



Mount Gambier Regional, Sport and Recreation Centre

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Project Management Plan Summary

This Project Management Plan and associated documentation incorporates formal policies, and relevant sample documentation to govern the initiation, execution, implementation and evaluation for the design/construction of the Mount Gambier Regional, Sport and Recreation Centre.

Council makes significant investment decisions on behalf of the community and in order to meet its obligations for sound financial management, Council must demonstrate its focus on community priorities and offer value-for-money to ratepayers. Procurement tasks must be carried out in accordance with Council's P420 Procurement, & Disposal of Land and Assets Policy (Appendix 1).

The success of this project is highly dependent on making sure that project tasks and stages are delivered as planned and to the project sponsors' and stakeholders' expectations. Therefore Council is planning a two stage procurement approach including an initial request for Expression of Interest (EOI) and subsequent Select Tender (RFT) to this project. The primary objective of the EOI is to establish a short list of suitably qualified and experienced companies from which Council would then invite selective tenders for the design and project management. At the EOI stage there would be no discussion on costs to perform the project work. This process is designed to ensure Council receives the best professional outcome having regard for the following key components:

- Providing opportunities for local contractor involvement in the project;
- Consideration for environmental factors; and
- Consideration for safety of public and property.

It is likely that this project will generate a great deal of interest from potential contractors (both local and outside the region). However, Council will need to ensure that contractors can meet the many safety / environmental aspects of this project, and that they are able to fulfil all of the items listed below, before being considered to undertake this project.

- Objectives of the work and expected outputs;
- The tasks expected to be completed by the contractor and methodology they will use;
- Any out of scope details;
- Timeframe for completion;
- Work health safety and risk management;
- Professional competence;
- Commercial capability;
- Environmental commitment;
- Governance requirements or considerations;
- Social considerations;
- Criteria for acceptance of deliverables; and
- A requirement for the contractor to have appropriate liability and other insurance cover and to meet any other legal obligations relevant to the project brief.

The sample documentation provided in the attached appendices will be utilised to assist Council Officers to both meet Council expectations for a successful and timely delivery of this project, and to achieve project outcomes and objectives. More specifically the attached project plan and associated documentation forms the basis for establishing major milestones to be able to deliver this project in accordance with the Regional Growth Fund.

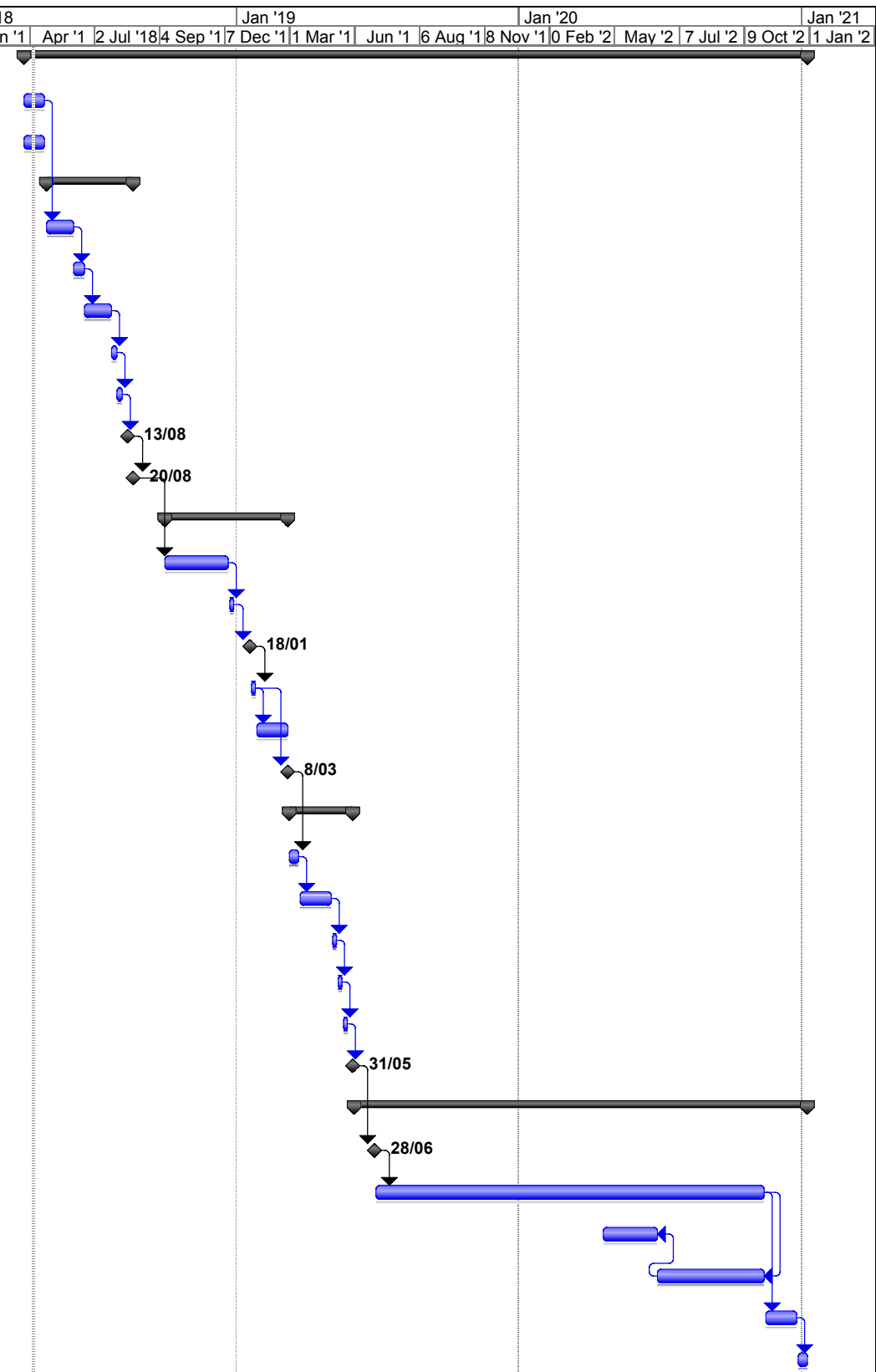


PROJECT PLAN

Project Name	Mount Gambier Regional Sport and Recreation Centre		
Project Description	Design and Construction of an Indoor Recreation (aquatics and Leisure) Centre		
Budget Allocation	\$25M	General Ledger	
Project Delivery Year	2019-2021	Work Order No	
		Eng Project No	1718-46
		Project Officer	D Morgan

Project Task	Required	Resp Officer	Details / Requirements	Due date	Status	Comments	Ref
1 Concept Stage							
1.1 Project Scope / brief	Yes	J Nagy		Apr-18	Completed		
1.2 CHAT assessment	Yes	A Izzard	Councils Holistic Assessment Tool	May-18	In progress		
1.3 Consultation / Community engagement	Yes	B Cernovskis	community meetings previously held	Mar-18	Completed		
1.4 Council Workshop	Yes	M McShane	present to Council	Apr-18	Completed		
1.5 Funding submission	Yes	J Nagy		Apr-18	Completed		
1.6 Corporate risk assessment	Yes	M McCarthy		Apr-18	Completed		
1.7 Governance considerations	Yes	M McCarthy		Apr-18	Completed		
2 Approval Stage							
2.1 Council resolution	Yes		approved funding submission	Apr-18	Completed	report before council	
2.2 Planning approval	Yes	J Nagy	to be obtained once final funding confirmed	Dec-18	Not started		
2.3 Building approval	Yes	J Nagy	to be obtained once final funding confirmed	Feb-19	Not started		
2.4 Heritage approval	No						
2.5 Cultural approval	No						
2.6 Safe Work SA notification	No						
2.7 SA Water	No						
2.8 SA Power	No						
2.9 APA (gas)	No						
2.10 Telstra	No						
2.11 DPTI	No						
2.12 CITB	No						
3 Design Stage							
3.1 Funding conditions	Yes	J Nagy	Federal agreement, Council budget	Feb-19	In progress	waiting outcome of submission	
3.2 Structural design	Yes	D Morgan	external consultant to engage engineer	Feb-19	Not started		
3.3 Disability requirements	Yes	D Morgan	part of architectural design	Feb-19	Not started	to conform with Aus stnds	
3.4 Australian standards	Yes	D Morgan	for all design elements	Feb-19	Not started		
3.5 Design guides / codes of practice	Yes	D Morgan	Design in accordance with best practice	Feb-19	Not started		
3.6 Site survey	Yes	S Georgiou	site survey of existing facilities	Feb-19	Not started		
3.7 Pavement testing - roadways	Yes	D Morgan	for all carpark areas as required	Feb-19	Not started		
3.8 Pavement design	Yes	D Morgan	for all carpark areas as required	Feb-19	Not started		
3.9 Geometric design	Yes	D Morgan	for all carpark areas as required	Feb-19	Not started		
3.10 Drainage design	Yes	D Morgan	design for site stormwater disposal	Feb-19	Not started	to link into existing system	
3.11 Construction drawings	Yes		part of external consultants scope	Feb-19	Not started		
3.12 Dial before you dig plans	Yes	S Georgiou	as required	Dec-18	In progress		
3.13 Detailed estimate	Yes		by external consultants	Oct-18	In progress		
3.14 Set out details	Yes	S Georgiou		Apr-19	Not started		
3.15 Design risk assessment / peer review	Yes	J Nagy	by external consultants	Apr-19	Not started		
3.16 Project Schedule / Gantt chart	Yes	D Morgan		Oct-18	In progress		
4 Tendering & Procurement Stage							
4.1 Tender specification & Contract documentation	Yes	L Hinton	for engaging architect firm / project manager & building contractor	Feb-19	Not started	for design and project management and also for construction company	
4.2 Vendor panel	No			Feb-19			
4.3 Procurement / purchasing requirements	Yes	L Hinton	In accordance with Council policies	Feb-19	Not started		
4.4 Annual Contractor engagement	Yes	D Morgan	for external works - asphalt / concrete	Feb-19	Not started		
4.5 Council day labour	Yes	C Mustart	for external works	Feb-19	Not started		
4.6 Officer delegation from Council	Yes	L Hinton	based on value of works	Feb-19	Not started		
5 Construction stage							
5.1 Time frame / time constraints	Yes	J Nagy		2019 - 2021	Not started		
5.2 Public notification	Yes	N Serle		2019 - 2021	Not started		
5.3 Service authority notification	Yes	D Morgan		2019 - 2021	Not started		
5.4 High risk work	Yes		Building contractor responsible	2019 - 2021	Not started		
5.5 Safe Work SA notification							
5.6 Public protection requirements	Yes		Building contractor responsible	2019 - 2021	Not started		
5.7 Construction methodology plan	Yes		Building contractor responsible	2019 - 2021	Not started		
5.8 Construction task risk assessments	Yes		Building contractor responsible	2019 - 2021	Not started		
5.9 Construction schedule	Yes		Building contractor responsible	2019 - 2021	Not started		
5.10 Progress reports to council	Yes		Project architect / construction manager	2019 - 2021	Not started		
5.11 Specialised works							
5.12 Budget Variation required							
5.13 Contractor audit for WHS	Yes	L Hinton	internal council site audits	2019 - 2021	Not started		
6 Commissioning stage							
6.1 Defects Inspection	Yes		Project architect / construction manager	2021	Not started		
6.2 Post construction review against design	Yes		Project architect / construction manager	2021	Not started		
6.3 Pre opening risk assessment	Yes		Project architect / construction manager	2021	Not started		
6.4 Certificates of occupancy / practical completion	Yes		Building officer / independent sign off	2021	Not started		
6.5 12 month inspection / review	Yes		Building officer / independent sign off	2021	Not started		

ID	Task Name	Duration	Start	Finish	Jan '18			Jan '19			Jan '20			Jan '21				
					1 Jul '1	3 Oct '1	5 Jan '1	Apr '1	2 Jul '18	4 Sep '17	Dec '1	1 Mar '1	Jun '1	6 Aug '18	Nov '1	0 Feb '2	May '2	7 Jul '2	9 Oct '2	1 Jan '2
1	MOUNT GAMBIER REGIONAL SPORT AND RECREATION CENTRE PROJECT	145 wks?	Mon 2/04/18	Fri 8/01/21														
2	Preparation of funding submission	20 days	Mon 2/04/18	Fri 27/04/18														
3	Consultant to update project scope and prepare brief for submission	20 days	Mon 2/04/18	Fri 27/04/18														
4	EOI period for selection and engagement of Architectural firm for design and project management	16 wks	Tue 1/05/18	Mon 20/08/18														
5	Preparation of EOI	25 days	Tue 1/05/18	Mon 4/06/18														
6	Peer review of EOI by independent consultant	10 days	Tue 5/06/18	Mon 18/06/18														
7	Advertising period for EOI	25 days	Tue 19/06/18	Mon 23/07/18														
8	Assessment of EOI including sub committee meeting	5 days	Tue 24/07/18	Mon 30/07/18														
9	Operational Services to endorse minutes of Sub Committee	5 days	Tue 31/07/18	Mon 6/08/18														
10	Council meeting to accept shortlisted firm	5 days	Tue 7/08/18	Mon 13/08/18														
11	Contract documentation signing for approved Architectural firm	5 days	Tue 14/08/18	Mon 20/08/18														
12	Design, documentation and detailed estimating stage	23 wks?	Mon 1/10/18	Fri 8/03/19														
13	Detailed designs and quantity surveyor costings	60 days	Mon 1/10/18	Fri 21/12/18														
14	Review of design and estimates and consideration by project sub committee	5 days	Mon 24/12/18	Fri 28/12/18														
15	Modification of design and adjustment of project estimates	15 days	Mon 31/12/18	Fri 18/01/19														
16	Council sign off on final plans & extent of works	5 days	Mon 21/01/19	Fri 25/01/19														
17	submission of plans for development approval - planning consent	30 days?	Mon 28/01/19	Fri 8/03/19														
18	submission of plans for development approval - building consent	6 wks	Mon 28/01/19	Fri 8/03/19														
19	Public tendering and contracting period for engagement of Building contractor	12 wks	Mon 11/03/19	Fri 31/05/19														
20	preparation of tender documentation	10 days	Mon 11/03/19	Fri 22/03/19														
21	Public tender period	30 days	Mon 25/03/19	Fri 3/05/19														
22	Assessment of tenders including sub committee meeting to consider	5 days	Mon 6/05/19	Fri 10/05/19														
23	Operational Services to endorse minutes of Sub Committee	5 days	Mon 13/05/19	Fri 17/05/19														
24	Council meeting to accept shortlisted building contractor	5 days	Mon 20/05/19	Fri 24/05/19														
25	Contract documentation signing for approved building construction firm	5 days	Mon 27/05/19	Fri 31/05/19														
26	Site Construction works in accordance with approved plans	84 wks	Mon 3/06/19	Fri 8/01/21														
27	Demolition of site works and existing facilities	20 days	Mon 3/06/19	Fri 28/06/19														
28	Building construction works	360 days	Mon 1/07/19	Fri 13/11/20														
29	Installation of site services	50 days	Mon 20/04/20	Mon 29/06/20														
30	external construction works - car parking, landscaping	100 days	Mon 29/06/20	Fri 13/11/20														
31	defect inspection and repair works	30 days	Mon 16/11/20	Fri 25/12/20														
32	pre opening assessment against approved plans	10 days	Mon 28/12/20	Fri 8/01/21														



Project: Old Hospital site development
Date: Fri 13/04/18

Task		Progress		Summary		External Tasks		Deadline	
Split		Milestone		Project Summary		External Milestone			

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1. INTRODUCTION

Section 49 of the Local Government Act 1999 requires Council to prepare and adopt policies on the contracting out of services, competitive tendering and the use of other measures to ensure that services are delivered cost-effectively, the use of local goods and services, and the sale or disposal of land or other assets.

Further, Section 49 (a1) of the Act requires Council to develop and maintain policies, practices and procedures directed towards obtaining value in the expenditure of public money, providing for ethical and fair treatment of participants, and ensuring probity, accountability and transparency in all disposal processes.

This Policy provides comprehensive guidance and authority to the Chief Executive Officer with respect to procurement and disposal processes.

All procurements and disposals are undertaken to give effect to Council's endorsed Budget and/or a specific resolution of Council.

This Policy:

- defines the methods by which Council can acquire goods and services;
- defines the methods by which Land and Assets are disposed of;
- demonstrates accountability and responsibility of Council to ratepayers;
- provides fairness and equity to all parties involved;
- enables all processes to be monitored and recorded; and
- ensures that the best possible outcome is achieved for the Council.

This Policy does not cover:

- non-procurement expenditure such as sponsorships, grants, funding arrangements, donations and employment contracts; or
- the purchase of land by the Council.

This Policy also does not cover:

- Land sold by Council for the non-payment of rates; or
- disposal of goods which are not owned by the Council, such as abandoned vehicles; as these are dealt with in the Act.

2. DEFINITIONS

In this Policy, unless the contrary intention appears, these words have the following meanings:

Act means the Local Government Act 1999

Asset means any physical item that the Council owns and that has at any time been treated pursuant to the Australian Accounting Standards as an 'asset', and includes all Plant and Equipment. It **does not include** financial investments or finance related activities.

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Authorised Officer means a Council Officer with formal (sub)delegation and/or financial authorisation granted by written instrument from the Chief Executive Officer to enter into contracts and transactions to a specified value and unless contrary provisions apply includes the Chief Executive Officer and General Managers.

