Request for Tender

500.2019.0089

Provision of Mechanical Maintenance Services for WRC Treatment Plants
Condition of Tender

Request for Tender (RFT): Provision of Mechanical Maintenance Services for WRC Treatment Plants

RFT Number: 500.2019.0089

Closing Time: Wednesday 6th November 2019, 2pm AEST
# Table of Contents

1. Agreement to be Bound by Conditions of Tender ......................................................... 5
2. Definitions ......................................................................................................................... 5
3. Interpretation ..................................................................................................................... 7
4. Background/ Project Information .................................................................................... 7
5. Timetable ........................................................................................................................... 8
6. Tender enquiries ............................................................................................................... 8
7. Tender briefing ................................................................................................................ 8
8. Tender Documents ........................................................................................................... 8
   8.1 Tender Documents ........................................................................................................ 8
   8.2 Tenderer has no right to claim .................................................................................... 8
9. Modification of the Tender Documents (Addenda) ........................................................ 9
   9.1 Council may modify ..................................................................................................... 9
   9.2 Tenderer to acknowledge receipt ................................................................................. 9
10. Lodgement of Tenders ................................................................................................ 9
11. Tender validity period .................................................................................................. 10
12. Late Tenders ................................................................................................................ 10
13. Tender requirements ..................................................................................................... 10
   13.1 Documents to be submitted with Tenders ................................................................. 10
   13.2 Tender Price .............................................................................................................. 10
   13.3 Legislative Requirements .......................................................................................... 10
14. Tender Criteria ............................................................................................................. 10
   14.1 Conforming Tender ................................................................................................. 10
   14.2 Tender Criteria ......................................................................................................... 11
   14.3 Departures from Tender Criteria ............................................................................. 11
   14.4 Departures from Conditions of Contract ............................................................... 11
   14.5 Council not obliged ................................................................................................. 11
15. Alternative Tenders ...................................................................................................... 11
   15.1 Submission of Alternative Tenders .......................................................................... 11
   15.2 Alternative Tenders are non-conforming ............................................................... 11
   15.3 Council not obliged ................................................................................................. 11
16. Statement of Departures ............................................................................................. 12
16.1 Statement of Departures to be provided ................................................................. 12
16.2 Format ..................................................................................................................... 12
16.3 Tenders deemed compliant ..................................................................................... 12

17 Statement of Additions and Variations .................................................................. 12
17.2 Council’s discretion ................................................................................................. 12

18 Acceptance and consideration of Tenders ............................................................... 13
18.1 Council not obliged ................................................................................................. 13
18.2 Council may annul tender process ......................................................................... 13
18.3 Council’s other discretions ...................................................................................... 13
18.4 Acceptance of a Tender .......................................................................................... 13
18.5 Actions following acceptance ................................................................................ 13

19 Signing of Tender and joint venture requirements .................................................. 13
19.1 Signing of Tender .................................................................................................... 13
19.2 Joint venture requirements ...................................................................................... 14

20 Evidence of Tenderer’s licensing ........................................................................... 14
20.1 Evidence of licensing .............................................................................................. 14
20.2 Obligation to indemnify .......................................................................................... 14

21 Nature of Contract .................................................................................................... 14
21.1 General .................................................................................................................... 14
21.2 Fixed lump sum contract (which may or not contain a Schedule of Rates) .......... 15
21.3 Remeasurable Schedule of Rates contract ............................................................ 15
21.4 Contract with fixed lump sum component and Remeasurable Schedule of Rates component ..... 15

22 Tenderer’s investigations .......................................................................................... 16
22.2 Tenderer’s ability ..................................................................................................... 16

23 Investigations by Tenderers ...................................................................................... 16
23.1 Tenderer to investigate ........................................................................................... 16
23.2 Access to Site ......................................................................................................... 16
23.3 Tenderer remains responsible ................................................................................ 16

24 Information required after opening of Tenders ....................................................... 17
24.1 Tenderer to provide additional information if requested ....................................... 17
24.2 Tenderer interviews ............................................................................................... 17
24.3 Changes to Tenders ................................................................................................. 17

25 Tender evaluation ..................................................................................................... 17
25.1 Local Government Act .......................................................................................... 17
25.2 Other ....................................................................................................................... 18
25.3 Council may change criteria .................................................................................. 19
26 Contract........................................................................................................................... 19
   26.1 Council to send Contract for signing ....................................................................... 19
   26.2 Tenderer must sign Contract .................................................................................. 19

27 Representations by Council ....................................................................................... 20
   27.1 Council makes no Representations .......................................................................... 20
   27.2 Council Not Obliged to Contract ............................................................................ 20
   27.3 Council May Terminate Tender Process ................................................................. 20
   27.4 Council Not Liable for Tenderer’s Costs ................................................................. 20

28 Reliance by Tenderer ................................................................................................. 20
   28.1 Tender information for convenience only .............................................................. 20
   28.2 Tenderer not to rely .............................................................................................. 20
   28.3 Tenderer to examine information ......................................................................... 20
   28.4 Council not liable .................................................................................................. 20

29 No collusion................................................................................................................ 21

30 Conflicts of interest .................................................................................................... 21
   30.1 Tenderer to identify conflicts .................................................................................. 21
   30.2 Tenderer to notify if conflict arises ....................................................................... 21
   30.3 Council’s rights ...................................................................................................... 21
   30.4 Tenderer must not canvas support ....................................................................... 21

31 Costs of tendering ...................................................................................................... 21

32 Use of information...................................................................................................... 22
   32.1 Tenders are Council property ................................................................................ 22
   32.2 Tender Documents are Council property .............................................................. 22
   32.3 Intellectual property in Tender Documents ............................................................ 22
   32.4 Tenderer licences Council .................................................................................... 22
   32.5 Council may make copies ..................................................................................... 22
   32.6 Right to information ............................................................................................. 22

33 Information Privacy Act compliance ........................................................................ 23

34 Governing law and jurisdiction ................................................................................ 23
   34.1 Governing law ....................................................................................................... 23
   34.2 Governing jurisdiction ......................................................................................... 23
1 Agreement to be Bound by Conditions of Tender

In consideration of Council:

a) inviting the Tenderer to tender for the Works the subject of these Conditions of Tender; and

b) agreeing to evaluate each Tender submitted by the Tenderer in accordance with these Conditions of Tender,

the Tenderer agrees to be bound by these Conditions of Tender for each Tender submitted by the Tenderer.

2 Definitions

These Conditions of Tender use definitions, some of which are found elsewhere in the Tender Documents and include the following defined terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Addenda or Addendum</td>
<td>means any document issued by Council pursuant to Clause 9 of these Conditions of Tender.</td>
</tr>
<tr>
<td>Alternative Tender</td>
<td>has the meaning given to it in Clause 15 of these Conditions of Tender.</td>
</tr>
</tbody>
</table>
| Commercial-in-Confidence Information | means information:  
(a) that is confidential to a Tenderer and which is expressly and specifically identified by that Tenderer as being 'commercial-in-confidence' at the time that information is disclosed; and  
(b) which Council agrees is confidential to the Tenderer.  |
| Conditions of Contract     | means the contract pursuant to which any successful Tenderer will be engaged by Council to carry out the Works and which includes:  
(a) a Formal Instrument of Agreement; and  
(b) the General Conditions of Contract, indicative copies of which is set out in Tender Schedule 2. |
| Conforming Tender           | means a Tender that complies with Clause 14.1.                                                                                           |
| Contract                   | means any contract formed between Council and the successful Tenderer pursuant to Clauses 18.4 and 0 of these Conditions of Tender and without limitation includes the Conditions of Contract. |
| Council                    | means Whitsunday Regional Council and includes where relevant any of its officers, agents or employees.                                    |
| Date of Acceptance of Tender | is the date so stated by Council in any Letter of Acceptance issued by Council pursuant to Clause 18 of these Conditions of Tender. |
| Date of the Invitation to Tender | means the date on which Council invited Tenderers to submit a Tender in accordance with the Tender Documents.                   |
| Day                        | means a calendar day.                                                                                                                      |
| Legislative Requirements   | includes:  
(a) acts, regulations, by-laws, ordinances, orders, awards and proclamations of the Commonwealth, the State or Territory or of the local government in which the Works or any part of them is being carried out;  
(b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Works; and |
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term Definition</td>
<td>(c) fees and charges payable in connection with the foregoing.</td>
</tr>
<tr>
<td>Letter of Acceptance</td>
<td>means a letter provided by Council to the successful Tenderer pursuant to Clause 18 of these Conditions of Tender and is not constituted or comprised by notice given, communicated or delivered by any other means, including by any other Council correspondence, publication, minute or resolution in relation to acceptance of a Tender or award of a Contract.</td>
</tr>
<tr>
<td>Letter of Tender Acknowledgement</td>
<td>means the letter (in the form set out in Schedule 12 of the Tender Response Form) to be sent by a Tenderer to Council enclosing that Tenderer’s Tender.</td>
</tr>
<tr>
<td>Non-Conforming Tender</td>
<td>means a Tender that does not strictly comply with the Tender Criteria and includes an Alternative Tender.</td>
</tr>
<tr>
<td>Personal Information</td>
<td>has the meaning given to it in the Information Privacy Act 2009 (Qld).</td>
</tr>
<tr>
<td>Personnel</td>
<td>has the meaning given to it in Clause 32.4 of these Conditions of Tender.</td>
</tr>
<tr>
<td>Policies and Plans</td>
<td>means the Tenderer’s Health and Safety Plan, Project Quality Plan and Inspection and Test Plans respectively which must be submitted with a Tenderer’s Tender.</td>
</tr>
<tr>
<td>Specifications</td>
<td>means the document set out in Tender Schedule 1, setting out the Works which may be required to be carried out by the successful Tenderer pursuant to the Contract.</td>
</tr>
<tr>
<td>Privacy Act</td>
<td>means the Privacy Act 1988.</td>
</tr>
<tr>
<td>Program</td>
<td>means the Tenderer’s program for the performance of the Works which must be submitted with a Tender.</td>
</tr>
<tr>
<td>Project</td>
<td>means the project for which a Tender is sought</td>
</tr>
<tr>
<td>Remeasurement</td>
<td>has the meaning given to that term in the Conditions of Contract.</td>
</tr>
<tr>
<td>Schedule of Prices and/or Rates</td>
<td>means the schedule to be completed by the Tenderer for a fixed lump sum contract or for a Remeasurable contract or for a combination of both, as the case may be, as further described in Clause 21 of these Conditions of Tender.</td>
</tr>
<tr>
<td>Site</td>
<td>means the site at which the Works are to be performed.</td>
</tr>
<tr>
<td>Statement of Additions and Variations</td>
<td>means the Schedule submitted by the Tenderer pursuant to Clause 17 of these Conditions of Tender, in the form set out in Schedule 11 of the Tender Response Form, identifying any proposed additions, departures or variations to the Tender Criteria.</td>
</tr>
<tr>
<td>Statement of Departures</td>
<td>means the Schedule submitted by the Tenderer pursuant to Clause 16 of these Conditions of Tender, in the form set out in Schedule 4 of the Tender Response Form, listing all departures in the Tender from the Conditions of Contract.</td>
</tr>
<tr>
<td>Tender</td>
<td>means the tender submitted by the Tenderer in accordance with these Conditions of Tender. The Tender may include an Alternative Tender.</td>
</tr>
<tr>
<td>Tender Closing Date</td>
<td>means the date and time specified in Clause 5 of these Conditions of Tender or such other date as may be determined by Council.</td>
</tr>
<tr>
<td>Tender Criteria</td>
<td>means the criteria to be met by the Tenderer, as set out in Clause 14 of these Conditions of Tender.</td>
</tr>
</tbody>
</table>
3 Interpretation

In these Conditions of Tender, except to the extent the context otherwise requires:

a) the singular includes the plural and vice versa and a gender includes other genders;

b) a reference to a party is a reference to a party to these Conditions of Tender and includes its successors and permitted assigns;

c) a reference to an item in a Clause, schedule, annexure or appendix is a reference to an item in a Clause of or schedule, annexure or appendix to these Conditions of Tender and references to these Conditions of Tender include its schedules and any annexures;

d) where a word or phrase is given a particular meaning, other parts of speech or grammatical forms of that word or phrase have corresponding meanings;

e) a reference to a document or agreement including these Conditions of Tender includes a reference to that document or agreement as amended, novated, supplemented, varied or replaced from time to time;

f) in the interpretation of these Conditions of Tender, headings are to be disregarded;

g) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it; and

h) wherever the words ‘include’, ‘included’ or ‘including’ are used in these Conditions of Tender, those words will be interpreted in all cases as if they were proceeded by the further words ‘but not limited to’ or the appropriate grammatical derivative.

4 Background/ Project Information

Whitsunday Water (a business unit of Whitsunday Regional Council – ‘Council’) manages all water and wastewater treatment and network assets for Proserpine, Cannonvale, Airlie Beach, Shute Harbour, Bowen and Collinsville. These include wastewater treatment assets such as: Proserpine Sewage Treatment Plant (STP), Cannonvale STP, Bowen STP, Collinsville STP and water treatment assets such as: Proserpine Water Treatment Plant (WTP) and Bowen WTP.

This contract will be offered for a period of two (2) years with an additional one (1) year extension at Councils discretion.
5 Timetable

a) The following timetable is indicative only and may be amended at any time in the absolute discretion of Council:

<table>
<thead>
<tr>
<th>Action</th>
<th>Time/Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tender release</td>
<td>Wednesday 16th October 2019</td>
</tr>
<tr>
<td>Tender briefing</td>
<td>8am, Thursday 24th October 2019</td>
</tr>
<tr>
<td>Tender Closing Date</td>
<td>Wednesday 6th November 2019, 2pm AEST</td>
</tr>
<tr>
<td>Contract award</td>
<td>Wednesday 27th November 2019</td>
</tr>
</tbody>
</table>

b) Council makes no representation and gives no warranty as to the accuracy of the indicative timetable for the Project.

