



## Request for Tender

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<b>Request for Tender:</b>	<i>AGRN973 Road Flood Damage Repairs</i>
<b>Deadline:</b>	<i>5.00PM AWST WEDNESDAY 19 OCTOBER 2022</i>
<b>Address for Delivery:</b>	<b>TENDER SUBMISSIONS MUST BE SUBMITTED VIA THE ELECTRONIC TENDERBOX BELOW</b>  <a href="mailto:tenderbox@greenfieldtech.com.au">tenderbox@greenfieldtech.com.au</a>  <b>NO OTHER FORMAT OF SUBMISSION WILL BE ACCEPTED</b>
<b>RFT Number:</b>	<i>RFT 02-22</i>

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The information that follows on this page has been prepared to assist tenderers ensure that they have provided all information required. It is the tenderers sole responsibility to ensure they have read this request thoroughly and provided all information required. Any details requested in this tender request including the schedules below that are not submitted will affect the score in the relevant assessment criteria. Additionally, a lack of detail in the relevant information for each schedule will also affect the score in the relevant assessment criteria.

**PART 5 - TENDERER'S OFFER:** *Tenderer's must complete and return this Part 5 with their tender submission.*

**SCHEDULE 1 – FORMAL OFFER**

**SCHEDULE 2 – STATEMENT OF INTENT**

**SCHEDULE 3 – STATEMENT OF CONFORMITY**

**SCHEDULE 4 – LOCAL PREFERENCE:** *Tenderer to nominate whether they are eligible for consideration under the Shire's Local Preference Policy and if so, why.*

**SCHEDULE 5 – REFEREES:** *The referees provided must be related to the previous projects listed in Schedule 8.*

**SCHEDULE 6 – ADMINISTRATION:** *The tenderer is required to confirm their willingness to complete the project administration tasks to the satisfaction of the Principal's Representative and that the tenderer's pricing schedule allows for these tasks.*

**SCHEDULE 7 – DETAILS OF PLANT TO BE SUPPLIED:** *The details provided in this schedule are used as part of the tender assessment. The details of individual plant items provided in these schedules should generally reflect the total list of requested plant in the tender schedule.*

**SCHEDULE 8 – RELEVANT PAST EXPERIENCE:** *Only details of previous projects involving the repair and/or construction of sealed and unsealed PUBLIC roads in SIMILAR locations should be provided in this schedule. Projects which involve supply of dry or wet hire to a separate head civil roadworks contractor should be clearly noted separately.*

**SCHEDULE 9 – CURRENT PROJECT COMMITMENTS:** *Tenderers need to nominate when other projects will be completed and when the tenderer is available to commence work with full complement of plant and personnel.*

**SCHEDULE 10 – KEY PERSONNEL:** *The specific details (names and associated resumes) provided for the Plant Hire Contractor Supervisor and Grader Operators will be used to score the relevant assessment criteria. The Plant Hire Contractor Supervisor will be a standalone supervisor and shall not operate any items of plant nor be the person designated to carry out machinery repairs or other activities. These nominated key personnel cannot be changed without the approval of the Principal's Representative.*

**SCHEDULE 11 – DETAILS OF PROPOSED CAMP/ACCOMMODATION AND MECHANICAL SUPPORT:** *The specific details provided for the Camp/Accommodation and Mechanical Support for the project will be used to score the relevant assessment criteria.*

**SCHEDULE 12 – INSURANCES:** *The relevant insurance information needs to be provided in this schedule. A failure to supply current insurance details in this schedule will mean the tender will be deemed non-conforming and not accepted for assessment.*

**SCHEDULE 13 – NOMINATED SUBCONTRACTORS:** *Any subcontractors that the tenderer proposes to use must be nominated in this schedule.*

## **1 GENERAL INFORMATION FOR TENDERERS**

### **1.1 General**

This PART 1 provides Tenderers with a brief description of the services required and a background to the Tender process. If there is any conflict between it and the detailed Specifications in the later Sections of these documents, the requirements in the later Sections shall have precedence.

This Request for Tender is comprised of the following parts:

- Part 1 – General Information for Tenderers (read and keep this part)
- Part 2 – Conditions of Tendering (read and keep this part)
- Part 3 – General Conditions of Contract (read and keep this part)
- Part 4 – Special Conditions of Contract (read and keep this part)
- **Part 5 - Tenderers Offer and Responses (complete and return this part)**
- **Part 6 – Tender Response Schedules (complete and return this part including all schedules)**
- Part 7 – Appendices (read and keep this part)

#### **Separate Documents**

- Addenda and any other special correspondence issued to Tenderers by the Principal.
- Any other policy or document referred to but not attached to the Request

### **1.2 Contract Requirements in Brief**

Suitably resourced, skilled and experienced contractors are invited to submit a Tender to complete various road flood damage repair works arising from flood damage sustained within Shire of Jerramungup in June 2021.

### **1.3 Contract Objectives**

The Objectives of the Contract include the following:

- To complete reinstatement of flood damaged roads to their pre-event standard in compliance with this specification and the conditions stipulated under the Shire's DRFA-WA funding agreement.
- To undertake the reinstatement works in a safe, cost effective and efficient manner to achieve an acceptable standard of performance in accordance with industry standards and standards required by this specification.
- To maintain regular and effective communication between the Plant Hire Contractor, Principal's Representative, Contract Site Inspector and Principal to ensure compliant



**Part 1 READ AND KEEP THIS PART**

delivery of the services required under the contract and compliance with the conditions stipulated under the Shire's DRFA-WA funding agreement.

- To ensure compliance with all Shire purchasing and procurement policies as well as the Shire's Disability Access Inclusion Plan. Refer to the Shire's website for further information.

## 1.4 Definitions

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

<b>Attachments:</b>	The documents you attach as part of your Tender.
<b>Contractor:</b>	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, including the executors or administrators, successors and assignments of such person or persons, corporation or corporations.
<b>Deadline:</b>	The deadline for lodgement of your Tender as detailed on the front cover of this Request.
<b>General Conditions of Contract:</b>	Means the General Conditions of Contract for the Provision of Services nominated in Part 3.
<b>Offer:</b>	Your offer to supply the Requirements.
<b>Principal:</b>	Shire of Jerramungup
<b>Request OR RFT OR Request for Tender:</b>	This document.
<b>Requirement:</b>	The Services requested by the Principal.
<b>Selection Criteria:</b>	The Criteria used by the Principal in evaluating your Tender.
<b>Specification:</b>	The Statement of Requirements that the Principal requests you to provide if selected.
<b>Principal's Representative:</b>	To be appointed by the Shire of Jerramungup
<b>Tender:</b>	Completed Offer form, Response to the Selection Criteria and Attachments.
<b>Tenderer:</b>	Someone who has or intends to submit an Offer to the Principal.
<b>Works or Services:</b>	Means the Works or Services, which the Contractor is required to provide to the Principal and the Contractor under the Contract.

## **1.5 Background Information**

The Shire of Jerramungup suffered damage to various road assets following flooding in June 2021. The Shire expects to receive funding for the road reinstatement works via the DRFAWA program.

Due to the severe damage incurred on some roads, the Shire is seeking to complete the high priority, urgent works prior to the end of 2022.

A full list of the defects that are proposed to be completed by the successful contractor as a result of this RFT process is contained within Appendix 4.

Due to the variable nature of the works, the Shire proposes to engage a contractor on an hourly rates basis to complete the scope of work. The work will be overseen by a Shire appointed Principal's Representative.

There is no guaranteed minimum quantity of work as a result of award of this RFT and the total value of work is subject to vary based on various factors. The Shire reserves the right to vary the scope of work without penalty for any reason prior to contract award or during the works.

The works within this RFT are on the following roads:

- Boxwood Hill Ongerup Rd
- Cameron Rd
- Doubtful Island Rd
- Meechi Rd

## **1.6 Scope of Work**

The contract provides for the repair of flood damaged roads by competent licensed operators (the Plant Hire Contractor).

The scope of works typically comprises:

- Minor clearing,
- Reforming and reconstruction of the road formation,
- Reconstruction of unsealed shoulders,
- Reconstruction of sealed floodways
- Reconstruction of rock/scour protection
- Reshape / form table drains and offshoot drains,

**Part 1 READ AND KEEP THIS PART**

- Source gravel from borrow pits including clearing, topsoil stripping, removal of overburden, pushing up and stockpiling gravel and associated rehabilitation,
- Construction and maintenance of turkey's nests associated with nominated water bore sources, and
- Various works to obtain water from water bores, natural sources and any other source for road construction purposes.

## **2 CONDITIONS OF TENDERING**

The applicable General Conditions of Contract, as referred to in this Request, are contained in Section 3. Tenderers are to ensure they have read and understood the General Conditions of Contract and shall include in their tendered price the cost of complying with the General Conditions of Contract.

### **2.1 How to Prepare Your Tender**

- a) Carefully read all parts of this document
- b) Ensure you understand the Requirements
- c) Complete and return the Offer (Part 5) and Schedules (Part 6) in all respects and include all Attachments
- d) Make sure you have signed the Offer form and responded to all the Selection Criteria
- e) Lodge your Tender before the Deadline

### **2.2 Contact Persons**

All queries should be directed to the nominated contact person below.

Joshua Kirk

Principal Civil Engineer, Greenfield Technical Services

0498 999 484

[Josh.kirk@greenfieldtech.com.au](mailto:Josh.kirk@greenfieldtech.com.au)

Tenderers should not rely on any information provided by any person other than those responses provided by the above person.

### **2.3 Tender Briefing / Site Inspection**

The Principal does not intend to conduct a tender briefing / site inspection. The Principal strongly recommends that prospective tenderers make themselves aware of the Shire and its environment prior to submitting a tender.

### **2.4 Lodgement of Tenders and Delivery Method**

The tender must be lodged by the Deadline.

**The Deadline for this request is 5.00PM AWST WEDNESDAY 19 OCTOBER 2022.**

Tenderers shall address and clearly label their tender submission as Shire of Jerramungup – **RFT 02-22 AGRN973 ROAD FLOOD DAMAGE REPAIRS.**

**All tenders must be submitted electronically prior to the deadline via the tenderbox address below:**

[tenderbox@greenfieldtech.com.au](mailto:tenderbox@greenfieldtech.com.au)

**NO OTHER FORMAT OF SUBMISSION WILL BE ACCEPTED.**

It is the tenderer's responsibility to ensure timely and complete delivery of any submission document. Tenders will not be accepted after the nominated closing date and time, or a revised closing date and time notified in writing to all Tenderers.

## **2.5 Rejection of Tenders**

A Tender will be rejected without consideration of its merits in the event that it is not submitted before the Deadline and may be rejected without consideration of its merits in the event that:

- a) It is not submitted at the place specified in the Request; or
- b) It fails to comply with any other requirements of the Request.

## **2.6 Late Tenders**

Tenders received after the Deadline will not be accepted for evaluation.

## **2.7 Acceptance of Tenders**

Unless otherwise stated in this Request, Tenders may be for all or part of the Requirements and may be accepted by the Principal either wholly or in part. The Principal is not bound to accept the lowest Tender and may reject any or all Tenders submitted.

## **2.8 Customs Duty**

The Tenderer shall allow for any customs duty and premise applicable to all imported materials, plant and equipment required in connection with the works in its Tender.

## **2.9 Site Allowances**

This contract is not subject to adjustment for Site allowances.

## **2.10 Disclosure of Contract Information**

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

All Tenderers will be given the particulars of the successful Tenderer (s) or be advised that no Tender was accepted.

### **2.11 Tender Validity Period**

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

### **2.12 Precedence of Documents**

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

### **2.13 Discrepancies, Errors and Emissions**

Should Tenderers find:

- any discrepancy, error or omissions in the Tender Documents; or
- the Tender documents are at variance with laws, ordinance, rules and regulations bearing on the conduct of the work;

they shall notify the Contact Person promptly in writing thereof, before the Deadline.

Any work performed contrary to such laws, ordinances, rules and regulations will not be accepted.

### **2.14 Statutory Requirements**

Tenderers shall make allowance to provide evidence that the work to be undertaken or completed or in progress satisfies all relevant statutory requirements. All materials, equipment, and work methods proposed by the Tenderer shall comply with the Work Health and Safety requirements presently in force within Western Australia.

### **2.15 Alternative Tenders**

Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases arising be clearly marked "**ALTERNATIVE TENDER**". For an Alternative Tender to be considered, it must be accompanied by a conforming Tender.

The Principal may in its absolute discretion reject any Alternative Tender as invalid.

Any printed “General Conditions of Contract” shown on the reverse of a Tenderer’s letter or quotation form will not be binding on the Principal in the event of a Contract being awarded unless the Tender is marked as an Alternative Tender

Alternative Tenders must offer significant advantage over conforming tenders to the Shire if they are to be accepted by the Shire.

## **2.16 Tenderers to Inform Themselves**

Tenderers will be deemed to have:

- a) examined the Request and any other information available in writing to Tenderers for the purpose of tendering;
- b) examined all further information relevant to the risks, contingencies, and other circumstances having an effect on their Tender which is obtainable by the making of reasonable enquires;
- c) satisfied themselves as to the correctness and sufficiency of their Tenders including tendered prices which will be deemed to cover the cost of complying with all the Conditions of Tendering and of all matters and things necessary for the due and proper performance and completion of the work described therein;
- d) acknowledged that the Principal may enter into negotiations with a chosen Tenderer and that negotiations are to be carried out in good faith; and
- e) satisfied themselves they have a full set of the Request documents and all relevant attachments.

## **2.17 Alterations**

The Tenderer must not alter or add to the Request documents unless required by these Conditions of Tendering.

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

## **2.18 Risk Assessment**

The Principal may have access to and give consideration to:

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

so as to assess that Tender and may consider such materials as tools in the Tender assessment process.

Tenderers may be required to undertake to provide to the Principal (or its nominated agent) upon request all such information as the Principal reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to provide the Services for which they are submitting and meet their obligations under any proposed Contract.

The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from the nominated agent may contact you concerning the financial information that you are required to provide.

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

## **2.19 Evaluation Process**

This is a Request for Tender.

Your Tender will be evaluated using information provided in your Tender.

The following evaluation methodology will be used in respect of this Request:

- a) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (e.g. completed offer form, attachments and any other information and/or documentation requested within this tender) may be excluded from evaluation.
- b) Tenders are assessed against the Selection Criteria. Contract costs are evaluated (e.g. tendered prices) and other relevant whole of life costs are considered.
- c) The most suitable Tenderers may be shortlisted and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution offered and/or open premises for inspection. Referees may also be contacted prior to the selection of the successful Tenderer.

A Contract may then be awarded to the Tenderer or Tenderers whose Tender is considered the most advantageous Tender to the Principal.

The Principal reserves the right to take into consideration any feature of a tender that provides a benefit to the Shire of Jerramungup and the community. Further, the Principal also reserves the right to take into consideration the Tenderer's past performance on any previous projects undertaken for the Shire or previous projects undertaken for other Clients of whom the Shire is aware of the outcomes. Any additional features or past performance



will be evaluated in accordance with the value-for-money assessment process outlined within.

## **2.20 Confidentiality of Submission Information**

The Principal will treat all information provided in a Tender submission as confidential and will not use it other than for purposes of, or related to, the Tender evaluation or as otherwise required by law.

