal's prior written approval (not to be unreasonably withheld or delayed). The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

13.2 The Principal may, without the Contractor's consent, assign or novate the Contract or assign any payment or any other right, benefit or interest under the Contract to another local government.

### 14 INDEMNITY

- 14.1 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:
  - (a) any breach of any warranty or any of the other terms and conditions of the Contract by the Contractor or the Contractor's Personnel;
  - (b) any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel;
  - (c) any claim made by a third party (including Facility Operators) against the Principal or the Principal's Personnel, to the extent that the claim arose out of the act or omission of the Contractor or the Contractor's Personnel; and
  - (d) any act or omission of the Contractor or the Contractor's Personnel that causes the Contractor to breach:
    - (i) any Legal Requirement in respect of work health and safety; or
    - (ii) any of its obligations under Clause 10,

except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.

14.2 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 14.

### 15 INTELLECTUAL PROPERTY RIGHTS

- (a) The Contractor warrants that the Goods and/or Services and any documents or methods of working provided by the Contractor do not infringe any Intellectual Property Right.
- (b) The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.
- (c) All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under the Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.
- (d) Except as otherwise provided in the Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods and/or Services and any documentation provided by the Contractor pursuant to the Contract vests in and shall remain vested in the Contractor.
- (e) Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.
- (f) The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Goods and/or Services and any documentation provided pursuant to the Contract.
- (g) The Principal grants to the Contractor a royalty free and non-transferrable licence to use the Principal's trade mark provided to the Contractor for the purposes of identification of Collection Vehicles when they are used to provide the Services and marketing the Goods and/or Services for the Term. The Principal may revoke the licence granted under this Clause at any time, upon written notice to the Contractor.

### 16 ORDERS

- 16.1 If the Contract is a Framework Agreement, this Clause 16 applies.
- 16.2 The Principal:
  - (a) may require the Contractor to provide Goods and/or Services from time to time by giving the Contractor an Order; and
  - (b) may order requirements of any one type or item of the Goods and/or Services either in one single lot or instalments or in such quantities as may be required.
- 16.3 Within five Business Days after receipt of an Order the Contractor must give notice to the Principal if it:
  - (a) disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
  - (b) recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.
- 16.4 If the Contractor:
  - (a) gives notice under Clause 16.3, the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with the Contract; or
  - (b) does not give notice pursuant to Clause 16.3 the Contractor must perform its obligations under the Order in accordance with the Contract.
- 16.5 If, pursuant to a notice issued under Clause 16.3, the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
  - (a) the contract price applicable to that Order and such contract price will be deemed to be the Contract Price for that Order; and
  - (b) the other information and requirements of the Order provided that such information and requirements fall within the scope of, and do not breach, the Framework Agreement.
- 16.6 The Principal is not obliged to issue Orders or otherwise purchase Goods and/or Services.
- 16.7 The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Goods delivered to the Delivery Points and any Services provided prior to the date the cancellation is notified to the Contractor.

# 17 QUALITY OF GOODS

- 17.1 If the Contract requires the delivery of Goods, including as part of the Bin Service, the Contractor must ensure that all Goods supplied under the Contract:
  - (a) conform to the description specified in the Contract and to samples provided (if any) by the Principal;
  - (b) where no standards are specified in the Contract, the Goods shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the International Standards Organisation;
  - (c) are fit for the purposes set out in, or which a Professional Contractor would reasonably infer from, the Contract;
  - (d) are properly, safely and securely stored and labelled for identification and safety; and
  - (e) are new and of merchantable quality.
- 17.2 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf if the Principal so requests).

### 18 QUALITY OF SERVICES

- 18.1 If the Contract requires the provision of any of the Services, the Contractor must ensure that:
  - (a) the Services match the description of the Services in the Contract;
  - (b) if the Contractor provided the Principal with a demonstration of the Services or represented that a result could be achieved by the Services before the Principal entered into the Contract or issued an Order for any of those Services, the Services correspond in nature and quality with the Services demonstrated or the services that achieved the result (as the case may be);
  - (c) the Services are provided in accordance with the KPIs;
  - (d) the Services are performed with the professional skill, care and diligence expected of a Professional Contractor;
  - (e) any items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality, comply with the standards set out in the Contract and are fit for their usual purpose and any purpose described in the Contract; and
  - (f) the Services are provided in accordance with the Principal's protocols as notified to the Contractor from time to time.
- 18.2 For each of the relevant Services, the Contractor must, except as otherwise provided in the General Contract Specifics, prepare, establish, implement and maintain a Quality System.
- 18.3 The Contractor warrants that the Contractor's Personnel engaged to perform the Services:
  - (a) have all the necessary skills, training, and qualifications (proof of which, along with an up-to-date resume, must be supplied to the Principal within two Business Days of request) to carry out the Services in accordance with the Contract; and
  - (b) are able to:
    - (i) perform the Services without the supervision of the Principal's Personnel; and
    - (ii) resolve any matters arising from the performance of the Services.

# 19 SUPPLY OF GOODS AND SERVICES

- 19.1 The Contract commences on the Start Date and continues for the Initial Term.
- 19.2 The Principal may, at its discretion, extend the Contract by giving notice in writing to the Contractor before expiry of the Initial Term, for an Extended Period to commence on the day after the end of the Initial Term and ending after the period of the Extended Period has elapsed.
- 19.3 The Contractor must supply the Goods and/or Services to the Principal in accordance with the Contract during the Term.
- 19.4 The Contractor must:
  - (a) obtain, at the Contractor's expense, any Approvals necessary for the supply of the Goods and/or Services to the Principal; and
  - (b) comply with any applicable Legal Requirements in supplying the Goods and/or Services to the Principal.
- 19.5 The Contractor must comply with all reasonable directions issued by the Principal's Representative in relation to the Goods and/or Services.
- 19.6 The Contractor acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the purchase of goods or services the same as and/or similar to the Goods and/or Services.
- 19.7 If the Contractor:
  - (a) delivers more Goods than the quantity specified in the Contract, the Principal may return any quantity of Goods provided by the Contractor in excess of that specified in the Contract to the Contractor at the Contractor's sole risk and expense; or
  - (b) performs more Services than the quantity specified in the Contract, the Principal is not liable to pay for the additional quantity.

### 20 PLANT AND EQUIPMENT

- 20.1 The Principal will supply Principal Supplied Plant and Equipment (if any) and the Contractor must supply all other things necessary to provide the Goods and/or Services, including labour and Plant and Equipment, at its expense.
- 20.2 The Contractor must ensure that all Plant and Equipment and any other items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality, comply with the Contract and all Legal Requirements, and are fit for their usual and intended purpose.
- 20.3 Principal Supplied Plant and Equipment remains the Principal's property and the Contractor may only use the Principal Supplied Plant and Equipment for the purpose of fulfilling the Contractor's obligations under the Contract.
- 20.4 The Contractor must compensate the Principal for any loss or damage to the Principal's premises or property (including the Principal Supplied Plant and Equipment) caused by the acts or omissions of the Contractor or the Contractor's Personnel.
- 20.5 The Contractor must promptly return to the Principal:
  - (a) any of the Principal Supplied Plant and Equipment referred to in Clause 20.1 that it no longer requires for performance of the relevant Services; and
  - (b) all of the Principal Supplied Plant and Equipment referred to in Clause 20.1 remaining at expiry of the Term.

# 21 RECORDS, REPORTING AND AUDITS

- 21.1 The Contractor must maintain records of:
  - (a) all complaints and queries received in respect of its performance of its obligations under the Contract;
  - (b) the results of any investigations made into complaints;
  - (c) any accidents or other incidents where a possibility of injury to persons or property damage arose;
  - (d) if delivery of Bins forms part of the Contract (including as part of the Bin Services), time and place of delivery of Bins;
  - (e) Environmental Incidents;
  - (f) if any of the Services form part of the Contract, its performance of each of the relevant Services, measured against the KPIs; and
  - (g) any other information reasonably requested by the Principal's Representative.
- 21.2 The Contractor must:
  - (a) deliver a report, in a format approved by the Principal's Representative, based on the records it is required to keep under Clause 21.1 to the Principal's Representative monthly, or at an alternative frequency agreed to by the Principal's Representative; and
  - (b) make the records available on demand for inspection by the Principal's Representative or a person nominated by the Principal's Representative. If directed by the Principal's Representative, the Contractor must prepare a report on any issue arising from the records within a period specified by the Principal's Representative.
- 21.3 The Principal may audit, or engage third parties to audit, the performance of the Services at any time. The Contractor must provide any reasonable assistance requested by a member of the Principal's Personnel, or a third party engaged for this purpose by the Principal, in checking the Contractor's compliance with any of its obligations under the Contract.