6 Tender enquiries

Any enquiries by Tenderers are to be directed via the forum in LG Tenderbox (Clause 10)

a) Tenderers must not direct requests for information to, or seek to discuss the Tender process with, any councillor or officer of Council other than the LG Tenderbox forum as stated in 6a).

b) Any question submitted by Tenderers is submitted on the basis that Council may circulate the Tenderer’s questions and Council’s answers to all other Tenderers without disclosing the source of the questions or revealing Commercial-in-Confidence Information or the substance of the proposed Tender.

7 Tender briefing

a) Tenderers are invited to attend a Tender briefing on the date set out in Clause 5.

b) Attendance at this Tender briefing is mandatory.

c) The location of the meeting is Cannonvale STP, 2 Garema Street, Cannonvale Qld 4802 meeting at 8am, followed by Proserpine STP, 12454 Bruce Highway, Proserpine Qld 4800.

d) Please confirm your attendance at this meeting via contracts@whitsundayrc.qld.gov.au no later than 10am, Wednesday 23rd October 2019.

8 Tender Documents

8.1 Tender Documents

The Tender Documents forming part of this Tender are:

a) these Conditions of Tender and its Tender Schedules (including the Specifications and Conditions of Contract);

b) the Tender Response Form;

c) any Addenda issued pursuant to Clause 9.

8.2 Tenderer has no right to claim

The Tenderer has no right or entitlement for any further time or compensation whatsoever (including, without limitation, to a claim for economic loss or loss of opportunity) arising from or with respect to or by reason of any error, omission, or misrepresentation (express or inferred) in the Tender Documents.
9 Modification of the Tender Documents (Addenda)

9.1 Council may modify

Council may at any time prior to the Date of Acceptance of Tender modify any provision or part of the Tender Documents by issuing a written Addendum to all Tenderers. Addenda issued will be numbered consecutively, commencing with the number 1.

9.2 Tenderer to acknowledge receipt

Tenderers must acknowledge receipt of any Addenda and include as part of tender submissions.

10 Lodgement of Tenders

Important Notice to Tenderers

A Tender that is submitted after the Tender Closing Date may be regarded as non-conforming and in Council’s absolute discretion might not be considered further in the evaluation of Tenders.

a) Tenders must be lodged in accordance with the method set out below.

b) Each Tender must be electronically submitted at the following website:

www.lgtenderbox.com.au

c) Tenderers must register in accordance with the instructions on that website. If a Tenderer has any questions in relation to that website, they should contact the following:

Phone: 1800 779 027
Email: helpdesk@lgtenderbox.com.au

d) Tenders must be submitted by the Tender Closing Date.

e) Council may extend the Tender Closing Date at its absolute discretion.

f) Council reserves the right to consider a Tender which is not submitted by the Tender Closing Date, in its absolute discretion, including if there is satisfactory evidence that the website www.lgtenderbox.com.au was not operational, or would not accept the Tender due to matters not caused by the Tenderer.

g) Tenders lodged either by facsimile or email or any other means will not be considered nor accepted by Council.

h) Tenders will be opened after the Tender Closing Date but will not be opened publicly. Council may, in its discretion, advise all Tenderers of the names of each Tenderer that has lodged a Tender.

i) Council reserves the right, exercisable in its sole discretion, to:

   i. accept or not accept any Tender received;

   ii. not proceed with the Project;

   iii. proceed with the Project but on different bases;

   iv. not proceed with this Tender; or

   v. proceed by combination of any of the above alternatives or otherwise as it sees fit.

j) Tenderers assume the risk that their Tender will not be received or accepted.

k) Council may, as it deems appropriate, engage in discussions with any Tenderer for the purpose of clarifying any issues relating to that Tenderer’s Tender, and may or may not, at Council’s absolute discretion, disclose the content of such discussions to other Tenderers.
11 Tender validity period

Any Tender lodged remains valid and binding upon the Tenderer for a period of 180 Days from the Tender Closing Date or such later date as may be mutually agreed between the Tenderer and Council and must not otherwise be withdrawn by the Tenderer.

12 Late Tenders

Tenders lodged with or received by Council after the Tender Closing Date are deemed to be late and will be opened and registered separately. Council may, but is not bound to, consider or accept a late Tender.

13 Tender requirements

13.1 Documents to be submitted with Tenders

Tenderers must in their Tenders provide all information required by the Tender Documents, including:

a) a properly completed Letter of Tender Acknowledgement (Schedule 12 of the Tender Response Form);

b) details of how the Tender meets the requirements of the Tender Documents;

c) a properly completed Statement of Departures (Schedule 4 of the Tender Response Form) (if any, and then only in respect to departures to the Conditions of Contract – see Clause 14);

d) a properly completed Schedule of Prices and/or Rates;

e) Policies and Plans and Program;

f) any other information as set out and required in the Conditions of Tender and the Tender Schedules; and

g) any other information required by the Tender Documents.

13.2 Tender Price

The Tender Price must be submitted in the Letter of Tender, including for any Alternative Tender.

13.3 Legislative Requirements

In submitting a Tender, the Tenderer warrants that it complies with all Legislative Requirements.

14 Tender Criteria

14.1 Conforming Tender

To be a Conforming Tender, a Tender must:

a) be properly completed and provide all the documents and information described in Clause 13.1; and

b) in all other respects comply with the Conditions of Tender, all applicable Legislative Requirements and the Tender Criteria.
14.2 Tender Criteria

a) Tenderers must comply with the following criteria.
   
i. Tenders must address the Tender Evaluation Criteria in Clause 25 of the Conditions of Tender;
   
ii. Tenders must be based on the entire scope of Works under the Contract as may be specified in the Specification; and
   
iii. Tenders must strictly comply with the Specification with no departures.

b) No exceptions or changes to these criteria are permitted in the Statement of Departures.

c) A Tender that does not comply with Clause 14.2a) is a Non-Conforming Tender.

d) Tenderers may depart from the Conditions of Contract but only if they submit a Statement of Departures (refer to Clause 14.4).

14.3 Departures from Tender Criteria

a) A Tenderer may submit an Alternative Tender provided that, the Tenderer has also submitted a Conforming Tender.

b) Any departure from the Tender Criteria proposed by the Tenderer (including any departure from the Specification) must be submitted as an Alternative Tender in accordance with Clause 15.

14.4 Departures from Conditions of Contract

Without limiting any other part of the Conditions of Tender, to be a Conforming Tender, any departures from the Conditions of Contract proposed by the Tenderer must be submitted in a priced Statement of Departures as further described in Clause 16.

14.5 Council not obliged

Council may, but is not bound to, consider or accept a Non-Conforming Tender.

15 Alternative Tenders

15.1 Submission of Alternative Tenders

Where a Tenderer seeks to vary the Tender Criteria, the Tenderer may, subject to this Clause, in addition to any Conforming Tender submitted, also submit an Alternative Tender clearly marked as ‘Alternative Tender’. The Alternative Tender must amongst other things, include a completed:

a) second Letter of Tender, except that the Letter of Tender for the Alternative Tender must:

   i. be clearly marked ‘Alternative Tender’; and
   
   ii. be revised accordingly; and

b) the Statement of Additions and Variations which clearly describes the extent to which the Tender Criteria are proposed to be varied by or departed from.

15.2 Alternative Tenders are non-conforming

An Alternative Tender is a Non-Conforming Tender.

15.3 Council not obliged

Council may, but is not bound to, consider or accept an Alternative Tender.
16 Statement of Departures

16.1 Statement of Departures to be provided

Each Tenderer (whether providing a Conforming Tender or an Alternative Tender) may provide a Statement of Departures with the Tender. The purpose of this Statement is to identify those Clauses in the Conditions of Contract that the Tenderer does not accept or will not be able to fully comply with.

16.2 Format

The Statement of Departures must be in the format and completed in accordance with the instructions specified in Schedule 4 of the Tender Response Form.

16.3 Tenders deemed compliant

If the Statement of Departures is not completed or if it does not indicate Clauses or conditions of the Conditions of Contract that the Tenderer does not accept or will not be able to fully comply with, the Tenderer will be deemed to have fully complied with and accepted all those Clauses and conditions. Full compliance means:

a) in the case of a Clause which is of an informative nature only – that the Clause has been read and understood;

b) in the case of a Clause which imposes a contract condition – that the condition is agreed to in a strict and literal sense; and

c) in the case of a Clause which specifies a characteristic or performance standard to be met by the Tenderer – that the Tenderer’s offer is to provide or exceed the specified characteristic or standard.

17 Statement of Additions and Variations

Tenderer to specify

If as part of an Alternative Tender, there are any:

a) proposed optional additions or variations to the requirements in the Tender Criteria which the Tenderer is willing to incorporate as part of its Tender and which will have significant commercial or technical value to Council and which are proposed by the Tenderer; or

b) any departures from the Tender Criteria,

then the Tenderer must specify these in a Statement of Additions and Variations in accordance with Schedule 11 of the Tender Response Form.

Incorporation of any additions or variations specified in the Statement of Additions and Variations of a Tenderer is at the discretion of Council. Any departures from the Conditions of Contract on which a Tender relies should be specified in the Schedule 4 of the Tender Response Form.

17.2 Council’s discretion

Without limiting any other Clause, the consideration and incorporation of any additions or variations specified in the Statement of Additions and Variations of the Tenderer is at the discretion of Council.
18 Acceptance and consideration of Tenders

18.1 Council not obliged

Council is under no obligation to accept the lowest or any Tender.

18.2 Council may annul tender process

Without limiting any other Clause, Council may accept or reject any Tender, annul the Tender process and reject all Tenders, at any time prior to the Date of Acceptance of Tender, without incurring any liability for cost, expense, loss or damage to the affected Tenderer or Tenderers or any obligation to inform the affected Tenderer or Tenderers of the grounds for Council's action or inaction.

18.3 Council’s other discretions

Council may at any time in its absolute discretion during the Tender Period:

a) request clarification or additional information (including of their Tender and Tender Schedules) from any Tenderer;

b) provide additional information to any or all Tenderers;

c) invite a Tenderer to change its Tender to take account of any change in the Tender Documents, including the Specification;

d) discontinue negotiations with any Tenderer;

e) proceed to negotiate with one Tenderer or a third party, but not with other or any Tenderers, and without any obligations to notify other or any Tenderers that it is so proceeding;

f) change any of the terms and procedures relating to the tender process;

g) decide not to proceed with a tendering process and not award the Contract or any contract;

h) without limiting Clauses 18.3c) and 18.3e), enter into discussions with one or more Tenderers including as to their Tender Price; and

i) do any other act or thing that it sees fit in relation to this tender process.

18.4 Acceptance of a Tender

A Tender is deemed to be accepted by Council only when Council provides a Tenderer with a Letter of Acceptance.

18.5 Actions following acceptance

Following acceptance of a Tender, Council may, but is not required to, notify the name of the successful Tenderer to all unsuccessful Tenderers and may at its discretion disclose the accepted Tender Price.

19 Signing of Tender and joint venture requirements

19.1 Signing of Tender

If the Tenderer:

a) is a corporation, the Tender must be signed by a senior executive of the corporation having authority to sign the Tender on its behalf or by affixing the seal of the corporation in accordance with its constitution and the Corporations Act 2001 (Cth); and/or

b) is comprised of more than one person (whether as an unincorporated joint venture or consortium and whether trading under a business or trade name or otherwise), each person must sign the Letter of Tender and Tender Schedules. Each person or a signatory from each person signing the Letter of Tender must initial any amendments to the Tender Schedules and sign and date each of the relevant Tender Schedules.
19.2 Joint venture requirements

If the Tenderer is an unincorporated joint venture, it must:

a) provide a copy of its joint venture agreement for Council’s review including for Council to review the allocation of liability under the joint venture agreement and its effect on Council’s rights of recovery under the Contract; and

b) specify in Schedule 4 of the Tender Response Form which joint venture party will assume the role of leader, with whom Council will interact if the Tenderer is awarded the Contract. If a contractor comprises two or more parties, their obligations and liabilities under the Contract shall be joint and several.

20 Evidence of Tenderer’s licensing

20.1 Evidence of licensing

The Queensland Building and Construction Commission Act 1991 (Qld) requires that a contractor must be licensed to carry out certain works and services. If any of the Works requires a licence under that Act, then the Tenderer must submit with its Tender evidence of such licence.

20.2 Obligation to indemnify

The Tenderer’s submission of a Tender means that the Tenderer irrevocably warrants that it complies in all respects (including concerning licences) in accordance with the Queensland Building and Construction Commission Act 1991 (Qld) and the Tenderer must indemnify Council for any breach of this warranty.