Land includes community land, vacant land, operational land, road reserves, any legal interest in land, and any other land-related assets, including all buildings (community and operational) on Land.

Minor Plant, Materials and Equipment includes all minor plant and equipment owned by Council with an original value of less than \$5,000. It includes all loose tools, store items, furniture, second hand items removed from other Plant and Equipment (such as air conditioners, bricks and pavers) and surplus bulk items.

3. POLICY OBJECTIVES

Council aims to achieve advantageous outcomes by:

- enhancing value for money through fair, competitive, non-discriminatory procurement and disposal;
- promoting the use of Council's financial, physical and staffing resources in an efficient, effective and ethical manner;
- making decisions with probity, accountability and transparency;
- advancing and/or working within Council's economic, social and environmental policies;
- providing reasonable opportunity for competitive and appropriately qualified and experienced local businesses to supply to Council;
- appropriately managing risk; and
- ensuring compliance with all relevant legislation.

4. POLICY PRINCIPLES

Council must have regard to the following principles in its Procurement and Disposal of Land and Assets:

- *Encouragement of open and effective competition*
- *Obtaining Value for Money*

Value for Money is not restricted to price alone, assessment must include consideration of (where applicable):

- the contribution to Council's long term financial plan and strategic management plans;
- any relevant direct and indirect benefits to Council, both tangible and intangible;
- efficiency and effectiveness of the proposed activity;
- the performance history, and quality, scope of services and support of each prospective supplier;
- fitness for purpose of the proposed goods or service;
- whole of life costs;


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- the costs of various disposal methods;
 - internal administration costs;
 - technical compliance & knowledge issues;
 - risk exposure; and
 - the value of any associated environmental benefits.
- *Probity, Ethical Behaviour and Fair Dealing*
 - *Accountability, Transparency and Reporting*
 - *Ensuring compliance with all relevant legislation*
 - *Encouragement of the development of competitive local business and industry*
 - Where other evaluation criteria are comparable, Council will also give consideration/weighting to the following:
 - the creation of local employment opportunities;
 - increased availability of local servicing support;
 - increased convenience with communications with the supplier for contract management;
 - economic growth within the local area;
 - benefit to Council of associated local commercial transaction; and/or
 - the short and long term impact of the procurement on local business.
 - *Environmental protection*
 - Council will seek to:
 - adopt purchasing practices which conserve natural resources;
 - align the Council's procurement activities with principles of ecological / environmental sustainability and the Natural Step Framework;
 - purchase recycled and environmentally preferred products where fit for purposes and it is possible and reasonable to do so;
 - integrate relevant principles of waste minimisation and energy;
 - foster the development of fit for purpose products and services which have a low environmental impact;
 - provide leadership to business, industry and the community in promoting the use of environmentally sensitive goods and services.
 - *Compliance with adopted Work, Health & Safety policies, procedures and practices.*
 - *Procurement and Disposals are undertaken within the parameters of and authority granted by Council's endorsed Budget and/or a specific resolution of Council.*

5. PROCUREMENT METHODS

Generally, open and fair competition is best achieved by undertaking a tender process so that all interested parties have an opportunity to bid. However, there may be procurements in which a tender process will not necessarily deliver the most advantageous outcome for the Council – in such instances, other market approaches may be more appropriate.

The Council may, having regard to its Procurement Principles and any other factors considered relevant by the Council, in its absolute discretion determine to utilise one or more of the following procurement methods:

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Direct Purchasing

This is where Council purchases from a single source, without first obtaining competing bids.

This method may be suitable for low value, low risk goods and services, and where the supplier already has a successful service history with the Council.

Where Direct Purchasing is utilised as a procurement method for items obtained with relative frequency and volume, a supplier is to be requested to submit to Council and keep current a list of unit prices / rates for such items purchased under this purchasing method.

Direct Purchasing may be utilised by an Authorised Officer using petty cash (up to \$150) or credit card (in addition to Council's formal online requisitioning system) up to the value of \$2,000.

Direct Purchasing may also be utilised for routine purchases of any value from any single or group of suppliers under a supply contract with a fixed pricing regime established under a Tender, Panel Contract or Strategic Alliance arrangement in accordance with this Clause 5.

Quotations

This is where Council obtains quotations from prospective suppliers.

Generally, a minimum of two written quotations should be sought. If a written quote cannot be obtained, the Council must keep detailed written records of the oral quote obtained, including details of the commercial terms of the quote.

This method may be suitable for an Authorised Officer to purchase low value, low risk goods and services with an estimated value not exceeding \$10,000.

Request for Quotations (RFQ)

This is where Council obtains written quotations from prospective suppliers.

Generally, a minimum of three written quotations are sought.

This method may be suitable for simple, largely price-based purchases with an estimated value not exceeding \$50,000.

Requests for Expressions of Interest (REOI)

This is where Council issues an open invitation for a proposed good(s) and/or service(s) of any value.

This method may be used by an Authorised Officer where there is potentially a large market for the proposed goods and/or service, and the Council would like to be able to prepare a short list of suppliers to invite to participate in a tender or request for quotation process.

Request for Tenders (RFT)

This is where the Council issues a formal tender for the supply of goods and/or service where the estimated value is in excess of \$50,000.

Council may issue a "Select" Request for Tender where it has already issued a REOI, or where it has documented reasonable grounds for only dealing with a select group of potential suppliers.

Otherwise, Council may issue an "Open" Request for Tender.

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Prior to any procurement decision arising from a Request for Tender process each Tender is to be assessed against a pre-determined and documented set of criteria. Assessment is to be undertaken individually by a panel comprising at least 3 Council Officers of which at least one is not to have been involved in the development of the Tender specification or to be involved in the management of the Tender Contract.

Panel Contracts

This is where the Council establishes panel arrangements with a select group of suppliers – generally, this occurs once the Council has completed its appointment of such suppliers in accordance with this Policy, and can include either:

- a standing offer from a pool of suppliers for the provision of goods and services on agreed terms; or
- the prequalification of certain suppliers who may or may not be engaged on terms to be agreed.

Once a panel has been established, the Council may purchase the particular goods and/or service through such panel arrangements.

A panel contract must be first endorsed by Council including the extent of goods and services and any value limit or conditions applicable to any particular contract, purchase or group/category of purchase.

An Authorised Officer may utilise a panel contract for direct purchasing of goods and services of any value within approved budget and authorisation limits.

Strategic Alliances

This is where the Council undertakes procurement through contract arrangements already established and administered by other organisations, including:

- LGA Procurement;
- a purchasing group of which the Council is (or becomes) a member;
- Procurement Australia;
- State Government contracts.

A Strategic alliance must first be endorsed by Council including the extent of goods and services and any value limit or conditions applicable to any particular alliance, purchase or group/category of purchase.

An Authorised Officer may utilise a strategic alliance for direct purchasing goods and services of any value within approved budget and authorisation limits.

A panel contract or strategic alliance will not require endorsement by Council where the panel or alliance is administered by the Local Government Association or under an arrangement between the constituent councils of a s43 subsidiary with which Council is associated (i.e. Limestone Coast Local Government Association).

6. PROCUREMENT STRUCTURE

The appropriate method of procurement will be determined by reference to a number of factors, including:

- *Value of the Purchase (all values exclusive of gst)*

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Value of Purchase (\$)	Possible Method of Procurement	Assessment/Purchasing Decision Making Delegations
Not exceeding \$2,000	Direct Purchasing	Authorised Officer - up to \$ limit
Not exceeding \$10,000	Obtain at least 2 Quotations (3 written quotes over \$5,000)	Authorised Officer - up to \$ limit
Not exceeding \$50,000	Request for Quotation (RFQ)	Authorised Officer - up to \$ limit
In excess of \$20,000	Request for Expression of Interest (REOI)	N/A - refer RFQ/RFT limits
In excess of \$50,000	Request for Tender (RFT)	CEO up to \$100,000 Council - above \$100,000
Budget	Direct Purchasing (Formal Supply Contract)	Authorised Officer - up to \$ limit CEO – up to Budget
	Panel Contracts	Authorised Officer - up to \$ limit CEO – up to Budget
	Strategic Alliances	Authorised Officer - up to \$ limit CEO – up to Budget
<p>In accordance with Clause 2 Definitions:</p> <p>Authorised Officer means a Council Officer with formal (sub)delegation and/or financial authorisation granted by written instrument from the Chief Executive Officer to enter into contracts and transactions to a specified value and unless contrary provisions apply includes the Chief Executive Officer and General Managers.</p>		

The value of the purchase will be calculated as follows:

- *single one-off purchase* – the total amount, or estimated amount, of the purchase (excluding GST);
- *multiple purchases* – the gross value, or the estimated gross value, of the purchases (excluding GST); or
- *ongoing purchases over a period of time* – the annual gross value, or the estimated annual gross value, of the purchases (excluding GST).
- *purchase including a trade-in/changeover* – the gross changeover value being the gross value of the item being purchased minus the value of the traded-in/changed-over

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Noting always that all procurements and disposals are undertaken to give effect to and implement Council's plans and objectives within the parameters of Council's endorsed Budget and/or a specific resolution of Council.

- *cost of an open market approach versus the value of the acquisition and the potential benefits;*
- *the particular circumstances of the procurement activity;*
- *the objectives of the procurement;*
- *the size of the market and the number of competent suppliers;*
- *the Council's leverage in the marketplace;*
- *time constraints;*
- *a holistic assessment of the risks associated with the relevant activity and /or project, including the risk profile of the procurement and any risks associated with the preferred procurement method.*

For the purpose of this clause 6, any variation in determining the procurement method in accordance with the values prescribed in the above table must be endorsed by the Chief Executive Officer and be accompanied by detailed written reasons of the relevant factors.

7. CONSIDERATIONS PRIOR TO DISPOSAL OF LAND AND ASSETS

Any decision to dispose of Land and Assets will be made after considering (where applicable):

- *the usefulness of the Land or Asset;*
- *the current market value of the Land or Asset;*
- *the annual cost of maintenance;*
- *any alternative future use of the Land or Asset;*
- *any duplication of the Land or Asset or the service provided by the Land or Asset;*
- *any impact the disposal of the Land or Asset may have on the community;*
- *any cultural or historical significance of the Land or Asset;*
- *the positive and negative impacts the disposal of the Land or Asset may have on the operations of the Council;*
- *the long term plans and strategic direction of the Council;*
- *the remaining useful life, particularly of an Asset;*
- *a benefit and risk analysis of the proposed disposal;*
- *the results of any community consultation process;*
- *any restrictions on the proposed disposal;*
- *the content of any community land management plan; and*
- *any other relevant policies of the Council.*

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Consideration given to these matters will be recorded in Council's corporate records management system and in the case of a decision to dispose of Land, will be presented in a report at a meeting of Council prior to the disposal decision being made.

8. DISPOSAL METHODS

Land disposal

The Council may resolve to dispose of Land.

Where the Land forms or formed a road or part of a road, the Council must ensure that the Land is closed under the Roads Opening and Closing Act 1991 (SA) prior to its disposal.

Where Land is classified as community land, the Council must:

- undertake public consultation in accordance with the Act and the Council's public consultation policy; and
- ensure that the process for the revocation of the classification of Land as community land has been concluded prior to its disposal; and
- comply with all other requirements under the Act in respect of the disposal of community land.

Where the Council proposes to dispose of Land through the grant of a leasehold interest, the Council must have complied with its obligations under the Act, including its public consultation obligations under Section 202 of the Act.

The Council will, where appropriate, dispose of Land through one of the following methods:

- *open market sale* - advertisement for disposal of the Land through the local paper and where appropriate, a paper circulating in the State, or by procuring the services of a licensed real estate agent and/or auctioneer (following compliance with this Policy);
- *expressions of interest* - seeking expressions of interest for the Land;
- *select tender* - seeking tenders from a selected group of persons or companies;
- *open tender* - openly seeking bids through tenders, including public auction;
- *by negotiation* – with owners of land adjoining the Land or others with a pre-existing interest in the Land, or where the Land is to be used by a purchaser whose purpose for the Land is consistent with the Council's strategic objectives for the Land.

Selection of a suitable disposal method will include consideration of (where appropriate):

- the number of known potential purchasers of the Land;
- the original intention for the use of the Land;
- the current and possible preferred future use of the Land;
- the opportunity to promote local economic growth and development;
- delegation limits, taking into consideration accountability, responsibility, operation efficiency and urgency of the disposal;
- the total estimated value of the disposal; and
- compliance with statutory and other obligations.

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The Council will not dispose of Land to any Council Member or employee of the Council who has been involved in any process related to a decision to dispose of the Land and/or the establishment of a reserve price.

If Land is to be auctioned or placed on the open market or disposed of by an expression of interest or select tender, then (unless the Council resolves otherwise) an independent valuation must be obtained to establish the reserve price for the Land. The independent valuation must be made no more than 6 months prior to the proposed disposal.

If Land is to be disposed of via direct sale, then (unless the Council resolves otherwise) an independent valuation must be obtained to ensure that an appropriate market value is obtained. The independent valuation must be made no more than 6 months prior to the proposed disposal.

An independent valuation will not be required for a disposal where a value estimation being for less than \$25,000 has been prepared and documented for the Land.

The Council will seek to dispose of Land by whichever method is likely to provide the Council with a maximum return at or near current market valuation, unless there are reasons for the Council to accept a lesser return which is consistent with the Council's overall strategic direction. These reasons must be documented in writing.

If the disposal is not to be on the open market, the disposal amount should have due regard to the value of the Land (independent or estimation) and the recovery of associated costs necessary to achieve the transaction.

Assets disposal

The sale of Assets will be the responsibility of the relevant General Manager who is responsible for those Assets.

The Council will, where appropriate, dispose of Assets through one of the following methods:

- *trade-in* – trading in equipment to suppliers
- expressions of interest – seeking expressions of interest from buyers;
- *select tender* – seeking tenders from a selected group of persons or companies;
- *open tender* – openly seeking bids through tenders;
- *public auction* – advertisement for auction in a paper circulating in the area, or procuring the services of an auctioneer (following compliance with this Policy).

Selection of a suitable method will include consideration of (where appropriate):

- the public demand and interest in the Asset;
- the method most likely to return the highest revenue;
- the value of the Asset;
- the costs of the disposal method compared to the expected returns; and
- compliance with statutory and other obligations.

 City of Mount Gambier	P420 PROCUREMENT, & DISPOSAL OF LAND AND ASSETS	Version No:	3
		Issued:	21/02/2017
		Next Review:	November 2019

Consideration will be given to direct disposal of Minor Plant and Equipment to a community/sporting group(s) where it is considered that such disposal provides a cost/service benefit to Council. Other groups may be provided with opportunity to participate in the disposal where the administrative resources necessary for such participation are not considered to outweigh or exceed the benefit/savings to be achieved or the Asset value.

Elected Members and employees of the Council will not be permitted to purchase Assets unless the purchase is via an open tender process or a public auction, and the tender submitted or bid made is the highest.

Purchasers of Assets must be required to agree in writing that before purchasing any Asset that no warranty is given by the Council in respect of the suitability and condition of the Asset for the purchaser and that the Council will not be responsible for the Asset in any respect following the sale.

9. CONSULTATION

The Council must undertake public consultation in respect of its proposed disposals in accordance with the requirements of the Act and its public consultation policies at all times.

10. RECORDS

The Council must record reasons for utilising a specific procurement or disposal method in each activity and where it uses a procurement or disposal method other than a tendering process.

11. EXCEPTIONS TO THIS POLICY

This Policy contains general guidelines to be followed by the Council in its procurement and disposal activities. There may be emergencies, or procurements or disposals in which a tender process will not necessarily deliver the best outcome for the Council, and other market approaches may be more appropriate.

In certain extenuating circumstances, the Chief Executive Officer may waive application of this Policy and pursue a method which will bring the best outcome for the Council.

Such circumstances might include, but not be limited to:

- emergency situations threatening life and property; or
- where the supply market is known; or
- timing constraints

The Chief Executive Officer must record in writing reasons for waiving application of this Policy.

This clause is not intended to override or avoid any other restrictive/prohibitive policy, delegation or other statutory or documented provisions or requirements.

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12. DELEGATIONS

This policy is to be administered with regard to and consistent with duly made delegations, sub-delegations and financial authorisations of the Council and Chief Executive Officer.

13. PRUDENTIAL REQUIREMENTS

This policy is to be administered with regard to and consistent with Council's Prudential Management Policy, practices and procedures and s48 of the Local Government Act 1999.

14. RISK MANAGEMENT

This policy is to be administered with regard to and consistent with Council's Risk Management Framework Policy and risk management practices and procedures.

15. REVIEW OF POLICY

This Policy shall be reviewed at least once during each term of Council, and shall be reviewed and presented to Council following it's first 12 months of operation. Council may revise or review this Policy at any time (but not so as to affect any process that has already commenced).

16. FURTHER INFORMATION

This Policy will be published on the Council's website and will be available for inspection at the principal office of the Council.

A copy of this Policy will be provided to any person upon request following payment of a fee as prescribed in Council's Schedule of Fees and Charges.