Documents and other information relevant to a Tender may be disclosed when required by law, such as under the Freedom of Information Act 1992, the Local Government Act 1995, the Local Government (Functions and General) Regulations 1996 or under a court order documents and other information relevant to the contract may be disclosed when required by law under the Freedom of Information Act 1982 or under Court Orders.

All Tenderers will be given particulars of the successful Tenderer or advised that no Tender was accepted

## **2.21 Property and Copyright in Request Documents**

All intellectual property, including patents, copyright, trademarks, know-how, technical information and confidential information in or attaching to this Request shall remain the property of the Principal. A Tenderer shall not use any of the information in this Request for any purpose other than the preparation of its Tender submission

## **2.22 Compliance Criteria**

The criteria detailed in Section 5.2 will not be point scored. Each Tender will be assessed by the Principal on a Compliant/Non-Compliant basis as to whether the criterion is satisfactorily met. An assessment of “Non-Compliant” against any criterion may eliminate the Tenderer from consideration.

Compliant tenders will proceed to be evaluated against the selection criteria

## **2.23 Selection Criteria**

The Contract may be awarded to a sole Tenderer or a panel of Tenderer(s) who best demonstrate the ability to provide quality services at a competitive price. The tendered prices will be assessed together with qualitative and compliance criteria to determine the most advantageous outcome to the Principal.

The Principal has adopted a “best value for money” approach to this Request.

This means that, although the price is considered, the Tender containing the lowest price will not necessarily be accepted, nor will the Tender rank the highest on the qualitative criteria.

Failure to address all the Selection Criteria may result in the tender being deemed non-compliant and the tender rejected.

The Selection Criteria is comprised of two components as described below:

- Qualitative Criteria 75%
- Price 25%

### **2.24 Qualitative Criteria (75%)**

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria as detailed within Section 5.3.1 of this document. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the goods or services being purchased.

It is essential that Tenderers address each qualitative criterion. Information that you provide addressing each qualitative criterion will be point scored by the Evaluation Panel.

**Failure to provide the required information may result in the tender being deemed non-compliant and elimination from the tender evaluation process or a low score.**

Before responding to the following qualitative criteria, Tenderers must note the following:

- All information relevant to your answer to each criterion are to be contained within your Tender
- Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience
- Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria
- Tenderers are to address each issue outlined within the qualitative criterion

A scoring system will be used as part of the assessment of the qualitative criteria. Unless otherwise stated, a Tender that provides all the information requested will be assessed as satisfactory. The extent to which a Tender demonstrates greater satisfaction of each of these criteria will result in a greater score. The aggregate score of each Tender will be used as one of the factors in the final assessment of the qualitative criteria and in the overall assessment of value for money.

### **2.25 Price (25%)**

Price is a weighted criterion. The Tenderer is to complete the Price Schedule (s) given in Section 5.3.4 for each of the work packages they are nominating for

**Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.**

## 2.26 Price Basis

All prices and schedule of rates for services offered under this RFT Request are to be fixed for the term of the Contract.

**Tendered prices are EXCLUSIVE of Goods and Services Tax (GST).**

Unless otherwise indicated prices tendered must include all applicable levies, duties, taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.

**There is no provision for rise and fall within this Contract.**

## 2.27 Regional Price Reference

Tenderers for the contract may be afforded a preference in accordance with Regulation 24(A-G) of the Local Government (Functions and General) Regulations and the Shire of Jerramungup's Regional Price Preference Policy (AP3).

A copy of this policy can be found on the Shire's website:

<https://www.jerramungup.wa.gov.au/documents/91/ap3-regional-price-preference-policy>

Tenderers have the opportunity to claim a Regional Price preference by indicating as such in Schedule 4.

**It is the sole responsibility of the tenderer to nominate how their tender is eligible for consideration under the Shire's Regional Price Preference Policy. Tenderers must not assume any prior knowledge of the Shire and/or the Tender Evaluation Panel. A failure to specifically state what elements of a tender are eligible for regional price preference may result in that tender not being considered for preference under the policy.**

## 2.28 Ownership of Tenders

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

### **2.29 Canvassing of Officials**

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

### **2.30 Identity of the Tenderer**

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Schedule 1 and whose execution appears on the same schedule. Upon acceptance of the Tender, the Tenderer will become the Contractor.

### **2.31 Costs of Tendering**

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

### **2.32 Tender Opening**

Tenders will be opened in the offices of the Shire of Jerramungup on or as soon as practicable after the advertised Deadline in accordance with all local government purchasing and tendering regulations. All Tenderers and members of the public may attend or be represented at the opening of Tenders. Those who intend on attending the tender opening are requested to notify the tender's nominated contact person prior to the tender deadline.

The names of the persons who submitted a Tender by the due Deadline will be read out at the Tender Opening. No discussions will be entered into between Tenderers and the Principal's officers present or otherwise, concerning the Tenders submitted.

### **2.33 In House Tenders**

The Principal does not intend to submit an In-House Tender.

### **3 GENERAL CONDITIONS OF CONTRACT**

The General Conditions of Contract applicable to this Tender are based on the Standard WALGA template for the “Supply of Goods and the Provision of General Services” and is included in Appendix 5.

Please note the following information below is intended for easy reference to clauses that may have been deleted, amended or added to the standard WALGA General Conditions of Contract for the “Supply of Goods and the Provision of General Services”.

1. The following Clauses have been deleted from the General WALGA Conditions:
  - a. Clauses 13, 14, 19, 21, 22.3, 22.4, 23.4, 23.5, 25, 29 and 36.
2. The following Clauses have been amended and differ from the corresponding Clauses in the General WALGA Conditions:
  - a. Clause 32 has some additional information. Refer Special Conditions of Contract section 4.19.
  - b. Clause 43 has some additional information. Refer Special Conditions of Contract section 4.18.
3. The following Clauses have been added to those of the General WALGA Conditions.
  - a. Refer Special Conditions of Contract Sections 4.1 – 4.17, 4.20 – 4.22.

## **4 SPECIAL CONDITIONS OF CONTRACT**

### **4.1 Terms of Engagement**

Following notification of award by the Shire, the successful contractor(s) shall commit to be established on site ready to commence work no later than 21 days after the notification. However, the Shire reserves the right to delay the contractor's start date for a period of up to 3 months following notification of award as required.

The Shire will confirm to the successful contractor (s), the full extent of establishment required on site for commencement.

### **4.2 Implementation Timetable**

Following formal notification of award of contract by the Principal to the Contractor, the works are expected to commence in late 2022. The Shire's preference is for all works to be completed by 31 December 2022.

The Principal reserves all rights to vary the above indicative timetable without penalty under the Contract for any reason.

The Contractor must be ready to mobilise to site within 21 days of a mobilisation request from the Principal.

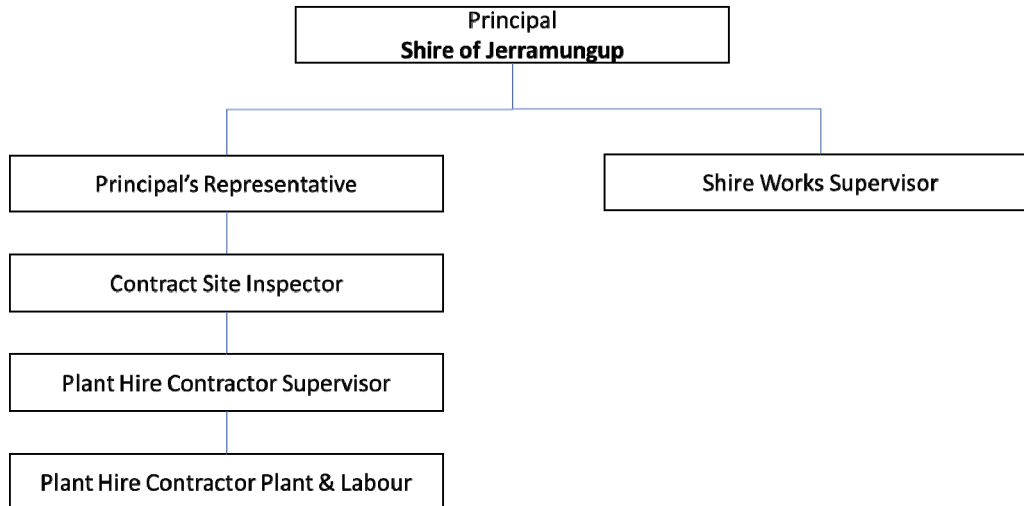
### **4.3 Period of Contract**

The duration of the Contract is fixed by the Project funding. Ongoing costs will be monitored on a fortnightly basis and works will continue until such time as the works are completed to the required specification within the approved cost estimate.

Notwithstanding this, the Shire of Jerramungup reserves the right to terminate the contract with the successful tenderer as per the provisions of Section 3.23 of this document

#### 4.4 Contract Management Structure

The Contract and Project Management Structure of the works will be as follows in the figure below.



**This is a tender for hourly plant hire with operators.**

The successful tenderer will be responsible for the day-to-day running of the works; the Contract Site Inspector will provide overall technical and quality assurance of the works. The intent is for the Plant Hire Contractor and Contract Site Inspector to work collaboratively to agree the most efficient and productive means of completing the works to achieve the project specifications.

##### 4.4.1 Principal's Representative

The Principal's Representative will be appointed by the Principal to represent the Principal in all aspects of the works. The Principal's Representative will also administer the contract.

##### 4.4.2 Contract Site Inspector

The Contract Site Inspector is the Principal's Site Representative.

##### 4.4.3 Shire Works Supervisor

The Shire Works Supervisor is separate to the flood damage reinstatement works but may provide guidance and / or information to the Principal's Representative and/or Contract Site Inspector with regards to local conditions.

#### 4.5 Specific Requirements of the Contract

The process for undertaking the flood damage works will be as follows:

1. The Contract Site Inspector reports to the Principal's Representative.

2. The overall extent of works is determined from the approved DRFA-WA defect schedule and cost estimate.
3. The Contract Site Inspector and Plant Hire Contractor will agree on the proposed methods to undertake the works on each defect.
4. The Plant Hire Contractor's Supervisor will manage the day-to-day operations of the Plant Hire Contractor's work crew to complete the works in the agreed timeframe in accordance with the project specifications.
5. The Contract Site Inspector will monitor and provide overall technical and quality assurance of the works. Works that do not conform shall be reworked as directed by the Contract Site Inspector. All costs associated with rework shall be at the Plant Hire Contractors' expense.

## **4.6 Working Times**

### **4.6.1 Working Hours**

Works will generally be confined to daylight hours only; no work may occur during twilight hours without the written approval of the Principal's Representative.

Working times will be negotiated with the Plant Hire Contractor prior to commencing works. There are no minimum guaranteed hours for any of the Plant Hire Contractor's non-provisional or provision plant, equipment and/or operators/labour.

All working hours are subject to agreement from and by the Principal's Representative.

### **4.6.2 Working Days**

Working days shall be Monday to Sunday inclusive.

### **4.6.3 Working Cycles**

The Contractor can expect to schedule work cycles on the basis of a 13 days on – 1 day off – 7 days on – 7 days off working swing. The Principal reserves the right to vary this as required to suit the work needs without any additional cost.

Where required, consideration for any legislative requirements or other events (e.g. Christmas / Easter etc) will be given by the Principal. It is possible that the Contractor may be required to take a mandatory work break over certain public holiday periods (where applicable) and any charges associated with this need to be allowed for in the Tenderer's pricing.



In extenuating circumstances, the above requirements may be varied but only by notice in writing from the Principal's Representative to the Contractor.

#### **4.7 Key Personnel**

There are a number of key personnel that are required to be supplied by the Plant Hire Contractor; refer details below.

##### **4.7.1 Plant Hire Contractor's Supervisor**

The Plant Hire Contractor's Supervisor will be a full-time, stand-alone site supervisor and shall not be involved in any other projects at all, nor operate any item of plant (including the machinery float), nor carry out any machinery repairs or similar activities. The Plant Hire Contractor's Supervisor shall demonstrate comprehensive:

- i. Previous experience with supervising / managing remote area road building / maintenance contracts, including experience in a remote campsite operation
- ii. Previous experience in interpreting design levels, drawings and design set-out
- iii. Sound organisational and time management skills
- iv. Previous experience in the operation of earthmoving plant
- v. Proven previous operational experience and sound understanding of machine capabilities and mechanical aptitude
- vi. Sound assessment / analysis skills in relation to road building materials
- vii. Sound understanding of contract management and administration

**NOTE:** This position is considered a senior operational position and the person nominated cannot be changed within written authority from the Principal's Representative.

**A resume for the Supervisor must be submitted as part of Schedule 10.**

##### **4.7.2 Contract Grader Operators**

The Plant Hire Contractor's grader operators shall demonstrate comprehensive:

- i. Previous experience with interpreting design levels, drawings and design set-out
- ii. Previous experience in unsealed rural road construction and road maintenance with particular reference to:
  - a. Working to site levels without necessarily having pegged and/or surveyed levels
  - b. Construction involving limited set-out to achieve a finished design

- c. Knowledge and understanding of working with and mixing variable in-situ and locally available materials
- iii. Sound knowledge of the operation of machinery associated with earthworks construction / maintenance and a mechanical aptitude

**NOTE:** These positions are considered senior operational positions and cannot be changed within written authority from the Principal's Representative.

**Resumes for the grader operators must be submitted as part of Schedule 10.**

#### **4.7.3 Other Personnel**

Prior to the construction works commencing and then at all times during the works, the Plant Hire Contractor is required to maintain a list of personnel on site and provide this list to the Principal on request. The list is to contain all relevant licences, tickets and other documentation for each person on site.

#### **4.8 Administration**

The construction works covered by this RFT will require the tenderer to undertake a certain amount of administration. A summary of the project administration required is summarised below:

- Complete hardcopy record sheets supplied by the Principal's Representative, provide daily resource record sheets broken up into hour, job number and cost item on a daily basis.
- Populate electronic spreadsheets supplied by the Principal's Representative, enter daily resource record sheets and electronically deliver to the Principal's Representative at an agreed frequency.
- Compile a detailed record of all works completed.
- Compile complete records of:
  - Prestart meetings
  - OHS meetings, incident reports and similar
  - Supervisor daily diaries
  - QA records

#### **4.9 Technical Specifications for Flood Damage Plant Hire Contractor**

Refer Appendix 1 for the technical specifications applicable to the flood damage road repairs and reconstruction works that the Plant Hire Contractor will comply with in completing the works.

#### **4.10 Mobilisation and Demobilisation**

The Contractor shall provide for the mobilisation and demobilisation of all plant, people, equipment, materials and consumables required to carry out the Works.

It is the Contractor's responsibility to determine appropriate resources, plant and equipment necessary to carry out the Works in accordance with the Contract.

Payment for all works associated with Mobilisation and Demobilisation including camp mobilisation / demobilisation and any camp shifts is a fixed lump sum and will be paid progressively on a percentage complete basis.

#### **4.11 Site Accommodation**

The Contractor shall provide for all costs, plant, equipment, labour, materials and consumables in order to accommodate the labour force necessary to carry out the works. The accommodation camp or camps shall be located such that workers are not required to travel excessive distances to nominated work areas.

The Contractor shall aim to ensure that the camp or camps are within a maximum of 70km from the work site. This may only be varied with the written approval of the Principal's Representative.

Camp locations are the responsibility of the Contractor however are subject to approval by the Principal's Representative.

The Contractor shall provide for the accommodation, at the remote camp, of the nominated Principal's Representative for the duration of the Contract.