21 Nature of Contract

21.1 General

a) The nature of the Contract is as stated in the Tender Documents, being:
   i. a fixed lump sum (which may or may not contain a Schedule of Rates);
   ii. a Schedule of Rates which is subject to Remeasurement; or
   iii. a sum consisting of:
      A. a fixed lump sum component; and
      B. a component based on a Schedule of Rates which is subject to Remeasurement.

b) For the purposes of the Conditions of Tender, including this Clause 21 and the Schedule of Prices and/or Rates, ‘fixed lump sum’ means the Works will be performed by the Tenderer under the Contract for a fixed price, which may only be adjusted as provided for in the Contract.

c) Unless expressly stated to the contrary in the Tender Documents, notwithstanding that the Contract contains a Schedule of Rates, the Works will be performed for a fixed lump sum and will not be subject to Remeasurement.

d) Any quantities that have been provided in any Schedule of Prices and/or Rates by or on behalf of Council and which schedule is in, is adopted from or is part of any document forming part of the Tender Documents and the Contract (whether prepared by or on behalf of Council or the Tenderer) are provisional, estimated and indicative quantities only, are not guaranteed by Council and may be increased or decreased in accordance with the Contract.
21.2 Fixed lump sum contract (which may or not contain a Schedule of Rates)

For a fixed lump sum contract:

a) the Tenderer shall state the fixed lump sum Tender Price in the Letter of Tender to perform the Works;

b) the Tenderer shall also complete the Schedule of Prices and/or Rates which must be fully priced and summed to agree with the fixed lump sum Tender Price in the Letter of Tender;

c) any items not listed in the Schedule but necessary for the completion of the Works in accordance with the Contract shall be deemed to be included in the Schedule of Prices and/or Rates and in the fixed lump sum Tender Price; and

d) if any error is made in the calculations or summation of the itemised amounts in the Schedule of Prices and/or Rates, the Tenderer shall be bound by the fixed lump sum Tender Price stated in the Letter of Tender and the rates and amounts in the Schedule of Prices and/or Rates may be altered by Council to conform with the fixed lump sum Tender Price.

21.3 Remeasurable Schedule of Rates contract

Further to Clause 21.1, if it is expressly stated in the Tender Documents that the Contract is a Schedule of Rates contract which is subject to Remeasurement:

a) the Tenderer must complete the Schedule of Prices and/or Rates by adding its rates and totalling those rates, not as a fixed lump sum, but for the purposes of enabling Council to compare Tenders;

b) if the Tenderer is not satisfied with the completeness of the Schedule of Prices and/or Rates, the Tenderer shall insert any further items which the Tenderer requires to price separately;

c) all other items not listed in the Schedule of Prices and/or Rates but necessary for the completion of the Works in accordance with the Contract shall be deemed to be included in the Schedule of Prices and/or Rates;

d) where Council has accepted rates, subject to the terms of the Contract, the amount payable under the Contract will be the sum of the product ascertained by multiplying the measured quantity of each item of work actually carried out under the Contract by the rate accepted by Council for the item;

e) where the actual quantity of part of the Works required to perform the Contract is:
   i. less than the quantity shown in the Schedule of Prices and/or Rates, where Council accepted a rate for that part of the Works, the rate shall apply to the lesser quantities; and
   ii. greater than the quantity shown in the Schedule of Prices and/or Rates, the amount payable under the Contract will only be adjusted in the terms of any variation properly issued under and in accordance with the Contract; and

f) if there is any error in the rates or prices in the Schedule of Rates and/or Rates which is different to the Tender Price, the rates and prices described in the Schedule of Prices and/or Rates apply.

21.4 Contract with fixed lump sum component and Remeasurable Schedule of Rates component

a) For a contract consisting of:
   i. a fixed lump sum component; and
   ii. a component based on a Schedule of Rates which is subject to Remeasurement,

the fixed lump sum component shall be subject to Clause 21.2 and the Remeasurable Schedule of Rates component shall be subject to Clause 21.3.

b) The Tenderer shall insert the Tender Price (arrived at by summing the fixed lump sum amount from the fixed lump sum component and the sum of the itemised amounts from the Remeasurable Schedule of Rates component) in the Letter of Tender.
22 Tenderer’s investigations

In submitting a Tender, the Tenderer warrants that it has carried out all relevant investigations (including of the Site and whether or not the Tenderer has availed itself of any opportunity to inspect the Site or otherwise and whether the opportunity to so inspect the Site has been given to the Tenderer or not) and has examined and acquainted itself with and satisfied itself concerning:

a) the contents of the Tender Documents and their completeness, currency and accuracy;
b) all information which is relevant to the risks, contingencies and other circumstances which could affect the Tender;
c) the accuracy, completeness and sufficiency of the Tender; and
d) the appropriateness and sufficiency of the Tender Price offered by the Tenderer in its Tender to perform the Works.

22.2 Tenderer’s ability

In submitting the Tender, the Tenderer further warrants:

a) the accuracy of all information provided by the Tenderer in the Tender;
b) that it has all necessary experience, skill and resources to perform and carry out its obligations in accordance with the Tender Documents;
c) that it is willing to accept the contractual terms and conditions of Council as contained or described in the Tender Documents; and
d) that the Tenderer is able to commence the Works the subject of this Tender as required by Council.

23 Investigations by Tenderers

23.1 Tenderer to investigate

Tenderers must make their own investigations as to the nature of the Site and its surrounds and satisfy themselves as to the accuracy and completeness of any matters stated in the Tender Documents and of any assumptions upon which Tenderers base their Tenders prior to submitting their Tender.

23.2 Access to Site

a) Access to the Site for the purposes of conducting investigations may be arranged by contacting the person specified in Clause 6.
b) Before entering the Site, the Tenderer must inform itself of, and take, all necessary precautions to avoid harm to themselves or damage to their property during the visit.
c) The Tenderer assumes complete responsibility for their safety and that of their invitees, notwithstanding any omissions, errors or inadequacies in the conditions or information provided by Council regarding the Site visit.

23.3 Tenderer remains responsible

Failure to investigate or to fully and properly investigate the conditions associated with the Site and the Works and attendance or no-attendance at any Tender briefing shall not relieve the Tenderer from responsibility for its understanding of the Works, including properly estimating the difficulty or cost of successfully performing the Works. This Clause and other relevant Clauses of these Conditions of Tender (which without limitation include Clauses 28) apply whether or not access to the Site has been given to Tenderers or whether or not a Tender briefing has been held.
24 Information required after opening of Tenders

24.1 Tenderer to provide additional information if requested

The Tenderer must provide, after the opening of Tenders, any additional information which may be requested by Council for evaluation of the Tender.

24.2 Tenderer interviews

Without limiting Clause 18, Council may interview a Tenderer in relation to the Tender. The Tenderer shall be represented at such interviews by a responsible member or members of its staff who are conversant with all technical, financial and contractual details of the Tender, who are authorised to make, at the interview, any decision on behalf of the Tenderer and who are able to indicate the relative values of any items under discussion.

24.3 Changes to Tenders

Council may after the Tender Closing Date invite all or any Tenderers to change their Tender to take into account changes to the Tender Documents as may be advised by Council.

25 Tender evaluation

25.1 Local Government Act

Evaluation of Tenders will be generally in accordance with the requirements of the Local Government Act 2009 (Qld) and other applicable Legislative Requirements. Section 104 of the Local Government Act 2009 (Qld) requires Council to have regard to the following principles:

a) open and effective competition;

b) value for money;

c) development of competitive local business and industry;

d) environmental protection; and

e) ethical behaviour and fair dealing.
### 25.2 Other

In addition to the principles in Clause 25.1 above, factors which will be taken into consideration by Council in assessing Tenders and Tenderers include:

<table>
<thead>
<tr>
<th><strong>A. Relevant Experience and Key Personnel</strong></th>
<th><strong>Weighting</strong></th>
</tr>
</thead>
</table>
| Describe the Tenderer’s experience in completing /supplying requirements similar to the requirements stated in the Specification and the Request for Tender. Tenderers must, as a minimum, complete **Tender Schedule 5 - Tenderer’s Experience** and provide details for the following information in an attachment and label it “3.2 – Relevant Experience”:
|               | 25%            |
| a) Provide details of similar work; and     |               |
| b) Detail the scope of the Tenderer’s involvement including details of outcomes; and |               |
| c) Provide details of issues that arose during the project and how these were managed; and |               |
| d) Demonstrate sound judgement and discretion; and |               |
| e) Demonstrate competency and proven track record of achieving outcomes; |               |
| f) Previous experience undertaking repairs and maintenance on water and wastewater assets; |               |
| g) A minimum of three references, preferably from a local government or wastewater utility. |               |
| Tenderers must complete **Tender Schedule 6 - Key Personnel**. Tenderers must also provide the following information in attachment labelled “3.2 – Key Personnel Skills and Experience”:
|               |               |
| a) Their role in the performance of the Contract; |               |
| b) Curriculum vitae (CV’s); |               |
| c) Qualifications/Licences, membership of any professional or business association, with particular emphasis on experience of personnel in projects with a similar requirement; |               |
| d) And any additional relevant information. |               |

<table>
<thead>
<tr>
<th><strong>B. Demonstrated Understanding</strong></th>
<th><strong>Weighting</strong></th>
</tr>
</thead>
</table>
| Tenderers should detail the process they intend to use to achieve compliance with the requirements of the Technical Requirements (Specification), including:
|                | 15%           |
| a) A demonstrated understanding of the scope of work; |               |
| b) Ability to undertake a condition assessment in the field and to provide a comprehensive service report. A minimum of three samples must be provided; |               |
| c) A project schedule/timeline, with regard for the nominated dates for providing a letter of intent, contract award and completion of the works; and |               |
| d) A Method Statement outlining all activities and processes required for the delivery of the technical requirements of the Specification; and |               |
| e) A Risk Mitigation Statement outlining proposed control measures for potential high risks; and |               |
| f) Other information relevant to the Tenderer’s understanding of the work. Details to be completed in **Tender Schedule 7 - Demonstrated Understanding** and additional details required above in an attachment labelled “3.2 – Demonstrated Understanding”.

|               |               |
|               | “Demonstrated Understanding” |
C. Tenderers’ Resources and Availability
Tenderers should demonstrate their ability to supply and sustain the necessary:

a) Plant, equipment and materials;

b) Any contingency measures or back up of resources including personnel (where applicable); and

c) Availability to mobilise with minimal delay following tender award

d) Any subcontractor information referred to in Clause 2.5 (Schedule 1 - Subcontractors)

e) Tenderers should detail the local resources used in the performance of the services. Including but not limited to listing local employees and/or Tenderers.

f) Alternative materials Tenderers and sources if required.

As a minimum, Tenderers should complete Tender Schedule 8 Tenderer Resources and Project Delivery and Tender Schedule 9 Current Commitments (Confidential) and provide plant/equipment schedule and proposed program of works in an attachment and label it “3.2 – Tenderers’ Resources and Availability”.

D. Local Supplier
As per Whitsunday Regional Council Procurement Policy Section 3 c. and d.

Tenderers should detail the local resources used in the performance of the services. Including but not limited to listing local employees, sub-contractors and/or suppliers in an attachment labelled “Local Content” as per index “3.2 – Local Supplier”. As a minimum, tenderers should complete Tender Schedule 10 - Local Content.

E. Pricing Schedules
Tenderers must complete Tender Schedule 3 - Schedule of Labour and Plant provided

25.3 Council may change criteria
Without limitation to Council’s rights under any other provision of these Conditions of Tender, Council may change any criteria set out or referred to in this Clause 25 without any obligation to notify Tenderers of such change.

26 Contract

26.1 Council to send Contract for signing

Following the sending of any Letter of Acceptance pursuant to Clause 18, the Contract will be sent to the successful Tenderer for signing.

26.2 Tenderer must sign Contract

Within 10 Days of receiving the Contract from Council, the successful Tenderer must sign the Contract and return it to Council.
27 Representations by Council

27.1 Council makes no Representations

Council does not make any representations, express, implied or inferred, or provide any undertakings to Tenderers other than to invite them to submit a Tender.

27.2 Council Not Obliged to Contract

Council is not obliged to negotiate or sign a Contract with any Tenderer.

27.3 Council May Terminate Tender Process

Council may, by notice in writing to the Tenderers, terminate this tendering process at any time at no cost or loss (contingent or otherwise) to Council and the Tenderer shall have no right or entitlement for any compensation whatsoever arising from such termination.

27.4 Council Not Liable for Tenderer’s Costs

Without limiting the terms of Clause 27.3, Council is not responsible for, or is not liable to pay for any costs, expenses, losses or damages which may be incurred by any Tenderer in the preparation or submission of its Tender.

28 Reliance by Tenderer

28.1 Tender information for convenience only

Any information supplied to a Tenderer in the Tender Documents or otherwise or in subsequent oral or written communication by or on behalf of Council is provided to the Tenderer for convenience only and may not be complete, up to date or accurate.

28.2 Tenderer not to rely

The Tenderer must not rely upon any matter disclosed or representation, warranty or statement (oral or otherwise) made to the Tenderer by Council, whether in the Tender Documents or otherwise, and must make and rely solely upon its own independent investigation, judgment and assessment of any such matter or representation.

28.3 Tenderer to examine information

The Tenderer must carefully review the Tender Documents and all documentation, and all other material provided and must make any enquiries which the Tenderer considers necessary or desirable to verify the information and materials contained in the Tender Documents or in any subsequent oral or written communication or material. The Tenderer has no right or entitlement for time or financial compensation of any kind arising from, or with respect to, or by reason of any error, omission, or misrepresentation (including for any incompleteness or inaccuracy) in the Tender Documents.

28.4 Council not liable

The Tenderer releases Council against any liability or cost, expense, loss or damage arising from any claim, suit, demand, proceeding or action which, but for this document, the Tenderer may have had against Council in respect of any matter disclosed or representation or warranty (oral or otherwise) made to the Tenderer by Council.
29 No collusion

The Tenderer warrants that:

a) neither the Tenderer nor any of its servants or agents nor any other party on its behalf had any knowledge of the Tender Price of any other Tenderer prior to submitting its Tender nor has the Tenderer disclosed to any rival Tenderer the Tender Price;

b) neither the Tenderer nor any of its servants or agents nor any other party on its behalf have entered into any contract, arrangement or understanding whereby on having either or both its Tender accepted or being awarded the Contract, the Tenderer will pay to any unsuccessful Tenderer any moneys or other reward in respect of or in relation to the Tender or any Contract; and

c) the Tender is a genuine competitive tender.