 City of Mount Gambier	P420 PROCUREMENT, & DISPOSAL OF LAND AND ASSETS	Version No:	3
		Issued:	21/02/2017
		Next Review:	November 2019

File Reference:	AF11/1740
Applicable Legislation:	Local Government Act 1999 (s49)
Reference: Community Plan	
Related Policies:	C375 Provision and Replacement of Council Vehicles F225 Fraud and Corruption Prevention R305 Risk Management Policy R180 Records Management Policy
Related Procedures:	
Related Documents:	LGA Procurement Handbook Procurement Contracting Document Templates (AF11/1901) WHS Policies/Document Templates (AF13/175)

17. DOCUMENT DETAILS

Responsibility:	Manager - Governance & Property
Version:	3.0
Last revised date:	17 th January, 2017
Effective date:	21 st February, 2017
Minute reference:	21 st February, 2017, Corporate and Community Services Item 4
Next review date:	November, 2019
<u>Document History</u>	
First Adopted By Council:	25 th November 2014, 15 th March 2016
Reviewed/Amended:	18/2/1999 Superseded Policy Q110, C250 20/7/2000 Superseded Policy Q115, 15 th March 2016, 21 st February, 2017



Procurement Plan

Cleaning Services – Lady Nelson Visitor and Discovery Centre, Main Corner Complex, Riddoch Art Gallery, Library

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1. Executive Summary

Contact Details	
Department / Business Unit	Community Services
Contact Person	Barbara Cernovskis, Manager Community Services & Development
Contact Details	city@mountgambier.sa.gov.au

Procurement Details	
Procurement Method	<input checked="" type="checkbox"/> Request for Tender <input type="checkbox"/> Request for Proposal <input type="checkbox"/> Direct Negotiations <input type="checkbox"/> Selective Tender <input type="checkbox"/> Two Stage – including EOI
Procurement Value (Inc. GST)	\$150,000.00 per annum
Funding Status	Funding Approved as per Council's 2015/2016 Operating Expenditure Budget Allocation
Contract Term (and any extension options)	2 years (option to extend for an additional 2 years)
Procurement Description (Brief)	Cleaning of the Lady Nelson Visitor and Discovery Centre, Main Corner Complex, Riddoch Art Gallery, Library

2. Proposed Procurement

2.1 Background

The Lady Nelson Visitor and Discovery Centre, Main Corner Complex, Riddoch Art Gallery and Library currently have individual cleaning arrangements (non-contracted). This presents a potential risk to Council and an opportunity now exists to consolidate and contract to one provider.

Benefits of merging these services to one contract will allow Council primary control and greater procurement outcomes e.g. local employment/supplier opportunities, environmental impact considerations, WHS compliance, and superior value for money outcomes.

As these Council sites are high profile public areas, it is imperative that cleaning standards are maintained and upheld daily. A critical success factor will be the effective and operative relationship formed between all stakeholders involved.

2.2 Procurement Objectives

Council requires professional cleaning services at an affordable cost which delivers a high quality of service that reflects a positive, credible and professional image of Council.

As Mount Gambier is the second most populous city in South Australia and a popular tourist destination due to its geographical features, particularly its volcanic and limestone features, the Blue Lake, parks and gardens, caves and sinkholes, the presentation of Council's facilities to local residents and to visitors directly reflects on the Council.

Full commitment to working with Council to provide the best value for money cleaning service while maximising opportunities for local business and promoting and reflecting community pride is paramount.

Standards will be measured through achievement of conclusive key performance indicators.

2.3 Scope

Cleaning services at The Lady Nelson Visitor and Discovery Centre, Main Corner Complex, Riddoch Art Gallery and Library encompasses all indoor activities typically required to clean commercial and public buildings including administration areas but does not include the maintenance of exterior areas such as parking lots, grounds, or picnic areas.

Actual cleaning expenditure as per 2014/2015 financial year:

Lady Nelson Visitor and Discovery Centre	\$28,022.76	Total: \$147, 011.80
Main Corner Complex	\$29,368.20	
Library	\$73,858.71	
Riddoch Art Gallery	\$15,762.80	

2.4 Estimated Value

Cost savings due to amalgamation are expected to occur in business administration (across all sites), cleaning consumables (through centralised purchasing), and will provide improved procurement market positioning opportunities ensuring value for money. Light, power and water will be supplied by Council at the Council's expense.

As the identified sites are high profile public areas, it is paramount that cleaning standards are maintained to a very high standard or the organisation will be at risk of negative public scrutiny. A contract for services for a period of two years with the option to extend the contract based on meeting key performance indicators is recommended.

The contractor will supply all 'fit for purpose' cleaning equipment (negating whole-of-life considerations by Council) for the term of the contract as per fixed term pricing. Council will supply cleaning chemicals and consumables (e.g. toilet paper), which will afford sustainable procurement opportunities and aggregated purchasing locally.

Based on stakeholder engagement and market research it is envisioned that Council could expect as much as \$20,000.00 in total savings which equates to a 13% decrease in operational expenditure.

2.5 Funding

The approved Council budget allocation for the 2015/2016 financial year:

Lady Nelson Visitor and Discovery Centre	\$29,000.00	Total: \$150,000.00
Main Corner Complex	\$30,000.00	
Library	\$74,000.00	
Riddoch Art Gallery	\$17,000.00	

3. Procurement Governance

3.1 Governance Structure

The Corporate and Community Services Committee has been established to review recommendations received from the administration, sub-committees, other reporting committees, and the committee itself, relating to, but not limited to, matters falling within the following broad headings:

- Corporate management/governance
- Civic administration
- Community services & relations
- Intergovernmental and industry relations
- Economic development
- Any Sub-committee established by the Committee

The governance framework applied by the Corporate and Community Services Committee is based on principles including: accountability, transparency/openness, integrity, stewardship, efficiency and leadership.

3.2 Conflict of Interest & Confidentiality

Any circumstances or relationships which will constitute a conflict or potential conflict of interest must be declared during the procurement process (refer Attachment 1 – Conflict of Interest/Confidentiality Declaration).

The Council will not be taken to have breached any obligation to keep information provided by the parties involved in this procurement process to the extent that the information:

- a) is disclosed by the Council to its advisers, officers, employees or subcontractors solely in order to conduct the procurement process or to prepare and manage any resultant agreement;
- b) is disclosed to the Council's internal management personnel, solely to enable effective management or auditing of the procurement process;
- c) is published in the agenda for an open meeting to consider and determine the outcome of the procurement process;
- d) is authorised or required by law to be disclosed;
- e) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality; and
- f) is disclosed after the Council has either completed the procurement process or terminated the plan.

3.3 Policies and Regulations

In order to effectively manage the proposed procurement process, the following policies have been considered and applied:

- Section 49 of the Local Government Act 1999
- Strategic Plan
- Community Plan – The Futures Paper 2016-2020
- P420 Procurement, & Disposal of Land and Assets
- Internal Financial Controls Guide
- Risk Management Policy
- WHS Contractor Management Policy, Procedure and Guide
- Chemical and Hazardous Substance Procedure
- Record Procedure

4. Market Analysis

4.1 Market Research – Internal

Internal consultation with Site Managers and employees was conducted in a series of meetings and by asking strategic questions to gain valuable information as to the requirements, challenges and expectations.

The existing arrangement is unsatisfactory at all sites – there have been numerous communication issues, pricing variances, and customer complaints (agreed that this is due to no contractual arrangement and lack of effective management systems).

Consultation with current service providers brought valuable feedback on how Council could improve a working relationship with contractors and insight into realistic timeframes for providing comprehensive and high standard service delivery. The current service providers (three companies in total) all have other business interests locally and in other regional areas.

Local residents and Visitors were approached for one-on-one surveys to ascertain their expectations regarding the cleanliness of sites and what opportunities there may be for improvements or innovation.

4.2 Market Research – External

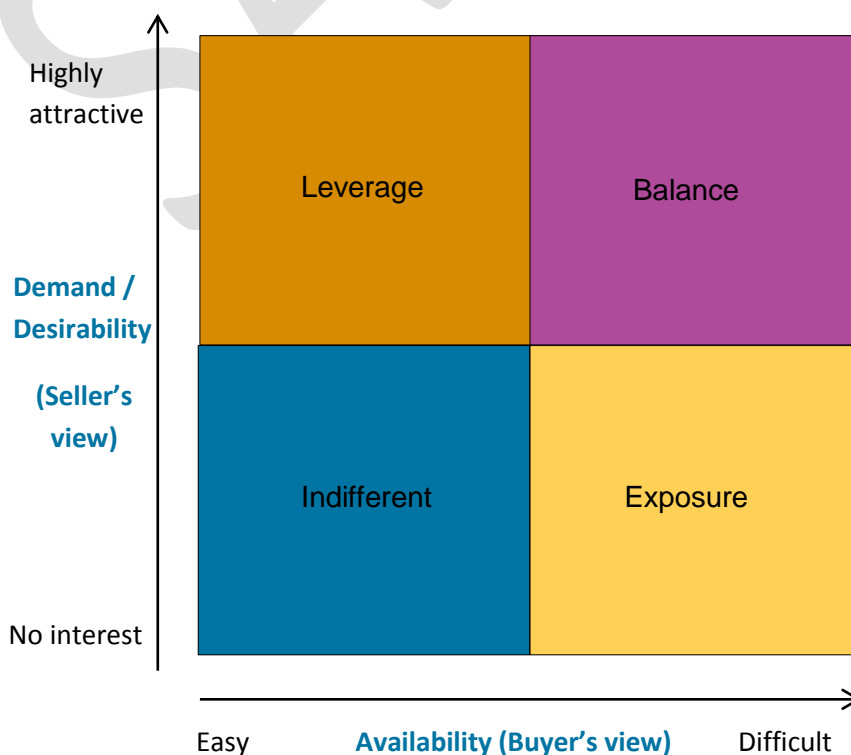
Advice on cleaning contract arrangements was sought from other Council's in regional areas of similar size and geographical location from metropolitan areas.

Research on Tender websites indicated that there are numerous companies that would be potentially interested in tendering for cleaning services in Mount Gambier offering increased local employment opportunities and a competitive bidding market.

The amalgamation of Council sites in one Contract for Services will be attractive to potential service providers not only for the dollar value but also for business growth in regional areas and to expand company profile.

Analysis of the data collected places the procurement in the leverage quadrant on the below illustrated market model due to numerous qualified service providers currently in the market who are looking for reliable sources of income in economic uncertainty; seeking ongoing business opportunities with Council and looking to 'break' into regional areas.

Market Model



5. Risk and Opportunity Analysis

Summarised in the table below:

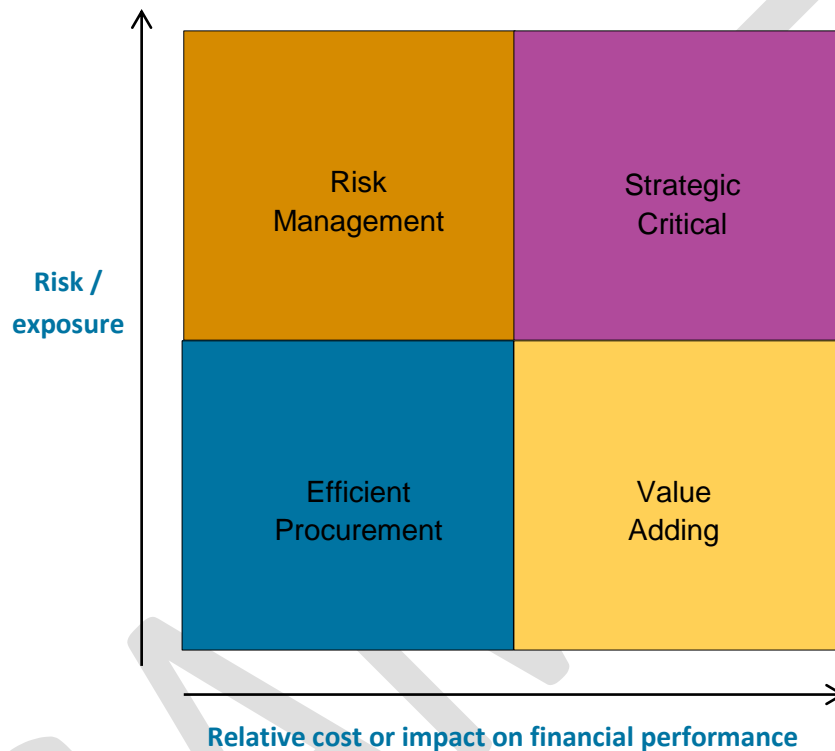
Risk Identification	Risk Level	Risk Treatment	Risk Management Measures	Monitoring and Evaluation
Identifying the need	High	Ensure outcomes are considered	Implement best practice policies, guidelines	Effective controls and review process
Developing the specification	High	Ensure specification is consistent with need analysis	Use functional or performance specifications	Market Knowledge
Selecting the procurement method	Moderate	Seek industry participation, provide staff with appropriate training and experience	Procurement policies, guidelines and practices	Review process
Contract documents	Moderate	Gain commercial expertise, assess and allocate risks appropriately	Planning and Preparation	Review process
Seeking, clarifying and closing offers	Moderate	Implement standard templates, procedures, allow adequate time.	Policy and Procedure	Regular Auditing
Evaluating offers	High	Provide staff with appropriate tender assessment and evaluation training and experience	Policy and Procedure, Code of Conduct	Maintain, Audit and Review and Monitor Performance
Selecting the preferred service provider	High	Perform financial, technical and company evaluations before awarding the contract	Reference Checks	Evaluation Process
Current service providers (non-contracted) aborting work or providing poor standards.	High	Communication and consultation between parties	Contingency plan to utilise prequalified contractors	Ongoing
Bad public relations if local contractors are not engaged	Moderate	Set evaluation criteria weighting to advantage local businesses opportunities	Evaluation Team to implement	Evaluation Team to review
Breach of knowledge/confidentiality agreements	Low	Prevention HR strategies in place	Briefing/debriefing, code of conduct, security checks	Ongoing
Contract management	High	Good record keeping and documentation, maintain an ethical environment, check that all obligations are covered and upheld	Policy and Procedure	Ongoing
Standard of cleaning dropping during transitional period	Moderate	Solid induction process including good familiarity with sites, clear contract specification	Contract Management as per contract management policy/procedure	Inspections/Auditing

6. Procurement Strategy

6.1 Market Approach

The best method to approach the market is an open Request for Tender (RFT) – based on the below model, the procurement sits in the high value, low risk quadrant. Large market capacity will allow value for money by maximising commercial advantage. Tactics include opportunities to centralise business across the Council, short term contract to maintain competition and to foster supplier relationships. Competitive bidding will exploit market conditions/trends.

Supply positioning model



6.2 Type of Contractual Arrangement

The Council will enter into a written Contract for Services with the successful Tenderer for a period of two years with the option to extend the contract for a further two years based on meeting Council key performance indicators. Council's standard Contract for Services template will be utilised. Terms to include fixed price monthly payments. The Contract for Service will not be binding until both parties have signed the agreement.

7. Evaluation

In assessing Tenders, the Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):

1. Insurance;
2. Compliance with WHS requirements;

3. Customer service experience and capacity;
4. The tendered fixed prices;
5. The level of risk associated with negotiation of an acceptable Contract for Services;
6. Environmental management systems;
7. Degree and compliance with the requirements set out in the RFT and the Tender documents; and
8. Such other matters that Council considers relevant, including:
 - a) Details of current and previous relevant experience in the provision of the services;
 - b) The provision of any aspect of the services by sub-contractors (if applicable);
 - c) Financial resources; and
 - d) Current and future contracts/workload

Tender responses will be assessed against a pre-determined and documented set of criteria (refer Attachment 2 – Tender Evaluation Form) individually by a panel comprising three Council Officers of which one has not been involved in the development of the Tender specification or will be involved in the management of the Contract for Services.

Evaluation results will be summarised and a report tabled with recommendation as an agenda item for Council pending a decision.

8. Procurement Timeframe

The proposed timing for the Procurement process is as follows:

Activity	Target Date	Responsibility
Procurement plan submitted for approval	15/03/2016	Procurement Officer
Procurement plan approved	24/03/2016	Chief Executive Officer
Market document drafted	15/04/2016	Procurement Officer
Evaluation and probity plan drafted	15/04/2016	Procurement Officer/Manager CSD
Tender advertised	22/04/2016	Communications Officer
Pre-tender briefing	09/05/2016	Procurement Officer
Tender closes	20/05/2016	Procurement Officer
Evaluation	20/05/2016	Evaluation Team
Short listing and presentations	02/06/2016	Procurement Officer/Manager CSD
Negotiations	03/06/2016	Procurement Officer/Manager CSD
Evaluation report	17/06/2016	Procurement Officer
Evaluation report approved	24/06/2016	Council/Chief Executive Officer
Contract award	01/07/2016	Procurement Officer

De-briefing unsuccessful tenderers	01/07/2016	Procurement Officer
Contract management plan completed	15/07/2016	Contract Manager
Transition plan Completed	15/07/2016	Contract Manager
Contract details published	15/07/2016	Contract Manager
Contract commencement	15/08/2016	Contract Superintendent/Contractor

9. Contract Management

It is imperative that the Contract for Services is effectively managed to ensure the deliverables are provided to the required standard, within the agreed timeframe, and to the cost provided.

The Contract Manager will prepare a detailed and comprehensive contract management plan as per the Contractor Management Procedure that will identify and manage risks and assign responsibilities. The Contract Manager will also facilitate communications with stakeholders, manage contract relationships, manage unresolved issues, manage contract administration and recording, manage contract performance, and negotiate contract variations.

A transition plan (in and out) will be developed by the Contract Manager which will identify transition activities required and appropriate timeframes.