# 22 REPRESENTATIVES

- 22.1 Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to the Contract.
- 22.2 The Principal's Representative may exercise all of the Principal's rights and functions under the Contract (including giving directions), except in connection with terminating the Contract, or resolving a Dispute which is the subject of the Dispute resolution procedure in Clause 36, or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.
- 22.3 The Contractor's Representative is responsible for the quality, timeliness, cost and provision of the Goods and/or Services in accordance with the Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

# 23 VARIATION

- 23.1 A direction to the Contractor to perform a Variation may only be effected in accordance with this Clause 23.
- 23.2 If the Principal or the Principal's Representative requests the Contractor must prepare and submit a variation proposal addressing any proposed Variation ('Variation Proposal'). The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal. The Contractor must submit the Variation Proposal to the Principal within five Business Days (or within such other period as the Parties agree) of the Principal's request for the proposal.
- 23.3 If a Variation requires the omission of Goods and/or Services, the Principal's Representative may have the omitted Goods and/or Services provided by others or not as the Principal sees fit.
- 23.4 The Variation Proposal must specify:
  - (a) the effect the Contractor anticipates the proposed Variation will have on the Date for Delivery, the Contract Price and the KPIs (if any); and
  - (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- 23.5 Following receipt of the Variation Proposal by the Principal, subject to Clause 23.2, the Parties must seek to agree on the price for the Variation and the impact of the Variation on the Date for Delivery and the KPIs (as the case may be).
- 23.6 The Principal or the Principal's Representative is not obliged to direct a Variation after receiving the Variation Proposal from the Contractor.
- 23.7 The Contractor acknowledges and agrees that, subject to Clause 23.10, the Principal or the Principal's Representative may direct the Contractor in accordance with Clause 23.13 to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the Date for Delivery and the KPIs (as the case may be).
- 23.8 The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with Clause 23.13.
- 23.9 If the Parties agree on the details in the Variation Form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.
- 23.10 If the Parties are unable to agree on:
  - (a) the price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
    - (i) if the Contract prescribes rates or prices to be applied in respect of the Goods and/or Services, those rates or prices must be used; or
    - (ii) if Clause 23.10(a)(i) does not apply, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and
  - (b) the impact of the Variation on the Date for Delivery and the KPIs (as the case may be),

then the Principal's Representative must determine a reasonable impact and amend the relevant Date for Delivery or the KPIs (as the case may be) by notice in writing to the Contractor.

23.11 A Variation does not invalidate the Contract.

- 23.12 The Contractor may request that the Principal direct a Variation and the Principal or the Principal's Representative may, in its absolute discretion, direct a Variation under Clause 23 or elect not to direct a Variation.
- 23.13 A direction is not a Variation unless a Variation Form has been signed by the Principal.

### 24 SUSPENDING THE CONTRACT

- 24.1 The Principal or the Principal's Representative may, at any time and for any reason, suspend the Contract or any part of the Contract.
- 24.2 When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under the Contract until such time that the Principal or the Principal's Representative directs that the Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under the Contract.
- 24.3 Where the suspension of the Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of the Contract. For the avoidance of doubt, such costs must not include Consequential Losses.
- 24.4 If the Principal or the Principal's Representative suspends the Contract or any part of it in accordance with Clause 24.1 (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Date for Delivery and the End Date are extended by the period of that suspension.
- 24.5 The remedies set out in Clauses 24.3 and 24.4 are the Contractor's sole and exclusive remedy in respect of the Principal suspending the Contract.

### 25 STEP-IN

- 25.1 The Principal may, but is not obliged to, step in and perform the whole or part of the Services to the extent necessary to cure the Step-in Event ('**Step-in Rights**').
- 25.2 The Principal is entitled to exercise the Step-in Rights when, in the reasonable opinion of the Principal:
  - (a) an Insolvency Event has occurred in respect of the Contractor;
  - (b) the Contractor is affected by a Force Majeure Event which delays the performance of the Services for more than five Business Days;
  - (c) there is a real and immediate risk that an Approval required under the Contract will be revoked or not granted;
  - (d) there is a real and immediate risk of action being taken by a governmental agency to require the Contractor to cease operating; or
  - (e) there is a real and immediate threat to public health or public safety associated with the delivery of the Goods and/or performance of the Services,

### (each a Step-in Event).

- 25.3 If the Principal is entitled to exercise the Step-in Rights, then the Principal, in its discretion:
  - (a) may enforce any of the contracts or arrangements to which the Contractor is a party in relation to the Services to the extent necessary to enable the Principal to undertake the actions in Clause 25.1; and
  - (b) is deemed to exercise the Step-in Rights as agent of and on behalf of the Contractor but nothing in this Clause 25.3(b) operates to require the Principal to act in the best interests of the Contractor.

- 25.4 Prior to the exercise of the Step-in Rights, the Principal must:
  - (a) where there is imminent harm or danger to person, property, or the relevant Facility, give at least one day's written notice to the Contractor; or
  - (b) otherwise, give at least five Business Days' written notice to the Contractor,

and give particulars of the circumstances giving rise to its exercise of the Step-in Rights.

- 25.5 The Principal will not be obliged to perform all or any of the Contractor's obligations under the Contract, nor will the Principal be liable for any Loss suffered by the Contractor, as a result of actions taken or omissions made by or on the Principal's behalf in the course of exercising or purporting to exercise the Step-in Rights, provided that the Principal has acted reasonably and honestly and has not acted fraudulently or with reckless disregard for the consequences of its acts or omissions.
- 25.6 The Contractor must comply with any reasonable direction of the Principal when the Principal exercises the Step-In Rights.
- 25.7 The Contractor for the duration of the Principal's exercise of the Step-in Rights:
  - (a) irrevocably appoints the Principal, and such persons as are from time to time nominated by the Principal, jointly and severally as its attorney with full power and authority to take any action in the exercise of the Step-in Rights; and
  - (b) must ratify and confirm whatever action an attorney appointed under Clause 25.7(a) takes in accordance with that Clause.
- 25.8 If the Principal has stepped-in in accordance with Clause 25.1, the Principal:
  - (a) must continue to pay the Contract Price in accordance with the Contract; and
  - (b) may retain, withhold, reduce or set-off from the Contract Price any costs incurred associated with the exercise of the Step-In Rights under this Clause 25.

### 26 WARRANTIES

The Contractor shall obtain all warranties specified in the Contract including any warranties that are obtained by any Subcontractor, and shall ensure that the Principal will have the benefit of the said warranties.

# 27 VARIATION TO CONTRACT TERMS

None of the terms of the Contract shall be varied, waived, discharged or released under any Legal Requirement, except by the express written agreement of the Principal.

### 28 PRICE BASIS

- 28.1 Unless otherwise stated in the Contract, the Contract Price shall be firm and not subject to rise and fall.
- 28.2 Unless otherwise provided in the Contract, the Contractor shall pay all packaging, freight, Taxes, insurances, and other charges whatsoever, in connection with the Contract and the Goods and/or Services including delivery of Bins to the Delivery Point and the return of Goods wrongly supplied and all packaging.
- 28.3 Unless stated otherwise in the General Contract Specifics, on each Review Date, the Contractor shall be entitled to adjust the Contract Price for the Services in accordance with this Clause 28.3. Unless stated otherwise in the General Contract Specifics, the Contract Price shall be reviewed and adjusted by the percentage movement as published in the Consumer Price Index since the last Review Date. The Contractor shall only be entitled to review the Contract Price for the Goods and/or Services on the Review Date and following such review the Contract Price shall be deemed to be fixed until the next Review Date.

### 29 INVOICING AND PAYMENT

- 29.1 Subject to the Contractor satisfactorily delivering the Goods or performing the Services (or both) in accordance with the Contract, the Principal must pay the Contractor the Contract Price calculated in the manner described in Item 18 of the General Contract Specifics.
- 29.2 As soon as reasonably practicable following the end of each calendar month (or as otherwise agreed by the Parties) the Contractor must provide to the Principal an Invoice for that part of the Contract Price that is payable in respect of the calendar month.
- 29.3 An Invoice must include the details set out in the General Contract Specifics.
- 29.4 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor and to the Contract Price contained in the Invoice being correctly calculated, the Principal must pay all Invoices that comply with Clause 29.3 within 30 Business Days (or such other period as the Principal's Representative and Contractor agree) of their generation or receipt (as the case may be), except where the Principal:
  - (a) is required by any Legal Requirement to pay within a shorter time frame, in which case the Principal must pay within that time frame;
  - (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
  - (c) disputes the Invoice, in which case:
    - (i) to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute; and
    - (ii) if the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.
- 29.5 A payment made pursuant to the Contract will not be taken or construed as proof or admission that the Goods delivered or the Services performed (or any part thereof) were to the satisfaction of the Principal but will only be taken to be payment on account.
- 29.6 Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid the Contract.
- 29.7 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price.