30 Conflicts of interest

30.1 Tenderer to identify conflicts

Tenderers must clearly identify in their Tender if they have any actual or perceived conflict in responding to this Tender, and if so, the manner in which they intend to deal with that conflict.

30.2 Tenderer to notify if conflict arises

If, at any time, an actual or potential conflict of interest arises for any Tenderer, that Tenderer must immediately notify Council in writing of that conflict of interest.

30.3 Council’s rights

If a Tenderer notifies Council of an actual or potential conflict of interest or Council becomes aware of the existence of an actual or potential conflict of interest, Council may, in its absolute discretion:

a) enter into discussions to seek to resolve such conflict of interest;

b) cease further consideration of and disregard the Tender lodged by that Tenderer; and/or

c) take any other action, as it considers appropriate.

30.4 Tenderer must not canvas support

Any Tenderer who directly or indirectly canvasses support from an elected member, employee or agent of Council will be disqualified and any Tender submitted will not be considered.

31 Costs of tendering

Council is not liable for any costs, expenses, losses or damages, however arising which a Tenderer incurs or becomes liable for in relation to or in connection with the preparation of a Tender, any representations by or on behalf of Council, the submission of a Tender, subsequent clarifications to a Tender, submissions after lodgement of a Tender (whether or not that submission is required by Council), or any other part of the Tender process and the Tenderer releases Council from any such claim whatsoever and howsoever brought. Each Tenderer participates in this Tender at its own risk.
32 Use of information

32.1 Tenders are Council property

All Tenders submitted by a Tenderer become the property of Council and will not be returned to the Tenderers.

32.2 Tender Documents are Council property

The Tender Documents and all documents, information, drawings, specifications, technical information and other material and information provided to a Tenderer (whether before or after the issue of these Conditions of Tender):

a) remain the property of Council;
b) must only be used for the purpose of preparing a Tender and for no other purpose;
c) must not be disclosed to any person other than to a person who is assisting the Tenderer in preparing its Tender; and
d) must be returned by an unsuccessful Tenderer to Council within 7 Days of being requested to do so by Council.

32.3 Intellectual property in Tender Documents

All intellectual property rights which exist in information contained in these Conditions of Tender or any related material will remain the property of Council, but the Tenderer is permitted to use that information and material for the purpose only of compiling its Tender.

32.4 Tenderer licences Council

Each Tenderer licences Council and its officers, employees, agents, advisers and representatives ('Personnel') to use, copy, adapt, amend, disclose or do anything else necessary (in Council's sole discretion) to all material (including that which contains intellectual property rights of the Tenderer or other persons) contained in its Tender for the purpose of Council's evaluation of that Tender, negotiating any Contract with the successful Tenderer (if this Tender process proceeds to that stage) and this Tender process generally (including to meet Council's procurement objectives).

32.5 Council may make copies

Council and its Personnel may make such copies of a Tender as it requires for those purposes.

32.6 Right to information

a) The Right to Information Act 2009 (Qld) (RTI Act) provides members of the public with a legally enforceable right to access documents held by Queensland Government agencies (including local governments).
b) The RTI Act requires that documents be disclosed upon request, unless the documents are exempt, or, on balance, disclosure is contrary to the public interest. Information provided by the Tenderer may be subject to disclosure to third parties pursuant to the RTI Act.
c) If disclosure under the RTI Act, or general disclosure of information provided by the Tenderer, would be of substantial concern to the Tenderer because it would disclose trade secrets, information of commercial value, the purpose or results of research or other information of a confidential nature, including Personal Information, this should be indicated by the Tenderer in its Tender. Despite this, Council cannot guarantee that any information provided by the Tenderer will be protected from disclosure under the RTI Act.
d) The Tenderer must familiarise itself with the relevant provisions of the RTI Act dealing with the requirements for disclosure of information by agencies, and the grounds on which access to information may be refused.
e) Council accepts no responsibility for the accuracy or adequacy of any information it provides to Tenderers concerning the content or effect of the RTI Act.
33 Information Privacy Act compliance

a) By submitting a Tender, the Tenderer warrants that it has obtained the consent of each individual whose Personal Information is included in the Tender for:
   i. the inclusion of their Personal Information in the Tender;
   ii. the use of the Personal Information by Council for the purpose of evaluating and awarding the Tender; and
   iii. the disclosure of the Personal Information to other parties (including professional advisors) as may be involved in assisting Council with the evaluation of the Tender.

b) The Tenderer must indemnify Council against any claim, damage or loss (including legal costs and expenses) that Council may incur as a consequence of a breach by the Tenderer of the warranty in Clause 33a).

c) Any Personal Information exchanged between the Tenderer and Council must be dealt with in accordance with the Information Privacy Act 2009 (Qld).

d) The Tenderer must immediately notify Council upon becoming aware of any breach of this Clause 33.

34 Governing law and jurisdiction

34.1 Governing law

The Conditions of Tender and the Tender Documents are governed by the laws in force in Queensland.

34.2 Governing jurisdiction

Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and the courts of appeal from them.
Tender Schedule 1 - Specification
Request for Quotation (RFQ):

Provision of Mechanical Maintenance Services for WRC Treatment Plants

RFQ Number: 500.2019.0089
Table of Contents

1 Background .................................................................................................................................. 3
2 Scope .......................................................................................................................................... 3
3 Technical Requirements and Overview of Work .................................................................... 3
   3.2 Chemical Dosing Pumps ..................................................................................................... 4
   3.3 Water and Sewerage Treatment Plants .............................................................................. 4
4 Documentation Requirements ............................................................................................... 4
5 Subcontracting .......................................................................................................................... 4
6 Contractor’s Representative ..................................................................................................... 4
7 Callouts ...................................................................................................................................... 5
8 Removal of Council Assets .................................................................................................... 5
9 Request for Services ................................................................................................................. 5
10 Documentation ........................................................................................................................ 5
11 Public Utilities .......................................................................................................................... 6
12 Hazardous Substances .......................................................................................................... 6
13 Inductions .................................................................................................................................. 6
14 Construction Industry General Safety Induction ................................................................ 6
15 Plant and Equipment .............................................................................................................. 6
16 Licenses and Competencies ................................................................................................... 7
17 Workplace Risk Management ............................................................................................... 7
1 Background
Whitsunday Water (a business unit of Whitsunday Regional Council – ‘Council’) manages all water and wastewater treatment and network assets for Proserpine, Cannonvale, Airlie Beach, Shute Harbour, Bowen and Collinsville. These include wastewater treatment assets such as: Proserpine Sewage Treatment Plant (STP), Cannonvale STP, Bowen STP, Collinsville STP and water treatment assets such as: Proserpine Water Treatment Plant (WTP) and Bowen WTP.

This contract will be offered for a period of two (2) years with an additional one (1) year extension at Council's discretion.

2 Scope
The scope of work is to undertake the repair and maintenance of water and wastewater mechanical infrastructure across Council's treatment assets.

Council is also looking to develop a comprehensive maintenance program across all water and wastewater assets. We acknowledge that maintenance to date has been primarily reactive and at times little is known about the information and condition around the water and wastewater assets.

This scope of work covers mechanical maintenance support. Proposed works consist of the evaluation, repair, maintenance, replacement and condition reporting for various water and wastewater treatment assets.

Guidelines and templates for condition assessments are provided by Council and the ability to provide concise, clear recommendations on preferred maintenance regimes following this will be well regarded. Condition assessments will be undertaken as per the Institute of Public Works Engineering Australia (IPWEA) Practice Note 7 (PN7), specifically Table 9-5 for mechanical and electrical assets.

The scope of work also entails developing maintenance programs in collaboration with Council staff with regular inspections (inspection checklists, general estimation of time and resourced required for inspections) to allow for transfer to a maintenance scheduling software and to improve financial budgeting forecasts.

3 Technical Requirements and Overview of Work
Council invites all interested parties to provide a tender for a preferred supplier arrangement in accordance with legislative requirements for the supplier of goods and services pertaining to mechanical maintenance support for treatment assets. The term of the tender arrangement shall be three (3) years unless revoked by Council and is subject to performance review at any time.

Proposed works consist of the evaluation, repair, maintenance, replacement and condition reporting for various water and waste water mechanical assets.

The works may require accessing sites with specialist equipment such as elevated work platforms, vehicle loading cranes, scissor lifts and slew cranes to extract equipment for servicing or repair.

To safeguard against cross contamination, tools and equipment used in waste water environments will not be permitted to be used in potable water situations. With all work, process risks associated with maintenance works must be documented, risk assessed and managed appropriately prior to undertaking work. Clear and timely communication to Council staff is critical if any mechanical or electrical work may impact process conditions and therefore public health and safety (e.g. Australian Drinking Water Guidelines), environmental regulatory compliance (Environmental Authority) or other key considerations.
3.2 Chemical Dosing Pumps

Works consist of the repair, maintenance and replacement of chemical dosing pumps as required.

Types of dosing pumps consist of but not limited to:

a) Diaphragm pumps
b) Plunger pumps

Associated works that form part of this contract consist of but not limited to:

a) Pipework and fittings.
b) Valves - isolation, non-return, pressure relief.

3.3 Water and Sewerage Treatment Plants

Works undertaken at treatment plants consists of the activities outlined in sewage pump stations and water pump stations as well as but not limited to the following:

a) Conveyor systems.
b) Augers.
c) Primary, secondary, grit screens.
d) Rotary bridge clarifiers.
e) Blowers.
f) Compressors.
g) Valves – pneumatic, electric.
h) Aerator, diffusers.
i) Membrane bioreactor technology.

4 Documentation Requirements

Service reports outlining repairs undertaken, issues and recommendations following work undertaken at each asset will be submitted in MS Word format with photographs within 72 hours on completion of work to the appropriate supervisor for review and action. All photographs will be provided in native electronic format.

All safety issues need to be immediately raised to the responsible Council officer as soon as they are identified and then documented in the service report.

5 Subcontracting

The Contractor must not subcontract or assign any right or obligation under this Agreement without Council’s prior written consent.

If written approval is given and the Contractor’s subcontracts any of the Services, the Contractor:

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

6 Contractor’s Representative

The Contractor must appoint a permanent contact person to liaise directly with the Council’s Representative on any issues that may arise. Full contact details, including emergency callout contact details, are to be provided to Council.

The nominated contact person must be familiar with Council’s assets and all requirements under the contract. In addition to a permanent contact person, a proxy contact person must also be nominated.
7 Callouts
In an emergency callout situation, the Contractor must be on site within a three (3) hours timeframe, unless agreed with the Council’s Representative.

8 Removal of Council Assets
If equipment is required to be removed from Council’s facilities to perform maintenance, the Contractor must ensure the following procedure is followed:

a) Obtain approval from the nominated officer in charge of the site;
b) Inform the nominated officer in charge of the site how long the repair is estimated to take;
c) Provide, if possible, a temporary replacement for the equipment being repaired;
d) Supply the nominated officer in charge of the site a receipt for the equipment being repaired;
e) Place a tag on the item of equipment being repaired showing details of the date removed and the location from which it was removed;
f) Make safe any hazard created by the removal of any item or safety feature; and
g) Advise the Council’s Representative.

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

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

9 Request for Services
A Request for Services will come from either a Council Representative accompanied by an official Council purchase order or in the case of after-hours or emergency works, the Council’s Representative who will supply a purchase order will do so the next business day. Council reserves the right to issue the Contractor with a standing order for specific categories.

10 Documentation
The Contractor is required to supply dockets for services performed and are to be completed daily, including a detailed breakup of hours worked, equipment hours used if applicable, stand down hours, indicate breaks taken and details as to where the services were performed. These dockets must be signed by the Contractor and handed to Council’s Representative at the end of each day. All invoices must clearly state purchase order, dates worked and corresponding docket numbers. All invoices must have a corresponding Council asset number provided by the Council’s Representative and/or nominated officer in charge of site.
11 Public Utilities

Some works will be undertaken in public spaces such as on pedestrian footpaths and adjacent to roadways.

The Contractor must take all precautions to avoid damage to any utility mains and services, gas, water, sewer, electric power (underground and overhead), telephone, etc and must be addressed in safe work method statements and safety systems. Council recommends the Contractor conducts a dial before you dig search prior to commencing works, where applicable.

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

All works on or adjacent to roadways and footpaths shall comply with the MUTCD (Manual of Uniform Traffic Control Devices). This will include implementation of all relevant signage, traffic control and pedestrian management where necessary.

12 Hazardous Substances

The Contractor must be able to demonstrate that they have considered and can effectively control the risks from storage and use of dangerous goods / hazardous substances. This must include the risk of fires, explosion, burns, contact with skin/eyes and spillage.

Safety Data Sheets (SDS) are to be provided to Council and must also be made available to workers at the point of use. As a minimum, any PPE specified with the SDS must be provided by the Contractor and used in accordance with SDS.

13 Inductions

All personnel working for Council may be required to undertake a depot or site-specific inductions. Failure to undertake any required induction may result in the personnel being ordered off site.

14 Construction Industry General Safety Induction

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

15 Plant and Equipment

The Contractor must provide all necessary plant and equipment to undertake the requested tasks. Any plant requiring certification shall have current certification before placing into service.

Safety equipment including but not limited to working at height apparatus, confined space equipment and lifting devices shall be inspected and tagged at the appropriate intervals.

Electrical equipment shall be tested and tagged in accordance with AS/NZS 3760:2010.
16 Licenses and Competencies

All works must be undertaken by suitably qualified and licensed personnel.
Specifically, for (1) mechanical maintenance, the following is required:

a) Mechanical fitters.
b) Dogger.
c) Confined space entry.
d) Working at heights.
e) Elevated work platform.
f) Vehicle loading crane (VLC).
g) Laser alignment.
h) Manufacturing and fabrication.
i) Maintenance planning.
j) Maintenance and project supervision.
k) Level 2 signage – Traffic Management Implementation.