The Principal's Representative and/or their representative may conduct regular inspection of the camp facilities. If there are concerns raised, the Principal's Representative will request that the Contractor rectify these which the Contractor must do as soon as possible.

#### **4.12 Miscellaneous Set Out Items**

The Contractor is responsible for the supply of all set out items including marking paint, pegs, tape and all other similar items for use by the Contractor and Contract Site Inspector.

These items are required to be procured and supplied to the Contract Site Inspector prior to the Contractor commencing on site.

#### **4.13 Occupational Safety and Health**

The works shall be conducted at all times in a workmanlike manner in accordance with any relevant Federal and State Acts or Regulations, Council Local Laws, and Australian Standards.

The Contractor (and any sub-Contractors engaged by the Contractor) shall observe all requirements of the Occupational Safety and Health Act 1984 and Regulations with respect to providing a safe workplace. This includes plant and equipment and clothing, safety training for supervisors and employees and protection of the public.

All Contractor Representatives must hold a current Construction Safety Awareness Training Card (Blue/White Card).

The Contractor shall prepare a Safety Management Plan for review and approval by the Principal prior to mobilisation to site. The Contractor shall have documented Safe Operating Procedures (SOPs) and/ or Job Safety Assessments (JSAs), which all Contractor Representatives adhere to.

Regular toolbox meetings are to be conducted by the Contractor for attendance by all personnel on site. Minutes of those meetings are to be recorded and maintained on site for presentation as requested.

#### **4.14 Contractor Performance**

The Contractor shall nominate their full-time Supervisor on site to ensure that the works are competently managed at all times. The Supervisor shall work collaboratively with the Contract Site Inspector to complete the works in accordance with the approved work scope and technical specifications within the estimated cost.

The Principal shall routinely review and assess the Plant Hire Contractor's performance. The Shire reserves the right to discharge any person or item of plant which, in their opinion, is not satisfying the requirements of the contract. The Plant Hire Contractor will be advised and given 4 days to rectify the complaint.

Failure by the Plant Hire Contractor to rectify the complaint will result in the non-performing person/ plant item being discharged from the site and the Contractor will be directed to find a replacement at the Plant Hire Contractor's cost.

In the event that the Plant Hire Contractor fails to perform under the contract, the Shire reserves the right to terminate the contract forthwith.

#### **4.15 Rain Affected Sites**

In flood damage contracts, the Shire hires plant, equipment and operators to complete the contract works.

Following rain, if the Principal and/or their Representative decides it is best not to work because the work will result in more damage to works, then the Principal may direct the Plant Hire Contractor not to use certain plant and that plant is therefore on standby (due to weather) until the Principal deems that the weather event causing the standby has passed.

On the other hand, if the Plant Hire Contractor, for his own reasons, prefers to leave site, then the plant / crew is not available for that period of time and so the Plant Hire Contractor is not on standby.

The best outcome for both parties is to agree as soon as possible, when the job is likely to resume normal operations, and then, if the calculated delay is time enough to leave site cost-efficiently, then the Plant Hire Contractor will be encouraged to take a break, preferably by varying the swing dates.

There may also be times when the Plant Hire Contractor may be instructed to cease work on rain affected areas / roads and commence work on other nearby locations that are not rain affected. This is at the sole discretion of the Principal and will not result in additional cost to the Principal.

#### **4.16 Complaints**

The Contractor's Supervisor shall make it clear to enquirers that they are operating on behalf of the Shire and shall take courteous note of complaints and suggestions made by the travelling public or affected landowners and ratepayers.

The Contractor shall report all such discussions to the Contract Site Inspector.

#### **4.17 Insurances**

The Contractor and its subcontractor(s) (if any) will be required to effect and maintain the insurance policies referred to in the General Conditions of Contract in the following sums:

- a) Employee Insurance Cover / Workers Compensation Insurance as provided for by the Act at Common Law in the minimum amount of \$50,000,000 (fifty million dollars)

- b) Public and Product Liability insurance cover in the minimum amount of \$20,000,000 (twenty million dollars) per incident and \$20,000,000 in the aggregate (twenty million dollars).
- c) Plant, Equipment and Vehicle insurance cover (including fire, theft and damage cover) sufficient for the value of the plant and equipment supplied by the Contractor for the works plus 3<sup>rd</sup> party insurance cover in the minimum amount of \$20,000,000 (twenty million dollars).

The Shire shall not take any responsibility for any damage incurred to vehicles, equipment or accommodation at any time whilst engaged on this project.

Copies of current Certificates of Currency of insurances for the above are to be provided with Schedule 12 of this Request.

#### **4.18 Contract Payments**

This is a hired-plant contract where payments will be made on the following basis:

- Plant and Equipment at tendered hourly rate multiplied by the number of hours in productive use, as per machine hour meter or agreed by the Contract Site Inspector.
- Plant and Equipment at tendered hourly standby rate multiplied by the number of hours on standby, as agreed by the Contract Site Inspector. Refer specific details of standby below.
- Payment for supply, installation, fuelling and maintenance of water supply equipment including pumps, standpipes and generators will be based upon tendered hourly rates (for all equipment combined) per bore site (or other designated water source). Separate to the operating hourly rate a rate is also to be tendered for standby of water supply equipment when pumping is not in progress.
- The cost of providing and maintaining plant servicing and refuelling vehicles and operators is to be allowed for in tendered plant rates for other items of plant and will be paid as part of productive plant hours. There will be no separate hourly rate applicable to these plant servicing items.
- Tendered hourly rate for Labour only to be multiplied by the number of productive hours worked as agreed by the Contract Site Inspector. Labour only hours will only be applicable and claimable only where prior approval is given by the Contract Site Inspector.

## Part 4 READ AND KEEP THIS PART

- Mobilisation and demobilisation including Camp is a fixed Lump Sum and will be paid progressively on a percentage complete basis.
- Mobilisation and demobilisation between job sections within a road is to be paid for on the basis of tendered hourly hire rate of the machinery float multiplied by the number of hours engaged in the plant relocation. There will be no additional payment for the item of plant being loaded, transported and unloaded. Items of plant able to be legally driven on the public road (such as graders, trucks etc) AND driven on the public road to mobilise between different job sections (i.e. the item is NOT transported on a float) will be paid for at their tendered hourly rate for productive hours.
- Preparation of a traffic management plan relevant to the Parcel of works shall be tendered as a single lump sum and paid via the first claim following submission to the Contract Site Inspector and Principal's Representative and subsequent approval.

Rates are deemed to include for daily travel between camp and the worksite.

**That is, the Contractor will not be paid for daily travel between the camp and the worksite. Every effort will be made to ensure the works are within a 70km distance of the camp site however no guarantee is given. The contractor will not be due any additional payment for travel time or any other costs if the distance from the work site to the camp site exceeds 70km.**

All invoices for payment shall be submitted to Contractor Administrator accompanied by copies of the daily timesheets and Daily Resource Record Sheets (supplied by the Principal's Representative post tender).

The value of each Claim for Payment by the Contractor is to be agreed and authorised by the Principal's Representative. Claims are to be submitted on a fortnightly basis and the corresponding payment will be processed within 30 days following receipt of a compliant claim.

### 4.18.1 Standby

Standby hours are defined as time on standby due to inclement or wet weather.

Standby paid on this basis will comprise a maximum of 8 hrs in any one day. The Plant Hire Contractor must make an allowance for the cost of labour hours for items of plant on standby within their tendered rates for productive machine hours as there will be no separate payment for idle operators of plant on standby.

**Weather-Related Standby**

Where weather causes a standby event, machinery may be put on standby if there is no productive work to progress. In this case, the Plant Hire Contractor will be entitled to a maximum of 8hrs standby per idle machine (i.e. at the standby rate for the respective machine on standby). There will be no separate payment due to the Plant Hire Contractor for idle operators.

If the event is forecast to continue for multiple days, the Principal may issue instruction to send the Plant Hire Contractor's whole crew or a portion of the work crew off site until the event passes. Alternatively, a work break may be rescheduled to align with the inclement weather. There will be no additional costs payable should either of these two situations occur.

**Other Non-Productive Hours**

The nature of the flood damage reinstatement works means there may be times when there is insufficient work or work fronts available to ensure the full work crew on site can be kept engaged in productive works. In this case, the Plant Hire Contractor must make appropriate allowances in their productive hourly rates for any and all unproductive hours incurred as there will be no separate payment for idle/non-productive plant.

Where the above situation occurs, the Plant Hire Contractor must also make an allowance for the cost of labour hours of operators of idle/non-productive plant in their productive hourly rates as there will be no separate payment for idle operators of plant. It is in the Plant Hire Contractor's interest to make every effort to gainfully engage operators of non-productive / idle plant on other productive activities in consultation with the Contract Site Inspector. Where the other activities are productive to the works, the operator engaged in labour activities will be paid on the tendered labour rate.

**4.18.2 Subcontractor Payments**

All subcontractors must be paid in full by the Contractor within 10 calendar days of the Plant Hire Contractor receiving payment from the Shire.

It is a requirement that the Contractor provides copies of remittance notifications for payments to their subcontractor (s) to the Principal's Representative within 7 calendar days of the payment being made.

Failure to pay subcontractors within timeframe and failure to submit remittance notes may result in delayed payments to the Contractor.



#### **4.19 Drug & Alcohol Testing**

Mandatory supervised alcohol testing is required before commencing work every day and daily records will be kept. Testing will take place at the Plant Hire Contractor's camp using the Plant Hire Contractor's breathalyser. Ad-hoc drug and alcohol testing is also to be conducted at random throughout the duration of the contract works with records kept.

#### **4.20 Statutory Compliance**

The Plant Hire Contractor and all associated sub-contractors will need to operate at all times in accordance with Acts Statutes (State or Federal) for the time being enacted or modifying any Acts, and all Regulations, By laws, Requisitions, Ordinances, and Orders made under any Act from time to time by any Statutory public or other competent authority.

This includes ensuring that all operators of plant and equipment hold current licenses and qualifications relevant to the works being undertaken and be suitably qualified, skilled and competent to operate in compliance with Worksafe Regulations, Industry and OSH standards and any other relevant legislative and regulatory requirements.

All operators must have been trained in Safe work practices associated with roadworks on public roads including accreditation (for appropriate personnel) in traffic management and knowledge of the traffic management plan associated with the works of this contract.

#### **4.21 Building and Construction Industry Training Levy**

The appointed contractor shall be deemed the Project Owner - for the purposes of the Building and Construction Industry Training Levy Act 1990 - and the Contractor shall be responsible for making any and all payments due to the BCITF, arising from this contract. The Contractor is responsible for determining whether this levy is applicable to the scope of works and making all arrangements for the same.

The Contractor shall provide proof of payment of the levy to the Principal's Representative and/or Shire if requested.

## **5 TENDERER'S OFFER**

### **5.1 Form of Tender**

The Chief Executive Officer  
Shire of Jerramungup  
8 Vasey Street, Jerramungup WA 6337

I/We (Registered Entity Name): \_\_\_\_\_  
(BLOCK LETTERS)

of: \_\_\_\_\_  
(REGISTERED STREET ADDRESS)

ABN \_\_\_\_\_ ACN (if any) \_\_\_\_\_

Telephone No: \_\_\_\_\_ Facsimile No: \_\_\_\_\_

E-mail: \_\_\_\_\_

#### **In response to RFT 02-22 AGRN973 ROAD FLOOD DAMAGE REPAIRS:**

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

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

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

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

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 2022

Signature of authorised signatory of Tenderer: \_\_\_\_\_

Name of authorised signatory (BLOCK LETTERS): \_\_\_\_\_

Position: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Authorised signatory Postal address: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Part 5 COMPLETE AND RETURN THIS PART**

**5.2 Compliance Criteria**

Please select with a “Yes” or “No” whether you have complied with the following compliance criteria.

Description of Compliance Criteria	Yes	No
<p><b>i) Compliance with the Conditions of this Request</b></p> <p>Respondents are to provide acknowledgment that your organisation has submitted in accordance with the Conditions of this RFT including completion of the Offer Form and provision of your pricing submitted in the format required by the Principal.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>ii) Complete Respondents Offer</b></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>iii) Compliance with the Specification Contained in this Request</b></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>iv) Complete Pricing Schedule</b></p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>v) Risk Assessment</b></p> <p>Respondents must address the following information in an attachment and label it “<b>Risk Assessment</b>”.</p> <ul style="list-style-type: none"> <li>- Provide an outline of organisation structure inclusive of any branches and number of personnel.</li> <li>- Attach current ASIC company extracts search including latest annual return.</li> <li>- Provide the organisation’s Directors/Company Owners and any other positions held with other organisations.</li> <li>- Provide a summary of how many years your organisation has been in business.</li> <li>- Are you acting as an agent for another party? If Yes, attach details (including name and address) of your Principal.</li> <li>- Are you acting as a trustee of a trust? If Yes, give the name of the trust and include a copy of the trust deed (<i>and any related documents</i>); and if there is no trust deed, provide the names and</li> </ul>	<p><b><i>Tick if Attached</i></b></p> <p style="text-align: center;"><input type="checkbox"/></p>	
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>

**Part 5 COMPLETE AND RETURN THIS PART**

<p>addresses of beneficiaries.</p> <p>- Do you intend to subcontract any of the Requirements? If Yes, provide details of the subcontractor(s) including the name, address and the number of people employed; and the Requirements that will be subcontracted.</p>	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>vi) Financial Position</b></p> <p>In order to demonstrate your financial ability to undertake this contract, in an attachment labelled “<b>Financial Position</b>” respond to the questions below including a profit and loss statement and latest financial return (<i>OR a statement from your accountant attesting to your financial viability</i>) for you and each of the other proposed contracting entities, together with a list of financial referees from your bank and/or accountant.</p> <p>- Does the Tenderer have the ability to pay all debts in full as and when they fall due? (If no, please provide details)</p> <p>- Does the Tenderer have any current litigation, claim or judgement as a result of which you may be liable for \$50,000 or more? (If yes, please provide details)</p> <p>- Will the Tenderer cooperate with an independent financial assessor during the conduct of financial assessments (if required)? (If no please outline reasons why)</p>	<p><b><i>Tick if Attached</i></b></p> <input type="checkbox"/>	
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
	<input type="checkbox"/>	<input type="checkbox"/>
<p><b>vii) Conflict of Interest</b></p> <p>Will any actual or potential conflict of interest in the performance of the Tenderers obligations under the Contract exist if awarded the Contract, or are any such conflicts of interest likely to arise during the Contract? If yes, please provide details.</p>	<p><i>Information Supplied</i></p> <p>Yes / No</p> <input type="checkbox"/> <input type="checkbox"/> <p><i>Is there a Conflict of Interest?</i></p> <p>Yes / No</p> <input type="checkbox"/> <input type="checkbox"/>	

**Part 5 COMPLETE AND RETURN THIS PART**

<p><b>viii) Insurance</b></p> <p>Does the Tenderer maintain the minimum insurance requirements of this Request? If Yes, provide evidence of the Tenderers insurance coverage including, insurer, expiry date, value and type of insurance. If Tenderer holds “umbrella Insurance” please ensure a breakdown of the required insurances are provided. A copy of the Certificate of Currency is to be provided to the Principal within 7 working days of acceptance.</p> <p>Minimum insurance cover:</p> <ul style="list-style-type: none"> <li>▪ Public and Product Liability – \$20,000,000 for one claim; and \$20,000,000 in aggregate</li> <li>▪ Workers Compensation - as per the WA Workers Compensation and Injury Management Act 1981</li> <li>▪ Vehicles – Sufficient for plant and machinery supplied under the contract plus third-party damage to a minimum of \$20,000,000.</li> </ul>	<p>Yes</p> <p><input type="checkbox"/></p>	<p>No</p> <p><input type="checkbox"/></p>
<p><b>ix) Critical Assumptions</b></p> <p>Tenderers are to specify any assumptions they have made that are critical to the Tender, including assumptions relating to pricing and ability to provide the Requirements in the manner specified in this Request. Tenderers should attach these assumptions in an attachment labelled <b><u>“Critical Assumptions”</u></b></p>	<p><i>Information Supplied</i></p> <p>Yes / No</p> <p><input type="checkbox"/> <input type="checkbox"/></p>	

### 5.3 Selection Criteria

#### 5.3.1 Qualitative Criteria

Tenderers are required to address the following qualitative criteria and provide details in the relevant schedules. Any item requested in the schedules below that is not specifically addressed by the tenderer may affect the tenderers score.