### 30 KEY PERFORMANCE INDICATORS

- 30.1 The Principal will, in assessing each Invoice, determine whether the Contractor has achieved the Key Performance Indicators applicable to the Goods and/or Services the subject of the Invoice. If any applicable Key Performance Indicators have not been achieved, the Principal may deduct 20% of the amount otherwise due to the Contractor under that Invoice ('Deduction').
- 30.2 The Principal may have recourse to Deductions retained under the Contract at any time it is entitled to recover from, or be paid (or has a bona fide claim that it is entitled to recover from or be paid) an amount claimed as due under the Contract or otherwise than under the Contract.
- 30.3 Within 20 days after the End Date, the Principal must return to the Contractor any Deductions, after retaining any withholding or set-off the Principal is entitled to make pursuant to the Contract.
- 30.4 If the Principal wrongfully withholds any Deduction under Clause 30.3, the Principal must repay the amount wrongfully withheld plus interest calculated at the rates specified in the General Contract Specifics from the End Date until the day that the money was repaid. The Contractor's entitlement under this Clause 30 is the sole entitlement in respect of the wrongful Deduction.

### 31 CONFIDENTIAL INFORMATION AND PUBLICITY

- 31.1 The Contractor must not advertise, publish or release to the public:
  - (a) the Confidential Information; or
  - (b) other information concerning the Goods and/or Services, or the Contract,

without the prior written approval of the Principal.

- 31.2 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:
  - (a) use Confidential Information except as necessary for the purposes of fulfilling its obligations under the Contract; or
  - (b) disclose the Confidential Information:
    - (i) other than (to the extent they require the information to enable the Contractor to fulfil its obligations under the Contract) to the Contractor's legal advisors, accountants or auditors; or
    - (ii) where disclosure is required by Law (including disclosure to any stock exchange).
- 31.3 The rights and obligations under this Clause 31 continue after the End Date.

### 32 GOODS AND SERVICES TAX

- 32.1 Any reference in this Clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 32.2 Unless expressly included, the consideration for any supply made under or in connection with the Contract does not include an amount on account of GST in respect of the supply ('GST Exclusive Consideration') except as provided under this Clause.
- 32.3 Any amount referred to in the Contract (other than an amount referred to in Clause 32.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 32.4 To the extent that GST is payable in respect of any supply made by a Party ('**Supplier**') under or in connection with the Contract, the consideration to be provided under the Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 32.5 The recipient must pay the additional amount payable under Clause 32.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- 32.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 32.4 or at such other time as the Parties agree.
- 32.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with the Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 32.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 32.8 If one of the Parties to the Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with the Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 32.4.

# 33 CONSEQUENTIAL LOSS

In relation to Consequential Loss:

- (a) except for Loss described in Clauses 14 and 33(b) but notwithstanding any other Clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by Law; and
- (b) Clause 33(a) does not exclude liability of the Contractor for Consequential Loss, if, but for Clause 33(a), the Contractor would have insurance cover for that Consequential Loss under an Insurance.

### 34 LIMITS ON LIABILITY

- 34.1 The Contractor's liability to the Principal in respect of Loss under the Contract in the aggregate for all claims is limited to the Contractor Maximum Liability Amount.
- 34.2 To the extent that the Principal is liable to the Contractor under any Legal Requirement or under the Contract, the Principal's liability to the Contractor in respect of Loss under the Contract in the aggregate for all claims is limited to the Principal Maximum Liability Amount.
- 34.3 The limitation of liability in Clause 34.1 does not apply in respect of:
  - (a) any fraud, deliberate default, gross negligence or Wilful Misconduct by the Contractor or the Contractor's Personnel; or
  - (b) any loss arising from any claim by a third party against the Principal arising out of any act or omission of the Contractor or the Contractor's Personnel.

### 35 FORCE MAJEURE EVENT

- 35.1 A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under the Contract ('Affected Obligations') and must either:
  - (a) to the extent practicable, specify in the notice the length of delay that will result from the Force Majeure Event; or
  - (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.
- 35.2 The Party's obligation to supply the Affected Obligations is suspended for as long as performance of the obligation is prevented by the Force Majeure Event.
- 35.3 If the Contractor is the Party with Affected Obligations, the Principal is relieved, to the extent the Contractor is precluded from providing the Goods and/or Services, from any payment to the Contractor for duration of the delay resulting from the Force Majeure Event.
- 35.4 The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- 35.5 If a Force Majeure Event continues to affect the supply of the Goods and/or Services for a continuous period of 180 days, the Principal may terminate the Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of the Contract being terminated.
- 35.6 The Parties will be responsible for their own costs incurred during the period of the Force Majeure Event.

### 36 SETTLEMENT OF DISPUTES

- 36.1 In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute ('**Notice of Dispute**').
- 36.2 The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:
  - (a) alleged facts on which the claim is based;
  - (b) legal basis on which the claim is made; and
  - (c) relief that is claimed.
- 36.3 Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:
  - (a) its position in relation to the Dispute; and
  - (b) the basis for its position.
- 36.4 Within 10 Business Days of receipt of the response referred to in Clause 36.3, the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to the Contract.
- 36.5 If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with Clause 36.4, either Party may initiate proceedings in a court of competent jurisdiction.
- 36.6 Either Party may, with the agreement of the other Party, at any time, refer the Goods and/or Services (or any part thereof) to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.

### 37 TERMINATION OF CONTRACT

- 37.1 If a Party breaches or repudiates the Contract, nothing in the Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under the Contract or under any applicable Legal Requirement.
- 37.2 If the Contractor:
  - (a) subject to Clause 36, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
  - (b) suffers an Insolvency Event;
  - (c) or any of the Contractor's Personnel, are found guilty of any criminal act in connection with the performance of the Contractor's obligations under the Contract that may bring the Principal into disrepute;
  - (d) assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal;
  - (e) fails to achieve the KPIs for a period of six continuous months;
  - (f) includes in its Tender or other information provided to the Principal any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or

- (g) or any of the Contractor's Personnel:
  - (i) does an act or omission of the type described in Clause 14.1(d); and
  - (ii) the Contractor, within five Business Days of a notice from the Principal does not remedy the act or omission or put in place a cure plan to remedy the act or omission to the Principal's reasonable satisfaction,

then the Principal may by notice in writing to the Contractor immediately terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.

- 37.3 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in Clause 37.2 above and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.
- 37.4 When the Contract is terminated, the Contractor must:
  - (a) promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest; and
  - (b) co-operate with and assist the Principal to transition the provision of the Goods and/and Services from the Contractor to the Principal or a third party.
- 37.5 The termination of the Contract does not affect:
  - (a) any rights of the Parties accrued before the End Date; and
  - (b) the rights and obligations of the Parties under the Contract which, expressly or by implication from its nature, are intended to continue after the End Date.

### 38 WAIVERS AND AMENDMENTS

- 38.1 The Contract may only be amended, or its provisions waived, in writing by the Parties.
- 38.2 No forbearance, delay or indulgence by the Principal in enforcing the provisions of the Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

### 39 ENTIRE AGREEMENT

- 39.1 To the extent permitted by Law, the Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, understandings, quotation requests, representations, warranties, promises, statements, or negotiations, express or implied in respect of the subject matter of the Contract.
- 39.2 To the extent permitted by Law and to the extent the Contractor's terms and conditions are supplied to the Principal in respect of the Goods and/or Services, those terms and conditions will be of no legal effect and will not constitute part of the Contract.

### 40 **RIGHTS AND REMEDIES**

The Principal may exercise the rights herein conferred in addition to all or any other rights or remedies which the Principal shall or may be entitled to against the Contractor whether under a Legal Requirement or the Contract.

### 41 CONSENTS

- 41.1 Where under the Contract a Party has any right or discretion, including a right to grant consent or approval, that Party:
  - (a) may exercise such a right or discretion solely for its own benefit; and
  - (b) to the maximum extent permitted by Law, does not have any obligation to take into account:
    - (i) the interests of the other Party; or
    - (ii) any requirement to act in good faith or reasonably where implied by Law or otherwise.
- 41.2 Unless expressly required by the terms of the Contract, a Party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with the Contract.
- 41.3 A Party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with the Contract. Any conditions must be complied with by the Party relying on the consent, approval or waiver.

### 42 INSURANCE

- 42.1 The Contractor must, at its own cost and expense, as a minimum procure and maintain the Insurances:
  - (a) on the terms and conditions set out in this Clause and otherwise on terms acceptable to the Principal; and
  - (b) from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency and approved by the Principal which either:
    - (i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
    - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
- 42.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
- 42.3 Without limiting Clause 42.1, the Contractor must:
  - (a) pay all premiums and all deductibles applicable to the Insurance when due; and
  - (b) promptly reinstate any Insurance required under this Clause 42 if it lapses or if cover is exhausted.