10. Approvals

Proposed approvals required:

Approval required:	By Whom:
Procurement Plan	Procurement Officer
Procurement Plan Deviations	Procurement Officer
Purchase Recommendation	Procurement Officer
Specification	Manager CSD/Procurement Officer
Evaluation and Probity Plan	Manager CSD/Procurement Officer
Negotiation Plan	Procurement Officer
Risk Management Plan	Contract Manager/Procurement Officer
Contract	Contract Manager/Procurement Officer
Contract Management Plan	Contract Manager/Procurement Officer
Contract Variations	Contract Manager/Procurement Officer

11. Declaration

On approval of this Procurement Plan the following documents will be submitted to the nominated authority for approval.

Nominated Authority Position / Title	
Mandated Documents	<input type="checkbox"/> Market Document <input type="checkbox"/> Evaluation and Probity Plan <input type="checkbox"/> Contract Management Plan
Other Documents (if required)	<input type="checkbox"/> Negotiation Plan <input type="checkbox"/> Transition Plan <input type="checkbox"/> Implementation Plan
Signature of Nominated Authority	<hr/> Date:

Notes



City of
Mount Gambier

Tender for

[Insert description of services tendered]

Open request for tenders

[Drafting Note: All sections highlighted in RED are to be completed by the Council. All "Drafting Note" text highlighted in RED is for the Council's information and must be deleted once read]
[Delete RED text once read]

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1. Structure of this RFT

This RFT is comprised of five sections, being:

- 1.1 Section A - Background and General Information to Tenderers
- 1.2 Section B - Conditions of Tendering
- 1.3 Section C - Contract for Services
- 1.4 Section D - Specifications **or** Project Brief *[Drafting Note – select one]*
- 1.5 Section E - Tender Response Schedules

2. Section A – Background & General Information

2.1 City of Mount Gambier invites tenders from Tenderers for the provision of *[insert detailed description of services and facility at which the Services is to be provided, if applicable]* (the **Services**). The Council will enter into a Contract for Services with the successful Tenderer.

2.2 *[Provide brief background regarding the Council's requirements for the provision of the Services, including the following (if applicable):*

2.2.1 *the area(s) to be serviced;*

2.2.2 *Council's aims and objectives regarding the Services;*

2.2.3 *general commercial terms of the proposed Contract between the successful Tenderer and the Council.]*

[Drafting Note – if the Council is establishing a panel for the Services, please insert a comment to that effect here] [Delete RED text once read]

3. Section B – Conditions of Tendering

3.1 Definitions

In this RFT, the following terms shall, unless inconsistent with the context, have the meanings indicated:

- 3.1.1 A reference to a **clause** is a reference to a clause of this RFT.
- 3.1.2 **Closing Date** means the time and date specified in clause 3.2.3, or such later time and date as may be notified in writing to Tenderers by the Council.
- 3.1.3 **Conditions of Tendering** means these Conditions of Tendering as attached to Section B of this RFT.
- 3.1.4 **Conforming Tender** means a Tender described in clause 3.5.1.
- 3.1.5 **Contract for Services** means the contract for the provision of the Services as attached to Section C of this RFT, as may be subsequently amended by agreement between the Council and the successful Tenderer pursuant to clause 3.9.
- 3.1.6 **Nominated Contact Person** means the person named in clause 3.3.1
- 3.1.7 **Non-Conforming Tender** means a Tender does not meet the requirements set out in this RFT and/or the Tender Documents.
- 3.1.8 **Preferred Tenderer** means the Tenderer referred to in clause 3.9.
- 3.1.9 **RFT** means this Request for Tender.
- 3.1.10 **Services** means the services sought to be purchased by the Council pursuant to this RFT.
- 3.1.11 **Specifications or Project Brief** means the specifications specified in Section D of this RFT. *[Select one]*
- 3.1.12 **Tender** means a tender submitted by a Tenderer pursuant to this RFT.
- 3.1.13 **Tender Documents** means the documents specified in clause 3.2.1.
- 3.1.14 **Tender Process** means the process for calling, receiving, evaluating and awarding of Tender(s) as proposed in clauses 3.2.7 and 3.2.8 of these Conditions of Tendering.

- 3.1.15 **Tender Response Schedules** are the forms attached to Section E of this RFT.
- 3.1.16 **Tenderer** has the meaning given to it in clause 3.2.2.
- 3.1.17 **Tenderer's Representative** means the person nominated by a Tenderer under clause 3.3.2.

3.2 Request for Tenders

The Council seeks Tenders from Tenderers for the provision of the Services, which are further described in the Tender Documents.

3.2.1 *Tender Documents*

The Tender Documents are comprised of:

- 3.2.1.1 these Conditions of Tendering;
- 3.2.1.2 the Contract for Services;
- 3.2.1.3 the Specifications *or* Project Brief [*select one*]; and
- 3.2.1.4 the Tender Response Schedules.

*[Drafting Note – please amend if additional documents are to be added to this]
[Delete RED text once read]*

3.2.2 *Obtaining a Copy of this RFT*

This RFT is open to any organisation or person who registers its interest and details with the Council and thereby obtains a copy of the Tender Documents (each such party is a **Tenderer**). Parties obtaining the Tender Documents (in soft copy) will be required to register their name and contact details at the time of issue of the documents.

[Drafting Note – please choose between Option 1 and Option 2. You must delete the unused option (ie electronic lodgement or hardcopy lodgement)] [Delete RED text once read]

3.2.3 *[Option 1] Electronic Lodgement of Tenders*

- 3.2.3.1 Tenders must be lodged electronically via Council's email address tenders@mountgambier.sa.gov.au or SA Tenders [*Drafting Note – Select one option*] before the Closing Date [*Drafting Note – Insert time and date*] and in accordance with the tender lodgement procedure set out in this clause.

3.2.3.2 Where there is any inconsistency between the lodgement procedure set out on the SA Tenders website and those set out in this RFT, this RFT will prevail.

[Drafting Note – Please delete if RFT is administered on Council's website] [Delete RED text once read]

3.2.3.3 Tenders lodged by any other means or to any other email address will not be considered.

[Drafting Note – Please note that this clause does not allow for Tenders to be submitted in hardcopy. Insert any other requirements Council may have in respect of Tender lodgement, including:

- *file format*
- *naming conventions (ie that the Tender is clearly endorsed with a particular title and identification number); and*
- *file sizes] [Delete RED text once read]*

3.2.3.4 Tenderers warrant that they have taken all reasonable steps to ensure that their Tenders are free of viruses or any other matter which would cause harm to the Council's website or systems.

3.2.3.5 Tenderers acknowledge that it is their sole responsibility to ensure that sufficient time has been allowed for Tender lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Date.

3.2.3.6 If Tenderers have any problem uploading their Tender, they must contact the Nominated Contact Person prior to the Closing Date. Any failure to do so will result in the Tender being a Non-Conforming Tender.

3.2.3.7 A Tender is deemed to have been lodged by the Tenderer when the Tender has been received by SA Tenders server or the Council's server.

[Drafting Note – Select one option] [Delete RED text once read]

[Option 2] Lodgement of Tenders

3.2.3.8 Tenders must be delivered to the Tender Box at the Council prior to *[insert time – generally 5pm]* on *[insert date]* (the Closing Date).

3.2.3.9 Applications must be enclosed in an envelope and marked “CONFIDENTIAL” and be addressed as follows:

Tender Box

Application for Tender for *[insert description of Services]*

[Insert Council name]

[Insert Council address]

Closing Date: *[insert time and date]*

3.2.3.10 Facsimile transmissions of Tenders will not be accepted.

3.2.3.11 Tenderers are required to lodge an original Tender plus three copies, each of which (including copies of all supporting documentation) is to be certified by the Tenderer to be true copies of the Tender.

3.2.4 *Late Tenders*

Tenders received after the Closing Date **WILL NOT** be considered or accepted.

3.2.5 *Extension of Time for the Submission of Tenders*

3.2.5.1 The Council may, in its absolute discretion, no less than two business days before the Closing Date, extend the Closing Date by notice in writing to the Tenderers.

3.2.5.2 A Tenderer may request the Council to extend the Closing Date for the submission of a Tender by written application to the Nominated Contact Person.

(a) Any such requests must be received by the Nominated Contact Person at least five business days prior to the Closing Date, and must provide sufficient reasons to support the request.

(b) It is entirely at the Council’s discretion as to whether an extension is granted.

3.2.6 *Tender Validity Period*

3.2.6.1 All Tenders will remain open for acceptance by the Council for a period of not less than three months after the Closing Date.

[Drafting Note – please amend this clause if the Council wishes to lengthen or shorten the 3 month period] [Delete RED text once read]

3.2.6.2 Once submitted, a Tenderer cannot withdraw its Tender without the prior written consent of the Council, unless the Tender is withdrawn in writing before the Closing Date.

3.2.7 *Proposed Tender Process*

[Drafting Note – insert proposed process – eg short-listing of preferred Tenderers, negotiations, etc. This may depend on the relevant Council project] [Delete RED text once read]

3.2.8 *Proposed Timing of Tender Process*

The proposed timing for the Tender Process is as follows:

[Drafting Note – the following may need to be amended to conform with Tender Process] [Delete RED text once read]

Request for Tenders	[insert date]
Closing Date	[insert date]
Notification to successful Tenderer	[insert date] <i>(indicative)</i>
Execution of Contract for Services	[insert date] <i>(indicative)</i>
Commencement of Provision of Services	[insert date] <i>(indicative)</i>

3.2.9 *Copying Tenders*

Tenderers must not use this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) for any purpose other than to prepare a Tender. This includes not copying this RFT or the RFT Documents (including any attached technical and other written information supplied by the Council) and providing a copy to any third party not involved in the preparation of a Tender.

3.3 Communication between the Parties

3.3.1 *Enquiries or Requests for Information or Clarification*

- 3.3.1.1 Any enquiries or requests for information or clarification regarding this RFT or the Tender Documents must be made in writing and addressed to the Nominated Contact Person.

The Nominated Contact Person is *[insert name and contact details of Nominated Contact Person]*.

****DO NOT SEND YOUR TENDER RESPONSE TO THIS ADDRESS****

*[Drafting Note – The Council may put timeframes in place regarding the cut off point for answering questions prior to the Closing Date. The clause needs to clearly stipulate that Council is not under any obligation to respond to questions raised within, for example, three days of the Closing Date]
[Delete RED text once read]*

- 3.3.1.2 The Nominated Contact Person may (but is not obligated to) respond to a Tenderer's enquiries or requests for information or clarification.
- 3.3.1.3 If the Council provides any information to a Tenderer by way of clarification, then the Council reserves the right to provide that information to other Tenderers.
- 3.3.1.4 No statement made by the Nominated Contact Person, or any other representative of the Council should be construed as modifying this RFT or any of the Tender Documents, unless confirmed in writing by the Nominated Contact Person.

3.3.2 *Tenderer's Contact Person*

- 3.3.2.1 Tenderers are required to nominate a person to be the authorised contact person and supply an address for the service of any notices for the purpose of this RFT (Tenderer's Representative).
- 3.3.2.2 Each Tenderer must notify the Council of its Tenderer's Representative within 10 business days of obtaining the Tender Documents.

[Drafting Note – please amend this clause if the Council wishes]

to lengthen or shorten the 10 business day period] [Delete RED text once read]

3.3.2.3 All communication with the Tenderer will be via the Tenderer's Representative.

3.3.3 *Site/Industry Briefing*

3.3.3.1 The Council may conduct a site/industry briefing. The briefing (if conducted) is intended to provide Tenderers with background information, and Tenderers are not to treat any statements made at the briefing as variations to this RFT.

3.3.3.2 The Council reserves the right to require all Tenderers to attend the site/industry briefing.

3.3.3.3 Details of the briefing will be provided to Tenderers at least seven business days prior to the briefing. Tenderers may be notified of the site/industry briefing by email, and Council may post the details of the briefing on the internet.

3.3.3.4 Each attending Tenderer must advise the Nominated Contact Person of the details of that Tenderer's attendees (including name and position) at least two business days before the briefing.

3.3.4 *Tenderer not to solicit the Council and its employees*

The Tenderer and its representatives must not interfere or attempt to interview or to discuss its Tender with Councillors or employees of the Council, other than the Nominated Contact Person. The Council reserves the right to reject any Tender submitted by a Tenderer which contravenes this clause.

3.4 **Tender Preparation**

3.4.1 *Tenderers to be informed*

Each Tenderer must, prior to submitting its Tender, become acquainted with the nature and extent of the Services to be undertaken, and make all necessary examinations, investigations, inspections and deductions.

3.4.2 *Evidence of Registration or Licensing*

Each Tenderer must (if applicable) be licensed or registered to perform the Services.

3.4.3 *Conflict of Interest*

Tenderers must inform Council of any circumstances or relationships which will constitute a conflict or potential conflict of interest if the Tenderer is successful. If any conflict or potential conflict exists, the Tenderer must advise how it proposes to address this.

3.4.4 *Use of Sub-contractors*

Where a Tenderer proposes to use resources from organisations other than the Tenderer itself, substantial information relating to the contractual arrangements for such resources must be detailed in the Tender, together with information on the relevant experience of such other organisation.

3.4.5 *Ombudsman Act*

Tenderers should be aware that the *Ombudsman Act 1972 (SA)* has been amended so that the definition of “administrative act” under that Act includes an act done in the performance of functions under a contract for services with a Council. That Act also includes powers enabling the Ombudsman to investigate matters in the public interest. The Tenderer must ensure compliance with all obligations arising under that Act and any other applicable legislation.

3.4.6 *Freedom of Information*

Tenderers should be aware that the *Freedom of Information Act 1991 (SA) (FOI Act)* gives members of the public rights to access documents of the Council. The FOI Act promotes openness in governance and accountability of government agencies and confers the public with a legally enforceable right to be given access to documents, including contracts entered into by the Council, except for those contracts or provisions which should be kept confidential for public interest purposes, the preservation of personal privacy or are commercial in confidence.

3.4.7 *Collusion*

The Tenderer must not collude with any other Tenderers or potential Tenderers.

3.4.8 *Tenderer's confidential information*

3.4.8.1 Subject to clauses 3.4.8.2 and 4, the Council will treat as confidential all Tenders submitted by Tenderers in connection with this RFT during the Tender process, the

evaluation of Tenders and any negotiations with preferred Tenderers.

3.4.8.2 The Council will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:

- (a) is disclosed by the Council to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant agreement;
- (b) is disclosed to the Council's internal management personnel, solely to enable effective management or auditing of the RFT process;
- (c) is published in the agenda for an open meeting to consider and determine the outcome of the Tender process;
- (d) is disclosed by the Council to the responsible Minister;
- (e) is authorised or required by law to be disclosed;
- (f) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality; or
- (g) is disclosed after the Council has either contracted with a Tenderer or terminated this RFT process.

3.5 Tender Documents

3.5.1 *Conforming Tenders*

A Conforming Tender is a Tender which meets all of the requirements set out in this RFT and the Tender Documents.

3.5.2 *Non-Conforming Tenders*

The Council is not required to, but may at its sole discretion, consider an incomplete, informal or a Non-Conforming Tender. Failure to respond to or meet any of the requirements set out in this RFT and the Tender Documents will result in the Tender being deemed a Non-Conforming Tender.

3.5.3 *Content of Tenders*

- 3.5.3.1 Tenderers are required to complete the Tender Response Schedules and submit them to the Council.
- 3.5.3.2 Tenderers can also supply any other additional information or documents. The Council may have reference to such additional information or documents in evaluating the Tenders.
- 3.5.3.3 All prices quoted by Tenderers in their Tender are:
 - (a) to be in Australian dollars;
 - (b) to be exclusive GST; and
 - (c) (if subject to rise and fall) to provide full details of how the rise and fall applies and the method of determining the price.
- 3.5.3.4 If a Tenderer proposes to provide the Services on a basis different to that envisaged by the Tender Documents (whether for reasons of innovation, efficiency or otherwise) that proposal should be fully documented and justified with the Tender. The Council does not warrant that any discussion with the Council's Nominated Contact Person prior to the Closing Date in relation to such a proposal will be taken into account in evaluating the Tenders.

3.6 **Acknowledgement by Tenderers**

Tenderers acknowledge that the Council:

- 3.6.1 makes no representations and offers no undertakings in issuing this RFT or the Tender Documents;
- 3.6.2 is not bound to accept the lowest Tender or required to accept any Tender;
- 3.6.3 may accept all or part of any Tender;
- 3.6.4 may require one or more Tenderers (but is not obliged to require all) to supply further information and/or attend a conference or interview;
- 3.6.5 may require one or more Tenderers (but is not obliged to require all) to make presentation(s);

- 3.6.6 may undertake “due diligence” checks on any Tenderer, including verifying references and/or referees, and undertaking company searches and credit checks;
- 3.6.7 will not be responsible for any costs or expenses incurred by the Tenderer arising in any way from the preparation and submission of its Tender;
- 3.6.8 accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this RFT;
- 3.6.9 will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of a Tender or prior to the signing of any Contract for Services or otherwise; and
- 3.6.10 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council in respect of the Tender Documents or this RFT, but will only be bound only by written advice provided by the Nominated Contact Person.