Before responding to the following qualitative criteria, Tenderers must note the following:

- a) All information relevant to your answers to each criterion are to be contained within your Tender
- b) Tenderers are to assume that the Evaluation Panel has no previous knowledge of your organisation, its activities or experience
- c) Tenderers are to provide full details for any claims, statements or examples used to address the qualitative criteria
- d) Tenderers are to address each issue outlined within a qualitative criterion

<b>A. Quality and Completeness of Road Construction Plant/Equipment.</b> Tenderers must provide the following information in the schedules listed as part of fulfilling this requirement.	<b>Weighting &lt; 25% &gt; Tick if attached</b>
- Identify the total number of each type of plant being nominated for this project for assessment against the nominated list and numbers within the Tender schedule. Complete the pro-forma at <b>Schedule 7</b> as part of providing this information.	<input type="checkbox"/>
- Nominate the age or hours of each item of nominated plant/equipment or some indication of condition or reliability. Complete the pro-forma at <b>Schedule 7</b> as part of providing this information.	<input type="checkbox"/>
- Identify any particular items of plant or attachments which are considered to have special or advantageous application to the works and locations identified within this tender. Complete the pro-forma at <b>Schedule 7</b> as part of providing this information.	<input type="checkbox"/>

**Part 5 COMPLETE AND RETURN THIS PART**

<b>B. Demonstrated Road Construction/Reconstruction Experience</b> Tenderers must provide the following information in the schedules listed as part of fulfilling this requirement.		<b>Weighting &lt; 25% &gt; Tick if attached</b>
	- Provide details of the tenderer's previous experience at completing similar works in similar areas. Complete the pro-forma at <b>Schedule 8</b> as part of providing this information.	<input type="checkbox"/>
	- Provide referees who can substantiate previous experience and demonstrated capability of the organisation. Complete the pro-forma at <b>Schedule 6</b> as part of providing this information.	<input type="checkbox"/>
	- Provide details of the experience of key staff including Supervisor and operators of the graders and dozer. This should at a minimum include a CV / work history including information on previous projects for all key personnel and the backup personnel for these positions. Complete the pro-forma at <b>Schedule 10</b> as part of providing this information.	<input type="checkbox"/>
	- Provide specific details of the relevant and similar experience of the nominated administrative staff who will be responsible for maintaining daily plant, labour and works progress records. Complete the pro-forma at <b>Schedule 10</b> as part of providing this information.	<input type="checkbox"/>
<b>C. Capacity to Complete Contract Works</b> Tenderers must provide the following information in the schedules listed as part of fulfilling this requirement.		<b>Weighting &lt; 25% &gt; Tick if attached</b>
	- Provide information about the capacity of the tenderer to provide back-up resources for key personnel should the need arise. Complete the pro-forma at <b>Schedule 10</b> as part of providing this information.	<input type="checkbox"/>
	- Provide information demonstrating the capacity of organisation to resource the work in the context of the tenderer's current and potential future works. Complete the	<input type="checkbox"/>

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	pro-forma at <b>Schedule 9</b> as part of providing this information.	
	<ul style="list-style-type: none"><li>- Provide information about the tenderer's proposed works methodology including how the tenderer will work with the Shire's Contract Site Inspector to determine the specific scope of work and the reinstatement works required.</li></ul>	<input type="checkbox"/>



### 5.3.2 Price Criteria

This is a Schedule of Rates Contract.

Tenderers must complete the following "Price Schedule" and submit with their tender submission. **Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.**

The Price Schedule is broken down into:

1. Preliminary Items.
2. Site Facilities and Supporting Items including per day rates for the following items
  - a. All camp and camping and messing costs and related items associated with complying with the requirements outlined within this RFT.
  - b. All costs associated with the Site Supervisor including vehicle and other items required to comply within this RFT.
3. Plant Hire Items

The Preliminary Items include lump sum amounts for such items as mobilisation and demobilisation to and from Shire of Jerramungup and other items including, insurances, compliance with legislation and preparation of traffic management plans.

Mobilisation items within the Preliminary Items section are detailed below:

- 1) **Mob/Demob Item 1:** is to allow for costs associated with mobilising and demobilising all equipment to / from the Shire of Jerramungup \ (all items as requested in the tender schedule **excluding provisional plant items**).
- 2) **Mob/Demob Item 2:** is to allow for costs associated with mobilising and demobilising **provision plant items** on a per machine basis to / from the Shire of Jerramungup.
- 3) **Mob/Demob Item 3:** is to allow for costs associated with mobilising and demobilising equipment between each location within the works.

**Note that some plant hire items are indicated as provisional only.**

The schedule requires rates to be provided for each specified item of plant whilst in productive use (including operator) and a standby rate (excluding operator) applicable during stand-by periods (e.g. inclement weather).

**Payment for plant hire will be made based on machine hours worked, as per the machine's hour meter and not machine hours on site.**

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A labour only rate is also required but will only be applicable when prior approval of the Contract Site Inspector is gained.

The items listed in the Site Facilities and Supporting Items schedule will be paid on a per day basis for those days whilst the Contractor is on site and available to progress productive works. No payment will be made for these items when the contractor is not on site or when the contractor is on site but unavailable to progress productive works.

All rates tendered in the Site Facilities and Supporting Items Schedule for camp facilities shall be deemed to include allowance for all camp facilities required to cater for all personnel including accommodation, messing power, potable water, waste disposal and consumables including any additional rooms as required to meet the requirements of this RFT.

Tenderers are required to price all items specified in the Price Schedule.

**All tendered plant, equipment and labour rates as well as amounts for Preliminary Items and Site Facility Items are to be exclusive of GST.**

All rates and lump sums tendered in the Price Schedule shall be deemed to include allowance for all costs associated with contract administration, reporting and office related activities in accordance including daily on-site requirements and contractual requirements from the Contractor's base as there will be no separate payment for this item

**Tender submissions which fail to satisfy all of these requirements may be considered non-compliant and may not proceed for evaluation.**

All rates and lump sums tendered in the Price Schedule shall be based on the working hours, days and cycles generally outlined in Section 4.6 and allow for the entire project timeline no matter if the project timeline differs to the schedule of rates timeline.

**5.3.3 Price Basis**

Are you prepared to offer a fixed price for items and a fixed schedule of rates?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
--	---------------------------------	--------------------------------

**Part 5 COMPLETE AND RETURN THIS PART**

**5.3.4 Price Schedule**

Tenderers to complete the following Preliminaries Items Pricing schedule.

<b><u>PRICE SCHEDULE PRELIMINARY ITEMS</u></b>			
<b>NAME OF CONTRACTOR.....</b>			
<b>PRELIMINARIES</b>	<b>Units</b>	<b>Qty</b>	<b>Amount</b>
<b><u>Note: Items in Red are provisional</u></b>			
Allow for all necessary preliminaries including, but not limited to;			
Mobilisation & demobilisation all plant and equipment to and from the Shire of Jerramungup <b>(Mob/Demob Item 1)</b>	Item	<b>1</b>	
<b>Mobilisation &amp; demobilisation of provisional plant items to and from the Shire of Jerramungup (Mob/Demob Item 2).</b>	<b>Per machine</b>	<b>1</b>	
Allow for all insurances required under the contract	Item	<b>1</b>	<b>Included in plant rates</b>
Allow for full compliance with all state and federal regulations	Item	<b>1</b>	<b>Included in plant rates</b>
Prepare Traffic Management Plan	Item	<b>1</b>	
Percentage on-cost for materials / specialised services outside of the pricing schedule below as requested by the Principal's Representative	%		
<b>SUB-TOTAL PRELIMINARIES</b>			

**Part 5 COMPLETE AND RETURN THIS PART**

Tenderers to complete the following Site Facilities and Supporting Items Pricing schedule.

**PRICE SCHEDULE SITE FACILITIES & SUPPORTING ITEMS**

**NAME OF CONTRACTOR.....**

<b>ITEM</b>	<b>Unit</b>	<b>Rate per Item (ex-GST)</b>
Allow for all camp, meals and accommodation (including all associated amenities as described within this RFT)	Per person per day	
Site Supervisor (including vehicle and all other items as described within this RFT)	Per day	

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Tenderers are required to complete the following Plant Hire Items Pricing Schedules.

<b>PRICE SCHEDULE – PLANT HIRE ITEMS (Note: Items in Red are provisional)</b>			
NAME OF CONTRACTOR.....			
<b>PLANT HIRE ITEMS</b>	<b>Qty requested</b>	<b>Units</b>	<b>Rate Per Item (ex-GST)</b>
<b>DOZER, D-8 or similar (no smaller)</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>GRADER, H-140 or similar (no smaller) with 14 ft blade</b>	<b>1 - 3</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>FRONT END LOADER 2.0 – 3.0m3 bucket (with IT attachments including bucket, forks and jib)</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>FRONT END LOADER 4.0 – 5.0m3 bucket</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>PADFOOT VIBRATORY ROLLER min 16t deadweight</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	

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**PRICE SCHEDULE – PLANT HIRE ITEMS (Note: Items in Red are provisional)**

NAME OF CONTRACTOR.....

PLANT HIRE ITEMS	Qty requested	Units	Rate Per Item (ex-GST)
<b>45 TONNE EXCAVATOR with GP and batter bucket, rock breaker and skeleton bucket, pick attachments etc</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>35 TONNE EXCAVATOR with GP and batter bucket, rock breaker and skeleton bucket, pick attachments etc</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>14 TONNE EXCAVATOR with GP, batter and skeleton buckets</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>SMOOTH DRUM VIBRATORY ROLLER min 16t deadweight</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>TRACTOR &amp; GRID ROLLER 12t – 16t static weight (not including weight of tractor)</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>MULTI-TYRED ROLLER min 16t deadweight</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	

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**PRICE SCHEDULE – PLANT HIRE ITEMS (Note: Items in Red are provisional)**

NAME OF CONTRACTOR.....

PLANT HIRE ITEMS	Qty requested	Units	Rate Per Item (ex-GST)
<b>WATER CART min 25,000 Litres</b>	<b>1 - 2</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>ROADTRAIN WATER CART (min 50,000 Litres)</b>	<b>1 - 2</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>ROADTRAIN SIDE – TIPPER Double (36m3)</b>	<b>1 - 2</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>ROADTRAIN SIDE – TIPPER Triple (54m3)</b>	<b>1 - 2</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>SEMI SIDE – TIPPER (18m3)</b>	<b>1 - 2</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
<b>SKID STEER LOADER with post hole auger and bucket attachment</b>	<b>1</b>		
Rate per hour while in use		Hour	
Standby rate per hour		Hour	

**Part 5 COMPLETE AND RETURN THIS PART**

**PRICE SCHEDULE – PLANT HIRE ITEMS (Note: Items in Red are provisional)**

NAME OF CONTRACTOR.....

PLANT HIRE ITEMS	Qty requested	Units	Rate Per Item (ex-GST)
<b>MACHINERY FLOAT</b> (including Prime Mover)	<b>1</b>		
Rate per hour while in use to mob between each location within the road ( <b>Mob/Demob Item 3</b> )		Hour	
One-off cost in lieu of standby rate to maintain float on site at all times		item	
<b>ALL EQUIPMENT FOR WATER SUPPLY AT EACH BORE/TURKEYS NEST</b> - including 3-phase submersible pump, standalone standpipe with <b>150mm</b> transfer pump including all generators as required and or all allowances required for bottom loading of water carts within a max of 10 minutes.	<b>No of bores varies between 1 to 4</b>		
Rate per bore site incl maintenance & fuelling		Day	
Standby rate per bore site (when not pumping)		Day	
<b>TRAFFIC MANAGEMENT</b> - For supply of a full-time trained traffic management person, any additional personnel (as required for specific circumstances) and all necessary equipment			
Roadwork being undertaken while road is CLOSED to public traffic		Day	
Roadwork being undertaken while road is OPEN to public traffic		Day	
<b>LABOUR RATE</b> – applicable only when agreed by the Contract Site Inspector.			
Rate per hour		Hour	



**Part 5 COMPLETE AND RETURN THIS PART**

**PRICE SCHEDULE – PLANT HIRE ITEMS (Note: Items in Red are provisional)**

NAME OF CONTRACTOR.....

PLANT HIRE ITEMS	Qty requested	Units	Rate Per Item (ex-GST)
<b>PRIME + 2-COAT BITUMEN SEAL</b> (nominal 0.6L/m2 50/50 Prime + 1.5L/m2 first coat 14mm + 1.0 L/m2 second coat 7mm)	<b>Approx. 350 – 400m2</b>		
Total Mob / Demob of Sealing Contractor		Item	
Rate per square metre		m2	
<b>GP CEMENT</b>			
Rate delivered to site		T	

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**PRICE SCHEDULE – PLANT HIRE ITEMS**

**NAME OF CONTRACTOR.....**

<b>PLANT ITEM</b>	<b>No. of machines offered per works package</b>	<b>Units</b>	<b>Hourly Rate Per Machine</b>
<b>ANY OTHER ADDITIONAL ITEMS OFFERED</b> .....			
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
All mob and demob costs		Item	
<b>ANY OTHER ADDITIONAL ITEMS OFFERED</b> .....			
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
All mob and demob costs		Item	
<b>ANY OTHER ADDITIONAL ITEMS OFFERED</b> .....			
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
All mob and demob costs		Item	
<b>ANY OTHER ADDITIONAL ITEMS OFFERED</b> .....			
Rate per hour while in use		Hour	
Standby rate per hour		Hour	
All mob and demob costs		Item	

## 6 SCHEDULES

### 6.1 Schedule 1 – Formal Offer

<b>TENDER NO.</b>	RFT 02-22	<b>PROJECT:</b>	AGRN973 Road Flood Damage Repairs
<b>Tenderer:</b>			
<i>(full trading name)</i>			
<b>Registered Office Address</b>		<b>Business Address</b>	
<b>Telephone</b>		<b>Facsimile</b>	
<b>Email</b>			

### LEGAL STATUS

All Tenderers are required to complete the following table:

<b>Legal Structure</b>	<b>Name</b>	<b>Australian Company Number (ACN)</b>	<b>Australian Business Number (ABN)</b>
Company			
Trusts			
Individual			
Partnership			

The Tenderer named above, hereby offers to provide Goods, Works and/or Services in accordance with:

- (a) Conditions of Tendering
- (b) Conditions of Contract
- (c) The Specification

**Part 6 COMPLETE AND RETURN THIS PART**

(d) Any addenda to the above

(e) This Tender Form including all its schedules relating to the above Contract.