#### 42.4 Each Insurance must:

- (a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
- (b) except for compulsory statutory workers' compensation insurance, compulsory motor vehicle insurance and professional indemnity insurance, include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each Party insured and a failure by any insured Party to observe and fulfil the terms and conditions will not affect any other Party;
- (c) provide that where the Principal is not a named insured the insurer must waive rights of subrogation against the Principal;
- provide that a notice of claim given to the insurer by an insured under the (d) Insurance must be accepted by the insurer as a notice of claim given by the Principal;
- (e) provide, where the Principal is an insured under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance: and
- (f) state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.
- 42.5 The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under the Contract.
- 42.6 The Contractor must maintain *public and product liability insurance*. The public and product liability policy must:
  - (a) come into effect on or before the Start Date and be maintained until the Insurance End Date:
  - (b) be in the joint names of the Contractor and the Principal and the Principal's Personnel;
  - (c) be for an amount of not less than the amount set out in the General Contract Specifics in respect of any one claim and not less than the amount set out in the General Contract Specifics in the aggregate during any one 12 month period of insurance:
  - (d) cover the liability of the Contractor, the Contractor's Personnel and the Principal in respect of:
    - (i) loss of, damage to, or loss of use of, any real or personal property; and
    - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers compensation policy),

arising out of or in connection with the performance of the Contract (including the provision of the Goods and/or Services and the derivation of any products from Delivered Material) by the Contractor; and

- (e) be endorsed to cover:
  - the use of unregistered motor vehicles or unregistered mobile Plant and (i) Equipment used in connection with the Contract; and
  - sudden and accidental pollution. (ii)

- 42.7 In addition to any *compulsory motor vehicle third party insurance* required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain *vehicle and equipment insurance* for the Contractor's vehicles (including the Collection Vehicles), registered Plant and Equipment used in connection with the Contract whether owned, hired or leased ('Contractor's Vehicles'). The vehicle and equipment liability policy must:
  - (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (b) cover against all loss and/or damage to the Contractor's Vehicles;
  - (c) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;
  - (d) be for an amount of not less than the market value of the Contractor's Plant and Equipment, and otherwise for not less than the amount set out in the General Contract Specifics for any one claim or occurrence and unlimited in the aggregate; and
  - (e) other than compulsory motor vehicle third party insurance required by virtue of any Legal Requirement, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal.
- 42.8 The Contractor must insure against *liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor* including liability by statute and at common law. This insurance cover must:
  - (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (b) to the extent permitted by any Legal Requirement, be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor; and
  - (c) be for not less than the amount set out in the General Contract Specifics common law liability in respect of any one event.
- 42.9 The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.
- 42.10 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
- 42.11 The Contractor must ensure that its Subcontractors are insured as required by this Clause 42, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
- 42.12 The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under the Contract is current by providing to the Principal the terms and conditions (including schedules) of the Insurances to demonstrate compliance with the Contract. Nothing in this Clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- 42.13 If the Contractor fails to procure and maintain the Insurance in accordance with the Contract, the Principal may, but is not obliged to procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.
- 42.14 Whenever a claim is made under any of the Insurance, the Contractor is liable for any excess or deductible payable as a consequence.

- 42.15 The Contractor must:
  - (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with the Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
  - (b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.
- 42.16 The Insurances are primary, and not secondary, to the indemnities referred to in the Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in the Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in the Contract before the insurer considers or meets the relevant claim.
- 42.17 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to the Contract in accordance with AS/NZS 4360-2004 Risk Management.
- 42.18 Notwithstanding the above, if permitted in the General Contract Specifics, the Contractor will be entitled to self insure in respect of any or all of the above insurances provided always that:
  - (a) it is lawful for the Contractor to do so;
  - (b) the Contractor identifies in writing which of the risks required to be insured are being self insured; and
  - (c) if required by the Principal from time to time, the Contractor will provide to the Principal a copy of the Contractor's latest annual report and accounts and/or demonstrate to the Principal's reasonable satisfaction that the Contractor maintains sufficient financial reserves to discharge any liability accruing in respect of such insurance risks.

### 43 INDUSTRIAL AWARDS

- 43.1 With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Services and the Contract.
- 43.2 Failure by the Contractor to comply with Clause 43.1 hereof shall entitle the Principal by notice in writing to the Contractor to immediately terminate the Contract, but without prejudice to any other rights or remedies of the Principal.

### 44 GOVERNING LAW

The Contract and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by, construed and take effect in accordance with the Laws of the State of Western Australia and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with the Contract or its subject matter or formation (including non-contractual disputes).

### 45 **PROPORTIONATE LIABILITY**

Each Party agrees that Part 1F of the *Civil Liability Act* 2002 (WA), to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- (a) the Contract; and
- (b) any of the Contractor's Subcontractors or the Subcontractor's personnel.

### 46 PERSONAL PROPERTY SECURITIES ACT

- 46.1 For the purposes of this Clause 46:
  - (a) the '**Principal's Personal Property**' means all personal property the subject of a security interest granted under the Contract; and
  - (b) words and phrases used in this Clause 46 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.
- 46.2 If the Principal determines that the Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:
  - (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
  - (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
  - (c) enabling the Principal to exercise rights in connection with the security interest.
- 46.3 The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.
- 46.4 The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:
  - (a) if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
  - (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.

### 46.5 The Contractor must not:

- (a) create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Goods; or
- (e) change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.
- 46.6 Everything the Contractor is required to do under this Clause 46 is at the Contractor's expense.
- 46.7 Neither the Principal 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. This Clause 46 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

### 47 APPLICATION OF THE CONTRACT

The Contract applies to the performance of the Contractor's obligations under the Contract whether performed before, on or after the Start Date.

### 48 **RESTRUCTURE OF THE PRINCIPAL**

If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure.

# 49 FAILURE TO PROVIDE GOODS AND PERFORM SERVICES

Where a State of Emergency is declared under the *Emergency Management Act 2005* (WA) or where the Contractor is unable or fails (for whatever reason) to provide the Goods and/or perform the Services in accordance with the Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Contract Price which relates to the relevant Goods and/or Services) obtain or acquire such goods and services as it requires from a third party and this will not constitute a suspension for the purposes of Clause 24.

# 50 DELIVERY OF WASTE TO A FACILITY

If the Contractor is not the Facility Operator, the Contractor must, in delivering the Collected Waste or Delivered Waste (as the case may be) to the relevant Facility:

- (a) be aware of and comply with and ensure that the Contractor's Personnel are aware of and comply with:
  - (i) any applicable Legal Requirements;
  - (ii) all Standards and Procedures, to the extent that these documents are applicable to the Contractor's performance of the Contract; and
  - (iii) all lawful directions and orders given by the Principal's Representative or any person authorised by Law to give directions to the Contractor;
- (b) ensure that the Contractor's Personnel entering the Facility perform in a safe manner and are properly qualified for, and skilled in, the performance of their tasks and are of such character as not to prejudice:
  - (i) safe working practices;
  - (ii) safety and care of property; and
  - (iii) continuity of work; and
- (c) provide all such information and assistance as the Principal reasonably requires in connection with any statutory or internal health and safety investigation in connection with the Contract or the Facility.

### 51 COMMUNITY ENGAGEMENT

- 51.1 The Contractor acknowledges that all liaison with the community in respect of the Goods and/or Services will be as directed by the Principal. The Contractor must do all things reasonably requested by the Principal in respect of community engagement, including referring all queries from the general public in respect of the Goods and/or Services to the Principal. If the Contractor receives queries from the general public in respect of the Goods and/or Services, it must do so as a representative of the Principal.
- 51.2 The Contractor must:
  - (a) provide suitably experienced personnel to assist in community engagement;
  - (b) implement and follow a complaints management system approved by the Principal; and
  - (c) notify the Principal of any complaints received by the Contractor in accordance with the reporting requirements under Clause 21.2 (unless the matter is serious or urgent in which case the Contractor will notify the Principal immediately).

# 52 CALL CENTRE

Where the General Contract Specifics require, the Contractor must provide and maintain a call centre (**Call Centre**) with an operative email, telephone and facsimile machines (the details of which are set out in the General Contract Specifics), with appropriate numbers of Contractor's Personnel for receipt of public enquiries and messages, directions and instructions from the Principal's Representative. The Call Centre must be staffed between the hours of the actual collection period applicable for the Shire of Mingenew (and at least between 8.00am and 5.00pm) on every Collection Day, unless otherwise specified in the General Contract Specifics. The Contractor must:

- (a) notify the Principal's Representative of any changes to the Call Centre's telephone and facsimile numbers five Business Days prior to of the change being made; and
- (b) put in place appropriate call forwarding methods to inform members of the public of the Contractor's new details prior to such change being made and the Contractor must maintain such call forwarding methods for as long as is reasonably determined by the Principal's Representative.