17 Workplace Risk Management

To manage biological and other health risks associated with undertaking wastewater works, all personnel at risk shall be vaccinated for the following:

a) Hepatitis A.
b) Hepatitis B.
c) Tetanus.

Chemical awareness training shall be required for all personnel working in and around chemical systems. Some examples include but are not limited to:

a) Chlorine gas.
b) Sodium hypochlorite.
c) Sodium metabisulphite.
d) Caustic.
e) Alum.
f) Citric acid.
g) Sugar syrup.
h) Magnesium hydroxide.

Hydrogen sulphide and other gases associated with foul air and wastewater system are of concern. Staff working in and around wastewater assets will be required to wear a gas detector at all times and are responsible for their proper operation, calibration and maintenance.
Tender Schedule 2 - Conditions of Contract
Supply of Goods and/or Services Contract for
500.2019.0089 – Provision of Mechanical Maintenance Services
for WRC Treatment Plants

Whitsunday Regional Council
ABN 63 291 580 128

and

[#insert Supplier's name]
# Table of contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Parties</td>
<td>1</td>
</tr>
<tr>
<td>Background</td>
<td>1</td>
</tr>
<tr>
<td>Operative provisions</td>
<td>1</td>
</tr>
<tr>
<td>1 Definitions and Interpretation</td>
<td>1</td>
</tr>
<tr>
<td>1.1 Definitions</td>
<td>1</td>
</tr>
<tr>
<td>1.1 Interpretation</td>
<td>4</td>
</tr>
<tr>
<td>2 Evidence of Contract</td>
<td>4</td>
</tr>
<tr>
<td>2.1 Documents that comprise the Contract</td>
<td>4</td>
</tr>
<tr>
<td>3 Variation of Goods and Services</td>
<td>4</td>
</tr>
<tr>
<td>3.1 Council’s right to vary</td>
<td>4</td>
</tr>
<tr>
<td>3.2 Valuation of Variation</td>
<td>5</td>
</tr>
<tr>
<td>4 Supplier’s warranties</td>
<td>5</td>
</tr>
<tr>
<td>4.1 Warranties as to Goods</td>
<td>5</td>
</tr>
<tr>
<td>4.2 Warranties as to Services</td>
<td>5</td>
</tr>
<tr>
<td>4.3 Warranties as to Supplier’s understanding</td>
<td>5</td>
</tr>
<tr>
<td>5 Supplier’s obligations</td>
<td>6</td>
</tr>
<tr>
<td>5.1 General obligations</td>
<td>6</td>
</tr>
<tr>
<td>5.2 Subcontracting</td>
<td>6</td>
</tr>
<tr>
<td>6 Information and records</td>
<td>6</td>
</tr>
<tr>
<td>6.1 Information to Council</td>
<td>6</td>
</tr>
<tr>
<td>6.2 Records</td>
<td>6</td>
</tr>
<tr>
<td>6.3 Council’s access</td>
<td>6</td>
</tr>
<tr>
<td>6.4 Obligations to continue</td>
<td>6</td>
</tr>
<tr>
<td>7 Inspection and testing</td>
<td>6</td>
</tr>
<tr>
<td>7.1 Supplier to test</td>
<td>6</td>
</tr>
<tr>
<td>7.2 Council may test</td>
<td>7</td>
</tr>
<tr>
<td>7.3 Supplier to rectify</td>
<td>7</td>
</tr>
<tr>
<td>7.4 Costs of testing</td>
<td>7</td>
</tr>
<tr>
<td>7.5 No relief</td>
<td>7</td>
</tr>
<tr>
<td>8 Packaging and transportation of Goods</td>
<td>7</td>
</tr>
<tr>
<td>8.1 Supplier’s obligations</td>
<td>7</td>
</tr>
<tr>
<td>8.2 Transportation</td>
<td>7</td>
</tr>
<tr>
<td>9 Delivery and Acceptance of Goods</td>
<td>7</td>
</tr>
<tr>
<td>9.1 Delivery of Goods</td>
<td>7</td>
</tr>
<tr>
<td>Section</td>
<td>Title</td>
</tr>
<tr>
<td>---------</td>
<td>----------------------------------------------------------------------</td>
</tr>
<tr>
<td>10</td>
<td><strong>Defective Goods or Services</strong></td>
</tr>
<tr>
<td>10.1</td>
<td>Defective Goods</td>
</tr>
<tr>
<td>10.2</td>
<td>Defective Services</td>
</tr>
<tr>
<td>10.3</td>
<td>Other rights not affected</td>
</tr>
<tr>
<td>10.4</td>
<td>Rectified Goods and re-performed Services</td>
</tr>
<tr>
<td>11</td>
<td><strong>Title and risk in the Goods</strong></td>
</tr>
<tr>
<td>11.1</td>
<td>Passing of title</td>
</tr>
<tr>
<td>11.2</td>
<td>Supplier’s warranties</td>
</tr>
<tr>
<td>11.3</td>
<td>Passing of risk</td>
</tr>
<tr>
<td>11.4</td>
<td>Supplier to separate Council’s Goods</td>
</tr>
<tr>
<td>12</td>
<td><strong>Extension of time and delays</strong></td>
</tr>
<tr>
<td>12.1</td>
<td>Notice of delay</td>
</tr>
<tr>
<td>12.2</td>
<td>Extension of time</td>
</tr>
<tr>
<td>12.3</td>
<td>Delay costs</td>
</tr>
<tr>
<td>12.4</td>
<td>Unilateral EOT</td>
</tr>
<tr>
<td>12.5</td>
<td>Effect of delay in granting EOT</td>
</tr>
<tr>
<td>12.6</td>
<td>Liquidated damages</td>
</tr>
<tr>
<td>12.7</td>
<td>No compensation for delay</td>
</tr>
<tr>
<td>12.8</td>
<td>Force Majeure</td>
</tr>
<tr>
<td>13</td>
<td><strong>Insurance</strong></td>
</tr>
<tr>
<td>13.1</td>
<td>Policies to be maintained</td>
</tr>
<tr>
<td>13.2</td>
<td>Evidence of insurance</td>
</tr>
<tr>
<td>13.3</td>
<td>Failure to provide evidence</td>
</tr>
<tr>
<td>13.4</td>
<td>Cancellation of insurance</td>
</tr>
<tr>
<td>14</td>
<td><strong>Payment and price</strong></td>
</tr>
<tr>
<td>14.1</td>
<td>Price is inclusive</td>
</tr>
<tr>
<td>14.2</td>
<td>Payment claims</td>
</tr>
<tr>
<td>14.3</td>
<td>Payment</td>
</tr>
<tr>
<td>14.4</td>
<td>Set off</td>
</tr>
<tr>
<td>14.5</td>
<td>Payment on account</td>
</tr>
<tr>
<td>15</td>
<td><strong>Suspension</strong></td>
</tr>
<tr>
<td>15.1</td>
<td>Right to suspend</td>
</tr>
<tr>
<td>15.2</td>
<td>Supplier to comply</td>
</tr>
<tr>
<td>15.3</td>
<td>Supplier’s rights</td>
</tr>
<tr>
<td>16</td>
<td><strong>Goods and Services Tax</strong></td>
</tr>
<tr>
<td>16.1</td>
<td>Definitions</td>
</tr>
<tr>
<td>16.2</td>
<td>GST exclusive</td>
</tr>
</tbody>
</table>
16.3 Taxable supplies 11
16.4 Reimbursement and indemnity 12

17 Personal Property and Securities Act 12
17.1 Definitions 12
17.2 Security Interest 12
17.3 Notification 12
17.4 Restrictions 12
17.5 Cost 12
17.6 Confidentiality 13

18 Termination for Convenience 13
18.1 Council may terminate 13
18.2 Consequences of termination 13
18.3 Payments on Termination 13
18.4 Return of documents 13

19 Dispute resolution 13
19.1 Notice 13
19.2 Meeting of representatives 13
19.3 Meeting of chief executives 13
19.4 No litigation before following procedures 14
19.5 Continued performance 14

20 Intellectual Property Rights 14
20.1 Rights vest in Council 14
20.2 Supplier's warranty 14
20.3 Notification of Council 14
20.4 Obligations continue 14

21 Release and indemnity 14
21.1 Council not liable to the Supplier 14
21.2 Supplier's liability 14
21.3 Council to contribute 14
21.4 Indemnities continuing 14

22 Confidentiality 14
22.1 Obligations of confidence 14
22.2 Exclusions 14
22.3 Restriction on disclosure 15

23 Notification of Claims 15

24 Privacy 15
24.1 Compliance with Information Privacy Act 15
25 **General** ................................................................................................................. 15
  25.1 Amendments ........................................................................................................ 15
  25.2 Assignment .......................................................................................................... 15
  25.3 Counterparts ........................................................................................................ 15
  25.4 No merger ............................................................................................................ 15
  25.5 Entire agreement ................................................................................................. 15
  25.6 Further assurances ............................................................................................. 15
  25.7 No waiver ............................................................................................................ 15
  25.8 Governing law and jurisdiction .......................................................................... 16
  25.9 Severability ......................................................................................................... 16
  25.10 Notice ................................................................................................................ 16
  25.11 Relationship of parties ..................................................................................... 16
  Particulars ................................................................................................................... 17
  Specification ............................................................................................................... 18
  Price ............................................................................................................................. 19
  Special Conditions ..................................................................................................... 20

**Execution** .................................................................................................................. 21
Contract – Supply of Goods and/or Services

Dated [#insert date of the Contract]

Parties

Council  Whitsunday Regional Council ABN 63 291 580 128
83-85 Main Street, Proserpine, Queensland 4800

Supplier  [#insert Supplier’s name] ABN [#insert ABN]
of [#insert address]

Background

A  The Supplier represents that it has expertise in the supply of the Goods and the performance of the Services.

B  On the basis of the Supplier’s expertise, Council has agreed to engage the Supplier for the supply of the Goods and the performance of the Services on the terms of this Contract.

Operative provisions

1  Definitions and Interpretation

1.1 Definitions

In this Contract, except where the context otherwise requires:

Term  Definition

Acceptance  has the meaning given in clause 9.2(b).

Business Day  means a day other than:

(a)  a Saturday, Sunday or a public holiday in Proserpine; and

(b)  27, 28, 29, 30 or 31 December in any year.

Claim  includes any claim, demand, action, proceedings or suit for an increase or adjustment to the Price, for payment of money (including damages), for

Confidential Information  means any information:

(a)  relating to the business and affairs of Council;

(b)  relating to the residents, employees, sub-contractors or other persons doing business with Council;

Term  Definition

Claim  includes any claim, demand, action, proceedings or suit for an increase or adjustment to the Price, for payment of money (including damages), for

Business Day  means a day other than:

(a)  a Saturday, Sunday or a public holiday in Proserpine; and

(b)  27, 28, 29, 30 or 31 December in any year.

Acceptance  has the meaning given in clause 9.2(b).

Term  Definition

Any EOT, delay, disruption or other time based claim, or for any other cost, loss, expense or damage:

(a)  under, arising out of, or in any way in connection with:

(i)  this Contract, the Goods or the Services, including any claim for a Variation;

(ii)  the supply of the Goods or the performance of the Services; or

(iii)  either party’s conduct prior to the date this Contract is signed by the parties or in the negotiations leading to the parties’ entry into this Contract; or

(b)  otherwise at law or in equity including:

(i)  by statute;

(ii)  in tort (including negligence);

(iii)  for restitution; or

(iv)  arising out of repudiation.

Claim  includes any claim, demand, action, proceedings or suit for an increase or adjustment to the Price, for payment of money (including damages), for

Confidential Information  means any information:

(a)  relating to the business and affairs of Council;