The Tenderer also acknowledges that if it is the successful tenderer, the documents listed above shall form part of the contract and agrees to be bound by the contract conditions.

**AMENDMENTS TO TENDER DOCUMENTS (IF ANY)**

Tenderer to sign and return any amendments (tender addenda) issued during the tender period in confirmation of their receipt.

Tenderer confirms amendments have been signed and returned:

**List Addenda No's received:**

**Signature:** .....

**Executed by Authorised Officer of Tenderer who has delegated authority to enter into a contract:**

Signature:

.....

Name and Title:

.....

Date:

.....

Signature of

Witness:

.....

Name of

Witness:

.....

Date:

.....

**Part 6 COMPLETE AND RETURN THIS PART**

**TENDERER'S CONTACT PERSON FOR ENQUIRIES ABOUT THIS TENDER**

Name:

.....

Position:

.....

Address:

.....

.....

Telephone:

.....

Email:

.....

## **6.2 Schedule 2 – Statement of Intent**

### **PREAMBLE**

It is the Shire's intention to complete roadworks within pre-agreed fixed budgets.

The Shire seeks to engage with a Contractor who identifies and supports the Shire's stated intentions as evidenced in the tender documents. It is essential that the Shire and the successful tenderer agree to work co-operatively to achieve mutually-agreed targets.

### **STATEMENT**

I have read carefully and fully understood these tender documents.

It is my intention to provide the Shire with the service required by the Shire as described in the tender documents, that is:

- I will supply all plant and equipment including camp, at the fixed tendered rates for the duration of the works, as determined by the Shire.
- I will ensure that all plant and equipment, including camp, is operated by competent staff at all times and that staff work to achieve the outcomes required by the Shire.
- I will ensure that all plant and equipment, including camp, will be fully maintained on site to ensure minimum downtime.
- I will put processes in place to ensure that my staff work co-operatively with the Shire at all times
- I will put processes in place to provide the Shire with timely accurate records of all costs for which the Shire will be liable under the contract.

---

SIGNATURE OF AUTHORISED SIGNATORY OF CONTRACTOR

---

NAME OF AUTHORISED SIGNATORY (BLOCK LETTERS)

---

POSITION

**6.3 Schedule 3 – Statement of Conformity**

The Tenderer is to signify here whether or not its Tender conforms in all respects to the requirements of the Tender Documents by indicating below:

Does your Tender conform?	<input type="checkbox"/> YES	<input type="checkbox"/> NO
---------------------------	---------------------------------	--------------------------------

If the Tender does not conform to all of the requirements of the Tender Documents, the Tenderer must list below all areas of non-conformity and the reasons therefore:

.....

.....

.....

.....

.....

.....

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.....

.....

.....

**Part 6 COMPLETE AND RETURN THIS PART**

**6.4 Schedule 4 – Local Preference**

Should the tenderer wish to be considered under the Shire of Jerramungup’s Local Price Preference Policy then the tenderer must provide details below of why the tenderer is eligible under the Policy (contained in Appendix 2).

Is the tenderer eligible for local preference under the Shire’s Local Preference Policy (Appendix 2)	<input type="checkbox"/> YES	<input type="checkbox"/> NO
If yes, please explain why below:		



**6.5 Schedule 5 – Referees**

Provide contact details of referees who can substantiate the Tenderer’s capabilities in undertaking the works required under the contract based on past experiences.

**FIRST REFEREE**

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email \_\_\_\_\_

**SECOND REFEREE**

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email \_\_\_\_\_

**THIRD REFEREE**

Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Contact Person: \_\_\_\_\_  
Telephone: \_\_\_\_\_ Email \_\_\_\_\_

### 6.6 Schedule 6 – Administration

The construction works covered by this RFT will require the tenderer to undertake a certain amount of project administration. A summary of the project administration required is summarised below:

- Using hardcopy record sheets supplied by the Principal’s Representative provide daily resource record sheets broken up into hour, job number and cost item on a daily basis
- Using electronic spreadsheet supplied by the Principal’s Representative, enter daily resource record sheets and electronically deliver to the Principal’s Representative at an agreed frequency.
- Compile a detailed record of all works completed
- Compile a complete record of:
  - Prestart meetings
  - OHS meeting and incidents reports etc
  - Supervisors daily diaries
  - QA records

Please confirm whether the above project administration tasks will be undertaken and that the associated costs are included in Section 5.3.4 “Price Schedule”

<input type="checkbox"/> YES	<input type="checkbox"/> NO
<b>If no, please explain what is not included:</b>	

6.7 Schedule 7 – Plant Details To Be Supplied

Plant Item	Make, Model	Year	Hour Meter Reading	Registration No	Operator Name & License No

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<b>Items of plant or attachments which are considered to have special or advantageous application to the works and locations identified within the tender</b>	<b>Details of Special Application / Advantage</b>

### 6.8 Schedule 8 – Relevant Past Experience

Please provide details of previous projects involving the repair and/or construction of sealed and unsealed **PUBLIC** roads in SIMILAR locations. These projects should only include those where the tenderer is the sole or major/head civil roadworks contractor. Projects which involve supply of dry or wet hire to a separate head civil roadworks contractor should not be included.

Item	Project Description	Client	Approx. Value	Approx. Duration	Outcomes Achieved
1					
2					
3					
4					
5					
6					

**6.9 Schedule 9 – Current Project Commitments**

Name / Description of Project	Start Date	Project Duration	Project Value	Client / Contact Name / Details

**6.10 Schedule 10 – Key Personnel**

Complete the following details.

**SUPERVISORY STAFF (Including Contractor’s Supervisor and Leading Hand)**

Name	Previous Experience / Projects	Previous Roles / Tasks	Years of Experience	Qualifications / Certificates	Reference Name / Contact No.	CV Included Y/N
Plant Hire Contractor’s Supervisor						

**SCHEDULE 10 KEY PERSONNEL (CONT'D)**

Complete the following details.

**KEY OPERATORS (Including Grader and Dozer Operators and Field Mechanic)**

Name	Previous Experience / Projects	Previous Roles / Tasks	Years of Experience	Qualifications / Certificates	Reference Name / Contact No.	CV Included Y/N
Grader Operator #1						
Grader Operator #2						



**SCHEDULE 10 KEY PERSONNEL (CONT'D)**

Complete the following details.

**ADMINISTRATION STAFF (on-site responsibility for Record Keeping and Reporting)**

Name	Previous Experience / Projects	Previous Roles / Tasks	Years of Experience	Qualifications / Certificates	Reference Name / Contact No.	CV Included Y/N

**SCHEDULE 10 KEY PERSONNEL (CONT'D)**

Provide details of available backup resources.

**BACKUP RESOURCES**

Name	Previous Experience / Projects	Previous Roles / Tasks	Years of Experience	Qualifications / Certificates	Reference Name / Contact No.	CV Included Y/N
Backup Supervisor						
Backup Grader Operator						
Backup Administrator						

**6.11 Schedule 11 – Details of Proposed Camp/Accommodation and Mechanical Support**

Item	Project Element	Project Specific Details
1	CAMP/ACCOMMODATION ARRANGEMENTS	
2	MECHANICAL SUPPORT	

**Part 6**

**COMPLETE AND RETURN THIS PART**

<b>3</b>	<b>EXTRA MACHINERY TO COVER LONG TERM BREAKDOWNS</b>	
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6.12 Schedule 12 – Insurances

INSURANCE TYPE	POLICY NO	EXTENT OF COVER		EXPIRY DATE	NAME OF INSURER
		Per Incident (\$A)	In Aggregate (\$A)		
Public Liability					
Vehicles Plant and Equipment					
Workers Compensation					

(Attach Certificates of Currency or other verification of the above insurances)

### 6.13 Schedule 13 – Nominated Subcontractors

**Note:** Written approval of all subcontractors by the Principal's Representative to the Contractor is required before commencement of the contract. The nomination of alternatives is acceptable. The Contractor shall be required to provide evidence that the subcontractors are registered and/or licensed (as required by law) in the work which is to be subcontracted and have the relevant policies of insurance.

NAME OF SUBCONTRACTOR	DESCRIPTION OF WORKS / PLANT ITEMS PROPOSED TO BE SUBCONTRACTED	Approx. Total No of Months the Subcontractor has worked for the Contractor over the last 2yrs	% of Total works which will be subcontracted

## Appendix 1 – Specification for Plant Hire Contractor

The following specifications are applicable to the scope of work outlined within this request. Due to local environmental conditions, it may be necessary for the Principal's Representative to vary specific aspects of these specifications to ensure that the works are completed within the available budget. Any variation will be advised in writing by the Principal's Representative to the Contractor.

### A1.1 Machinery and Equipment

The Plant Hire Contractor shall ensure that all items of plant and equipment mobilised to site are fully licensed for their particular use and maintained, serviced and operated in compliance with manufacturers and suppliers operating guidelines including recommended safe work methods. The Plant Hire Contractor shall also comply with all legislative and regulatory requirements relevant to the activities proposed to be conducted. These requirements may include but are not necessarily limited to:

- Current road train permits (to be carried in the vehicle) relevant to public roads proposed to be used
- A functioning machine hour meter
- Flashing amber beacons appropriately mounted and maintained for visibility
- Two-way radio communications
- Fully enclosed air-conditioned cabins fitted with approved roll over protection structure.
- Appropriately lined and bunded fuel tanks for spillage containment in accordance with regulations.

Failure to comply with these requirements will deem the particular item of plant unable to be retained on the work site.

It is the Plant Hire Contractor's responsibility to ensure that plant is maintained safe and secure at all times. Plant and equipment shall be pro-actively maintained to minimise breakdown and downtime. Plant items not readily available for work when required, for whatever reason, may attract a financial penalty if the omission impedes progress on site. The penalty will be equivalent to plant hours lost multiplied by the tender operating rate.

The Tender Schedule includes provision of pumps as required to maintain water supply to the project. Water tankers shall be steel frame and lining. Aluminium tankers are not suitable for the proposed work sites.

## **A1.2 Fuel, Consumables, Camp, Meals and Accommodation**

The Plant Hire Contractor is responsible for fuel supply and for ensuring that all plant is adequately fuelled at all times such that works are not delayed. All machinery refuelling shall take place outside normal working hours at all times. Permission to vary this needs to be obtained in writing from the Principal's Representative.

The Plant Hire Contractor will be responsible for the timely supply of all consumables.

All camping and support facilities shall be supplied by the Contractor at the Contractor's expense. The Contractor is responsible for arranging and maintaining all meals and accommodation (including linen etc) for the work crew. Camp shall be clean, tidy, well maintained in good order and include:

- i. Full time / dedicated and suitably qualified and experienced Cook / camp attendant (this person is not to be carrying out actual work on the work site in any capacity)
- ii. Laundry, washroom, shower and toilet facilities
- iii. Potable water supply
- iv. Camp kitchen including a dedicated air-conditioned mess room to cater for the full work crew plus one additional person
- v. Individual air-conditioned sleeping quarters sized to accommodate the full work crew plus one additional person

*Note; the Principal reserves the right to instruct the contractor (at the contractor's cost) to supply extra campsite ablution/shower facilities or any other camp facilities if the Principal deems it required.*

Camp shall be maintained clean and free of rubbish at all times. All rubbish and camp wastes are to be disposed of in a suitable waste disposal facility (typically a Shire-managed refuse pit or similar)

Camps shall be located and established to ensure that the daily commute to work site never exceeds 70 kilometres.

**Daily travel from camp to the worksite (s) shall be via commuter bus / vehicle. All plant and machinery used on the worksite shall remain at the worksite at all times unless authorised by the Contract Site Inspector.**

Note all proposed camp sites are subject to the approval of the Principal's Representative.



### **A1.3 Contractor's Site Supervisor**

The Contractor's Site Supervisor must be equipped with a suitable 4WD vehicle (including reliable mobile field communications with operators and personnel to coordinate all activities on site on a day-to-day basis) for exclusive use by the supervisor. This is to be a standalone role and the Supervisor shall not operate any items of plant or undertake any machinery repairs or ancillary works etc.

### **A1.4 Contractor's Site Office**

The Plant Hire Contractor's site office is to be a dedicated room and is to be fully equipped with all the necessary computers, A4 & A3 printers, A4 & A3 scanners and reliable satellite internet and phone communications.

### **A1.5 General Communications**

The Plant Hire Contractor's Site Supervisor is required to be contactable via camp satellite phone and mobile satellite phone at all times. Additionally, all of the Plant Hire Contractor's employees, contractors and sub-contractors working more than 20km from the main crew worksite are to be provided with emergency communication equipment; at a minimum a satellite phone.

### **A1.6 Items Supplied By The Shire**

The Contract Site Inspector will identify possible gravel sources and water sources required for the works, however all clearing, stripping, push-up and rehabilitation of any gravel pits and all works associated with loading, carting and handling water will form part of the Plant Hire Contractor scope.

### **A1.7 Traffic Management**

The Plant Hire Contractor shall submit a project specific generic Traffic Management Plan (TMP) to be implemented at all work locations. The TMP shall fully satisfy the requirements of AS 1742.3 and MRWA Code of Practise – Worksite Traffic Management (2013).

In addition to the above, the Shire requires that the Plant Hire Contractor erect suitable signage at the start and end of each works section stating that roadworks are occurring in the area and the work crew's UHF channel is to be provided on the signage.

The Plant Hire Contractor (s) shall also take care not to damage other local infrastructure such as gates, grids, floodways, culverts, fences, etc. The Plant Hire Contractor (s) shall be held liable for any such damage attributable to his crew.

### A1.8 Roadside Environment

Every attempt shall be made to have a minimal impact on the surrounding vegetation and environment when performing maintenance grading and construction grading. All operations shall comply with the state statutory requirements as well as any project specific documentation. Failure to comply with these requirements may result in the Plant Hire Contractor's operators being discharged.

Where practical existing turn-around points shall be used, or newly installed turn-around points shall be repeatedly used to minimise the chances of erosion.

Where appropriate no vegetation shall be left growing within the road formation (table drain to table drain). All vegetation growing within the formation shall be cut off the road and shall not be brought back on to the formation and be mixed in to the material being used for the road pavement.

Maintenance / reconstruction activities shall be carried out in such a way that:

- Road plant remains within the formation and does not park, traverse or turn around on areas of native ground cover;
- Gravel, screenings, and materials are not stacked under the drip line of trees or vehicles parked there;
- Cut-off drains, or preferably mounds do not cause erosion;
- Used engine oil and contaminants are not left on the road reserve and are disposed of according to Government regulations;
- No material infected with fungal disease or weeds is introduced to the road network;
- Sacred sites are not disturbed as also are plants and cultural sites; and
- Declared plants and noxious weeds are prevented from spreading.

It is the sole responsibility of the Contractor to identify and protect all existing underground and aboveground utilities and services in the areas they are working. This may include any DBYD enquiries and / or liaison with utility providers. Any damage is the sole responsibility of the Contractor and must be repaired in accordance with the requirements of the utility provider.

### A1.9 Standard Construction Details

The works shall generally be undertaken as detailed in the drawings summarised below:

<b>Revision</b>	<b>Description</b>
A	Standard Cross Section Details – Unsealed roads
B	Typical Gravel Floodway
A	Typical Offshoot Drains
A	Standard Turkeys Nest Detail

The above drawings will be provided to the Contractor prior to commencing works. The specific construction details of each construction element within the works will vary and be coordinated by the Principal's Representative.