# Schedule 1 – General Contract Specifics

Item No	Contract Specific	Description	Clause Reference
1.		Provision of a Waste Collection Services, including the provision of all Bins.	4
2.	OH&S Management System	Required for Collection Services.	10.4
3.	EMS	Required for Collection Services.	11.3(c)
4.	ЕМР	Required for Collection Services.	11.3(d)
5.	Operational Plan	Required for Collection Services.	11.4(b)
6.	Quality System	Required for Collection Services.	11.4(b) and 18.2
7.	Framework Agreement	No.	16.1
8.	Initial Term	Three Years	19.1 and 1.1
9.	Start Date	22 day of September, 2019 (day after existing contract concludes).	19.1 and 1.1
10.	End Date	The earlier of either 21 September 2022; and (b) the date the Contract is terminated under Clause 37.	19.1 and 1.1
11.	Extended Periods	A two year option is provided for (vis. 22 September 2022 to 21 September 2024.	19.2 and 1.1
12.	Goods to be supplied	Provision of all Bins.	19.3 and 1.1
13.	Services to be provided	Those Services listed in Item 1 of the General Contract Specifics (Schedule #1).	19.3 and 1.1
14.	Principal Supplied Plant and Equipment	Nil. The Contractor will provide all Bins.	20.1 and 1.1
15.	Principal's Representative	Chief Executive Officer (Nils Hay) Address: 21 Victoria Street, Mingenew, WA, 6522 Telephone: 0899281102 Facsimile: 0899281128 Email: ceo@mingenew.wa.gov.au	22 and 1.1
16.	Contractor's Representative	Robert Baldwin Address: 11 Connolly Street, Webberton, WA 6530 Telephone: (T)089 938 400; (M)0400 485 529 Email: robert.baldwin1@cleanaway.com.au	22 and 1.1

Item No	Contract Specific	Description	Clause Reference
17.	Price Adjustment Basis	Not Applicable for first Three Years. Consumer Price Index (All Groups) Perth negotiable for extension period if provided.	
18.	Contract Price	To be as per Schedule 11 (Schedule of Rates). To be inserted prior to Contract execution.	29 and 1.1
19.	Details of Invoices	Invoices must include the relevant purchase order number and details of the service supplied to the Principal, including the basis of calculation and supporting information during the relevant month to which the Invoice relates and any other information reasonably requested by the Principal.	
20.	Interest rate for late payments or wrongful Deductions		30.4
21.	Contractor Maximum Liability Amount	The Contractor Maximum Liability Amount is unlimited.	34.1 and 1.1
22.	Principal Maximum Liability Amount	\$0. <sub>.</sub>	34.2 and 1.1
23.		12 months from the date of delivery of the Goods or 12 months from the End Date, whichever is later.	
24.		\$5,000,000 for one claim and \$20,000,000 in the aggregate for any 12 month period.	42.6(c)
25.	Minimum level of Public Liability Insurance Cover required	\$10,000,000 for one claim and unlimited in the aggregate.	42.6(c)
26.	Contractor's Vehicle Insurance End Date	Contract End Date plus any Extended Periods.	42.7(a))
27.		Not less than the market value of the Contractor's Vehicles.	42.7(d)
28.	Workers compensation End Date	Contract End Date plus any Extended Periods.	42.8(a)
29.	workers compensation Insurance required	The Shire of Mingenew notes and accepts that Cleanaway Operations Pty Ltd holds (and will continue to hold for the term of this contract) a self-insurance licence authorising retention of liability and management of workers' compensation claims under the Commonwealth Safety, Rehabilitation and Compensation Act 1988 (vis. insurance cover that meets the Workers Compensation and Injury Management Act 1981 (WA) and \$50,000,000 for common law liability).	42.8(c)
	Contractor permitted to self insure with respect to the Insurances		42.18

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- 2.8 If the Contractor fails to comply with Clause 2.4 of this **Schedule 2**, the Contractor will have no entitlement to an extension of time of the applicable Date for Delivery.
- 2.9 If an extension of time is granted in accordance with this Clause 2 of **Schedule 2**, provided that those costs are not also reimbursable pursuant to Clauses 23 or 24, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay, but without regard to overheads, profit or any other cost, loss, expense or damage.

# 3 DELIVERY OBLIGATIONS

- 3.1 The Contractor must, in delivering the Goods to the Delivery Points:
  - (a) not interfere with the Principal's activities or the activities of any other person at the Delivery Point; and
  - (b) leave the Delivery Points secure, clean, orderly and fit for immediate use having regard to the condition of the Delivery Points immediately prior to the delivery of Goods.
- 3.2 The Contractor must:
  - (a) deliver the Goods to an occupier of each Delivery Point;
  - (b) if no occupier of the Delivery Point is present, or the Delivery Point is one to which Clause 4.6(b) of this **Schedule 2** applies, placing the Goods within the boundaries of the Delivery Point in a safe and secure manner; or
  - (c) if the Contractor is unable to obtain access to the Delivery Point, placing the Goods as close as possible to the Delivery Point in a safe and secure manner.
- 3.3 Upon delivery of the Goods, the Contractor must notify the Principal's Representative, in writing, of the serial number of each Good delivered to a Delivery Point and the address of the Delivery Point to which it was delivered.

# 4 EXPENSES OF DELIVERY OF GOODS

Unless otherwise provided in the Contract, the Contractor shall pay all packaging, freight, Taxes, insurance, and other charges whatsoever, in connection with the delivery of Goods to the Delivery Point and the return of Goods wrongly supplied and all packaging.

# 5 PROPERTY AND RISK IN THE GOODS

- 5.1 This Clause 5 of Schedule 2 applies to each supply of Goods, including as part of the Bin Services (if Bin Services form part of the Contract), unless the description of the Bin Services states that ownership of the Goods is to remain with the Contractor.
- 5.2 Risk in Goods will pass from the Contractor to the Principal on Acceptance of those Goods.
- 5.3 Upon payment of the Goods, ownership of the Goods shall pass to the Principal. Payment shall include credit by way of set off.
- 5.4 The Contractor warrants that:
  - (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and that it sells the Goods to the Principal on that basis; and
  - (b) the Principal will be entitled to clear title to and complete and quiet possession of the Goods upon payment for them.

# 6 RECEIPT AND ACCEPTANCE OF GOODS

- 6.1 Delivery and receipt of the Goods shall not of itself constitute Acceptance of the Goods by the Principal.
- 6.2 Acceptance of the Goods occurs on the earlier of:
  - (a) the Principal's Representative notifying the Contractor in writing that the Goods have been accepted; or
  - (b) the lapse of 14 days after delivery of the Goods to the Delivery Points without the Principal notifying the Contractor in writing that the Goods have been rejected.
- 6.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to Acceptance remains with the Contractor except where the damage, deterioration, theft or loss is caused by a negligent act or omission of the Principal or the Principal's Personnel.
- 6.4 Where Goods are found to be Defective Goods, the Principal may reject any or all of the Defective Goods in accordance with Clause 7 of this **Schedule 2**.

# 7 REJECTION AND REMOVAL OF DEFECTIVE GOODS

- 7.1 During the Defects Liability Period the Principal's Representative shall notify the Contractor in writing of the Defective Goods and may:
  - (a) direct that the Defective Goods be either replaced or rectified by the Contractor (at the Contractor's expense) within such reasonable time as the Principal's Representative may direct; or
  - (b) elect to accept the Defective Goods whereupon the Contract Price shall be reduced by the extra costs the Principal incurs as a result of accepting those Goods.
- 7.2 Should the Contractor fail to comply with a notice issued under Clause 7.1(a) of this **Schedule 2** within the time specified in that notice, the Principal shall be entitled to:
  - (a) replace the Defective Goods with goods of the same or similar quality;
  - (b) sell the Defective Goods; and/or
  - (c) have the Defective Goods redelivered at the Contractor's risk and expense to the Contractor's premises,

and recover its costs, losses and expenses of so doing from the Contractor.

- 7.3 Where the Contractor has made good any Defective Goods under this Clause 7 of **Schedule 2**, those Goods will be subject to the same Defects Liability Period as the original Goods, from the date the Contractor made good the Defective Goods.
- 7.4 The Principal shall not be responsible for the care or custody of any Defective Goods after the Contractor has been notified that they are defective.
- 7.5 Upon a refund of the price paid for the Defective Goods which had previously been Accepted, property in those Goods shall revert to the Contractor.
- 7.6 Without limiting Clause 14, any cost or expense incurred by the Principal in connection with the Defective Goods under this Clause 7 of **Schedule 2**, shall be a debt due from the Contractor to the Principal.
- 7.7 Nothing in the Contract shall prejudice any other right which the Principal may have against the Contractor arising out of the failure by the Contractor to provide Goods in accordance with the Contract.