3.7 Council's Rights

The Council reserves the right to:

- 3.7.1 amend, vary, supplement or terminate this RFT at any time;
- 3.7.2 accept or reject any Tender, including the lowest price tender;
- 3.7.3 negotiate with any service provider on all or any part of the Services to be supplied pursuant to this RFT;
- 3.7.4 vary the timing and process referred to in clauses 3.2.7 and 3.2.8;
- 3.7.5 postpone or abandon this RFT;
- 3.7.6 add or remove any Tenderer;
- 3.7.7 accept or reject any Tenders whether or not they are Conforming Tenders;
- 3.7.8 accept all or part of any Tender;
- 3.7.9 negotiate or not negotiate with one or more Tenderers; and/or
- 3.7.10 discontinue negotiations with any Tenderer.

3.8 Tender Evaluation

3.8.1 In assessing Tenders, the Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):

3.8.1.1 insurance;

3.8.1.2 compliance with work health and safety requirements;

3.8.1.3 customer service experience and capacity;

3.8.1.4 the tendered prices, including the proposed pricing structure;

3.8.1.5 the level of risk associated with negotiation of an acceptable Contract for Services;

3.8.1.6 environmental management systems (if applicable);

3.8.1.7 degree of compliance with the requirements set out in this RFT and the Tender Documents; and

3.8.1.8 such other matters that Council considers relevant, including:

(a) details of current and previous relevant experience in the provision of the Services;

(b) the provision of any aspect of the Services by sub-contractors (if applicable);

(c) financial resources;

(d) staff resources; and

(e) current and future contracts/workload.

3.8.2 *Use of Tender Documents*

The Council may use, retain and copy any information contained in the Tenders for the evaluation of Tenders and for the finalisation of the provisions of the Contract for Services.

3.8.3 *Debriefing of Tenderers*

If requested, Tenderers may be debriefed against the Council's evaluation criteria. Tenderers will not be provided with information concerning other Tenderers, apart from publicly available information. No comparison with other Tenders will be made.

3.9 Acceptance of Tender

[Drafting Note – only include this clause 3.9 if the Council is establishing a panel for the services] [Delete RED text once read]

Each Tenderer acknowledges that it may be appointed to a panel of Suppliers to provide some or all of the Services. Accordingly, the Council reserves the right to negotiate a panel contracting arrangement with the successful Tenderers to supplement the contract terms and conditions.

[Drafting Note – if the Council is establishing a panel, use the Services Agreement which provides for a panel arrangement] [Delete RED text once read]

- 3.9.1 The Council reserves the right to negotiate different terms and conditions for the Contract for Services with any one or more Tenderers (each referred to as a **Preferred Tenderer**).
- 3.9.2 The Council and the Preferred Tenderer may (if required) enter into negotiations for the award and execution of a Contract for Services.
- 3.9.3 If, despite their best endeavours and acting in good faith, the Council and the Preferred Tenderer are unable to negotiate and agree on the terms of the Contract for Services, the Council reserves the right to negotiate with any other parties, including other Tenderers, for the provision of the Services.
- 3.9.4 The successful Tenderer will be notified in writing by the Council of the Council's acceptance of its Tender. The successful Tenderer must not make any oral or written public statements in relation to the awarding of a Contract for Services until written notice is received by the Tenderer.
- 3.9.5 The notification of the acceptance of Tender by the Council creates an obligation on the Council and the successful Tenderer to enter into the Contract for Services (subject to any variations agreed pursuant to this clause 3.9).
- 3.9.6 The successful Tenderer acknowledges and agrees that all intellectual property created by the successful Tenderer arising out of the provision of the Services belongs to the Council, and the successful Tenderer will do all reasonable things necessary to assist the Council in the protection and transfer of ownership of the intellectual property resulting from the provision of the Services.

3.10 Unsuccessful Tenders

Unsuccessful Tenderers must, if required by the Council, return the Tender Documents to the Council, once they have been advised that their Tender is unsuccessful.

3.11 No Legal Requirement

The issue of this RFT or any response to it does not commit, obligate or otherwise create a legal obligation on the Council to purchase the Services from the Tenderers.

4. Governing Law

4.1 This RFT is governed by the law in South Australia.

4.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

5. ICAC

Tenderers acknowledge that if they enter into a contract with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act)* and will be obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

6. Section C – Contract for Services

[To be inserted]

[Drafting Note – please consider whether a panel contract is to be inserted] [Delete RED text once read]

7. Section D – Specifications for the Services

OR PROJECT BRIEF [SELECT ONE]

[To be inserted]

8. Section E – Tender Response Schedules

SECTION E – TENDER RESPONSE SCHEDULES FOR SERVICES

[Drafting Note – the Council may remove any one or more of the Schedules if the Council feels they are not relevant to the Tender and/or the relevant Council project] [Delete RED text once read]

[Drafting Note – the Council may amend one or more of the Schedules to suit the Council's requirements and/or the relevant Council project] [Delete RED text once read]

Schedule 1 Tender Form – Formal Offer

I/We _____ (Tenderer) on _____ (Date) having read, understood and fully informed myself/ourselves/itself of the contents, requirements and obligations of the Request for Tender, do hereby tender to provide and complete the Services described in the [insert either Specifications or Project Brief, as per RFT] in accordance with the Contract for the amounts set out in the Tender Return Schedules attached.

The Tenderer:

1. is subject to the terms and conditions set out in the Conditions of Tendering;
2. irrevocably offers to perform the Services on the terms of the Contract and the [insert either Specifications or Project Brief, as per RFT] which form part of the Tender Documents subject only to the variations set out in Schedule 12;
3. confirms that this Tender has been prepared without any consultation, communication, agreement or other arrangement with any competitor regarding:
 - 3.1 prices or methods, factors or formulae used to calculate prices;
 - 3.2 the intention or decision to submit a Tender, or the terms of the Tender;
 - 3.3 the submission of a Non Conforming Tender; and
 - 3.4 the quality, quantity, specifications or particulars of the Services; and
4. holds this offer open and capable of acceptance by the Council for a period of 90 days from the closing date.

The undersigned undertakes that if selected as the successful Tenderer, I/we/it will execute and be bound by the Contract in accordance with the Conditions of Tendering.

If the Tenderer is a company, it must execute this Tender as follows:

Executed by [Insert Company name] pursuant to section 127 of the <i>Corporations Act 2001</i>	
..... Signature of Director Name of Director (print)	..... Signature of Director/Company Secretary (<i>Please delete as applicable</i>) Name of Director/Company Secretary (print)
OR Signature of Sole Director and Sole Company Secretary Name of Sole Director and Sole Company Secretary (print)	
OR Signed for [Insert name of Representative] by an authorised representative in the presence of:	
..... Signature of witness Name of witness (print)	..... Signature of authorised representative Name of authorised representative (print) Position of authorised representative (print)

If the Tenderer is an individual, the document must be executed as follows:

Signed by [insert name]		in the presence of:	
..... Signature of witness		..... Tenderer	
..... Name of witness (print)			

If the Tenderer is a partnership, the Tender must be executed as follows:

[Drafting Note – add extra execution clauses for additional partners as necessary]
[Delete RED text once read]

Partner 1:

Signed sealed and delivered by [insert name]		in the presence of:	
..... Signature of witness		..... Signature of partner	
..... Name of witness (print)			
..... Address of witness (print)			

Partner 2:

Signed sealed and delivered by [insert name]		in the presence of:	
..... Signature of witness		..... Signature of partner	
..... Name of witness (print)			
..... Address of witness (print)			

[Drafting Note – insert more execution clauses if there are more than 2 partners] *[Delete RED text once read]*

Schedule 2 Tenderer's Details

<p>1. Name of Tenderer</p> <p>State in full the name(s) of the person(s) or the registered name(s) of the company(s) and trading names.</p> <p>ABN number</p>	
<p>2. Contact person</p> <p>Nominate a contact person for this tender to deal with any questions or queries that may arise.</p>	
<p>3. Registered address</p>	
<p>4. Postal address</p>	
<p>5. Telephone</p>	
<p>6. Fax</p>	
<p>7. Email</p>	
<p>8. Bank Details</p> <p>Name of Trading Bank: Branch: Account Name: BSB Number: Account/IBAN Number:</p>	
<p>9. Tender conditions</p> <p>Tenderer to sign that it has read and understood this RFT and the Conditions of Tender.</p>	
<p>10. Amendments to Tender Documents</p> <p>Tenderer to indicate the amendments it requests.</p>	

Schedule 4 Licences and Accreditation

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

List details of any licences or accreditations required or relevant to this Tender.

Schedule 5 Insurance

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Provide details of insurance currently held by you and any proposed subcontractor that would be extended to provide cover for work under the Contract.

Insurance type	Policy no	Extent of cover		Expiry date	Name of insurer
		Per incident \$A	In aggregate \$A		
Public and products liability					
Professional indemnity (if applicable)					
Property and facilities					
Contents					
Vehicles plant & equipment					
Workers compensation					
Directors and officers (if applicable)					
Other					

[Drafting Note – Council may add to or remove any one or more of the above insurances as relevant to the Council's project and the Council's requirements] [Delete RED text once read]

[Drafting Note – LGAMLS recommends a minimum of \$10 million cover for public liability insurance] [Delete RED text once read]

Schedule 6 Work Health & Safety & Risk Management

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

[Drafting Note – the Council should also refer to the LGAMLS' 'One System' and adapt as necessary in this document] [Delete RED text once read]

1. Tenderer Work Health and Safety Management System Questionnaire

1.1	Work Health and Safety policy and management	Yes	No
(a)	Does the Tenderer have a written Work Health and Safety Policy? If yes provide a copy of policy Comments:	<input type="checkbox"/>	<input type="checkbox"/>
(b)	Does the Tenderer have a Work Health and Safety Management System recognised by an independent authority (eg Workcover Corporation)? If yes provide details: 	<input type="checkbox"/>	<input type="checkbox"/>
(c)	Does the Tenderer have a Work Health and Safety Management System manual or plan? If yes provide a copy of contents page(s) Comments:	<input type="checkbox"/>	<input type="checkbox"/>
(d)	Are work health and safety responsibilities clearly identified for all levels of staff? If yes provide a copy of contents page(s) Comments:	<input type="checkbox"/>	<input type="checkbox"/>

1.2 Safe work practices and procedures

- (a) Has the Tenderer prepared safe operating procedures or specific safety instructions relevant to its operations?

If yes provide a summary listing of procedures or instructions

Comments:

.....

- (b) Does the Tenderer have any permit to work systems?

If yes provide a summary listing or permits:

.....

.....

- (c) Is there a documented incident investigation procedure?

If yes provide a copy of a standard incident report form

- (d) Are there procedures for maintaining, inspecting and assessing the hazards of plant operated/owned by the company?

If yes provide details:

.....

.....

- (e) Are there procedures for storing and handling hazardous substances?

If yes provide details:

.....

.....

- (f) Are there procedures for identifying, assessing and controlling risks associated with manual handling?

If yes provide details:

.....

.....

1.3 Work Health and Safety training

(a) Describe how work health and safety training is conducted in your company:

.....

.....

(b) Is a record maintained of all training and induction programs undertaken for employees in your company?

If yes provide examples of work health and safety training records:

.....

.....

1.4 Work Health and Safety workplace inspection

(a) Are regular work health and safety inspections at worksites undertaken?

If yes provide details:

.....

.....

(b) Are standard workplace inspection checklists used to conduct work health and safety inspections?

If yes provide details or examples:

.....

.....

(c) Is there a procedure by which employees can report hazards at workplaces?

If yes provide details:

.....

.....

1.5 **Work Health and Safety consultation**

(a) Is there a work health and safety committee?

(b) Are employees involved in decision making over work health and safety matters?

If yes please provide details:

.....
.....

(c) Are there employee elected work health and safety representatives?

Comments:

.....

1.6 **Work Health and Safety performance monitoring**

(a) Is there a system for recording and analysing work health and safety performance statistics?

If yes provide details:

.....
.....

(b) Are employees regularly provided with information on company work health and safety performance?

If yes provide details:

.....
.....

(c) Has the company ever been convicted of a work health and safety offence?

If yes provide details:

.....
.....

1.7 Safety performance

(a) Please provide the following information for the last three years

	2013/2014	2014/2015	2015/2016
What was the average number of employees in your organisation?			
What was the approximate number of hours worked?			
How many injuries have occurred to your employees which resulted in a fatality, permanent disability or time lost from work of one day or more?			
What is the Lost Time Injury Frequency Rate?			
What is the total number of full days lost due to injury?			
What is the average days lost per injury?			

[Drafting Note – update these dates as necessary] [Delete RED text once read]

Schedule 7 Environmental Management System

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Tenderers are to provide details of their environmental management system and where possible, examples of:

- Reports on environmental performance
- Incident reports including actions taken to address the incident and improvements to processes to reduce risk of occurring again
- Environmental management plans established for other contracts

Schedule 8 Quality Systems

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Describe the level of quality assurance in place in the Tenderer's organisation and plans to move to quality accreditation if not presently accredited.

Provide details of contracts performed by the Tenderer under its Quality Assurance System.

Schedule 9 Industrial Relations Record

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Provide a summary of the Tenderer’s industrial relations record over the last five years.

*[Drafting Note – Council may amend the reference to 5 years to suit its requirements]
[Delete RED text once read]*

Schedule 10 Conflict of Interest

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Provide details of any interest, relationship or clients which may or do give rise to a conflict of interest and the issue about which that conflict or potential conflict does or may arise.

Schedule 11 Referees

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Details of at least three references for similar work and information on the approximate date when work was completed and the approximate value of work undertaken.

Reuse this page if more than three references are provided.

Client Name:

Address:

Contact Name:

Telephone:

Date of Work:

Value of Work:

Client Name:

Address:

Contact Name:

Telephone:

Date of Work:

Value of Work:

Client Name:

Address:

Contact Name:

Telephone:

Date of Work:

Value of Work:

*[Drafting Note – please amend this if Council requires more or less than 3 referees]
[Delete RED text once read]*

Schedule 12 Statement of Conformity

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

If the Tender does not comply with all the requirements of the Tender Documents, the Tenderer must list below all areas of non-conformity, partial conformity or alternative offer and the reasons therefore.

The Tender must be read to disregard and render void any area of the Tender which is non-conforming, partially conforming or an alternative offer except to the extent detailed in this Schedule.

If any non-compliance is determined to be unacceptable, the Tender may not be further considered.

NC = Non-conforming

PC = Partial conforming

AO = Alternate offer

Area of non-conformity and reason	NC/PC/AO

Schedule 13 Organisation Structure, Facilities and Resources

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

1. Organisation structure

Provide details of the staff and the organisation structure proposed to be used for performance of the Services. Details must include but not be limited to:

- Company structure to be used to support the Services including size and location of office, organisation structure
- Number of staff proposed to be used and their qualifications and experience
- Details of the award, enterprise agreement, and/or local area workplace agreement, under which staff will be employed, and rates of pay, conditions, or allowances

2. Employees

Provide details

3. Other details (eg specific plant & equipment, vehicles)

4. Facilities

Provide details

5. Proposed subcontractors

Provide details in the Table below the proposed major sub-contractors or other representatives to be employed or engaged by the Tenderer. The Tenderer must define the scope and extent of Services to be provided by sub-contractors.

Subcontractor's name and address	Services to be provided	Item(s)

6. Contingency arrangements

Provide details of contingency arrangements should any facilities or sites required to facilitate the Contract become unavailable in the short and long term.

Schedule 14 Experience

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

1. Past performance

For how many years has the Tenderer engaged in the type of work required by the Contract?

Has the Tenderer had an appointment terminated on a project in the last five years. If yes please provide brief details.

Has the Tenderer terminated a project in the last five years. If yes please provide brief details.

Has the Tenderer refused to continue providing services under a contract in the last five years unless the terms or payments were changed from those which were originally agreed. If yes please provide brief details.

2. Current contracts

Provide details of current contracts in a local government environment including the range of services provided and the numbers and types of properties serviced.

3. Other commitments

Provide details of other work commitments expected to continue during this Contract.

Schedule 15 Customer Service Plan

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Tenderers must demonstrate their capacity and skill in regard to the provision of customer service. Tenderers must describe what systems they will use and performance levels that will be achieved in the provision of advice and response to enquiries, complaints, and requests for assistance from members of the public. This must include but not be limited to:

- procedures for the handling of all enquiries and complaints;
- staff education programs to ensure highest levels of customer service are attained and maintained;
- indicative performance standards for handling of enquiries and complaints, including specific time scales;
- number and qualifications of staff who will provide this service;
- location/s of enquiry and assistance points where enquiries and complaints will be managed;
- hours of availability of customer service and supervisory staff;
- how the complaints register will be maintained;
- proposed information leaflets, forms and reports that will be used in providing this service

Schedule 16 Implementation Schedule and Transition Plan

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

1. Implementation schedule

Tenderers must provide a comprehensive project plan that encompasses all activities required and timelines for each activity from Contract execution to Contract 'start date'.

2. Transition plan

Tenderers must comprehensively describe their proposals to ensure minimum disruption to service and assistance to customers in adjusting to the new service, during the transition periods at the commencement and also at the termination of the Contract. Such initial transition plan should include timetables for:

- service information leaflets
- notices to users regarding service problems

Schedule 17 Value Added Services

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Provide details of any other benefits you can offer to improve the level of service or value of your Tender.

Schedule 18 Improvement and Innovation

*[Drafting Note – the Council may delete this Schedule if the Council does not require it]
[Delete RED text once read]*

Provide details of ideas and systems that are proposed for improved performance.