### **A1.10 Setting Out**

The Contract Site Inspector will be responsible for the general set-out of the start and end of work sections.

The specific set-out required for to facilitate road construction in accordance with the specification shall be the responsibility of the Plant Hire Contractor.

### **A1.11 Earthworks**

#### **A1.11.1 Materials for Earthworks**

The Contractor is responsible for the supply of road materials required for construction, in liaison with the Shire of Jerramungup. Material for embankments shall be free from boulders having any dimension as detailed in the Oversize Material Section.

All suitable materials from excavations may be used in earthworks construction up to and including the subgrade layer. Imported material shall conform to the requirements given in Table 1.12.1.

The portion of the material passing the 0.425 mm sieve for imported material shall have a linear shrinkage not exceeding 1.0%. The Contractor shall be responsible for any assumptions made by the Contractor in relation to the nature and types of materials encountered in excavations and the bulking and compaction characteristics of materials incorporated in embankments.

#### **A1.11.2 Unsuitable Material**

Material which the Principal's Representative deems to be unsuitable for use in Embankment Construction, Subgrade Preparation, or Embankment Foundation shall be excavated and then disposed of.

A void created from the excavation of unsuitable material during Embankment Foundation or Subgrade preparation shall be backfilled with suitable embankment quality material or as directed by the Principal's Representative and compacted in accordance with Table A1.11.5A.

#### **A1.11.3 Oversize Material**

All oversize material having any dimension between 100mm and 300mm shall be reduced in size or shall be removed from excavated material intended to be used as fill within 300mm of the subgrade and/or shoulder surfaces and/or batter face.

All oversize material having any dimension greater than 300 mm shall not be used as fill and shall be removed to spoil. Oversize material not used in the embankment shall be stockpiled in uniformly shaped heaps in spoil areas.

#### **A1.11.4 Embankment Foundation**

After the completion of clearing and topsoil removal, the material upon which embankment is to be constructed shall be compacted as specified in Table A1.11.5A to a depth of 150mm.

#### **A1.11.5 Subgrade Preparation**

##### **Unsealed Roads**

Unsealed road construction typically requires the road to be shaped to form a 4% crown on straight sections and 4% superelevation on curve sections. This will include reshaping of existing formation and building up of existing formation by incorporating existing windrowed material within the formation width. Therefore, the existing pavement shall initially be cut/filled and shaped as necessary to form a subgrade layer over the entire area nominated for gravel sheeting.

Earthworks material shall be placed uniformly without abrupt changes in material type, quality or size. Earthworks material shall be worked in compacted layers not greater than 200mm or less than 100mm. Where less than 100mm is required to be worked the underlying material shall be grader scarified to such a depth that the resulting thickness of the layer to be worked is greater than 100mm.

During the whole of the compaction process, the Characteristic Moisture Content of the earthworks material shall be within -2% to +2% of the optimum moisture content.

The subgrade compaction required over the entire area, measured relative to the Modified Maximum Dry Density (MMDD) of the material, is detailed in the table below.

Earthworks Layer	Characteristic Dry Density Ratio % (Mc)
Embankment Foundation	92
Earthworks Embankment	93
Subgrade	94

**Table A1.11.5A – Earthworks Compaction Values**

The subgrade compaction for unsealed roads shall be tested by proof rolling only. This compaction testing is to be inspected and verified by the Principal's Representative. The subgrade for the unsealed roads shall be shaped to achieve 4% crowned road crossfall (+/- 0.5%).

### **Sealed Roads**

The subgrade compaction required over the entire area of sealed road construction, measured relative to the Modified Maximum Dry Density (MMDD) of the material, is detailed in Table A1.11.5A. During the whole of the compaction process for sealed roads, the Characteristic Moisture Content of the earthworks material shall be within -2% to +2% of the optimum moisture content.

The completed subgrade layer shall be in a homogeneous uniformly bonded condition with no evidence of layering or disintegration.

The level of the completed subgrade surface shall be deemed to be conforming when the level measured at any point on the surface is within -35mm, + 20mm of the subgrade level at that point as determined from the drawings.

The subgrade layer for sealed roads shall be dried back such that the Dryback Characteristic Moisture Content (DMC) is equal to or less than the proportion of Optimum Moisture Content as shown in Table A1.11.5B as determined by Test Method WA 133.1. The Dryback required in the subgrade layer is given in the table below prior to the construction of the overlying pavement layer.

Pavement Layer	Dryback Characteristic Moisture Content (% of OMC)
Subgrade	80

**Table A1.11.5B – Dryback on Subgrade Values**

The completed subgrade surface shall be maintained in its conforming condition until pavement construction commences and shall be watered as necessary to prevent shrinkage cracking, dusting or loosening of its surface. The contractor shall provide evidence that the subgrade is conforming prior to proceeding with the pavement gravel construction.

### **Sealed Floodways**

Sealed floodways are to be constructed by boxing out the existing floodway material to a depth of 200mm, tying the base of the box-out to a depth of 150mm (where possible), grading, conditioning, compacting and trimming the base of the box-out area to suit the typical details as directed by the Principal's Representative.

#### **A1.11.6 Table Drains**

If the edge of the subgrade section is below the existing ground profile, then a 150mm deep formed table drain will be required as directed by the Principal's Representative. Additionally, any existi

ng table drains will need to be cleaned out and deepened if they are less than 150mm below the subgrade hinge point.

Drains shall be excavated to provide an even grade with no obstructions or hollows which would impede the flow of water.

Drains, levees and drainage basins shall be constructed to conform to the cross-sections and levels as shown in the Drawings or as directed onsite. They shall be neatly finished to a standard obtainable with blade grader operations. Offshoot drains and diversion drains shall be constructed as shown on the Drawings or as required to direct water away from table drains or other works.

Material excavated from drains and drainage basins, which conforms to the requirements for embankment material as specified in within this document may be utilised to construct levees or as fill material more than 150mm below the subgrade surface.

### **A1.12 Pavements**

#### **A1.12.1 Materials for Unsealed Pavements**

Materials for unsealed pavements shall generally comply with the material properties indicated in the table below.

Material Property	EARTHWORKS FILL	GRAVEL FOR UNSEALED PAVEMENT	GRAVEL FOR SEALED PAVEMENT	
			Used in Cement Stabilised pavement	Used in Conventional pavement
Particle Size Distribution				
37.5mm	100	95 – 100	100	100
19.0mm		80 – 100	55 – 100	71 – 100
9.5mm			40 – 81	50 – 81
4.75mm			30 – 66	36 – 66
2.36mm	20 – 100	33 – 65	20 – 53	25 – 53
1.18mm			13 – 43	18 – 43
0.425mm		13 - 50	8 – 36	11 – 36
0.075mm	1 – 20	8 – 40	3 – 19	4 – 19
Weighted Plasticity Index (PI x % passing 0.425mm)		Max 500		
Plasticity Index (PI)	< 18%	8 – 20%		
Linear Shrinkage (LS)			< 8%	< 5%
CBR – Unsoaked		Min 70	Min 60	Min 80
CBR – 4 day soaked	Min 20	Min 35	Min 50	Min 60

**Table A1.12.1 – Material properties for road construction**

**A1.12.2 Materials for Sealed Pavements**

The proposed basecourse material shall be tested prior to incorporating it into the works. The type of testing required is detailed in Table 11.5. Pavement material shall conform to the specifications as described in Table A1.12.1 (above).

**A1.12.3 Unsealed Pavement Construction**

Each pavement layer worked shall be generally parallel to the finished pavement surface and shall extend to hinge point. Basecourse shall be worked in compacted layers not more than 300 mm nor less than 100 mm compacted thickness. Pavement material shall be spread and compacted to achieve uniformity free from any evidence of segregation. During the whole of the compaction process, the Characteristic Moisture Content of the pavement material shall be within -2% to +2% of the optimum moisture content.

The pavement compaction required, measured relative to the Modified Maximum Dry Density (MMDD) of the material, is detailed in Table A1.12.3 below.

<b>Pavement Layer</b>	<b>Characteristic Dry Density Ratio % (Mc)</b>
Gravel Sheetting	96

**Table A1.12.3 – Pavement (gravel sheetting) compaction values**

The pavement compaction for unsealed road construction shall be tested by proof rolling only.

The gravel pavement for unsealed roads shall be judged to be acceptable when the crossfall is 4% crowned or 4% superelevation (+/- 0.5%) for straights and curves respectively.

Completed pavement layers shall be in a uniformly bound condition with no evidence of layering, disintegration or surface tearing. The finished surface should appear as a stone mosaic interlocked with fine material and shall be dense, even textured and tightly bound.

**A1.12.4 Sealed Pavement Construction**

Pavement construction shall not commence until the subgrade has dried back as described in Table A1.11.5B.

Each pavement layer worked shall be generally parallel to the finished pavement surface and shall extend to the hinge point. Basecourse shall be worked in compacted layers not more than 300 mm nor less than 100 mm compacted thickness. Pavement material shall be spread and compacted to achieve uniformity free from any evidence of segregation. During the whole of the compaction process the Characteristic Moisture Content of the pavement material shall be within -2% to +2% of the optimum moisture content.

The required pavement compaction, measured relative to the Modified Maximum Dry Density (MMDD) of the material, is detailed in the table below.

<b>Pavement Layer</b>	<b>Characteristic Dry Density Ratio % (Mc)</b>
Basecourse	96

**Table A1.12.4 – Pavement (sealed) compaction values**

The pavement compaction for unsealed road construction shall be tested by proof rolling only.

**A1.12.5 Pavement Preparation for Bitumen Sealing**

Pavement layers shall be dried back to the requirements given in table below prior to the construction of the bituminous sealing.



Pavement Layer	Dryback Characteristic Moisture Content (% of OMC)
Subgrade	80
Basecourse	80

**Table A1.12.4 – Dryback on pavement values**

The finished surface should appear as a stone mosaic interlocked with fine material and shall be dense, even textured and tightly bound. The basecourse must retain those characteristics after rotary brooming and be suitable to receive bituminous surfacing.

Completed basecourse construction shall be maintained to the specified standards of surface shape, level, compaction and finish up to the time of application of the bituminous surfacing. Watering shall be continued as necessary to prevent shrinkage cracking, dusting or loosening of the surface. The contractor shall provide evidence that the basecourse is conforming prior to proceeding with the sealing.

### **A1.13 Bituminous Surfacing**

The appropriate bituminous surfacing treatment shall be applied in accordance with the requirements of MRWA Specification 503 BITUMINOUS SURFACING.

Bituminous sealing shall not commence until the basecourse has dried back as described in Table A1.12.4. New bitumen seal shall overlap join with the existing sealed pavement by a minimum of 200mm.

The Contractor shall ensure that the nominated aggregate source is sampled and tested to establish the aggregate ALD's (7 and 14mm). The sampling and testing must be taken at some time after the contract start date and before the commencement of the sealing works.

Construction traffic shall not be allowed on newly sprayed areas until the prime has penetrated and the sprayed surface is no longer tacky. Public traffic shall not be allowed on primed areas without the approval of the Principal's Representative.

The prime coat shall be cured for a period of three (3) to seven (7) days prior to the application of a subsequent bituminous surfacing treatment. Dependent upon factors such as the blend to be used, climatic conditions and the porosity of the basecourse, a reduced curing time of not less than 24 hours may be approved by the Principal's Representative. The contractor will need to make allowance for the construction and then reinstatement and rehabilitation of temporary detours for traffic to accommodate this requirement.

**A1.13.1 Application Rates**

Typical application rates are shown in the tables below and are based on a double / double seal where both first and second coats are applied on the same day or the following day. These rates are subject to the seal design process detailed in section A1.13.2 below.

Surface Type	BINDER COMPOSITION % BY VOLUME			BINDER APPLICATION RATE – BAR @ 15°C (L/m <sup>2</sup> )
	CLASS 170 BITUMEN	MEDIUM CURING CUTTING OIL	SLOW CURING CUTTING OIL	
Prime	50	50		0.60
Bitumen First Coat 14mm	96	4	-	1.50
Cutback Bitumen Second Coat 7mm	100	-	-	1.0

**Table A1.13.1 – Nominal binder composition and application rates**

**A1.13.2 Seal Design**

The Contractor shall submit Preliminary Seal Design details to the Principal’s Representative for his review not less than 4 weeks before any materials are delivered to site.

All aspects of the Preliminary Seal Design shall comply with current Austroads Guidelines. The Seal Design submission shall identify sufficient information to allow for checking against Austroads guidelines. This includes ALD test certificates of the proposed aggregates. The ALD test certificates shall not be more than 6 weeks old.

The Principal’s Representative shall respond to the design submission within 1 week of receipt, advising acceptance, rejection or proposed amendment.

The Preliminary Seal Application needs to make due allowance for actual surface texture depth and the variances that may be encountered on site

It is acknowledged that Preliminary Seal Designs submitted to the Principal’s Representative may require some variance at the time of spraying to cater for any site conditions at variance with those on which the preliminary seal design was based.

Responsibility for the final design application shall rest with the Contractor unless directed otherwise by the Principal’s Representative.

The Principal’s Representative will only make payments based on the preliminary seal designs submitted by the Contractor and accepted by the Principal’s Representative and any seal design variations duly approved on site (in writing) by the Principal’s Representative.

**A1 READ AND KEEP THIS PART**

All bitumen application rates shall be expressed only in terms of “ .. litres per square metre @15o C”

<b>Seal Type</b>	<b>Location</b>	<b>Design Responsibility</b>
Prime	Cement Stabilised Floodways	Contractor
First Coat Seal	All Works	Contractor
Second Coat Seal	All Works	Contractor

## Appendix 2 – Damage Repair Listing

ROAD NAME	SLK START	SLK END	LENGTH (L/M)	DAMAGE WIDTH or DIA. (M)	DEFECT AREA (M2)	POSITION	DESCRIPTION OF DAMAGE	REINSTATEMENT REQUIRED
<b>Boxwood Hill Ongerup Rd</b>	6.018	6.033	15	3	45	LHS	Rock protection damaged	Reconstruct rock protection
	6.018	6.038	20	5	104	FW	Sealed floodway damaged	Reconstruct sealed floodway
	11.213	11.265	52	5	270	FW	Sealed floodway damaged	Reconstruct sealed floodway
<b>Cameron Rd</b>	0.480	0.540	60	3	180	RHS	Shoulder Scour	Shoulder Reconstruct
	0.480	0.540	60	3	180	RHS	Rock protection damaged	Reconstruct rock protection
<b>Doubtful Islands Rd</b>	2.110	2.150	40	3	120	RHS	Shoulder Scour	Shoulder Reconstruct
<b>Meechi Rd</b>	10.700	10.840	140	3	420	LHS	Shoulder Scour	Shoulder Reconstruct

**Appendix 3 –General Conditions of Contract**



# **GENERAL CONDITIONS OF CONTRACT**

**FOR THE SUPPLY OF GOODS AND THE  
PROVISION OF GENERAL SERVICES**

**Shire of Jerramungup  
and  
(INSERT CONTRACTOR'S NAME & ABN)**

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## DATE

## PARTIES

Shire of Jerramungup of 8 Vasey Street, Jerramungup WA 6337 (ABN 45 742 432 975) ('Principal'); and

[CONTRACTOR] of [CONTRACTOR ADDRESS] (CONTRACTOR ABN) ('Contractor').