ATTACHMENT 1 - GOODS C	CONTRACT SPECIFICS
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ltem No	Contract Specific	Description	Clause Reference
Clause refe	erences refer to Clauses in Schedule	2 (other than Clause 1.1).	
1.	Date for Delivery	22 September 2019.	2.4
2.	Defects Liability Period	Subject to Clause 7.3 of Schedule 2, the period of time beginning on the Date for Delivery and ending on the conclusion of a 12 months period.	r

# Schedule 3 – Bin Services

### 2 APPLICATION OF THIS SCHEDULE

This **Schedule 3** only forms part of the Contract if Item 1 of the General Contract Specifics refers to Bin Services. For clarity, if Item 1 of the General Contract Specifics does not refer to Bin Services, this **Schedule 3** does not form part of, and has no force or effect in respect of, the Contract.

Note: Schedule 3 does form part of this Contract.

### 3 SERIAL NUMBERS

If the Contract requires the provision of the Bin Services, the Contractor must, unless directed otherwise by the Principal:

- (a) deliver to the Principal, prior to the Start Date, a database, in a form and using software approved by the Principal's Representative, of all serial numbers of the Bins to be supplied as part of the Bin Services and the addresses of Delivery Points to which they are to be delivered;
- (b) notify the Principal's Representative each month, in writing, of the serial number of each Bin delivered to a Delivery Point as part of the Bin Services and the address of the Delivery Points to which it was delivered; and
- (c) deliver to the Principal, within 5 days of the end of the Term, the database provided under Clause 3(a) of this **Schedule 3** updated to reflect the information provided under Clause 3(b) of this **Schedule 3**.

### 4 RETRIEVAL AND REPLACEMENT

- 4.1 The Contractor must retrieve all damaged Bins, or Bins no longer required, at Delivery Points and:
  - (a) either:
    - (i) dispose of them, if they are damaged beyond repair; or
    - (ii) repair them and store them at a secure location for re-issue to Delivery Points as required; and
  - (b) if the Bin was removed due to being damaged, replace that Bin, by re-issuing a replacement Bin in a timely manner.
- 4.2 The Contractor must use its best endeavours to reuse Bins wherever possible.

### 5 AFFIXATION OF NOTICES

The Contractor must, from time to time, if directed by the Principal, attach notices or stickers, in any manner nominated by the Principal, to all Bins which have already been or are to be supplied to Delivery Points. The Principal will supply any such notices or stickers. The Principal will compensate the Contractor for its reasonable costs in carrying out this service.

# Schedule 4 – Collection Services

### 1 APPLICATION OF THIS SCHEDULE

This Schedule 4 only forms part of the Contract if Item 1 of the General Contract Specifics refers to Collection Services.

Note: Schedule 4 does form part of this Contract.

### 2 COLLECTION SERVICES

- 2.1 Waste must be collected by the Contractor in the course of the performing the Collection Services on the specified Collection Days as set out in the Collection Schedules.
- 2.2 The Collection Services must not take place on a day that is not a Collection Day without the prior written consent of the Principal's Representative. The Principal's Representative's consent may be given subject to such conditions as he or she considers appropriate.
- 2.3 The Contractor must carry out Collection Services scheduled for Christmas Day, New Year's Day and Good Friday on an alternative day within the seven days of the same week, as approved by the Principal.
- 2.4 The Contractor must, at its cost, on becoming aware of, or upon receiving a notification of a missed or late Waste collection from a resident or the Principal, return and collect the Waste. If advice is received, prior to 11am, collection must be made on that day and at the time set out in the Collection Contract Specifics.

### 3 TIME AND FREQUENCY FOR COLLECTION SERVICES

- 3.1 The Contractor must perform the Collection Services on the days, times and at the frequency specified in the Collection Schedule from all:
  - (a) Residential (and selected Commercial, Industrial, or "Town-site" Rural) Tenements within the Collection Area; and
  - (b) other places within the Collection Area nominated by the Principal's Representative (which may include schools, public facilities, common collection points, compounds within high density housing estates and the like).
- 3.2 The Collection Services must not take place on the days and at the times set out in the Collection Contract Specifics.

### 4 COLLECTION SCHEDULE

- 4.1 The Principal will, not later than three weeks prior to the Start Date, provide the Contractor with a complete listing of the addresses within a Collection Area to be serviced under the Contract. This list may be updated by the Principal at any time during the Term.
- 4.2 The Principal may determine, and if so must notify the Contractor of, the Collection Day applicable to a particular area within the Collection Area. If the Principal does not notify the Contractor of the Collection Day, the Contractor must determine the most efficient route and Collection Days to meet its obligations in respect of the Collection Area, including the requirements in this Clause 4 of Schedule 4.

- 4.3 The Contractor must prepare a systematic scheme for the performance of the Collection Services at all Tenements within the Collection Area for each type of Waste (Collection Schedule). The Collection Schedule must be consistent with the information provided to the Contractor in accordance with Clause 4.2 of this Schedule 4, the frequency for collection of each type of Waste specified in the Collection Contract Specifics, and any other information the Principal provides the Contractor for the purposes of determining the Collection Schedule.
- 4.4 A draft of the Collection Schedule must be submitted to the Principal's Representative for approval at least two weeks prior to the Start Date.
- 4.5 The Collection Schedule must be prepared so that Main Roads are serviced outside peak traffic times.
- 4.6 The Principal's Representative may:
  - (a) require that the Contractor provide further information in relation to the proposed Collection Schedule or any related matter;
  - (b) direct reasonable amendments to the proposed Collection Schedule; and
  - (c) make his or her approval of the proposed Collection Schedule subject to such reasonable conditions as he or she considers appropriate.
- 4.7 The Contractor must operate the Collection Services in accordance with the Collection Schedule approved by the Principal's Representative and any alteration to the Collection Schedule must only be made with the prior written consent of the Principal's Representative.

### 5 COLLECTION OF WASTE

- 5.1 The Contractor must collect all Waste that is:
  - (a) placed within a Bin that is put out at the kerbside; or
  - (b) located at any place directed by the Principal's Representative.
- 5.2 If the manner in which any Bin is, or the contents of any Bin, placed out for collection from or at any Delivery Point does not comply with any policy of the Principal, Legal Requirements, a term of the Contract or direction, the Contractor must still empty the Bin and collect the Waste in or around the relevant Bin, except in circumstances set out in the Collection Contract Specifics.
- 5.3 If the Contractor does not empty a Bin in accordance with Clause 5.1 of this Schedule 4, the Contractor must ensure that the driver of the Collection Vehicle:
  - (a) immediately notifies the Contractor of the address of the Tenement and the grounds for not emptying the Bin. The Contractor must in turn notify the Principal as soon as possible of the address of the Tenement, the serial number of the Bin and the grounds for not emptying the Bin; and
  - (b) attaches to the Bin a sticker, in a form approved by the Principal's Representative, indicating:
    - (i) why the Bin was not emptied;
    - (ii) the steps that must be taken to have the Bin emptied in future; and
    - (iii) a contact point for enquiries.
- 5.4 The Contractor must ensure that the Contractor's Personnel collect and remove any material spilt:
  - (a) by them in performing the Collection Services;
  - (b) from any Bin; or
  - (c) from a Collection Vehicle.

- 5.5 The Contractor must, after emptying each Bin, replace it:
  - (a) as near as practicable to the position in which it was located prior to being emptied (but not on a road or within one metre of a driveway); and
  - (b) in an upright position with the lid closed.
- 5.6 The Contractor must ensure that:
  - (a) Bins are not placed in any position which is hazardous to any person or property (including a Bin itself); and
  - (b) Bins are not dropped or thrown.
- 5.7 The Contractor may encounter challenging Tenements in performing the Collection Services. The Contractor must (at its cost):
  - (a) provide written advice to the Principal's Representative prior to the Start Date which:
    - (i) identifies those Tenements where the Contractor believes that special collection arrangements will be required; and
    - (ii) indicates the arrangements which the Contractor proposes to implement to collect Waste from such Tenements;
  - (b) seek to co-operatively resolve all problems that arise in consultation with the Principal's Representative;
  - (c) comply with any directions of the Principal's Representative with respect to any such problems; and
  - (d) use Collection Vehicles in challenging areas which are able to safely service those areas, including avoiding contact with the public, overhead wires and overhanging trees.
- 5.8 Ownership of all Collected Material vests, as against the Contractor, in the Principal.