Schedule 19 Pricing

All prices must be listed exclusive of GST

Provide a breakdown of the costs for the Services and/or each type of Service (if applicable) and/or breakdown of fixed and variable costs (if applicable).



TENDER EVALUATION PANEL SIGN-OFF/CONFLICT OF INTEREST

I acknowledge that I will be given access to information pertaining to or in respect of the evaluation process for this procurement and that all information that is acquired by me (whether by verbal or written means) in the course of my duties, is strictly confidential. I undertake that I shall not at any given time, disclose or reveal to any other party or person, or use or copy for any purpose other than in the discharge of my duties as a member of the Evaluation Team, such information without first obtaining the written consent of the Procurement Officer.

All documents, reports and information discussed within the evaluation process will be treated as commercial-in-confidence. Information and documentation will be kept secure at all times and not be divulged or given to any persons not directly involved in the evaluation process.

I agree to keep the results of this evaluation process confidential.

I declare that to the best of my knowledge I do not have any:

- Financial interest in the project;
- Relatives or friends with a financial interest in the project;
- Personal bias or inclination which would in any way affect my decisions in relation to the project; and
- Personal obligation, allegiance or loyalty which would in any way affect my decisions in relation to the project.

I undertake to notify the Procurement Officer immediately in writing if prior to or during the evaluation process, a conflict of interest arises or appears likely to arise.

I have read this Evaluation Plan and agree to abide by it.

Insert Tender Details Here

Evaluation Panel Members:

Name/Position:

Date:

Signed:

Name/Position:

Signed:

Name/Position:

Signed:



EOI EVALUATION MATRIX

This form is designed to evaluate the capabilities of potential Contractors capable of undertaking the following project. The assessment is based on 4 key areas designed to cover the prospective Company's ability to undertake the project in accordance with relevant environmental and safety requirements as well as their financial capability to undertake a project of this size. Consideration is also given to the Contractor's performance in similar sized projects and their understanding of this project through the proposed methodology statement submitted as part of the EOI for:

PROJECT DESCRIPTION: _____

COMPANY NAME: _____

EVALUATION OFFICER: _____ DATE: _____

EVALUATION CRITERIA	COMMENTS	Max Score	Score
1. PROFESSIONAL COMPETENCE			
1.1 Compliance to Specifications		5	
1.2 Capability / Availability <ul style="list-style-type: none"> • Details of project management team 		5	
1.3 Past performance in similar sized projects		5	
1.4 Customer service standards <ul style="list-style-type: none"> • Communication strategies • Reporting strategies 		5	
1.5 Quality systems <ul style="list-style-type: none"> • project management capabilities 		5	
2. COMMERCIAL CAPABILITY			
2.1 Financial Viability of company		5	
2.2 Adequate Professional Indemnity Insurance		5	
2.3 Public liability Insurance		5	
2.4 Financial capacity to fund works prior to progress payments		5	

EVALUATION CRITERIA	COMMENTS	Max Score	Score
3. ENVIRONMENTAL COMMITMENT			
3.1 Environmental controls to address project		5	
3.2 Environmental approach to project (both statutory & financial sustainability viewpoint)		5	
3.3 Environmental Management System		5	
3.4 Sustainability Principles (reuse, recovery, recycle)		5	
3.5 Previous commitment to environmental considerations in other projects & summary of outcomes.		5	
4. WORK HEALTH & SAFETY, RISK MANAGEMENT			
4.1 Relevant licences / accreditations to carry out works		5	
4.2 Compliance with WHS regulations		5	
4.3 WHS policies and procedures in place		5	
4.4 Methodology Statement prepared to address safety issues		5	
4.5 Risk Management policies and procedures in place		5	
4.6 Risk Analysis of project		5	
5. SOCIAL CONSIDERATIONS			
5.1 Involvement of Local Contractors		5	
TOTAL		100	





EVALUATION MATRIX FOR EXPRESSION OF INTEREST (EOI)

SUMMARY SHEET

EVALUATION CRITERIA	COMMENTS	Contractor 1	Contractor 2	Contractor 3	Contractor 4	Contractor 5	Contractor 6	Contractor 7	Contractor 8
1. PROFESSIONAL COMPETENCE									
1.1	Compliance to Specifications	4.0	4.4	4.4	4.4	3.4	5.0	4.6	4.6
1.2	Capability / Availability	4.0	4.6	4.4	4.8	2.2	5.0	4.6	3.6
1.3	Past performance in similar sized projects	4.0	4.6	3.8	5.0	2.8	5.0	3.6	2.4
1.4	Customer service standards	1.4	2.2	2.8	3.6	2.2	4.4	4.4	3.0
1.5	Quality systems	2.8	4.6	4.6	4.6	3.0	5.0	4.0	3.4
2. COMMERCIAL CAPABILITY									
2.1	Financial Viability of company	4.0	4.2	2.8	4.4	2.2	5.0	4.6	4.2
2.2	Adequate Professional Indemnity Insurance	1.6	1.0	1.0	2.6	0.6	5.0	5.0	4.0
2.3	Public liability Insurance	5.0	5.0	4.0	4.6	3.4	5.0	5.0	5.0
2.4	Financial capacity to fund works prior to progress	4.2	4.2	2.6	4.4	2.2	5.0	4.8	4.4
3 ENVIRONMENTAL COMMITMENT									
3.1	Environmental controls to address project	4.4	3.6	4.4	4.8	3.4	4.8	4.8	3.2
3.2	Environmental approach to project (both statutory	4.2	3.2	4.2	4.0	2.6	4.8	4.0	3.0
3.3	Environmental Management System	3.2	3.4	4.0	4.2	2.4	5.0	3.8	3.8
3.4	Sustainability Principles	3.6	2.8	3.2	4.2	2.0	4.8	3.6	2.6
3.5	Previous commitment to environmental	3.2	3.4	2.4	4.0	2.4	4.8	2.8	3.0
4. WORK HEALTH & SAFETY, RISK									
4.1	Relevant licences / accreditations to carry out	4.4	4.6	4.8	4.4	3.0	4.2	4.2	3.8
4.2	Compliance with WHS regulations	4.2	4.2	4.8	4.6	4.0	5.0	4.4	3.4
4.3	WHS policies and procedures in place	4.4	3.8	4.8	4.6	4.0	5.0	4.4	3.2
4.4	Methodology Statement prepared to address safety	4.8	3.8	4.8	4.2	2.6	5.0	4.6	4.2
4.5	Risk Management policies and procedures in place	4.6	2.8	4.6	4.6	3.6	5.0	4.4	3.4
4.6	Risk Analysis of project	3.6	2.4	4.8	3.8	2.8	5.0	4.6	3.6
5. SOCIAL CONSIDERATIONS									
5.1	Involvement of Local Contractors	0.0	0.2	0.0	0.0	4.4	2.8	5.0	5.0
	TOTAL	75.6	73.0	77.2	85.8	59.2	100.6	91.2	76.8
	Raw score ranking	6	7	4	3	8	1	2	5
	DM	4	6.5	5	2	8	1	3	6.5
	MS	3	8	7	5	6	1	2	4
	GB	6	3	4.5	4.5	8	2	1	7
	AI	6	7	5	4	8	1	2	3
	DS	6	5	7	3	8	1	2	4
	Dmut	7	5	4	2	8	1	3	6
	Order ranking	<u>32</u>	<u>34.5</u>	<u>32.5</u>	<u>20.5</u>	<u>46</u>	<u>7</u>	<u>13</u>	<u>30.5</u>
		5	7	6	3	8	1	2	4



City of
Mount Gambier

Contract for

[INSERT SHORT DESCRIPTION OF WORKS]

[Drafting Note: This agreement is to be used for one-off engagements. All sections highlighted in RED are to be completed by the Council. All "Drafting Note" text

highlighted in RED is for the Council's information and must be deleted once read. LGA Procurement recommends that users of this agreement always check the LGA Procurement website www.lgaprocurement.sa.gov.au to ensure that they are using the current version of this document.]

[Delete RED text once read]

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Schedule

<p>Item 1 Council</p>	<p>City of Mount Gambier ABN 17 330 264 425 Fax: (08) 8724 9791 Email: city@mountgambier.sa.gov.au Phone: (08) 8721 2555 Attention: [Council officer]</p>
<p>Item 2 Contractor</p>	<p>Name: [Name] ABN: [ABN] Address: [Address] Fax: [Fax] Email: [Email] Attention: [Contractor officer]</p>
<p>Item 3 Contract Sum</p>	<p>[Choose former option if lump sum, latter is not lump sum] [\$ (exclusive of GST) \$ _____ (GST) \$ (Total – including GST) (being a fixed lump sum price and not subject to any rise and fall escalation)] [See Schedule of Rates in Annexure C]</p>
<p>Item 4 Contract Works</p>	
<p>Item 5 Site</p>	<p>[Site]</p>
<p>Item 6 Date for Commencement</p>	<p>[Commencement Date]</p>

Item 7 Date for Completion	[Date for Completion]
Item 8 Defects Liability Period	26 calendar weeks commencing on Completion of the Contract Works
Item 9 Security	Form of Security: [Retention Sum/Bank Guarantee] Security amount: [percentage of Contract Sum]% of the Contract Sum, as adjusted from time to time, inclusive of GST
Item 10 Contractor's Representative	[Contractor's Representative]
Item 11 Working hours	[Working hours]
Item 12 Rates for valuation of Variations	[Rates for valuation of Variations] (All expressed exclusive of any GST)
Item 13 Provisional sums	[Provisional sums]
Item 14 Payment of Contract Sum	[Delete options as applicable:] [Option 1] 1. Where the Contract Sum is a lump sum the Contractor may at monthly intervals (or as otherwise specified in this agreement) submit a written claim for: 1.1 the portion of the Contract Sum referable to the work then completed; and 1.2 the portion of the total of any Variation sum existing at that time that directly corresponds with the percentage level to which that Variation existing at that time is complete. 2. The Council must assess the progress claim and issue the Council's assessment (including an assessment of GST payable) to the Contractor within five business days of receipt and must particularise any discrepancy between the claimed amount and the assessed amount. <i>[Drafting Note – Please note the timeframe of 5 days for the assessment of progress claims in clause</i>

	<p>2. Section 14 of the Building and Construction Industry Securities of Payment Act 2009 (SA) provides for a maximum of 15 business days or any shorter timeframe agreed by the parties in the contract after service of the progress claim to consider the progress claim and provide a payment schedule if the Council disputes the amount of the progress claim. Please consider the circumstances carefully and nominate a timeframe of no more than 15 business days] [Delete RED drafting note text once read]</p> <p>3. The Council must pay the assessed amount (including payment for GST) but less any retention sum within 30 days of the end of the month in which the assessment is issued.</p> <p>4. Contemporaneously with receipt of payment referred to in paragraph 3, the Contractor must give the Council a tax invoice for the amount of the payment, clearly identifying each taxable supply or disbursement as such. [Delete clause 24.4 if using this paragraph.]</p> <p>5. Any difference arising between the parties in respect of the quantum of progress payments must be resolved in accordance with clause13.</p> <p>Option 2 The Council must pay to the Contractor, within 30 days of the end of the month in which the Final Certificate is issued, the Contract Sum as adjusted by this agreement.</p>
Item 15 Council's Representative	[Council's Representative]
Item 16 Confidential Sections	[Confidential Information]
Item 17 Reimbursable Expenses	[Reimbursable Expenses]

Date

[Insert Date]

Parties

City of Mount Gambier ABN 17 330 264 425 of 10 Watson Terrace Mount Gambier, South Australia 5290

The person specified in Item 2 of the Schedule (**Contractor**)

Background

- A. Pursuant to a [insert process pursuant to which this agreement is to be executed – eg Request for Tender, Request for Quote, etc], the Council sought tenders from suitably qualified parties for the Contract Works.
- B. The Contractor submitted a [insert appropriate submission – eg tender, quote, etc] for the Contract Works, and the Council accepted it.
- C. The Contractor agrees to perform the Contract Works on the terms in this agreement.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions

In this agreement:

Agreement means this agreement and includes the Schedule and the Annexures.

Annexure refers to an Annexure of this agreement.

Authorisation means any authorisation, agreement, approval, licence, permit, consent, qualification, accreditation, filing, registration, certificate, resolution, direction, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

Certificate of Completion means the certificate of completion issued under clause 10.2.

Clause refers to a clause of this agreement.

Completion, Completion of the Contract Works and like expressions is the stage when the Contract Works are complete except for minor Defects and are fit for use and occupation by the Council for their intended use.

Confidential Information means any documentation or information of a confidential nature supplied by either of the parties to the other in connection with this agreement and includes all scientific, technical, manufacturing, performance, sales, financial, commercial, contractual or marketing information possessed by each party, but specifically excludes any documentation or information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by Law.

Confidential Sections are those clauses, Schedules and/or Annexures specified in specified in Item 16 of the Schedule that are deemed to be confidential for the purposes of the FOI Act.

Contract Sum means the sum specified in Item 3 of the Schedule, as adjusted from time to time in accordance with this agreement.

Contract Works means the works specified in Item 4 of the Schedule and Annexure A, and any authorised Variation.

Contractor's Representative means the person specified in Item 10 of the Schedule.

Council means the Council specified in Item 1 of the Schedule.

Council's Representative means the person specified in Item 15 of the Schedule.

Date for Commencement means the date specified in Item 6 of the Schedule.

Date for Completion means the date specified in Item 7 of the Schedule, as adjusted from time to time in accordance with this agreement.

Defect means any defect, error or omission in the Contract Works.

Defects Liability Period means the period specified in Item 8 of the Schedule.

Defects Notice means a written defects notice issued pursuant to clause 11.2.

Final Certificate means the final certificate issued pursuant to clause 11.8.

FOI Act means the *Freedom of Information Act 1991* (SA).

Force Majeure Event means an event beyond the reasonable control of the parties which precludes a party from performing on time an obligation under this agreement. Such circumstances include:

- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires and any natural disaster; and
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution.

Governmental Agency means any government or any government, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

Latent Condition means any physical condition on the Site or its surroundings, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by the Contractor prior to entering into this agreement if the Contractor had:

- (c) examined all information made available in writing by the Council to the Contractor;
- (d) examined all information relevant to the risks, contingencies and other circumstances affecting this agreement and obtainable by reasonable enquiries; and
- (e) inspected the Site and its surroundings.

Law means any statute, regulation, order, rule, subordinate legislation or other document enforceable under any statute, regulation, order, rule or subordinate legislation.

Non-completion Notice means a written notice of non-completion of the Contract Works issued under clause 10.2.

Notice means a notice, demand, consent, approval or communication under this agreement.

Programme means the programme for the conduct of the Contract Works in Annexure A.

Recipient refers to a party who receives a supply pursuant to the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Reimbursable Expenses means the expenses specified in Item 17 of the Schedule.

Reportable Incident means any accident, injury, property or environmental damage or any potential breach of any Law that occurs during or as a result of this agreement.

Schedule refers to the Schedule of this agreement.

Security means the security in the amount and form specified in Item 9 of the Schedule.

Site means the site of the Contract Works specified in Item 5 of the Schedule.

Special Conditions mean the special conditions set out in Annexure B, if any.

Supplier refers to a party who makes any supply under the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Variation means any change in the Contract Works as specified in this agreement, being:

- (a) any increase of, decrease in, or omission from such works;
- (b) any change in the character or quality of any such works; or
- (c) any supply of additional works.

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to the Contractor includes any person comprising the Contractor;
- 1.2.7 a reference to this agreement includes any schedules and annexures to this agreement;

- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;
- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.15 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

2. Execution of Contract Works

In consideration for the payment of the Contract Sum, the Contractor must:

- 2.1 execute and complete the Contract Works in accordance with this agreement to Completion by no later than the Date for Completion and to the reasonable satisfaction of the Council, and perform its other obligations under this agreement;
- 2.2 supply at the Contractor's expense all facilities and services required at or about the Site for the execution of the Contract Works. Those facilities and services must comply with all Authorisations and the standards and other requirements of all applicable Laws and of any relevant Governmental Agency;
- 2.3 comply with reasonable directions of the Council in the execution of the Contract Works;

- 2.4 comply with all Laws and Authorisations affecting or applicable to the Contract Works or the execution of the Contract Works;
 - 2.5 not interfere with or damage property on or adjacent to the Site;
 - 2.6 repair all damage caused to property on or adjacent to the Site by the Contractor, its employees, agents or sub-contractors or their respective employees, and provide any necessary temporary protection;
 - 2.7 pay all fees in respect of the execution of the Contract Works to any Governmental Agency, and procure any Authorisation required in respect of the execution of the Contract Works;
 - 2.8 before Completion and during the Defects Liability Period and any operational maintenance period specified:
 - 2.8.1 keep the Contract Works and the Site clean and tidy;
 - 2.8.2 regularly remove from the Site all surplus materials;
 - 2.8.3 clean up rubbish on a daily basis;
 - 2.8.4 place all rubbish in a bin provided on-site or other areas as directed by the Council.
- Failure to do so may result in the Council carrying out this work at the cost of the Contractor without notice;
- 2.9 unless otherwise agreed with the Council in writing, carry out the Contract Works only between the working hours set out in Item 11 of the Schedule.

3. Access, Work Health and Safety

3.1 Access to Site and Contract Works

- 3.1.1 The Council must provide the Contractor with sufficient access to the Site to enable the Contractor to undertake and complete the Contract Works.
- 3.1.2 The Contractor must allow the Council access to the Site and the Contract Works at all times.