## BACKGROUND

- (a) The Principal wishes to engage the Contractor for the supply of Goods and/or the provision of Services.
- (b) The Contractor has agreed to supply the Goods and/or provide the Services on the terms of this Contract.

The Parties agree as set out in the Operative part of this Contract, in consideration of, among other things, the mutual promises contained in this Contract.

## OPERATIVE PART

### 1 DEFINITIONS

1.1 In this Contract, except where the context otherwise requires:

'Acceptance' has the meaning given in Clause 22.2.

'Approval' means any certificate, licence, consent, permit, approval, authority or requirement of any Legal Requirement or any organisation having jurisdiction in connection with the provision of the Goods and/or Services.

'Approximate Quantities' has the meaning given in Clause 16.

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

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

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

'Clause' means a clause of this document.

'Completion' means delivery of Goods to the Delivery Point and the completed performance of Services in accordance with this Contract.

'Completion Date' means the date for Completion specified in the Contract Specifics or, if no date is specified, the End Date.

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

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

and includes this Contract, but does not include information which:

- (d) is or becomes generally and publically available other than as a result of a breach of this Contract;

- (e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or
- (f) has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

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

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

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

**'Contract'** means this document (including all schedules, attachments, annexures and clarifications) and any Order. For the avoidance of doubt, if this Contract is a Framework Agreement then each Order issued under this Contract constitutes an individual Contract (comprising this document and that Order).

The contract documents comprise the following parts:

#### **RFT 02-22 AGRN973 ROAD FLOOD DAMAGE REPAIRS**

- Part 1 – General Information for Tenderers
- Part 2 – Conditions of Tendering
- Part 3 – General Conditions of Contract
- Part 4 – Special Conditions of Contract
- Part 5 – Tenderer's Offer
- Part 6 – Submitted Schedules
- Appendices 1 – 3
- Formal acceptance of the Tender
- Any other policy or document referred to but not attached.

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

**'Contract Specifics'** means the contract information attached at Schedule 1.

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

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

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

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

**'Defective Goods'** means Goods of an inferior quality or which are otherwise inconsistent with this Contract.

**'Defective Services'** means Services of an inferior quality or which are otherwise inconsistent with this Contract.

**'Defects Liability Period'** means, subject to Clause 23.3, the period of time beginning on the date of Completion and ending on the expiry of the time stated in the Contract Specifics.

**'Delivery Point'** means the Site or such other place as is specified in the Contract Specifics as the place for the delivery of the Goods.

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

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

**'End Date'** has the meaning given in the Contract Specifics.

**'Fixed Quantities'** has the meaning given in Clause 16.

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

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

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

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

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

**'Goods'** means the goods specified as such in the Contract Specifics (including any part of the goods so identified and particularised).

**'Goods and/or Services'** means all of the Goods (if any) and all of the Services (if any) specified in the Contract Specifics.

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

**'GST Law'** means *A New Tax System (Goods and Services Tax) Act 1999* and any related Act imposing such tax and includes any subordinate legislation in respect of these acts.

**'Insurance'** means the insurances which the Contractor is required to obtain under Clause 43 and the Contract Specifics.

**'Insurance End Date'** means the date set out in the Contract Specifics as an Insurance End Date for a specific Insurance.

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

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

**'Law'** means:

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

**'Legal Requirement'** means:

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

**'Liquidated Damages'** means the liquidated damages described as such in the Contract Specifics.

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

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

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

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

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

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

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

**'Principal's Personnel'** means directors, employees, agents, contractors or subcontractors of the Principal.

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

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

**'Progress Claim'** means a document in a form approved by the Principal evidencing the delivery of Goods and/or performance of Services and which includes the information set out in the Contract Specifics.

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

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

**'Representative'** means the Principal's Representative or the Contractor's Representative.

**'Review Date'** means each 12 month anniversary of the execution of this Contract.

**'Schedule of Rates'** means the schedule of rates attached in Schedule 6.

**'Scope of Services'** means the scope of the Services set out in Schedule 3.

**'Services'** means the services identified as such in the Contract Specifics including:

- (a) any part of the services so identified and particularised;
- (b) any ancillary services; and
- (c) services required to be performed to deliver the Goods.

**'Site'** has the meaning given in the Contract Specifics.

**'Specification'** means the technical specification for the Goods attached in Schedule 2.

**'Standards and Procedures'** means the documents listed in Schedule 4 and any other guidelines, rules, requirements or Site specific conditions which the Principal makes available to the Contractor from time to time.

**'Start Date'** has the meaning given in the Contract Specifics.

**'State of Emergency'** has the meaning given in Clause 24.

**'Subcontractor'** means any person engaged by the Contractor in connection with the Goods and/or Services and includes consultants, subcontractors, suppliers and other contractors.

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

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

**'Tender'** means the offer submitted by the Contractor to supply the Goods and/or Services under this Contract and includes associated documentation.

**'Term'** means the period of time between (and including) the Start Date and the End Date.

**'Variable Quantities'** has the meaning given in Clause 16.

**'Variation'** means any change to the Goods and/or Services, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Goods and/or Services.

**'Variation Form'** means a notice substantially in the form set out in Schedule 5 under which the Principal has directed a Variation in accordance with Clause 27.

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

## 2 INTERPRETATION

In this Contract (unless the context otherwise requires):

- (a) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';
- (d) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (e) words in the singular include the plural and vice-versa;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, a calendar quarter or a calendar year;
- (i) headings are for convenience only and do not affect interpretation of this Contract;
- (j) a promise on the part of 2 or more persons binds them jointly and severally; and
- (k) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

## 3 ORDER OF PRECEDENCE

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

- (a) this document;
- (b) in the case of the Goods, the Specification and, in the case of the Services, the Scope of Services;
- (c) any other schedules, attachments or annexures to this document; and
- (d) any Order.

#### **4 SEVERABILITY**

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

- (a) read down, if possible, so as to be valid and enforceable; and
  - (b) severed from this Contract to the extent of the invalidity or unenforceability,
- and the remainder of this Contract shall not be affected by such invalidity or unenforceability.

#### **5 NOTICES**

5.1 Any notice or other communication under this Contract shall be in legible writing, in English and signed and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the recipient specified in this Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
- (b) facsimile transmission to the facsimile number of the recipient specified in this Contract or at such other number as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified number; or
- (c) email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.

5.2 Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:

- (a) if by delivery in person, when delivered to the address of the recipient;
- (b) if by post, 3 Business Days from and including the date of postage;
- (c) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
- (d) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

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

5.3 In this Clause 5, reference to a recipient includes a reference to a recipient's officers, agents or employees.

5.4 A notice or other communication must not be given by electronic means of communication (other than facsimile and email as permitted in Clause 5.1).

5.5 A printed or copied signature will be sufficient for the purpose of sending any notice or other communication.

#### **6 CONTRACTOR TO HAVE INFORMED ITSELF**

6.1 The Contractor shall be deemed to have:

- (a) examined carefully this Contract and any other information made available by the Principal to the Contractor in connection with the Tender or this Contract;
- (b) examined the Site and its surroundings (if applicable);
- (c) satisfied itself as to the correctness and sufficiency of its Tender and that the Contract Price covers the cost of complying with all its obligations under this Contract and of all matters and things necessary for the due and proper performance and completion of this Contract; and
- (d) obtained and properly examined all information (including information provided by or on behalf of the Principal) relevant to the risks, contingencies and other circumstances that may have had an effect on its Tender and which was provided or obtainable by the making of reasonable enquiries.

6.2 Failure by the Contractor to do all or any of the things it is deemed to have done under this Clause will not relieve the Contractor of its obligation to perform and complete this Contract in accordance with this Contract.

## **7 COMPLYING WITH LEGAL REQUIREMENTS**

7.1 The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Goods and/or Services and/or the performance of this Contract.

7.2 Without limiting in any way the generality of the foregoing or Clause 8, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984* and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

7.3 If a Legal Requirement is at variance with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Goods and/or the Services and/or the way in which they must be provided, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

## **8 SAFETY OBLIGATIONS**

8.1 The Contractor must perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety.

8.2 The Contractor must supply or arrange to be supplied all things necessary to ensure the Services are carried out and the Goods are provided in a manner that is safe and without risks to health.

8.3 The Contractor must ensure that the Services are performed and the Goods are provided in a manner that is safe and without risks to any person, including by ensuring that the Contractor's Personnel entering the Delivery Point perform in a safe manner.

8.4 The Contractor must:

- (a) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident which is notifiable under any Legal Requirement, injury or property damage which:
  - (i) occurs during the provision of the Goods and/or Services; or
  - (ii) is associated with the Goods and/or Services; and
- (b) provide the Principal with any further information when requested by the Principal.

8.5 In performing its obligations under this Contract, the Contractor must ensure the health, safety and welfare of the following people when they are on, or immediately adjacent to, the Principal's premises over which it has control:

- (a) the Principal and the Principal's Personnel;

- (b) the Contractor's Personnel; and
- (c) the public.

- 8.6 The Contractor must provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the Goods and/or Services.
- 8.7 The Contractor must, at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this Clause 8.
- 8.8 If the Principal observes or becomes aware of a condition that breaches this Clause 8, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction and modify the Contractor's method of work in order to avoid that condition arising.
- 8.9 The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under Clause 8.7 or 8.8 does not relieve the Contractor from complying with its obligations under this Clause 8.

## **9 ASSIGNMENT AND SUBCONTRACTING**

The Contractor shall not:

- (a) assign this Contract, or any part thereof or any payment thereunder; or
- (b) subcontract the whole or any part of this Contract,

without the Principal's prior written approval (not to be unreasonably withheld or delayed). The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under this Contract.

## **10 CONTRACTOR'S PERSONNEL**

The Contractor must, and must ensure the Contractor's Personnel, comply with:

- (a) all directions given by the Principal's Representative or any person authorised by Law or the Standards and Procedures to give directions to the Contractor in relation to this Contract or the Goods and/or Services; and
- (b) the Standards and Procedures that are applicable to this Contract.

## **11 INDEMNITY**

- 11.1 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind arising directly or indirectly from:
- (a) any breach of any warranty or any of the other terms and conditions of this Contract by the Contractor or the Contractor's Personnel;
  - (b) any Wilful Misconduct or a negligent act or omission of the Contractor or the Contractor's Personnel; and
  - (c) any claim made by a third party against the Principal or the Principal's Personnel, to the extent that the claim arose out of the act or omission of the Contractor or the Contractor's Personnel,
- except to the extent of liability which is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.
- 11.2 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 10.

## **12 INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Contractor warrants that the Goods and/or Services and any design, documents or methods of working provided by the Contractor do not infringe any Intellectual Property Right.



- 12.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.
- 12.3 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under this Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.
- 12.4 Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Goods and/or Services and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.
- 12.5 Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.
- 12.6 The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Goods and/or Services and any documentation provided pursuant to this Contract.

### **13 ORDERS**

- 13.1 If this Contract is a Framework Agreement, the following sub-Clauses apply:
- (a) The Principal:
    - (i) may require the Contractor to provide Goods and/or Services from time to time by giving the Contractor an Order; and
    - (ii) may order requirements of any one type or item of the Goods and/or Services either in one single lot or instalments or in such quantities as may be required.
  - (b) Within 5 Business Days after receipt of an Order the Contractor must give notice to the Principal if it:
    - (i) disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
    - (ii) recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.
  - (c) If the Contractor:
    - (i) gives notice under Clause 13.1(b), the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or
    - (ii) does not give notice pursuant to Clause 13.1(b) the Contractor must perform its obligations under the Order in accordance with this Contract.
  - (d) If, pursuant to a notice issued under Clause 13.1(b), the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates to the extent applicable), may determine:
    - (i) the contract price applicable to that Order and such contract price will be deemed to be the Contract Price for that Order; and
    - (ii) the other information and requirements of the Order provided that such information and requirements fall within the scope of, and do not breach, the Framework Agreement.
  - (e) The Principal is not obliged to issue Orders or otherwise purchase Goods and/or Services.
  - (f) The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any part of the Goods delivered to the Delivery Point and any Services provided prior to the date the cancellation is notified to the Contractor.

## 14 QUALITY OF GOODS

- 14.1 The Contractor must ensure that all Goods supplied under this Contract:
- (a) conform to the description specified in this Contract and to samples provided (if any) by the Principal;
  - (b) where no standards are specified in this Contract, the Goods shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the International Standards Organisation;
  - (c) are fit for their intended purpose;
  - (d) are properly, safely and securely packaged and labelled for identification and safety; and
  - (e) are new and of merchantable quality.
- 14.2 The Contractor must ensure that the Principal has the full benefit of any manufacturer's warranties that may be applicable to the Goods (and the Contractor must, at its cost, pursue any manufacturer's warranties on the Principal's behalf if the Principal so requests).

## 15 QUALITY OF SERVICES

- 15.1 The Contractor must ensure that:
- (a) the Services match the description of the Services in this Contract;
  - (b) if the Contractor provided the Principal with a demonstration of the Services or represented that a result could be achieved by the Services before the Principal entered into this Contract or issued an Order for any of those Services, the Services correspond in nature and quality with the Services demonstrated or the services that achieved result (as the case may be);
  - (c) the Services are fit for their intended purpose; and
  - (d) to the extent that the Services are design Services, the works being designed will be fit for their intended purpose as described in this Contract.
- 15.2 The Contractor warrants that the Contractor's Personnel engaged to perform the Services:
- (a) have all the necessary skills, training, and qualifications (proof of which, along with an up-to-date resume, must be supplied to the Principal within 2 Business Days of request) to carry out the Services in accordance with this Contract; and
  - (b) are able to:
    - (i) perform the Services without the supervision of the Principal's Personnel; and
    - (ii) resolve any matters arising from the performance of the Services.

## 16 SUPPLY OF GOODS AND SERVICES

- 16.1 The Contractor must supply the Goods and/or Services to the Principal in accordance with this Contract during the Term.
- 16.2 The Contractor must obtain, at the Contractor's expense, any Approvals necessary for the supply of the Goods and/or Services to the Principal.
- 16.3 Where this Contract is for the supply of Goods by reference to:
- (a) **'Variable Quantities'**, the Principal shall not be required to purchase all or any Goods listed except such of the Goods as may be ordered by the Principal.
  - (b) **'Approximate Quantities'**, the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.

- (c) **'Fixed Quantities'**, the Principal shall purchase the actual quantity shown.
- 16.4 Where this Contract does not specify whether the required quantities are Fixed Quantities, Approximate Quantities or Variable Quantities, the Parties agree that they shall be deemed to be Variable Quantities.
- 16.5 The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.
- 16.6 The Principal shall not be required to take or accept all or any of the Services listed except such of the Services as may be ordered by the Principal from time to time during the Term.
- 16.7 Where the quantity or value set out in Scope of Services is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under this Contract and the Principal shall not be required to take or accept said nominated approximate quantity or value of Services.
- 16.8 The Contractor acknowledges and agrees that the Principal may enter into arrangements or agreements with third parties for the purchase of goods or services the same as and/or similar to the Goods and/or Services.
- 16.9 If the Contractor:
- (a) delivers more Goods than the quantity specified in this Contract, the Principal may return any quantity of Goods provided by the Contractor in excess of that specified in this Contract to the Contractor at the Contractor's sole risk and expense; or
  - (b) performs more Services than the quantity specified in this Contract, the Principal is not liable to pay for the additional quantity.