### 6 COLLECTION VEHICLES

- 6.1 Without limiting Clause 20, the Contractor must:
  - (a) use a sufficient number of Collection Vehicles to perform the Collection Services in accordance with the Collection Schedule from the Start Date;
  - (b) ensure that all Collection Vehicles used in the performance of Collection Services are in good repair and condition throughout the Term; and
  - (c) ensure that all Collection Vehicles are sufficiently equipped to comply with its obligations under the Contract.
- 6.2 If at any time during the Term, the Principal's Representative, acting reasonably, considers the resources used by the Contractor in the performance of the Collection Services are inadequate to perform the Collection Services with the Collection Schedule (including both the number of Contractor's Personnel, and the quality and/or quantity of the Collection Vehicles), the Principal's Representative may direct the Contractor to address such inadequacy as the Principal's Representative deems appropriate, and the Contractor must comply with such direction.
- 6.3 All Collection Vehicles must be kept clean and washed down both inside and outside and disinfected at the frequencies specified in the Collection Contract Specifics to the reasonable satisfaction of the Principal's Representative. These activities must be carried out at the Contractor's premises.

- 6.4 All Collection Vehicles operated by the Contractor's Personnel in carrying out its obligations under the Contract must be fitted with an effective two-way communication system. For the purposes of effecting control over Collection Vehicles engaged in the performance of the Collection Service, the Contractor must be able to maintain effective two-way communication with all Collection Vehicles from the Contractor's office.
- 6.5 When any Collection Vehicles are passing along roads or left standing in any public place, they must be secured so as to prevent the escape of any Waste or other matter from the vehicle. No Collection Vehicle must be left standing in such a manner as to cause offence or present a hazard to a member of the public.
- 6.6 Each Collection Vehicle must include the signage required by the Principal as set out in the Collection Contract Specifics and must be professionally painted or affixed in any manner directed by the Principal's Representative. The Principal's Representative may direct which colour the Collection Vehicle and any identification information which is to be painted on the Collection Vehicle. The costs under this Clause 6 of Schedule 4 must be borne by the Contractor.
- 6.7 The Contractor is responsible for all inputs required to operate and maintain each Collection Vehicle.

# 7 DELIVERY OF WASTE TO THE FACILITY

- 7.1 The Contractor must:
  - (a) deliver all Waste collected in the course of the Collection Service to one or more Facilities, as directed by the Principal from time to time; and
  - (b) deliver only Collected Material to Facilities.
- 7.2 If the Contractor is not the Facility Operator, the Contractor must ensure that the Contractor's Personnel comply with any:
  - (a) directions of representatives of the Facility Operator; and
  - (b) rules of which notice has been given to the Contractor by the Facility Operator (including, without limitation, rules for occupational health and safety),

while at a Facility, except to the extent that it would be unsafe to do so.

- 7.3 The Contractor must ensure that all Collected Material delivered to the Facility during the performance of the Collection Service is weighed at the weighbridge at the Facility (if that Facility has a weighbridge) or is otherwise measured in accordance with the procedures in place at the Facility.
- 7.4 If weighbridge dockets are produced under Clause 7.1 and are not electronic, the Contractor must collect weighbridge dockets immediately after each load of Collected Material is weighed. The Contractor must deliver these weighbridge dockets for all loads of Collected Material delivered to the Facility in the course of the Collection Service each month to the Principal's Representative.
- 7.5 The measurements taken in accordance with Clause 7.3 of this Schedule 4 are conclusive evidence of the amount of Delivered Material received at the Facility and will be used for the purpose of calculating payment to the Contractor in accordance with Clause 29.
- 7.6 If the Contractor is not the Facility Operator:
  - (a) the Contractor must deliver Collected Material to a Facility during the Opening Hours for that Facility; and
  - (b) the Contractor may only deliver Collected Material to a Facility outside of the Opening Hours with the permission of the Principal, which permission may be subject to conditions.
- 7.7 If the Contractor is not the Facility Operator, the Contractor must, in delivering the Collected Waste to the Facility:
  - (a) not interfere with the activities of any other person at the Facility; and
  - (b) leave the Facility secure, clean, orderly and fit for immediate use having regard to the condition of the Facility immediately prior to the delivery of the Collected Waste.
- 7.8 If Recyclables Sorting Services do not form part of the Contract, and any Delivered Material delivered to a Recyclables Facility exceeds the Maximum Compaction Rate, the Principal may deduct the amount of any Over-compaction Charge paid by the Principal to the Facility Operator of that Recyclables Facility from the Contract Price.

## 8 ADDITIONAL REPORTING

Without limiting the reporting required in Clause 21, the Contractor must maintain records of:

- (a) any breach of Legal Requirements by the occupier of a Tenement in respect of the placement or contents of a Bin or other material left out for collection; and
- (b) the weight of Collected Material collected by each Collection Vehicle per day.

## 9 COMPLAINTS

If the Contractor receives any complaint regarding the failure by the Contractor's Personnel to:

- (a) collect and remove litter; or
- (b) empty a Bin or otherwise collect the Waste as required under the Contract,

from a member of the public, the Contractor must:

- (i) immediately notify the Principal of the complaint;
- (ii) investigate the complaint and advise the Principal and the complainant of the result of the investigation within four hours of the complaint being made; and
- (iii) rectify any breach of the Contract in respect of which a complaint was made on the same day that the complaint was made.

## 10 NOTIFICATIONS

If Bin Services do not form part of the Contract and the Contractor or Contractor's Personnel becomes aware that a Bin is damaged or is no longer required at a Delivery Point, the Contractor must immediately notify the Principal.

## 11 PROMOTIONAL MATERIAL

If requested by the Principal, the Contractor must at its cost:

- (a) prepare and deliver to each Delivery Point information related to the performance of the Collection Services as required by the Principal's Representative;
- (b) deliver any information prepared by the Principal in relation to the Collection Services, waste management, recycling, or other information relevant to the Contract; and
- (c) if required by the Collection Contract Specifics, prior to the Start Date place an advertisement (the size, content and format of which must be approved by the Principal's Representative) in newspapers nominated by the Principal's Representative summarising the information required under this Clause 11 of Schedule 4.

### 12 ADVERTISING

Except as otherwise provided in the Collection Contract Specifics, in the event of any suspension of, or a stoppage or disruption to, the Collection Service, the Contractor must, as and when directed by the Principal's Representative:

- (a) place advertisements in newspapers nominated by the Supervisor; and
- (b) organise a letterbox drop of information to affected areas,

advising of the relevant suspension, stoppage or disruption, with the size, content and format of any newspaper advertisement or any information distributed by a letterbox drop approved by the Principal's Representative.

## 13 WASTE LEVY

If the Contractor is not the Facility Operator and is charged the waste levy imposed by Law by the Facility Operator, and:

- (a) there is an increase or decrease in the existing waste levy imposed by Law; or
- (b) there is any new levy, charge, duty, impost or tax imposed by Law applicable to the delivery of Waste at the relevant Facility,

the Contractor may increase or decrease the Contract Price for the amount of increase or decrease in the levy, charge, duty, impost or tax (as the case may be) effective from the date of the increase or decrease.

## 14 TITLE TO BINS

If the Contractor provides bins as part of the Collection Services during the Term and ownership of such bins is explicitly stated in the Specification to vest in the Contractor, at the End Date, ownership of the bins provided by the Contractor as part of the Collection Services vests, as against the Contractor, in the Principal, unless otherwise indicated in the Collection Contract Specifics.

Item No	Contract Specific	Description	Clause Reference
1.	Collection Services	As set out in the Collection Services Specification at Schedule 10.	2
2.	Time for collection of missed Waste	To be mutually agreed by the Principal and the Contractor, depending on the Collection Day and the Delivery Point of the missed collection.	
3.	Collection Area	As set out in Schedule 9.	3.1
4.	Prohibited Time for Waste collection.	Between 6.00pm and 7.00am, unless exempted by the Principal in writing.	3.2
5.	Frequency of Waste collection	Weekly, or as otherwise set out in the Collection Services Specification at Schedule 10.	4.3
6.	Green Waste	Not Used.	5.1 and 1.1
7.	Household Junk	Not Used.	5.1 and 1.1
8.	Recyclables	Not Used.	5.1 and 1.1
	Circumstances when Waste need not be collected	<ul> <li>Waste Services need not be collected where:</li> <li>a) The bin is deemed to be unserviceable;</li> <li>b) The weight of the bin exceeds 80 kilograms;</li> <li>c) The bin is blocked by an obstruction preventing emptying;</li> <li>d) The Bin is grossly contaminated; or</li> <li>e) The bin is not placed out for collection before the Collection Vehicle arrives on the Collection Day.</li> <li>Notification must be provided to the Principal of the above instances (with the exception of (e)).</li> </ul>	
10.	Cleaning of Collection Vehicles	All Collection Vehicles must arrive in a reasonable state of cleanliness (inside and outside) prior to every Collection Day. A weekly washing schedule is therefore anticipated.	
11.	Collection Vehicles Signage	Not initially required. May be utilised at a later date.	6.6
12.	Opening Hours	Not Applicable - All refuse collected is to be disposed of outside of the Shire of Mingenew at a refuse disposal site confirmed as appropriate by the Principal's Representative. <u>There is no</u> <u>capacity to dispose of waste at the Mingenew</u> <u>Refuse Disposal Site</u> .	7.6 and 1.1
13.	Advertisement of Services	As per Clause 12 of Schedule 4. Advertisement and nominated newspaper to be as per the direction of the Principal's representative.	
14.	Bin ownership	At the End Date, property and title in the Bins remains with the Contractor.	14

## ATTACHMENT 1 - COLLECTION CONTRACT SPECIFICS

# Schedule 5 – Landfill Management Services and Transfer Station Services

Save for the requirement for the Contractor to remove waste deposited at the Mingenew Transfer Station (maximum bin numbers and removal frequency as outlined in Schedule 11 (Contract Price Schedule), this Schedule is not applicable as Landfill Management and Transfer Stations Services resides with the Principal.