3.2 Work Health and Safety

The Contractor must comply with the *Work Health and Safety Act 2012 (SA)*, any regulations made under it and the Council's Work Health and Safety Policy, including the implementation of safety requirements and a safe system of work.

3.3 Contractor responsible

- 3.3.1 Without limiting its other obligations under this agreement, the Contractor has complete responsibility and liability for health and safety on the Site. In this regard the Contractor must develop and implement appropriate rules, systems and procedures and generally monitor, manage and administer the operations of the Site and the Contract Works in a proper and professional manner and, without limiting this, the Contractor must take and enforce all necessary or desirable measures to ensure safety in respect of persons and property while performing its obligations under this agreement.
- 3.3.2 Without limiting clause 3.3.1, the Contractor must at its own cost:
- 3.3.2.1 erect and at all times during the day and night maintain in or around the Site suitable signs warning the public of the execution of the Contract Works; and
 - 3.3.2.2 during all hours of darkness keep all machinery and other obstructions or traps created in the course of the Contract Works adequately illuminated for the protection of the public.

3.4 Suspension of Contract Works

- 3.4.1 If the Council considers that the suspension of the whole or part of the Contract Works is necessary because of a breach of this clause by the Contractor or for any other reason (with the Council acting reasonably in all things), the Council may direct the Contractor to suspend the progress of the whole or part of the Contract Works for such time as the Council thinks fit (acting reasonably in all things).
- 3.4.2 As soon as the Council becomes aware that the reason for suspension no longer exists, the Council must direct the Contractor to recommence work on the whole or relevant part of the Contract Works.
- 3.4.3 If caused (whether directly or indirectly) by any act or omission of the Contractor, the Contractor bears any cost incurred by it by reason of a suspension under this clause.
- 3.4.4 Suspension under this clause does not affect the Date for Completion, but the cause of the suspension may be a ground for time extension under clause 9.3.

4. Materials and Work

- 4.1 Unless otherwise specified in this agreement, the Contractor must supply at its own cost everything necessary for the proper completion of the work under this agreement and the proper performance of its obligations under this agreement.
- 4.2 Unless otherwise specified in this agreement, materials used in the Contract Works and the standard of workmanship must be suitable for their purpose and consistent with the nature and character of the Contract Works.
- 4.3 Unless otherwise specified in this agreement, materials to be incorporated in the Contract Works must be new and, where applicable, materials and workmanship must comply with the relevant standard of Standards Australia International Limited.
- 4.4 At any time before the issue of the Final Certificate, the Council may reject any material or work which does not comply with this agreement and may direct its removal, correction or replacement, whether it has been the subject of a payment or not. The Council must make any such rejection or give any such direction as soon as practicable after discovering the non-compliance.
- 4.5 If the removal, correction or replacement directed by the Council requires the removal of, or damage to, works or materials of other contractors, the Contractor must also remove, replace and/or reinstate those other works or materials.
- 4.6 If the Council directs the Contractor to correct or replace any material or work, the Contractor must commence the work of correction or replacement within seven days after the receipt by the Contractor of the direction (or such other period as the Council may reasonably determine) and must complete the work properly and to the satisfaction of the Council. If the Council directs the Contractor to remove from the Site any material which does not comply with this agreement, the Contractor must do so promptly.
- 4.7 The Contractor must bear the cost of all such removals, corrections, replacements and reinstatements.
- 4.8 If the Contractor fails to comply with this clause the Council may have the removal, correction or replacement carried out by other persons. The cost incurred by the Council in having the work so carried out is a debt due from the Contractor to the Council.

5. Provisional Sums

The Council need not pay any provisional sum specified in Item 13 of the Schedule unless the relevant work or item is performed or supplied by the Contractor at the

direction of the Council. In that case, the Council must pay the provisional sum (subject to adjustment) to the Contractor as an addition to the Contract Sum in the same manner and at the same time as the Contract Sum.

6. Subcontracting and Assigning

- 6.1 The Contractor must not assign or subcontract this agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld in the Council's absolute discretion.
- 6.2 With any application for such consent, the Contractor must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Contract Works to be assigned or subcontracted.
- 6.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Contractor from any liability under this agreement or at Law in respect of the performance or purported performance of this agreement and the Contractor is responsible for the acts and omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Contractor.
- 6.4 For the purpose of this clause, if the Contractor is a company, an assignment of this agreement includes any change in the beneficial ownership of the share capital of the Contractor, or the resignation, death or appointment of any director of the company, which alters the effective control of the Contractor.

7. Workforce

7.1 Control of employees

- 7.1.1 The Contractor must employ and must ensure that its subcontractors employ only persons who are careful, skilled and experienced in their respective trades and callings.
- 7.1.2 The Council may object to and direct the Contractor to remove or have removed from the Site or from any activity connected with the Contract Works within such time as the Council directs any person employed by the Contractor or by any subcontractor who (in the Council's opinion) is incompetent or negligent in the performance of that person's duties or whose conduct is (in the Council's opinion) prejudicial to the competent, safe and timely execution of the Contract Works.

7.1.3 The Contractor must comply with such direction and any such person must not again be employed on the Site or on activities connected with the Contract Works without the prior approval of the Council.

7.2 Industrial relations

7.2.1 The Contractor is responsible for industrial relations with all workers engaged in and about the execution of the Contract Works.

7.2.2 The Contractor must keep the Council fully informed of any disputes with or demands by workers or their representatives and any other circumstances which could result in industrial action affecting the normal working of the Site or otherwise affecting the competent and timely execution of the Contract Works.

7.2.3 If the workers of the Contractor or the workers of any subcontractor of the Contractor take industrial action which affects the normal working of the Site or otherwise affects the competent and timely execution of the Contract Works and that industrial action is prohibited by Law, then the Contractor must at its own cost take all action necessary to seek urgent injunctive relief preventing such industrial action and must at all times keep the Council fully informed of the progress of such action.

7.2.4 If the Contractor fails to seek injunctive relief in accordance with this clause, or if the Contractor does not do so with all expedience, the Council may take such action, and the Contractor is liable to the Council for all costs incurred in so doing.

8. Variations

8.1 Variations

No Variation invalidates this agreement.

8.2 No unauthorised variation

The Contractor must not make any Variation of the Contract Works except:

8.2.1 a Variation instructed by the Council; and/or

8.2.2 a Variation requested by the Contractor, which has been approved by the Council.

8.3 Execute Variations

The Contractor must carry out as part of the Contract Works or omit from the Contract Works (as is required) any Variation instructed by the Council.

8.4 Adjustment of Contract Sum

For the purpose of any adjustment of the Contract Sum for a Variation:

8.4.1 if practicable, the value of a Variation must be agreed by the Contractor and the Council before the Contractor commences to execute the Variation;

8.4.2 if the value of a Variation is not agreed by the Contractor and the Council, the value must be determined by the Council in accordance with the rates and the criteria set out in Item 12 of the Schedule;

8.4.3 a Variation must be valued as soon as practicable, and the Contractor must promptly and diligently supply to the Council all information relevant to the valuation.

9. Time

9.1 Commencement of Contract Works

The Contractor must commence the execution of the Contract Works on or before the Date for Commencement and must execute the Contract Works with due diligence, and maintain a rate of progress appropriate to bring the Contract Works to Completion in accordance with this agreement.

9.2 Completion of Contract Works

The Contractor must bring the Contract Works to Completion on or before the Date for Completion.

9.3 Claim for time extension

9.3.1 The Contractor by written notice to the Council may claim a time extension if progress of the Contract Works is delayed or will be delayed by:

9.3.1.1 a breach of this agreement by the Council;

- 9.3.1.2 construction and execution of a Variation unless made necessary by an act or omission of the Contractor;
 - 9.3.1.3 civil commotion, any combination of workmen on or off site, lockouts or similar actions undertaken by employers of labour provided such actions have not been caused or contributed to by an act or omission of the Contractor or a company related to the Contractor;
 - 9.3.1.4 a Latent Condition;
 - 9.3.1.5 a strike, ban or other industrial action affecting the progress of the Contract Works which is of general application throughout the relevant industry or industries; or
 - 9.3.1.6 inclement weather or its consequences affecting the Contract Works at the Site.
- 9.3.2 The Contractor may only claim a time extension made reasonably necessary by the delays caused by these factors.
- 9.3.3 The claim must state with reasonable particularity the cause of delay, and an estimate (if practicable) of the extent or likely extent of the delay in bringing the Contract Works to Completion.
- 9.3.4 The claim must be made before or within seven days after the commencement of the delay, whether or not it is practicable to estimate the delay or its consequences.
- 9.3.5 The Contractor may provide to the Council any information the Contractor considers appropriate for any ongoing review by the Council of the time extension.
- 9.3.6 The Contractor must promptly provide to the Council all information requested by the Council for any ongoing review by the Council of the time extension.

9.4 Extension of time

If progress of the Contract Works is delayed by a cause beyond the control of the Contractor and listed in clause 9.3.1, and if Completion of the Contract Works is thereby delayed, the Contractor is entitled, subject to clauses 9.5 and 9.6, to a fair and reasonable extension of the time for bringing the Contract Works to completion, and the Date for Completion must be extended under clause 9.6.

9.5 Conditions precedent

The Contractor is entitled to a time extension only if:

- 9.5.1 the Contractor claimed a time extension in strict compliance with clause 9.3;
- 9.5.2 the Contractor took reasonable steps to minimise the delay in Completion of the Contract Works; and
- 9.5.3 the delayed activities are critical to the Programme.

9.6 Council's determination

The Council must determine what (if any) fair and reasonable extension of time for bringing the Contract Works to Completion should be allowed to the Contractor in respect of each claim, and must give written notice of every such determination to the Contractor, and the Date for Completion must be extended accordingly.

9.7 Extraordinary grant

With the Contractor's consent, before or after Completion, the Council may by written notice allow to the Contractor an extension of time for bringing the Contract Works to Completion, and the Date for Completion of the Contract Works must be extended accordingly.

9.8 No costs or damages

The Contractor accepts the risk of all costs, losses and expenses incurred because of a delay in progress or Completion of the Contract Works (including a delay caused by a Variation directed by the Council). The Contractor's sole remedy for such a delay is an extension of time approved by the Council under this clause. No costs or damages are payable by the Council in respect of such a delay.

10. Completion of Contract Works

10.1 Inspection of Contract Works

The Contractor must notify the Council in writing to arrange an inspection or inspections of the Contract Works when, or as soon as practicable after, they are brought to Completion. The Contractor must at that time provide to the Council all warranties, certificates, operating and maintenance manuals and other information necessary for the use, operation and maintenance of the Contract Works, including a copy of the 'as built' drawings, plans and specifications for the Contract Works.

10.2 Certificate of Completion

The Council must then inspect the Contract Works and:

- 10.2.1 if satisfied that the Contract Works have been brought to Completion, must give to the Contractor a Certificate of Completion of the Contract Works stating the date upon which the Contract Works were brought to Completion; or
- 10.2.2 if not so satisfied, must give to the Contractor a Non-completion Notice specifying the Defects which the Contractor must attend to before the Council will issue a Certificate of Completion of the Contract Works.

If the Council fails to give to the Contractor either a Certificate of Completion or a Non-completion Notice within 10 days after receipt of the written notice from the Contractor under clause 10.1, the Contractor may give the Council a further written notice requiring the Council to issue a Certificate of Completion or a Non-completion Notice within seven days after receipt of that further notice. If the Council fails to do so, the Council is deemed to give a Certificate of Completion of the Contract Works upon the expiration of seven days.

The Contractor may give the Council a notice under clause 10.1 more than once.

10.3 Completion of Contract Works

Unless the Contractor by written notice to the Council disputes the Certificate of Completion of the Contract Works within seven days after receipt of the Certificate, the Contract Works are deemed to have been brought to Completion on the date stated in the Certificate of Completion. The Certificate must not be otherwise disputed.

11. Defects Liability

11.1 Defects Liability Period

The Defects Liability Period for the Contract Works commences upon Completion of the Contract Works and continues until expiry of the period stated in Item 8 of the Schedule.

11.2 Remedy Defects

If before the expiry of the Defects Liability Period, in the Council's opinion a Defect is apparent or has been detected in the Contract Works, the Council may give written notice to the Contractor in the form of a Defects Notice

requiring the Contractor to remedy that Defect. The Defects Notice must state:

11.2.1 the Defect which is required to be remedied; and

11.2.2 the date by which the Defect is to be remedied.

11.3 Carry out instructions

The Contractor must promptly and competently carry out instructions of the Council given in a Defects Notice, in strict accordance with that Defects Notice.

11.4 Council may rectify

If a Defect is not rectified within the time specified in the Defects Notice, the Council may rectify the Defect at the Contractor's cost, without prejudice to any other rights that the Council has against the Contractor in respect of that Defect. The costs incurred by the Council in so rectifying the Defect are a debt due from the Contractor to the Council.

11.5 Further Defects Liability Period

If the Contractor executes remedial work under this clause, the Council may by written notice to the Contractor fix a further Defects Liability Period in respect of the remedial work (being no longer than the initial Defects Liability Period) commencing upon the date of completion of the remedial work. This clause applies to that remedial work as if the further Defects Liability Period was the Defects Liability Period referred to in clause 11.1.

11.6 Access for remedial works

The Council must provide reasonable access to the Contract Works for the Contractor to execute remedial works at times reasonably convenient to the Council and occupiers of the Contract Works. The Contractor must execute remedial works in such manner as minimises inconvenience to the Council and occupiers of the Contract Works.

11.7 Deemed Variation

If it is established that a Defect identified as such by the Council is not a Defect or is a Defect in the design of the Contract Works as prepared by any consultant of the Council, the works carried out by the Contractor pursuant to an instruction under clause 11.2 are deemed a Variation.

11.8 Final Certificate

Upon the expiry of the Defects Liability Period, and when the Contractor has completed the Contract Works including all remedial works to the reasonable satisfaction of the Council and has provided to the Council all documents and

other information required by the Council under this agreement, the Council must issue to the Contractor a Final Certificate stating the Council must pay to the Contractor within 21 days any remaining balance of the Contract Sum as adjusted under this agreement.

Issue of the Final Certificate and payment of the Contract Sum do not release or discharge any liability of the Contractor to the Council for any breach of this agreement (including any Defect) or for any other conduct in relation to the Contract Works or this agreement.

12. Adjustment of Contract Sum

12.1 No adjustment unless authorised

If the Contract Sum is a fixed lump sum, it is not subject to rise and fall, and includes allowance for all works incidentally or contingently necessary to execute and complete the Contract Works and for all the Contractor's risks and responsibilities. Without limiting this, it includes allowance for all the Contractor's costs of and incidental to any special payment or allowance made to or for the benefit of workers engaged upon execution of the Contract Works including any project or site allowance, any disability allowance, any redundancy payment or redundancy pay scheme, or any payment or contribution or allowance for or on account of superannuation or long service leave.

The Contract Sum will not be adjusted or varied except in accordance with provisions of this agreement providing expressly for an adjustment of the Contract Sum.

12.2 Adjustment for Variations

If the Council instructs a Variation, the Contract Sum is adjusted by adding or deducting (as the case requires) the value of the Variation as agreed between the Contractor and the Council. However the Contract Sum must not be increased unless:

- 12.2.1 the Council has expressly stated in writing that the instruction is a Variation;
- 12.2.2 the Council has expressly stated in writing that the Contract Sum will be adjusted for the Variation; or
- 12.2.3 the works carried out are deemed a Variation under clause 11.7.

13. Payment of Contract Sum

- 13.1 Where the Contract Sum is a fixed lump sum, the Council must pay the Contract Sum in accordance with Item 14 of the Schedule.
- 13.2 Where the Contract Sum is determined by the Schedule of Rates in Annexure C, the Council must pay the Contract Sum at the time and in the manner specified in Annexure C.

14. Security

- 14.1 If the Security is a bank guarantee, then the Contractor must provide the Security to the Council before the Date for Commencement as security for the due performance of the Contractor's obligations under this agreement.
- 14.2 If the Security is a retention sum, then the Council may deduct and retain an amount up to the Security amount from each payment by the Council to the Contractor under this agreement as security for the due performance of the Contractor's obligations under this agreement.
- 14.3 The Security (whether retention sum or bank guarantee) must be released to the Contractor as follows:
 - 14.3.1 upon the issue of the Certificate of Completion, 50% of the Security (as adjusted under this agreement) must be released; and
 - 14.3.2 upon the issue of the Final Certificate, any remaining Security (as adjusted under this agreement) must be released.

15. Right of Council to Recover Money

Without limiting the Council's other rights, the Council may deduct any debt due from the Contractor to the Council under this agreement from any money which is or becomes payable to the Contractor by the Council, including the Security. This clause does not affect the Council's right to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

16. Risks, Indemnities and Insurances

- 16.1 **Contractor's risk**
 - 16.1.1 The Contract Works are at the Contractor's risk until the Contract Works are brought to Completion.

16.1.2 The Council's insurance does not cover material loss or damage to any property, plant or equipment or materials of the Contractor. The Contractor must take out appropriate insurance to cover these items.

16.1.3 Security for plant, equipment and unfixed materials on Site is the sole responsibility of the Contractor.

16.2 Property damage

The Contractor must indemnify the Council against any loss or liability (including the payment of excesses on insurance effected by the Council) incurred by the Council in respect of the loss or destruction of, or damage to, or interference with, any property of the Council or of any person, if and to the extent that it is caused or contributed to by the Contractor or its employees or agents or any subcontractor or any person supplying work or services in and about the execution of the Contract Works by the Contractor.