(b)  relating to the residents, employees, sub-contractors or other persons doing business with Council;
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>(c)</td>
<td>which is by its nature confidential;</td>
</tr>
<tr>
<td>(d)</td>
<td>which is designated as confidential by Council; or</td>
</tr>
<tr>
<td>(e)</td>
<td>which the Supplier knows or ought to know, is confidential, and includes all knowhow, financial information and other commercially valuable information of Council.</td>
</tr>
<tr>
<td>Date for Delivery</td>
<td>means the date for delivery or period of time for delivery set out in Schedule 1, as adjusted by any EOT.</td>
</tr>
<tr>
<td>Defect or Defective</td>
<td>means any part or aspect of the Goods or Services that do not strictly comply with the requirements of this Contract.</td>
</tr>
<tr>
<td>Delivery</td>
<td>has the meaning given in clause 9.1(b).</td>
</tr>
<tr>
<td>EOT</td>
<td>means an extension to the Date for Delivery or Service Completion Date (as the case may be).</td>
</tr>
<tr>
<td>Extension Periods</td>
<td>Means the period nominated by Council to extend the Term (and the Completion Date) for up to one year at a time, on the same terms as this document. If Council wishes to extend the Term (and the Completion Date) it will give the Contractor written notice prior to the Completion Date.</td>
</tr>
<tr>
<td>Force Majeure</td>
<td>means any event or occurrence outside a party’s reasonable control, as a direct or indirect result of which the party relying on the event is prevented from or delayed in performing its obligations under this Contract (other than a payment obligation), and includes, provided the foregoing is satisfied:</td>
</tr>
<tr>
<td></td>
<td>(a) a physical natural disaster including fire, flood, lightning or earthquake;</td>
</tr>
<tr>
<td></td>
<td>(b) war or other state of armed hostilities (whether war is declared or not), insurrection, riot, civil commotion, act of public enemies, national emergency (whether in fact or in law) or declaration of martial law;</td>
</tr>
<tr>
<td></td>
<td>(c) epidemic or quarantine restriction;</td>
</tr>
<tr>
<td></td>
<td>(d) ionising radiation or contamination by radioactivity from any nuclear waste or from combustion of nuclear fuel; and</td>
</tr>
<tr>
<td></td>
<td>(e) confiscation, nationalisation, requisition, expropriation, prohibition, embargo, restraint or damage to property by or under the order of any government agency, but does not include:</td>
</tr>
<tr>
<td></td>
<td>(f) in the case of the Supplier, any event or occurrence which results from the wrongful act or wrongful omission of the Supplier or the failure by the Supplier to act in a prudent and proper manner;</td>
</tr>
<tr>
<td></td>
<td>(g) any failure by the affected party to reach agreement with any third party necessary to enable the affected party to perform its obligations under this Contract;</td>
</tr>
<tr>
<td></td>
<td>(h) an event or circumstance or its effects which could have been prevented, overcome or remedied by the exercise by the affected party of reasonable precautions and in the case of the Supplier by exercising the standard of care and diligence expected of an experienced and competent supplier;</td>
</tr>
<tr>
<td></td>
<td>(i) breakdown or unavailability of the Supplier’s plant and equipment;</td>
</tr>
<tr>
<td></td>
<td>(j) strike or industrial action whether solely affecting the Supplier or of wider application; or</td>
</tr>
<tr>
<td></td>
<td>(k) inclement weather.</td>
</tr>
<tr>
<td>General Conditions</td>
<td>means this document.</td>
</tr>
<tr>
<td>Goods</td>
<td>means the goods described in the Specification.</td>
</tr>
<tr>
<td>GST</td>
<td>has the meaning set out in the GST Act.</td>
</tr>
<tr>
<td>GST Act</td>
<td>means A New Tax System (Goods and Services Tax) Act 1999 (Cth) and includes other GST related legislation.</td>
</tr>
<tr>
<td>Insolvency Event</td>
<td>means any of the following events occurring in relation to the Supplier:</td>
</tr>
<tr>
<td></td>
<td>(a) a liquidator, receiver, receiver and manager, administrator, official manager or other controller (as defined in the Corporations Act 2001 (Cth)), trustee or controlling trustee or similar official is appointed over any of the property or undertaking of the party;</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>(b)</td>
<td>the party is, or becomes unable to, pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Act 2001 (Cth), or is presumed to be insolvent under the Corporations Act 2001 (Cth);</td>
</tr>
<tr>
<td>(c)</td>
<td>an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party, otherwise than for the purpose of an amalgamation or reconstruction;</td>
</tr>
<tr>
<td>(d)</td>
<td>the party ceases to carry on business;</td>
</tr>
<tr>
<td>(e)</td>
<td>the party or the party’s property or undertaking becomes subject to a personal insolvency arrangement under Part X of the Bankruptcy Act 1966 (Cth) or a debt agreement under Part IX of the Bankruptcy Act 1966 (Cth); or</td>
</tr>
<tr>
<td>(f)</td>
<td>anything analogous to the events described in paragraphs (a) to (e) occur.</td>
</tr>
</tbody>
</table>

**Intellectual Property Rights**  
means any and all beneficial and legal ownership, intellectual property and industrial protection rights throughout the world, both present and future, including rights of or in connection with any confidential information, copyright (including future copyright and rights in the nature of or analogous to copyright), moral rights, inventions (including patents), trademarks, service marks, designs, semiconductors, circuit layouts and performance protection (whether or not now existing and whether or not registered or registrable) and includes any right to apply for registration of such rights or renewals.

**Legislative Requirements**  
includes:  
(a) Acts; regulations, by-laws, local laws and ordinances;  
(b) orders, awards, codes and proclamations of any government agency having jurisdiction in the country, state, territory or local government area in which the matters the subject of this Contract or any part of it are being carried out and the requirements of any other relevant government agency;  
(c) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the supply of the Goods or performance of the Services; and  
(d) fees and charges payable in connection with the foregoing.

**Loss**  
means all loss, damages, costs, liability or expense including, but not limited to, diminution in the expected life of the Goods.

**Personnel**  
means:  
(a) in relation to Council, Council’s employees, agents and contractors (other than the Supplier); and  
(b) in relation to the Supplier, the Supplier’s employees, agents, subcontractors and subcontractors’ employees.

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

**Price**  
means the amount payable for supply of the Goods and performance of the Services, determined according to the rates and prices set out in Schedule 3, and where applicable adjusted in accordance with this Contract.

**Services**  
means the services described in the Specification.

**Service Completion Date**  
means the date specified in Schedule 1 for the completion of the Services, as adjusted by any EOT.

**Site**  
means the place described in Schedule 1 at which Delivery of the Goods or performance of the Services is to occur.

**Special Conditions**  
means the special conditions set out in Schedule 4.

**Specification**  
means any specification or scope of services included, or referred to, in Schedule 2.

**Variation**  
has the meaning given in clause 3.1.

**Warranty Period**  
means the period set out in Schedule 1 that commences on the date of Delivery or the date the Services are completed.
1.1 Interpretation

In this Contract:

(a) a singular word includes the plural and vice versa;

(b) a word which suggests one gender includes the other gender;

(c) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a
    schedule, annexure or party to, this Contract and references to this Contract include
    any schedules or annexures;

(d) a reference to a party to this Contract or any other document or agreement includes
    the party's successors, permitted substitutes and permitted assigns;

(e) if a word or phrase is defined, its other grammatical forms have a corresponding
    meaning;

(f) a reference to a document or agreement (including a reference to this Contract) is to
    that document or agreement as amended, supplemented, varied or replaced;

(g) a reference to legislation or to a provision of legislation (including subordinate
    legislation) is to that legislation as amended, re-enacted or replaced, and
    includes any subordinate legislation issued under it;

(h) if any day on or by which a person must do something under this Contract is not a
    Business Day, then the person must do it on or by the next Business Day;

(i) a reference to a person includes a corporation, trust, partnership,
    unincorporated body, government and local authority or agency, or other entity whether
    or not it comprises a separate legal entity;

(j) a reference to 'month' means calendar month;

(k) this Contract is not to be construed against the interests of Council merely because
    Council proposed this Contract or some provision in it;

(l) the meaning of any general language is not restricted by any accompanying example,
    and the words 'includes', 'such as' or 'for example' (or similar phrases) do not limit
    what else might be included;

(m) headings are not to be used in the interpretation of this Contract; and

(n) a reference to "$" or 'dollar' or any other monetary reference is to Australian
    currency.

2 Evidence of Contract

2.1 Documents that comprise the Contract

(a) This contract is comprised of the following documents:

(i) the Special Conditions (if any);

(ii) the General Conditions;

(iii) the Specification; and

(iv) any other schedule or annexure to the General Conditions.

(b) Any ambiguity or discrepancy between the documents comprising this Contract will be
    resolved and interpreted according to the same order of precedence as the documents
    are listed in clause 2.1(a), with the documents higher in the list having higher priority.

3 Variation of Goods and Services

3.1 Council's right to vary

Council may, at any time by giving notice to the Supplier, vary the Goods or Services. Any such
variation may be to:

(a) increase or decrease the quantity of the Goods or Services to be supplied;

(b) change the Date for Delivery or Service Completion Date;

(c) omit any Goods or Services and have those same Goods supplied or those same
    Services performed, by a third party or by Council; or

(d) change the nature or quality of the Goods or Services to be supplied,

(Variation).
3.2 Valuation of Variation

(a) Any adjustment to the Price as a result of a Variation will be determined as follows:

(i) as agreed between the Supplier and Council;

(ii) if clause 3.2(a)(i) does not apply, then to the extent that this Contract sets out rates or prices that are applicable to the Variation, those rates or prices will be used;

(iii) if clause 3.2(a)(ii) does not apply, then by Council, acting reasonably; and

(iv) if a reduction in the quantity of Goods or Services to be supplied, or the omission of any part of the Goods or Services, occurs after the Supplier has incurred costs directly relating to the Goods or Services reduced or omitted, then Council must reimburse the Supplier a reasonable amount for the costs directly incurred (taking into account any steps taken by the Supplier to minimise any Loss suffered).

(b) Other than as set out in clause 3.2(a), the Supplier has no Claim against Council arising out of, or in connection with, any Variation.

4 Supplier’s warranties

4.1 Warranties as to Goods

The Supplier warrants that the Goods will:

(a) comply with, or exceed, all applicable Australian Standards, or if none are applicable then applicable international standards, except to the extent that a different standard is prescribed under this Contract;

(b) comply with all relevant Legislative Requirements;

(c) comply with the Specification;

(d) be new and of merchantable quality, free from defects in composition, materials and workmanship;

(e) be fit for the purposes described in this Contract, for the purposes (if any) informed to the Supplier by Council, and for the purposes for which goods similar to the Goods are commonly supplied; and

(f) correspond with any sample of the Goods that the Supplier provided or showed to Council before entering this Contract.

4.2 Warranties as to Services

The Supplier warrants that the Services will:

(a) comply with the Specification;

(b) be performed with skill, care and diligence;

(c) be performed by appropriately qualified and trained Personnel;

(d) comply with all relevant Legislative Requirements, Australian Standards or such other standard as Council may nominate;

(e) be fit and suitable for any purpose expressed in this Contract or which Council has made known to the Supplier, or in the absence of such expressed purpose, be fit for the purposes for which services similar to the Services are commonly procured; and

(f) correspond with the Services that the Supplier demonstrated to Council before entering this Contract.

4.3 Warranties as to Supplier’s understanding

The Supplier warrants that it has:

(a) a clear understanding of its obligations under this Contract;

(b) not relied upon, and will not rely upon, any written or verbal statement or representation made to it by Council, but instead has relied upon, and will continue to rely upon, its own investigations and this Contract;

(c) not placed any reliance on the accuracy or adequacy of any information or data provided to it by Council, except only that much that is set out in Schedule 1; and

(d) satisfied itself as to the correctness and sufficiency of its tender to undertake all of the obligations under this Contract and that the Price covers all of its costs and overheads for the Supplier to perform all of its obligations arising from this Contract.
5 Supplier’s obligations

5.1 General obligations

The Supplier must:

(a) Deliver the Goods by the Date for Delivery;

(b) complete the performance of the Services by the Service Completion Date and in any case expeditiously and without delay;

(c) comply with all Legislative Requirements relating to the performance of its obligations under this Contract;

(d) obtain at its expense, any licences, registrations or permits necessary to perform its obligations under this Contract;

(e) take all necessary measures to prevent any damage, harm or nuisance to persons, property or the environment arising from or in connection with the supply of the Goods and the performance of the Services;

(f) perform all obligations under this Contract with the degree of skill, care and diligence expected of a competent supplier experienced in performing the same or similar obligations;

(g) comply with all procedures and policies published from time to time by Council relating to any matter connected with the performance of the Supplier’s obligations under this Contract, including health, safety, the environment, security of the Site, the Goods and the Services;

(h) comply with all lawful directions of Council;

(i) comply with all lawful directions of any other person with authority for workplace health and safety at the Site; and

(j) except to the extent that this Contract expressly states otherwise, supply at its own expense all labour, plant, goods, tools, appliances and other things that the Supplier requires to fulfil its obligations under this Contract.

5.2 Subcontracting

(a) The Supplier must not subcontract or assign any right or obligation under this Contract without Council’s prior written consent.

(b) If the Supplier subcontracts any of its obligations under this Contract, the Supplier:

(i) remains fully responsible for the performance of those obligations under this Contract; and

(ii) will be liable to Council for acts or omissions of its subcontractors as if they were acts or omissions of the Supplier.

6 Information and records

6.1 Information to Council

The Supplier must keep Council fully informed on all aspects of any matter or thing which relates directly or indirectly to the Goods, the Services or any other matter which may affect either this Contract or the Supplier’s performance of it.

6.2 Records

The Supplier must maintain, and where applicable ensure that all of its Personnel maintain, accurate records relating to the performance of all of its and its Personnel’s obligations in connection with this Contract.

6.3 Council’s access

Except where the Supplier has the benefit of legal professional privilege in relation to any record, Council may at any time upon providing reasonable prior notice, inspect and copy any record for any purpose. The Supplier will provide all reasonable assistance, at its cost, to enable Council to inspect the records.

6.4 Obligations to continue

The obligations in clauses 6.2 and 6.3 will survive termination or expiry of this Contract and will apply for a period of seven years from the date that all the Goods are Accepted or the date that the Services are completed (as the case may be) or from the date of termination of this Contract, whichever first occurs.

7 Inspection and testing

7.1 Supplier to test

The Supplier must carry out testing of the Goods and Services, as set out in this Contract.
7.2 Council may test
(a) Council may, at any time, whether at the Supplier’s premises, the Site or any other place where the Goods are being manufactured or stored, or where the Services are being performed:
(i) inspect, examine, take samples, test and witness tests on the Goods or the performance of the Goods to ensure that the Goods complies with this Contract; or
(ii) inspect, examine, test and witness tests on any Services.
(b) The Supplier must ensure that Council has access to the Supplier’s premises, the Site or any other place where the Goods are being manufactured or stored, or where the Services are being performed to inspect, examine, take samples and witness tests in accordance with clause 7.2(a).

7.3 Supplier to rectify
The Supplier must promptly rectify any Defects in the Goods or Services identified in the inspection or tests including any Defects notified by Council to the Supplier.

7.4 Costs of testing
(a) The Price includes the costs of testing under clause 7.1.
(b) Costs in connection with testing under clause 7.2 shall be paid by Council except where the test is required because of, or reveals a failure of, the Supplier to comply with this Contract.

7.5 No relief
Any review, inspection, examination, testing or witnessing of testing that Council undertakes in respect to the Goods or performance of the Services does not relieve the Supplier of the Supplier’s responsibilities under this Contract.