#### ATTACHMENT 1 - LANDFILL MANAGEMENT AND TRANSFER STATION CONTRACT SPECIFICS

Not applicable as Landfill Management and Transfer Stations Services resides with the Principal.

# Schedule 6 – Recyclables Sorting Services and Green Waste Processing Services

Not used (Recyclables Sorting Services and Green Waste Processing Services responsibilities reside with the Principal).

#### ATTACHMENT 1 - RECYCLABLES SORTING AND GREEN WASTE PROCESSING CONTRACT SPECIFICS

Not used (Recyclables Sorting Services and Green Waste Processing Services responsibilities reside with the Principal).

# Schedule 7 – Standards and Procedures

Not Used.

# Schedule 8 – KPIs

1. Principal and Contractor to communicate (in person if required by the Principal) at least Half Yearly to discuss contract performance and mutual opportunities for performance enhancement.

Meeting Agenda to include a report on all relevant data collected (this will enable discussions to focus on, and any decisions made to take into account, the statistics of the Service).

- 2. Data Report to include statistics collected from
  - 1. the Call Centre;
  - 2. accident statistics;
  - 3. bin lift data;

  - tonnages of refuse collected; and
     Any other statistics/information reasonably required by the Principal.
- 3. Satisfactory progress being made by both parties on mutually agreed outcomes of the Half Yearly meetings.

# Schedule 9 – Collection Area\*



\*Indicative plans of town-site collection areas of Mingenew. Note that as per Schedule 11, a small number of other collection points exist outside of these geographic areas.

# Schedule 10 – Specification

#### SERVICE SUMMARY

The services required involves the provision of a weekly waste collection service from designated Delivery Points within the Shire's boundaries which is generally made up of Residential (and selected Commercial, Industrial, or "Town-site" Rural) Tenements in the main town-site of Mingenew, the collection (fortnightly) of Front Lift Bins from the Mingenew Transfer Station site, and the disposal of that waste.

#### General Refuse Kerbside Collection and Disposal

The service includes the weekly collection, and disposal, of domestic and commercial refuse from approximately 232 Contractor supplied 240/120litre Mobile Garbage Bins, and 2 x 3.0m3 Front Lift Bin from the Delivery Points in the designated collection areas.

#### Mingenew Transfer Station Collection and Disposal

The service includes the fortnightly collection (and disposal) of up to 12 x 3m<sup>3</sup> Front Lift Bins from the Mingenew Transfer Station site.

#### New/Additional Bins

The Principal will make every reasonable endeavour to promptly notify the Contractor of any need for new or additional Bins (and if advised by the tenement directly, replacement Bins). New and additional bins are to be supplied by the Contractor at <u>no charge</u> to the tenement or the Principal, to then be placed out for collection to be collected and disposed of by the Contractor. Payment of these extra services will be at the Contract Price and as from the first relevant Collection Day, provided the Principal does not direct that the Service is not to be provided for selected Bins.

#### **Ceased/Deleted Bins**

The Principal will make every reasonable endeavour to promptly notify the Contractor of ceased/deleted Bin requirements to Delivery Points. The Contractor shall also assist where reasonably practical, and advise the Principal of Delivery Points where Bins are no longer put out for collection. A credit for these ceased/deleted services will be at the Contract Price and as from the first relevant Collection Day after notification occurs. The Contractor is to collect and remove Bins as per clause 4 of Schedule 3.

#### Waste Disposal

The collected refuse from all locations is to be disposed of at an appropriately licenced and approved (by the Principal's Representative) waste management facility. <u>There is no capacity to dispose of waste at the Mingenew Waste Disposal Site</u>.

#### Locked Bins

Where Bins (generally only in public places) are locked in position, the Contractor is required to relock the bins back into position after collection.

#### Damaged Bins

The Contractor shall repair (where practical) any damaged Bins noticed during the collection process (as per clause 4 of Schedule 3). The Contractor shall replace any un-repairable Bins. The Principal is responsible for reimbursement to the Contractor of the cost of replaced bins as per Schedule 11 (Contract Price Schedule).

#### Mobile Garbage Bins (MGB) Maintenance Services

The Contractor will maintain the responsibility for the supply and delivery of any new or replacement MGB's.

### Special/One-Off Collection Services

The Shire may make special requests for additional services for any of the above services such as collections for periodic community events (e.g. Mingenew Expo) however this will be via separate and individual service/cost agreements on a case by case basis.

# Schedule 11 – Contract Price Schedule

## ATTACHMENT 1 – PRICE SCHEDULE

Note - Below Schedule for information only, RFQ Schedule of Rates from successful Contractor to be inserted prior to Contract execution.

ltem	Service Category	Description	Estimated Quantity	Collection Frequency	3 Year Initial Term + 2 Year Option
					Unit Rate (Ex GST)
1	Mingenew Residential and Commercial Collection	240lt	211	weekly	\$1.52
2	Mingenew Town-site Caravan Park, Sports Ground, Hall, Office and Parks, Street Collection	240/120/55lt	21	weekly	\$1.52
3	Mingenew Commercial Collection	1.5m³ Bulk Bin	Nil presently	weekly/ fortnightly	\$17.58
4	Mingenew Commercial Collection	3m³ Bulk Bin	1	weekly/ fortnightly	\$17.58
5	Mingenew Commercial Collection Service	4.5m <sup>3</sup> Bulk Bin	Nil Presently	weekly/ fortnightly	\$17.58
6	External to Mingenew Townsite – (1) Drover's Rest (Mingenew-Morawa/ Mingenew-Mullewa Rd intersection); (2) Enanty Barn (Mullewa Road); (3) Depot Hill (Depot Hill Road); Yandanooka Townsite.	Domestic 240lt Collection	8 (approx.)	weekly	\$1.52
7	Bin Hire	1.5m³ Bulk Bin	n/a	weekly	\$3.165
8	Bin Hire	3m³ Bulk Bin	n/a	weekly	\$3.165
9	Bin Hire	4.5m³ Bulk Bin	n/a	weekly	\$3.165
10	Mingenew Transfer Station	3m³ Bulk Bins	For up to 12 bins	fortnight	\$286.92
11	Replacement (only) of 240lt Bins	/bin		As Required	\$60.00
12	Tipping Fee*	Rate/tonne as charged	Approx. 3.5t/week		\$94.00/tonne

\* Approximately 3.5tonnes per week removed.

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# **ATTACHMENT 2 – COLLECTION MAPS\***



\*Indicative plan of town-site collection areas of Mingenew. Note that as per Attachment 2, a small number of other collection points exist outside of these geographic areas.

# Schedule 12 - Variation Form

This Contract Variation Form serves to vary the Contract in accordance with the terms set out below. Unless specified, all terms and conditions of the Contract continue unaffected.

Contract Number	Contract Title		
Variation Number:	Date of request		
Requestor	Phone	Email	
Direct Manager	Phone	Email	
Change Details			
Proposed implementation date			
Details of change (use attachments if required)			
Effect on services			
Implementation plan			
Effect on service charges			6
Effect on performance criteria			
Effect on documentation			
Other relevant information			

# Schedule 13 – System and Plan Requirements

Insert prior to Contract execution, any specific requirements for each of the OH&S Management System, EMS, EMP, Operational Plan and/or Quality System (whichever required in accordance with the General Contract Specifics).

# Executed as an agreement

### Principal

Signed for Shire of Mingenew of 21 Victoria Street, Mingenew, WA, 6522 [ABN#41 454 990 790] by its authorised representatives:

sign here

print name NILS HAY (Chief Executive Officer, Shire of Mingenew)

sign here Witness

print name ERIN GREAVES (Governance Officer, Shire of Mingenew)

#### Contractor

Signed for Cleanaway Operations Pty Ltd of Level 4, 441, St Kilda Road, Melbourne VIC 3004 [ABN# 40 010 745 383] ('Contractor').

by its representative

sign here

print name BRAD GORNALL (General Manager, Northern Australia, Solid Waste Service, Cleanaway **Operations Pty Ltd)** 

in the presence of

sign here Witness Smal STEVENS

print name