16.3 Public risk

The Contractor must indemnify the Council against any liability incurred by the Council in respect of personal injury to, or death of, any person arising out of, or in the course of, the execution of the Contract Works if and to the extent that it is caused or contributed to by the Contractor or its employees or agents or any subcontractor or any person supplying work or services in and about the execution of the Contract Works.

16.4 Contractor's insurance

16.4.1 The Contractor must effect and maintain at all material times during the currency of this agreement insurance in the joint names or otherwise for the benefit of the Council, the Contractor and all subcontractors and suppliers (**Insured**). The insurance must at all times cover liability to the public (including the Council) for at least \$10,000,000 in respect of personal injury to or death arising by accident to any person and in respect of any injury loss or damage arising by accident to any property real or personal including property (other than the Contract Works) belonging to the Council or in which the Council is interested and where the accident arises out of or is caused by the execution of the Contract Works.

*[Drafting Note – please consider whether the amount is sufficient for the Council – please amend if insufficient] **[Delete RED text once read]***

16.4.2 The Contractor must keep the insurance current until the expiry of the Defects Liability Period.

16.4.3 The Contractor must ensure that each policy of insurance required by this clause contains provisions acceptable to the Council that:

- 16.4.3.1 require the insurer to accept the term 'insured' as applying to each of the persons comprising the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby); and
- 16.4.3.2 require the insurer, whenever the insurer gives to the Contractor a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Council in writing that the notice has been given to the Contractor; and
- 16.4.3.3 provide that a notice of the occurrence of an event out of which the particular Insured giving the notice alleges that it has suffered or could suffer a loss or damage must be accepted by the insurer as a notice of the occurrence given by the Insured. If an event occurs which in the opinion of the Contractor may give rise to a claim involving the Council or the Contractor under the policy of insurance effected by the Contractor it must notify the Council and must ensure that the Council is kept fully informed of subsequent action and developments concerning the claim.

16.5 Return To Work SA

- 16.5.1 Subject to clause 16.5.2, the Contractor must ensure that it is at all times registered as an employer under the *Return to Work Act 2014* (SA) (Act) and that it pays all monthly levies due under it in respect of its employees engaged in and about the Contract Works. The Contractor must produce to the Council on execution of this agreement a current Certificate of Registration as an employer under the Act. The Contractor must ensure that all subcontractors engaged by it have at all times current Certificates of Registration as employers under the Act, and must produce them to the Council upon request in writing by the Council.
- 16.5.2 Notwithstanding clause 16.5.1, if the Contractor (or any subcontractor) is unable to register as an employer under the Act, then the Contractor must instead adequately insure against accident, personal injury and disability. The Contractor must maintain such insurance at all times during the currency of this agreement (including the Defects Liability Period) and must produce evidence of:
 - 16.5.2.1 the existence and adequacy of such insurance; and
 - 16.5.2.2 the Contractor's (and/or any sub-contractor's) inability to register as an employer under the Act.

16.6 Inspection of insurance policies

- 16.6.1 Whenever requested by the Council, the Contractor must produce evidence (to the satisfaction of the Council) of the insurances effected and maintained by the Contractor pursuant to this clause.
- 16.6.2 If the Contractor fails to do so, the Council may effect and maintain any such insurance and pay the premiums. The amount paid is a debt due from the Contractor to the Council.

17. Force Majeure

- 17.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
 - 17.1.1 neither party is liable for such delay or failure; and
 - 17.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 17.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
 - 17.2.1 notify the other party as soon as possible giving:
 - 17.2.1.1 reasonably full particulars of the Force Majeure Event;
 - 17.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
 - 17.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;
 - 17.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
 - 17.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 17.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 17.2.5 notify the other party when resumption of performance occurs.
- 17.3 If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this agreement by written notice to the Contractor.

[Drafting Note – please amend this clause if the Council wishes to shorten or lengthen the 60 day period] [Delete RED text once read]

18. Termination by Council

18.1 If:

18.1.1 the Contractor becomes an externally-administered body corporate or an insolvent under administration;

18.1.2 execution is levied against the Contractor or its assets for more than \$1,000 and execution is not stayed or satisfied within 14 days;

18.1.3 the Contractor fails, or ceases, to hold an Authorisation required by Law for carrying out the Contract Works;

18.1.4 any industrial action affects the execution or progress of the Contract Works or any industrial action which may affect the execution or progress of the Contract Works is threatened, except industrial action of a general application throughout the relevant industry or industries;

18.1.5 the Contractor's engagement under any other agreement with the Council in respect of the Site or any adjacent site is terminated or if the Council lawfully excludes the Contractor from the Site or any adjacent site under any such agreement;

18.1.6 the Contractor:

18.1.6.1 fails to provide the Security;

18.1.6.2 fails to proceed diligently and competently with the execution of the Contract Works;

18.1.6.3 commits a breach of this agreement; or

18.1.6.4 fails to comply with an instruction or direction of the Council; and

the Council gives written notice to the Contractor specifying the breach and requiring it to be remedied within seven days of receipt or any other reasonable period specified in the notice and stating the Council's intention to terminate the Contractor's engagement under this agreement if the breach is not remedied within that period, and the Contractor does not so remedy the breach within that period;

without limiting its other rights, the Council may:

- 18.1.7 take over the whole or any part of the Contract Works remaining to be completed; and/or
- 18.1.8 terminate the Contractor's engagement under this agreement by written notice to the Contractor.
- 18.2 If the Council exercises these rights, insofar as is necessary, the Council may exclude from the Site the Contractor and any other person concerned in the performance of the Contract Works.
- 18.3 If the Council takes over the whole or any part of the Contract Works remaining to be completed, the Council may:
 - 18.3.1 complete them or part of them;
 - 18.3.2 let a contract for them or part of them; or
 - 18.3.3 engage or employ any person other than the Contractor to carry out them or part of them.
- 18.4 After taking over the Contract Works or part of them, on Completion the Council must ascertain the cost of the works to the Council, comprising payments to the Contractor and all losses, costs, charges and expenses incurred by the Council in carrying out the Contract Works. The Council must certify that amount to the Contractor. A certificate signed by the Council stating the costs of the Contract Works to the Council is prima facie evidence of the matters stated in the certificate. If the amount certified is greater than the amount which would have been paid to the Contractor if the whole of the Contract Works had been completed by the Contractor pursuant to this agreement, the difference between the two amounts is a debt due from the Contractor to the Council.
- 18.5 Upon termination of the Contractor's engagement under this clause, the Contractor is liable to the Council for all losses, costs and expenses caused by the termination of the Contractor's engagement, as if this agreement had been repudiated by the Contractor and rescinded by the Council's acceptance of such repudiation.

19. Termination by Contractor

- 19.1 The Contractor may terminate this agreement by written notice to the Council if the Council breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving written notice requiring it to do so.
- 19.2 Termination of this agreement under this clause does not affect any accrued rights or remedies of other party.

20. Confidential Information and Freedom of Information

20.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:

20.1.1 keep confidential;

20.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

20.1.3 maintain proper and secure custody of; and

20.1.4 not use or reproduce in any form;

any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.

20.2 The Consultant consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.

20.3 Unauthorised disclosure of any Confidential Sections constitutes a breach of a party's obligations under this agreement.

21. Dispute Resolution

21.1 General

[Drafting Note – please delete this clause if the Council does not wish to make provision for alternative dispute resolution] [Delete RED text once read]

21.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.

21.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.

21.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

21.1.4 If the parties are unable to resolve the dispute within 10 business days, they must promptly refer the dispute:

21.1.4.1 in the case of the Council to the Chief Executive Officer;
and

21.1.4.2 in the case of the Consultant to the Consultant's Representative.

[Drafting Note – please amend this clause if the Council wishes to lengthen or shorten the 10 business day period] [Delete RED text once read]

21.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

21.2 Mediation

21.2.1 If those persons are unable to resolve the dispute within 10 business days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:

21.2.1.1 a mediator agreed by the parties; or

21.2.1.2 if the parties are unable to agree a mediator within five business days, a mediator nominated by the President of the Law Society or the President's nominee.

[Drafting Note – please amend this clause if the Council wishes to lengthen or shorten any of the specified periods] [Delete RED text once read]

21.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.

21.2.3 Any information or documents disclosed by a party under this clause:

21.2.3.1 must be kept confidential; and

21.2.3.2 may not be used except to attempt to resolve the dispute.

21.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

21.3 Arbitration

21.3.1 If the dispute is not resolved within 10 business days of appointment of the mediator, a party may refer the dispute to:

21.3.1.1 an arbitrator agreed by the parties; or

21.3.1.2 if the parties are unable to agree an arbitrator within five business days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.

[Drafting Note – please amend this clause if the Council wishes to lengthen or shorten the 10 business day period] [Delete RED text once read]

21.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011* (SA).

21.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.

21.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

21.4 Performance

If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

22. Representatives

22.1 The Council nominates the Council's Representative as its agent for the purpose of this agreement.

22.2 The Contractor nominates the Contractor's Representative as its agent for the purposes of this agreement.

22.3 Each party's representative has the authority to make or give instructions, approvals and decisions in respect of the Contract Works, unless a party notifies the other in writing of limits on the powers of its representative.

23. Relationship

This agreement does not create a relationship of employment, agency or partnership between the parties.

24. Miscellaneous

24.1 Special Conditions

If there is an inconsistency between a Special Condition set out in Annexure B and the rest of this agreement, the Special Condition governs to the extent of the inconsistency.

24.2 Business Days

Except for the commencement carrying out or completion of any works, if the day on which an act is to be done under this agreement is not a business day, that act may be done on the next business day.

24.3 Alteration

This agreement may be altered only in writing signed by each party.

24.4 Approvals and consents

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

24.5 Entire agreement

This agreement:

24.5.1 constitutes the entire agreement between the parties about its subject matter;

24.5.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

[Drafting Note – please note the provisions of this clause. Council therefore must ensure that this agreement records all agreed terms and conditions with the Contractor] [Delete RED text once read]

24.6 Waiver

A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.

24.7 Exercise of power

24.7.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

24.7.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

24.8 **Survival**

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

24.9 **Further action**

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

24.10 **Governing law**

24.10.1 This agreement is governed by the law in South Australia.

24.10.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

24.11 **Ombudsman**

The Contractor acknowledges that the *Ombudsman Act 1972* (SA) empowers the Ombudsman to investigate matters in the public interest. The Contractor must ensure compliance with all obligations arising under that or any other Act.

24.12 Work Health and Safety

In complying with its obligations pursuant to this agreement, the Contractor agrees to:

- 24.12.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Contractor;
- 24.12.2 comply with all requirements of the *Work Health and Safety Act 2012* (SA) and any regulations made under it;
- 24.12.3 comply with any reasonable requests of the Council in relation to the Contractor's performance of its obligations pursuant to this agreement;
- 24.12.4 promptly notify the Council of any accident, injury, property or environmental damage or any potential breach of any law (reportable incident) that occurs during or as a result of this agreement. Within 24 hours of a reportable incident, the Contractor must provide a report to the Council's Representative giving details, including the result of investigations into its cause and recommendations or strategies for prevention in the future.

24.13 ICAC

The Contractor acknowledges and agrees that by entering into this agreement with the Council the Contractor will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act, 2012* (SA) (ICAC Act) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

25. Goods and Services Tax

25.1 Consideration does not include GST

Unless specifically described as 'GST inclusive', any payment or consideration under this agreement does not include GST.

25.2 Gross up of consideration

Where a supply by one party (**Supplier**) to another party (**Recipient**) under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

- 25.2.1 the expressed consideration for that supply must be increased by, and the Recipient must pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and

25.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

25.3 Reimbursements

If a payment to a party under this agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with the previous subclause.

25.4 Tax invoices

Notwithstanding any other provision of this agreement, the Recipient need not make any payment for a taxable supply made by the Supplier under this agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

[Drafting Note – Delete if using paragraph 4 of Item 14] [Delete RED text once read]

25.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under this agreement, any party that becomes aware of the occurrence of that adjustment event must notify each other party to that taxable supply as soon as practicable, and all of those parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

26. Security of Payment

26.1 If the *Building and Construction Industry Security of Payment Act 2009* (SA) (SP Act) applies to this agreement:

26.1.1 the SP Act prevails to the extent of any inconsistency; and

26.1.2 the parties agree to comply with the SP Act.

26.2 The Contractor must immediately give the Council, by handing to the Council's Representative, a copy of any notice or any written communication of any nature the Contractor receives or issues pursuant to the SP Act. This includes a copy of any notice(s) or written communication(s) of any nature

that the Contractor receives from any other party in relation to the Contract Works, including from any subcontractor or subconsultant of the Contractor.

- 26.3 If the Council receives a copy of a notice or other written communication from a subcontractor or subconsultant of the Contractor indicating an intention to suspend or actually suspending any aspect of the Contract Works, the Council may, in its absolute discretion, pay the subcontractor or subconsultant the whole or part of the money the subcontractor or subconsultant states that it is owed by the Contractor and the amount of the payment made by the Council will be a debt due from the Contractor to the Council.
- 26.4 The Contractor indemnifies the Council against all liabilities, damages, losses, costs and expenses (including legal costs on a full indemnity basis) incurred by the Council arising from a suspension of the Contract Works pursuant to the SP Act.
- 26.5 If the Contractor suspends the whole or any part of the Contract Works pursuant to the SP Act, then to the extent permitted by law, the Contractor shall not be entitled to any extension of time for Completion of the Contract Works or any adjustment of the Contract Sum.

27. Notices

- 27.1 A Notice must be:
- 27.1.1 in writing, in English and signed by a person authorised by the sender; and
 - 27.1.2 hand delivered or sent by pre paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- 27.2 A Notice is deemed to be received:
- 27.2.1 if hand delivered, on delivery;
 - 27.2.2 if sent by prepaid mail, two business days after posting (or seven business days after posting if posting to or from a place outside Australia);
 - 27.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;

27.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.

However if the Notice is deemed to be received on a day that is not a business day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next business day.

27.3 If two or more people comprise a party, Notice to one is effective Notice to all.

28. Costs

Each party must pay its own costs of preparing this agreement and any document required by it.

[Drafting Note – please amend this clause if it is not correct – eg if the Council has negotiated for the Contractor to pay the Council's costs] [Delete RED text once read]

EXECUTED as an agreement

By the Council

SIGNED by [Insert name] under delegated authority in the presence of:	
..... Signature	..... Signature of witness
	..... Name of witness (print)

If the Contractor is a company, the document must be executed as follows:

Executed by [Insert] pursuant to section 127 of the Corporations Act 2001	
..... Signature of Director	..... Signature of Director/Company Secretary <i>(Please delete as applicable)</i>
..... Name of Director (print)	..... Name of Director/Company Secretary (print)
OR	
..... Signature of Sole Director and Sole Company Secretary	
..... Name of Sole Director and Sole Company Secretary (print)	
OR	
Signed for [Insert] by an authorised representative in the presence of:	
..... Signature of witness	..... Signature of authorised representative
..... Name of witness (print)	..... Name of authorised representative (print)
	..... Position of authorised representative (print)

If the Contractor is an individual, the document must be executed as follows:

Signed by [insert name] in the presence of:	
..... Signature of witness	..... Contractor
..... Name of witness (print)	

If the Contractor is a partnership, the document must be executed as follows:
(Add extra execution clauses for additional partners as necessary.)

Partner 1:

Signed by [insert name] in the presence of:	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

Partner 2:

Signed by [insert name] in the presence of:	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

Annexure A Contract Works

[Contract Works - attach drawings, plans, etc]

Annexure B Special Conditions

[Special conditions]

Annexure C Schedule of Rates

[Set out the rates for employees, plant and equipment – delete if not applicable]

1. The Contract Sum is calculated in the following manner:

- 1.1 Within 14 days of the end of each calendar month during the term and during the calendar month following the expiry of the term, the Contractor must provide to the Council's Representative a certificate certifying the amount that the Contractor believes is owed by the Council for Contract Works provided during the previous month.
- 1.2 Such certificates must be accompanied by copies of the work sheets for each employee for each day claimed setting out the hours worked and containing sufficient other detail to enable the Council's Representative to check the calculation of the Contract Sum against the rates shown above. Each work sheet must be certified correct by the Contractor's Representative.
- 1.3 The Contractor must as soon as reasonably practicable answer any questions and provide any further evidence the Council's Representative reasonably requires to verify the Contractor's claim.
- 1.4 Within 30 days of the end of the previous calendar month the Council must pay to the Contractor the amount of the Contractor's claim accepted by the Council's Representative less any amount that the Council cannot verify.
- 1.5 If the Council's Representative does not verify any amount the Council's Representative must give his or her reasons for not doing so to the Contractor at the time of payment of the balance of the claim.

2. Where this Annexure includes estimated hours for any aspect of the Contract Works:

- 2.1 Where the actual hours incurred by the Contractor in performing a nominated portion of the Contractor Works exceed the estimated hours by an amount of greater than 5% then there is no obligation on the Council to reimburse the Contractor for such additional hours.
- 2.2 Where the Council's Representative is of the view that the additional hours have been incurred for reasons beyond the reasonable control of the Contractor, then the Council's Representative may, in his or her absolute discretion, determine that the Council should reimburse the Contractor for all or some of the additional hours.

Annexure D Programme

[Programme]