8 Packaging and transportation of Goods

8.1 Supplier’s obligations
The Supplier must pack and label the Goods in accordance with this Contract, any directions of Council and otherwise in accordance with all applicable Legislative Requirements.

8.2 Transportation
Unless otherwise agreed, the Supplier is responsible, at its cost, for transportation of the Goods to the Site and the unloading of the Goods at the Site.

9 Delivery and Acceptance of Goods

9.1 Delivery of Goods
(a) The Supplier must Deliver the Goods by the Date for Delivery.
(b) Delivery of the Goods will occur when the Supplier has safely unloaded the Goods at the Site and Council has acknowledged, in writing, its receipt of the Goods.
(c) Any terms or conditions included in a ‘delivery docket’ provided by the Supplier or its Personnel and signed by or on behalf of Council at Delivery will have no application to this Contract or Council.

9.2 Acceptance of Goods
(a) Delivery shall not, of itself, constitute Acceptance of the Goods by Council.
(b) Council shall be deemed to have Accepted the Goods on the earlier of:
(i) the date Council gives written notice to the Supplier that the Goods have been Accepted; and
(ii) 10 Business Days after the date of Delivery, provided that during that 10 Business Day period Council did not notify the Supplier that any of the Goods were Defective.

10 Defective Goods or Services

10.1 Defective Goods
If at any time before or during the Warranty Period the Goods are found to be Defective, Council may, at its option and without limiting its rights:
(a) notify the Supplier that Council rejects the Defective Goods, in which case the Supplier must at its cost collect the Goods and Council may recover its Losses arising from the Defective Goods as a debt due and payable to Council;
(b) notify the Supplier to rectify the Goods at its own cost and within the timeframe
nominated by Council, acting reasonably. If the Supplier fails to rectify the Defective Goods within the required timeframe, Council may, without further notice, rectify the Defective Goods itself or employ another to do so and Council’s Losses arising from the Supplier’s failure shall be a debt due and payable to Council; or

(c) accept the Defective Goods and recover from the Supplier as a debt due and payable Council’s Losses (including Losses of repairing or replacing the Goods and performing work to any property that is necessary in connection with the repair or replacement of the Goods).

10.2 Defective Services

If at any time before or during the Warranty Period Council is not satisfied that the Services comply in all respects with the requirements of this Contract, Council may, at its option:

(a) require the Supplier to, within a reasonable time, take such steps as are necessary to ensure that the Services comply with this Contract and the Supplier agrees that no money will be payable to the Supplier by Council for any work done to rectify the non-compliance;

(b) notify the Supplier that Council rejects the Services which do not comply with this Contract and the Supplier agrees to refund to Council any payments made by Council in respect of the Services which do not comply with this Contract; or

(c) rectify, either itself or by others, the Services which do not comply with this Contract and the Supplier agrees to reimburse Council for any Losses which Council incurs in rectifying any such Services which Losses are deemed a debt due by the Supplier to Council.

10.3 Other rights not affected

Council’s rights under clause 10 do not in any way change or affect the Supplier’s obligations under this Contract or affect Council’s rights to claim for any damage or Loss Council may suffer because of the Supplier’s failure to fulfil its obligations under this Contract or to exercise other rights under this Contract, including under clause 18.

10.4 Rectified Goods and re-performed Services.

(a) Any repairs to, or replacement of, Defective Goods by the Supplier will be subject to a warranty period of the same length as the Warranty Period, except that the warranty period for the Defective Goods will commence from the later of the Warranty Period and the date of repair or replacement.

(b) Any Services that are re-performed or made good by the Supplier will be subject to a warranty period of the same length as the Warranty Period, except that the warranty period for the Defective Services will commence from the later of the Warranty Period and the date of re-performance or the date on which the Services were made good.

11 Title and risk in the Goods

11.1 Passing of title

Title in each of the Goods passes to Council on the earlier of:

(a) payment in full for those Goods, provided that payment shall include any credit by way of set off; and

(b) Delivery of those Goods.

11.2 Supplier’s warranties

The Supplier warrants that Council will receive title to all Goods free of any liens, charges or encumbrances and be entitled to complete and uninterrupted possession of all Goods.

11.3 Passing of risk

Risk in each of the Goods passes to Council on the later of:

(a) Acceptance of those Goods; and

(b) the date when title in those Goods passes to Council.

11.4 Supplier to separate Council’s Goods

If title to any Goods passes to Council before Delivery, the Supplier must set the relevant Goods aside and clearly mark them as the property of Council, in a manner reasonably required by Council.

12 Extension of time and delays

12.1 Notice of delay

If the Delivery of the Goods or the performance of the Services is, or is likely to be, delayed, the Supplier must within five Business Days of the first occurrence of the circumstance giving rise to the delay...
commencing, notify Council in writing setting out the
details of the cause of the delay, the activities
affected and the steps taken by the Supplier to
minimise the delay.

12.2 Extension of time

If:

(a) the Delivery of the Goods or completion of
    the Services will be delayed by an act or
    omission of Council or its Personnel;

(b) the delay was not contributed to by an act
    or omission of the Supplier or its Personnel;

(c) the Supplier has notified Council of the
    delay in accordance with clause 12.1; and

(d) within 10 Business Days of the first
    occurrence of the circumstance giving rise
    to the delay commencing, the Supplier
    provides Council with a further notice
    demonstrating to Council's reasonable
    satisfaction that the requirements of
    clauses 12.2(a) and 12.2(b) have been
    satisfied,

then Council may grant the Supplier a reasonable
EOT.

12.3 Delay costs

The Supplier will not be entitled to any delay costs for
any delay it suffers unless the delay is directly and
solely caused by a breach of this Contract by Council
and the Supplier can provide documentary evidence
of such delay costs to Council's reasonable
satisfaction.

12.4 Unilateral EOT

Council may (at any time in its sole discretion and
solely for Council's benefit) grant an EOT even if the
Supplier has not requested an EOT.

12.5 Effect of delay in granting EOT

A delay or failure by Council to grant an EOT, that the
Supplier would otherwise have been entitled to, will
not cause the Date for Delivery or Service Completion
Date (as the case may be) to be set at large but may
entitle the Supplier to a claim for damages.

12.6 Liquidated damages

If Schedule 1 states that liquidated damages apply to
this Contract, then:

(a) if the Supplier fails to Deliver the Goods by
    the Date for Delivery or perform the
    Services by the Service Completion Date, it

will be indebted to Council for liquidated
 damages at the rate stated in Schedule 1
for every day after the Date for Delivery or
Service Completion Date (as the case may
be) until the earlier of the date upon which
the Goods are Delivered or Services
completed, and the date that this Contract
is terminated; and

(b) Council and the Supplier agree that all
    sums payable by the Supplier to Council
    under clause 12.6 are proportionate to the
    greatest amount of loss and damage
    suffered by Council if the Supplier does not
    Deliver the Goods by the Date for Delivery
    or complete the Services by the Service
    Completion Date.

12.7 No compensation for delay

The Supplier is not entitled to any cost, expense, loss
or damage it may incur arising out of any delay
regardless of its cause.

12.8 Force Majeure

(a) Where a party is unable, by reason of Force
    Majeure, to carry out all or any of its
    obligations under this Contract, that party
    must notify the other party immediately of
    that Force Majeure with reasonably full
    particulars and, insofar as known, the
    probable extent to which it will be unable to
    perform or be delayed in performing its
    obligations.

(b) If a party gives a notice under clause
    12.8(a), then that party's obligations are
    suspended to the extent that they are
    affected by Force Majeure. If the affected
    party is the Supplier, it will be entitled to an
    EOT to the Date for Delivery or the Service
    Completion Date (as the case may be) for
    the duration of the Force Majeure.

(c) Any costs, losses or savings arising out of
    Force Majeure will be borne, incurred or
    retained as the case may be by the party
    incurring or receiving them.

(d) Council may by giving written notice to the
    Supplier, immediately terminate this
    Contract if the effect of Force Majeure
    continues for more than 20 Business Days.
    If this Contract is terminated under clause
    12.8(d), the Supplier has no Claim against
    Council in respect of any such termination.
13 Insurance

13.1 Policies to be maintained

From the date of this Contract the Supplier must take out and maintain, and where applicable, ensure that its Personnel also take out and maintain:

(a) if stated in Schedule 1, a comprehensive public and products liability policy in the amount specified in Schedule 1, to cover all sums which the Supplier or its Personnel (including transport contractors) may become legally liable to pay as a result of:

(i) death of or bodily injury (including disease or illness) to any person; and

(ii) loss of or damage to property;

(b) if stated in Schedule 1, professional indemnity insurance. The professional indemnity insurance must be maintained for a period of seven years after the completion of the Services and contain the following provisions:

(i) a minimum indemnity limit as specified in Schedule 1; and

(ii) one automatic reinstatement provision;

(c) insurance in respect of all claims and liabilities arising, whether at common law or under statute relating to workers compensation or employer’s liability, from any accident or injury to any person employed by the Supplier in connection with the supply of the Goods and performance of the Services. This insurance must comply with the Legislative Requirements of the relevant jurisdiction in which the supply of the Goods and performance of the Services are carried out; and

(d) a policy of insurance against any and all liability, loss and damage of any kind whatever arising directly or indirectly from the use, non-use, failure, breakage or any other act, omission or matter arising in respect of plant, equipment, tools, appliances or other property owned, rented or hired by the Supplier and used in relation to this Contract.

13.2 Evidence of insurance

Before commencing to supply any Goods or perform any Services and otherwise at Council’s request, the Supplier must produce evidence that the Supplier is maintaining the insurances required by clause 13.1 (including providing certificates of currency and policy wordings of the insurance).

13.3 Failure to provide evidence

(a) If the Supplier fails to produce evidence in accordance with clause 13.2, the Supplier may not submit any claim for payment under this Contract or otherwise in connection with the supply of the Goods or performance of the Services until it does so.

(b) Council may take out and maintain any policy of insurance required by clause 13 if the Supplier fails to do so. The Supplier must reimburse Council for any expenses Council incurs in taking out and maintaining any policy of insurance under clause 13.

13.4 Cancellation of insurance

(a) The Supplier must notify Council immediately of any cancellation of a relevant insurance policy and of any change to the policy which affects Council’s interests.

(b) If any event occurs which may give rise to a claim involving Council under any policy of insurance to be taken out under clause 13 then the Supplier must:

(i) notify Council within 10 Business Days of that event; and

(ii) ensure that Council is kept fully informed of any subsequent actions and developments concerning the relevant claim.

14 Payment and price

14.1 Price is inclusive

The Price is inclusive of all costs and expenses of the Supplier in performing its obligations under this Contract, including:

(a) the cost of any items used in or supplied with the Goods or used or supplied in the performance of the Services;

(b) all charges for Delivery of the Goods; and

(c) all taxes except GST; Rise and fall,

The Price is fixed and firm and is not subject to adjustment for escalation in the cost of the Goods or the Services, materials, labour or any other inputs into the supply of the Goods or performance of the Services.
14.2 Payment claims

At the times specified in Schedule 1, the Supplier must submit payment claims to Council which must:

(a) be in the form required by Council;

(b) contain the details which, in the reasonable opinion of Council, are sufficient to describe and identify the Goods supplied and Services performed; and

(c) be accompanied by a Tax Invoice.

14.3 Payment

Within 20 Business Days of receipt of a payment claim that complies with clause 14.2, Council will pay the amount of the payment claim, except where:

(a) Council exercises its right under clause 14.4; or

(b) Council disputes the payment claim, in which case:

(i) Council will pay the undisputed part of the relevant payment claim (if any); and

(ii) if the resolution of the dispute determines that Council is to pay an amount to the Supplier, Council will pay that amount within 20 Business Days of resolution of that dispute.

14.4 Set off

Council may reduce any payment due to the Supplier under this Contract by any amount for which the Supplier is, or may become, liable to Council under this Contract. This clause does not limit Council's right to recover those amounts in other ways or limit any other rights of Council.

14.5 Payment on account

Any payment made by Council will neither be evidence of the value of the Goods supplied or the Services performed, nor an admission that the Goods have been supplied satisfactorily or the Services performed satisfactorily, but will be a provisional payment on account and subject to a final verification by Council.

15 Suspension

15.1 Right to suspend

Council may by notice to the Supplier at any time and for any reason:

(a) suspend the supply of the Goods or performance of the Services by giving the Supplier written notice; and

(b) direct the Supplier to recommence the supply of the Goods or performance of the Services.

15.2 Supplier to comply

When the Supplier receives a notice of suspension, the Supplier must suspend the supply of the Goods or performance of the Services until such time as it is directed to resume supply of the Goods or performance of the Services. When directed, the Supplier must resume supply of the Goods and performance of the Services as soon as reasonably possible.

15.3 Supplier's rights

Unless the suspension is required due to the breach of contract or negligent act or omission of Council or its Personnel, the Supplier will have no Claim against Council in connection with any notice of suspension given by Council.

16 Goods and Services Tax

16.1 Definitions

In this clause 16, ‘Input Tax Credit’, ‘Joint Venture Operator’, ‘Recipient’, ‘Representative Member’, ‘Supplier’, ‘Tax Invoice’ and ‘Taxable Supply’ have the meanings given to them in the GST Act and ‘Supplier’ means the entity making the Supply.

16.2 GST exclusive

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

16.3 Taxable supplies

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

(a) the Recipient must pay the Supplier an amount equal to the GST for the Supply (in addition to the consideration otherwise
payable under this Contract for that Supply; and

(b) the Supplier must give the Recipient a Tax Invoice for the Supply.

16.4 Reimbursement and indemnity

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

17 Personal Property and Securities Act

17.1 Definitions


17.2 Security Interest

(a) The parties acknowledge that this Contract may constitute a Security Interest in favour of Council.

(b) If Council determines that this Contract (or a transaction in connection with it) is or contains a Security Interest, the Supplier agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Council asks and considers necessary for the purposes of:

(i) ensuring that the Security Interest is enforceable, perfected and otherwise effective;

(ii) enabling Council to apply for any registration, complete any Financing Statement or give any notification, in connection with the Security Interest; or

(iii) enabling Council to exercise rights in connection with the Security Interest.

(c) Council is not required to give any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA to be given (even though the parties have waived the right to receive notice).

17.3 Notification

The Supplier must notify Council as soon as the Supplier becomes aware of any of the following:

(a) If any Personal Property which does not form part of Council’s Personal Property becomes an Accession to Council’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;

(b) If any of Council’s Personal Property is located or situated outside Australia or, upon request by Council, of the present location or situation of any of Council’s Personal Property; or

(c) If the Supplier parts with possession of Council’s Personal Property.

17.4 Restrictions

The Supplier must not:

(a) create any Security Interest or lien over any Personal Property that Council has an interest in (other than Security Interests granted in favour of Council);

(b) sell, lease or dispose of its Personal Property that Council has a Security Interest in;

(c) give possession of the Supplier’s Personal Property that Council has a Security Interest in or Council’s Personal Property to another person except where Council expressly authorises it to do so;

(d) permit any of Council’s Personal Property to become an Accession to or Commingled with any asset that is not part of the Goods or the Services; or

(e) change its name without first giving Council 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.

17.5 Cost

Everything the Supplier is required to do under this clause 17 is at the Supplier’s expense.
17.6 Confidentiality

Neither Council nor the Supplier will disclose information of the kind mentioned in section 275(1) of the PPSA and the Supplier will not authorise, and will ensure that no other party authorises, the disclosure of such information. Clause 17 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) (b), (d) and (e) of the PPSA.

18 Termination for Convenience

18.1 Council may terminate

At any time and for any reason the Council may by written notice terminate this Contract in respect of any part, or the whole, of the services under the Contract.

18.2 Consequences of termination

Upon receipt of a notice of termination in accordance with clause 18.1, the Supplier shall immediately:

(a) cease the part, or the whole, of the services under the Contract, as the case requires; and

(b) comply with any directions by Council, including to the extent directed to:

(i) protect property in the possession of the Supplier in which the Council has or may acquire an interest;

(ii) assign to Council or its nominee all rights and benefits under contracts with third parties;

Any expiration or termination of this Contract does not affect:

(a) any of Council’s rights which may have accrued before the date of expiration or termination; or

(b) the rights and obligations of the parties under this Contract which survive termination.

18.3 Payments on Termination

Subject to Council’s rights under or in connection with the Contract, including without limitation the rights to withhold or set off payment and recovery of damages, following a termination for convenience, Council shall:

(a) pay the Supplier:

(i) for the services executed prior to the date of termination, the amount which would have been payable if the termination had not occurred and the Supplier had made a claim for payment on the date of termination;

(ii) the applicable contractual payment due to the Supplier for any services properly performed after the termination;

(iii) to the extent that paragraph (ii) does not apply, the reasonable direct costs of complying with any directions given by Council upon, or subsequent to, termination;

Council shall not otherwise be liable to the Supplier for any cost, loss, expense or damage incurred by the Supplier as a consequence of, or in connection with, the services under the Contract or the termination and the Supplier otherwise may make no Claim.

18.4 Return of documents

On the expiry or earlier termination of this Contract, the Supplier must immediately and its cost return all Confidential Information to Council.

19 Dispute resolution

19.1 Notice

Any dispute or difference arising out of or in connection with this Contract must be notified in writing by one party to the other. The notice must set out details of the dispute or difference.

19.2 Meeting of representatives

Within 10 Business Days of delivery of the notice in clause 19.1, the representatives of the parties must meet to attempt to resolve the dispute or difference.

19.3 Meeting of chief executives

If the dispute or difference is not resolved in accordance with clause 19.2, or the parties do not meet in accordance with clause 19.2, the dispute or difference must be referred to the chief executive officers (or equivalent) of the parties who must meet to attempt to resolve the dispute or difference. If the dispute or difference is not resolved by the chief executive officers (or equivalent) within 20 Business Days of delivery of the notice in clause 19.1, either party may refer the dispute or difference to litigation.
19.4 No litigation before following procedures

Except for proceedings seeking urgent injunctive or declaratory relief, no dispute or difference may be referred to litigation before the procedures in clauses 19.1, 19.2 and 19.3 have been completed.

19.5 Continued performance

Despite the existence of a dispute or difference or litigation in respect to the dispute or difference, the parties must continue to perform their obligations under this Contract.

20 Intellectual Property Rights

20.1 Rights vest in Council

All Intellectual Property Rights created in any document, matter or thing prepared or written for this Contract or developed by the Supplier for the supply of the Goods or performance of the Services will vest in Council.

20.2 Supplier’s warranty

The Supplier warrants that in carrying out its obligations under this Contract, neither Council nor the Supplier will infringe the Intellectual Property Rights of any other person.

20.3 Notification of Council

The Supplier must notify Council as soon as the Supplier becomes aware of any suspected, threatened or actual infringement of:

(a) any Intellectual Property Rights assigned to Council by the Supplier or the Supplier’s subcontractors under this Contract; or
(b) any Intellectual Property Rights of a third party,

and must provide all reasonable assistance in defending Council’s interests against such infringement.

20.4 Obligations continue

The obligations in clause 20 continue after this Contract is terminated.

21 Release and indemnity

21.1 Council not liable to the Supplier

Council will not be liable to the Supplier in any circumstances for any indirect, economic, special or consequential loss or damage, loss of revenue, loss of production or loss of profit whether or not such liability arises in contract, tort (including negligence) or any other cause of action at law or in equity.

21.2 Supplier’s liability

The Supplier must indemnify Council and its Personnel against any Claim or Loss of any nature whatsoever, which Council or its Personnel may suffer or incur, arising from or in connection with:

(a) any personal injury, illness, death to any person or loss or damage to any property; or
(b) any negligence or breach of this Contract by the Supplier.

21.3 Council to contribute

The Supplier’s indemnity in clause 21 will be reduced to the extent that any negligent act or omission of Council or its Personnel contributed to the event giving rise to the obligation to indemnify.

21.4 Indemnities continuing

Each indemnity in this Contract is a continuing obligation separate and independent from the Supplier’s other obligations and survives termination or expiration of this Contract.

22 Confidentiality

22.1 Obligations of confidence

The Supplier must keep confidential, and not use or disclose, other than as permitted by this Contract, any Confidential Information of Council provided to or obtained by the Supplier prior to or after entry into this Contract.

22.2 Exclusions

The obligations in clause 22.1 do not apply to Confidential Information:

(a) that is required to be disclosed by applicable law, or under compulsion of law by a court or government agency, as long as the Supplier:
(i) discloses the minimum amount of Confidential Information required to satisfy the law or rules; and
(ii) before disclosing any information, gives a reasonable amount of notice to Council and takes all available steps (whether required by Council or not) to maintain such Confidential Information in confidence;

(b) that is in the public domain otherwise than as a result of a breach of this Contract or other obligation of confidence; or

(c) that is already known by, or rightfully received, or independently developed, by the Supplier free of any obligation of confidence.

22.3 Restriction on disclosure

(a) The Supplier may use and disclose Confidential Information of Council only with the prior written consent of Council.

(b) If the Supplier discloses Confidential Information under clause 22.3(a), the Supplier must ensure that such information is kept confidential by the person to whom it is disclosed.

23 Notification of Claims

If the Supplier does not:

(a) give to Council a written notice of any Claim it has or alleges against Council within 20 Business Days of events or circumstances giving rise to the Claim first occurring; or

(b) give to Council notice of any Claim required to be communicated by another provision of this Contract within the time specified by that provision,

Council shall not be liable in connection with the Claim or to any Claim arising from or related to those events or circumstances and the Supplier shall be absolutely barred from proceeding with such Claim or any Claim arising from or related to those events or circumstances.

24 Privacy

24.1 Compliance with Information Privacy Act

(a) The Supplier warrants that it has complied with all of its obligations under the Information Privacy Act 2009 (Qld) in relation to information supplied to Council about the Supplier’s Personnel.

(b) Any Personal Information (as defined in the Information Privacy Act 2009 (Qld) exchanged between the Supplier and Council must be dealt with in accordance with that act.

(c) The Supplier must immediately notify Council upon becoming aware of any breach of clause 24.

25 General

25.1 Amendments

This Contract may only be amended by written agreement between all parties.

25.2 Assignment

(a) The Supplier may only assign this Contract or a right under this Contract with the written consent of Council.

(b) Council may at any time assign or novate its rights and obligations under this Contract without the Supplier’s consent.

25.3 Counterparts

This Contract may be executed in any number of counterparts. All counterparts together make one instrument.

25.4 No merger

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

25.5 Entire agreement

This Contract supersedes all previous agreements about its subject matter and embodies the entire agreement between the parties.

25.6 Further assurances

Each party must do all things necessary to give effect to this Contract and the transactions contemplated by it.

25.7 No waiver

(a) The failure of a party to require full or partial performance of a provision of this
Contract does not affect the right of that party to require performance subsequently.

(b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.

(c) A right under this Contract may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

25.8 Governing law and jurisdiction

(a) Queensland law governs this Contract except that the Sale of Goods (Vienna Convention) Act 1986 (Qld) will have no application to any matter in connection with either this Contract or the supply of the Goods.

(b) Each party irrevocably submits to the exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.

25.9 Severability

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

25.10 Notice

(a) A notice, consent or communication under this Contract is only effective if it is:

(i) in writing, signed by or on behalf of the person giving it;

(ii) addressed to the person to whom it is to be given; and

(iii) given as follows:

(A) delivered by hand to that person’s address;

(B) sent by prepaid mail (and by prepaid airmail if the person is overseas) to that person’s address; or

(C) sent by fax to that person’s fax number where the sender receives a transmission confirmation report from the despatching machine indicating the transmission has been made without error and showing the relevant number of pages and the correct destination fax number or name of recipient.

(b) A notice, consent or communication given under clause 25.10(a) is given and received on the corresponding day set out in the table below. The time expressed in the table is the local time in the place of receipt.

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

(c) A person’s address and fax number are those set out in Schedule 1 or as the person notifies the sender.

25.11 Relationship of parties

(a) The Supplier is Council’s contractor and not Council’s employee or agent.

(b) No party:

(i) is in any way the agent or partner of another party for any purpose whatsoever nor has any right to hold itself out as such; and

(ii) may make any promise, warranty or representation nor execute any contract or otherwise deal in the name of or on behalf of another party.
## Schedule 1

### Particulars

<table>
<thead>
<tr>
<th>Clause 1.1, Commencement Date</th>
<th>1st December 2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clause 1.1, Extension Periods</td>
<td>One (1) Year at Council's discretion</td>
</tr>
<tr>
<td>Clause 1.1, Service Completion Date</td>
<td>Two (2) Years from Commencement Date</td>
</tr>
<tr>
<td>Clause 1.1, Site:</td>
<td>Proserpine Sewage Treatment Plant (STP), Cannonvale STP, Bowen STP, Collinsville STP and water treatment assets such as: Proserpine Water Treatment Plant (WTP) and Bowen WTP</td>
</tr>
<tr>
<td>Clause 1.1, Warranty Period:</td>
<td>Not Applicable</td>
</tr>
<tr>
<td>Clause 4.3, information that the Supplier may rely on:</td>
<td>Specification</td>
</tr>
<tr>
<td>Clause 12.6, liquidated damages:</td>
<td>Do liquidated damages apply: No</td>
</tr>
<tr>
<td>Clause 13.1, insurance:</td>
<td>Is public and product liability insurance required: Yes If yes, value is to be not less than: $20,000,000</td>
</tr>
<tr>
<td>Clause 14.2, times for submitting payment claims</td>
<td>28th day of the month</td>
</tr>
<tr>
<td>Clause 18, Notice Period for Termination</td>
<td>20 Business days</td>
</tr>
<tr>
<td>Clause 25.10(c), details for notices:</td>
<td>Council</td>
</tr>
<tr>
<td>Contact Person:</td>
<td>Peter Stapleton</td>
</tr>
<tr>
<td>Postal address:</td>
<td>PO Box 104, Proserpine Qld 4800</td>
</tr>
<tr>
<td>Street address:</td>
<td>52 Main Street, Proserpine Qld 4800</td>
</tr>
<tr>
<td>Email:</td>
<td><a href="mailto:contracts@whitsundayrc.qld.gov.au">contracts@whitsundayrc.qld.gov.au</a></td>
</tr>
<tr>
<td>Supplier</td>
<td></td>
</tr>
<tr>
<td>Contact Person:</td>
<td>[#insert]</td>
</tr>
<tr>
<td>Postal address:</td>
<td>[#insert]</td>
</tr>
<tr>
<td>Street address:</td>
<td>[#insert]</td>
</tr>
<tr>
<td>Email:</td>
<td>[#insert]</td>
</tr>
</tbody>
</table>
Schedule 2

Specification

[#Council to insert specification for the Goods and/or scope of the Services]
## Schedule 3

<table>
<thead>
<tr>
<th>Price</th>
</tr>
</thead>
</table>

[Council to insert]
Schedule 4

Special Conditions

[#Council to insert any special conditions]
Execution

EXECUTED as an agreement

Executed by
Whitsunday Regional Council ABN 63 291 580 128 by its
authorised officer:

Witness
Full name of Witness

Authorised Officer
Full name of Authorised Officer

Executed by
[#insert company name (in title case)] ABN [#insert ABN] by:

Director
Full name of Director

Director/Secretary
Full name of Director/Secretary