## **17 PLANT AND EQUIPMENT**

- 17.1 The Contractor must provide (at its cost) all Plant and Equipment, labour and haulage necessary for the performance of the Contractor's obligations under this Contract.
- 17.2 The Contractor must ensure that all Plant and Equipment and any other items which the Contractor uses or supplies in conjunction with the Services are of merchantable quality, comply with this Contract and all Legislative Requirements, and are fit for their usual and intended purpose.

## **18 TIME FOR PERFORMANCE AND EXTENSIONS OF TIME**

- 18.1 The Contractor shall deliver the Goods in full to the Delivery Points and perform the Services at the times stated in this Contract. In this respect time shall be of the essence of this Contract.
- 18.2 Subject to Clauses 18.3, 18.4 and 18.5 and if the Services are unlikely to be completed and/or that the Goods will not be delivered to the Delivery Point by the Completion Date the Contractor is entitled to an extension to the Completion Date if the delay is due to:
- (a) breach by the Principal of its obligations under this Contract;
  - (b) delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;
  - (c) a Force Majeure Event occurring before the Completion Date;
  - (d) suspension of this Contract under Clause 28, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or
  - (e) a Variation being granted under Clause 27.
- 18.3 The Contractor may only claim an extension to the Date for Delivery under Clause 18.1 if the Contractor:
- (a) could not reasonably have been expected to foresee the delay at the date of signing this Contract;

- (b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and
- (c) or the Contractor's Personnel, did not cause the delay, whether by breach of this Contract or otherwise.

18.4 The Contractor's claim for an extension to the Completion Date must:

- (a) be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen; and
- (b) include the facts on which the claim to the extension to the Completion Date is based.

18.5 If the Principal's Representative reasonably considers that:

- (a) the claim for an extension of time under Clause 18.4 relates to an event listed in Clause 18.2; and
- (b) Clauses 18.3 and 18.4 have been satisfied,

the Principal must notify the Contractor within 10 Business Days of the claim for an extension of time under Clause 18.4 (or such other time agreed by the Parties) that an extension of time to the Completion Date is granted. The notice must include the period of extension granted by the Principal, which will be reasonable having regard to the nature of the event specified in Clause 18.2 (as determined by the Principal, acting reasonably).

18.6 The Principal may by written notice to the Contractor direct an extension of time to the Completion Date at:

- (a) any time that the Principal directs a Variation; or
- (b) at any other time at the absolute discretion of the Principal,

notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Completion Date. The Contractor acknowledges that the mechanism in this Clause 18.6 is a discretionary right of the Principal which may be exercised by the Principal for the sole benefit of the Principal and does not:

- (c) impose any obligations on the Principal;
- (d) to the maximum extent permitted by Law, give rise to any duty to act in good faith;
- (e) in any way constitute a waiver or relaxation of any of the requirements under this Clause 18; or
- (f) entitle the Contractor to claim any Loss of whatever nature arising out of, or in connection with, any extension of time granted by the Principal in accordance with this Clause 18.6.

18.7 If the Principal, considers (acting reasonably) that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the claim under Clause 18.4 that the Completion Date remains unchanged.

18.8 If the Contractor fails to comply with Clause 18.4 the Contractor will have no entitlement to an extension of time of the Completion Date.

18.9 If an extension of time is granted in accordance with this Clause 18, provided that those costs are not also reimbursable pursuant to Clauses 27 or 28, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay, but without regard to overheads, profit or any other cost, loss, expense or damage.

## **19 LIQUIDATED DAMAGES**

19.1 Subject to Clauses 18, 27 and 28, if the Contractor does not perform the Services in full, and/or deliver the Goods in full to the Delivery Points by the Completion Date, the Contractor must pay to the Principal, Liquidated Damages for every day after the Completion Date to and including the earliest of:

- (a) the date the Services and/or Goods are actually performed or delivered in full to the Delivery Points; or
  - (b) termination of this Contract.
- 19.2 If an extension of time is granted in accordance with Clause 18.5 after the Contractor has paid or the Principal has set off the Liquidated Damages payable under Clause 19.1, the Principal shall repay to the Contractor such of those Liquidated Damages as represent the days the subject of the extension of time.
- 19.3 The payment of Liquidated Damages will not relieve the Contractor from its obligations to perform the Services in full and/or deliver the Goods in full to the Delivery Points or from any of its obligations and liabilities under this Contract.
- 19.4 Liquidated Damages shall become due upon the issue of a notice by the Principal setting out the amount of Liquidated Damages payable by the Contractor to the Principal.
- 19.5 The Principal may recover the amount of Liquidated Damages:
- (a) on demand from the Contractor; or
  - (b) by deducting such amount from any amount owed to the Contractor by the Principal,
- after the elapse of the Completion Date.
- 19.6 The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this Clause 19 represent the Principal's genuine pre-estimate of the damages likely to be suffered by it if the Services are not performed in full and/or the Goods are not delivered in full to the Delivery Points, by the Completion Date and such sums shall not be construed as a penalty.

## **20 INSPECTION AND INFORMATION**

- 20.1 The Contractor must keep the Principal fully informed on all aspects of the Goods and/or Services, and must supply on request:
- (a) progress reports on the performance of the Goods and/or Services and in such detail as will allow the Principal to ascertain whether such are in conformity with this Contract; and
  - (b) the Contractor's Technical Material, reports, data and a detailed supply program, relating to the Goods and/or Services.
- 20.2 Subject only to providing reasonable notice, the Principal may itself or through an agent:
- (a) review, inspect, examine and witness tests of, any Goods and/or Services, or the performance of any Goods and/or Services; and
  - (b) inspect any equipment used in measuring any Goods and/or Services at any time up to 12 months after the measurement of the Goods and/or Services occurs,
- at the Delivery Point, the Site, the Principal's premises, the Contractor's premises and/or at the premises of any Subcontractors, as the case may be, and the Contractor must ensure that the Principal is granted the necessary access required for them to review, inspect, examine or witness tests of the Goods and/or Services.
- 20.3 The Contractor must give the Principal 10 Business Days notice (or such other period as the Parties agree) prior to the date the Goods and/or Services will be ready for delivery, inspection or testing.
- 20.4 Any review, inspection, examination or witnessing of testing by the Principal or their results does not relieve the Contractor of its responsibilities under this Contract.
- 20.5 If, as a result of any review, inspection, examination, or witnessing of testing, the Principal is not satisfied that the Goods and/or Services will comply with this Contract and the Contractor is notified in writing of such dissatisfaction, the Contractor agrees to take such steps as are necessary to ensure compliance.

## **21 DELIVERY OBLIGATIONS**

21.1 The Contractor must, in delivering the Goods to the Delivery Point:

- (a) not interfere with the Principal's activities or the activities of any other person at the Delivery Point; and
- (b) leave the Delivery Point secure, clean, orderly and fit for immediate use having regard to the condition of the Delivery Point immediately prior to the delivery of Goods.

## **22 RECEIPT AND ACCEPTANCE OF GOODS AND SERVICES**

22.1 Delivery and receipt of the Goods and/or Services shall not of itself constitute Acceptance of the Goods and/or Services by the Principal.

22.2 Acceptance of the Goods and/or Services occurs on the earlier of:

- (a) the Principal's Representative notifies the Contractor in writing that the Goods and/or Services have been accepted; or
- (b) when after the lapse of 14 days after delivery of the Goods to the Delivery Points without the Principal notifying the Contractor in writing that the Goods have been rejected..

22.3 The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to Acceptance remains with the Contractor except where the damage, deterioration, theft or loss is caused by a negligent act or omission of the Principal or its agents or employees.

22.4 Where Goods are found to be Defective Goods, the Principal may reject any or all of the Defective Goods in accordance with Clause 23.

## **23 REJECTION AND REMOVAL OF DEFECTIVE GOODS OR DEFECTIVE SERVICES**

23.1 During the Defects Liability Period the Principal's Representative shall notify the Contractor in writing of the Defective Goods and/or Defective Services and may:

- (a) in the case of Defective Goods:
  - (i) direct that the Defective Goods be either replaced or rectified by the Contractor (at the Contractor's expense) within such reasonable time as the Principal's Representative may direct; or
  - (ii) elect to accept the Defective Goods whereupon the Contract Price shall be reduced by the extra costs the Principal incurs as a result of accepting those Goods; and/or
- (b) in the case of Defective Services:
  - (i) reject the Defective Services, in which case the Contractor must re-perform the Services free of charge; or
  - (ii) make good or engage another contractor to make good the Defective Services whereupon the Contract Price shall be reduced by the extra costs the Principal incurs as a result of making good those Defective Services.

23.2 Should the Contractor fail to comply with a notice issued under Clause 23.1(a)(i) or 23.1(b)(i) within the time specified in that notice, the Principal shall be entitled to:

- (a) replace the Defective Goods or the Defective Services with goods/services (as applicable) of the same or similar quality; and
- (b) sell the Defective Goods; and/or
- (c) have the Defective Goods redelivered at the Contractor's risk and expense to the Contractor's premises,

and recover its costs losses and expenses of so doing from the Contractor.

- 23.3 Where the Contractor has made good any Defective Goods or Defective Service under this Clause 23, those Goods and/or Services will be subject to the same Defects Liability Period as the original Goods and/or Services, from the date the Contractor made good the Defective Goods or Defective Services (as applicable).
- 23.4 The Principal shall not be responsible for the care or custody of any Defective Goods after the Contractor has been notified that they are defective.
- 23.5 Upon a refund of the price paid for the Defective Goods which had previously been Accepted, property in those Goods shall revert to the Contractor.
- 23.6 Without limiting Clause 10, any cost or expense incurred by the Principal in connection with the Defective Goods and/or the Defective Services under this Clause 23, shall be a debt due from the Contractor to the Principal.
- 23.7 Nothing in this Contract shall prejudice any other right which the Principal may have against the Contractor arising out of the failure by the Contractor to provide Goods and/or Services in accordance with this Contract.

## **24 FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES**

Where a State of Emergency is declared under the *Emergency Management Act 2005 (WA)* or where the Contractor is unable or fails (for whatever reason) to provide the Goods and/or Services in accordance with this Contract, the Principal may, for as long as determined by the Principal (acting reasonably) and without being liable in any way to the Contractor (including for that part of the Contract Price which relates to the relevant Goods and/or Services), obtain or acquire such goods and services as it requires from a third party.

## **25 PROPERTY AND RISK IN THE GOODS**

- 25.1 Risk in Goods will pass from the Contractor to the Principal on Acceptance of those Goods.
- 25.2 Upon payment for the Goods, property in the Goods shall pass to the Principal. Payment shall include credit by way of set off.
- 25.3 The Contractor warrants that:
- (a) it has complete ownership of the Goods free of any liens, charges and encumbrances and that it sells the Goods to the Principal on that basis; and
  - (b) the Principal will be entitled to clear title to and complete and quiet possession of the Goods upon payment for them.

## **26 REPRESENTATIVES**

- 26.1 Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.
- 26.2 The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute resolution procedure in Clause 38 or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.
- 26.3 The Contractor's Representative is responsible for the quality, timeliness, cost and provision of the Goods and/or Services in accordance with this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

## **27 VARIATION**

- 27.1 A direction to the Contractor to perform a Variation may only be effected in accordance with this Clause 27.

- 27.2 If the Principal or the Principal's Representative requests the Contractor must prepare and submit a variation proposal addressing any proposed Variation (**Variation Proposal**). The Principal agrees to provide such further information as reasonably requested by the Contractor to enable the Contractor to prepare the Variation Proposal. The Contractor must submit the Variation Proposal to the Principal within 5 Business Days (or within such other period as the Parties agree) of the Principal's request for the proposal.
- 27.3 If a Variation requires the omission of Goods and/or Services, the Principal's Representative may have the omitted Goods and/or Services provided by others or not as the Principal sees fit.
- 27.4 The Variation Proposal must specify:
- (a) the effect the Contractor anticipates the proposed Variation will have on the Completion Date and the Contract Price (if any); and
  - (b) any other relevant matters that might assist the Principal to make a decision regarding the Variation Proposal.
- 27.5 Following receipt of the Variation Proposal by the Principal, subject to Clause 27.2, the Parties must seek to agree on the price for the Variation and the impact of the Variation on the relevant Completion Date.
- 27.6 The Principal or the Principal's Representative is not obliged to direct a Variation after receiving the Variation Proposal from the Contractor.
- 27.7 The Contractor acknowledges and agrees that, subject to Clause 27.10, the Principal or the Principal's Representative may direct the Contractor in accordance with Clause 27.13 to perform the Variation even if the Parties are unable to agree on the price for the Variation or the impact of the Variation on the relevant Completion Date.
- 27.8 The Contractor must not commence performing the proposed Variation unless and until the Principal or the Principal's Representative directs the Contractor in accordance with Clause 27.13 .
- 27.9 If the Parties agree on the details in the Variation Form, the Principal will sign and issue the Variation Form and the Contractor will be entitled to be paid the agreed amount set out in the Variation Form once the Variation has been performed.
- 27.10 If the Parties are unable to agree on:
- (a) the price for the Variation within 10 Business Days after the date of receipt of the Variation Proposal from the Contractor, the Variation must be valued by the Principal's Representative as follows:
    - (i) if this Contract prescribes rates or prices to be applied in respect of the Goods and/or Services, those rates or prices must be used; or
    - (ii) if Clause 27.10(a)(i) does not apply, using reasonable rates or prices, having regard to all circumstances which the Principal's Representative (acting reasonably) considers to be relevant; and
  - (b) the impact of the Variation on the Completion Date,
- then the Principal's Representative must determine a reasonable impact and amend the relevant Completion Date by notice in writing to the Contractor.
- 27.11 A Variation does not invalidate this Contract.
- 27.12 The Contractor may request that the Principal direct a Variation and the Principal or the Principal's Representative may, in its absolute discretion, direct a Variation under Clause 27 or elect not to direct a Variation.
- 27.13 A direction is not a Variation unless a Variation Form has been signed by the Principal.



## **28 SUSPENDING THIS CONTRACT**

- 28.1 The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
- 28.2 When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
- 28.3 Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Losses.
- 28.4 If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with Clause 28.1 (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Completion Date and the End Date are extended by the period of that suspension.
- 28.5 The remedies set out in Clauses 28.3 and 28.4 are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

## **29 WARRANTIES**

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

## **30 VARIATION TO CONTRACT TERMS**

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

## **31 PRICE BASIS**

- 31.1 Unless otherwise stated in this Contract, the Contract Price shall be firm and not subject to rise and fall.
- 31.2 Unless otherwise provided in this Contract, the Contractor shall pay all packaging, freight, Taxes, insurances, and other charges whatsoever, in connection with this Contract and the Goods and/or Services including delivery of Goods to the Delivery Point and the return of Goods wrongly supplied and all packaging.
- 31.3 On each Review Date, the Contractor shall be entitled to adjust the Contract Price for the Goods and /or Services in accordance with this Clause 31.3. The Contract Price shall be reviewed and adjusted by the percentage movement as published in the Consumer Price Index since the last Review Date. The Contractor shall only be entitled to review the Contract Price for the Goods and/or Services on the Review Date and following such review the Contract Price shall be deemed to be fixed until the next Review Date.

## **32 INVOICING AND PAYMENT**

- 32.1 As soon as reasonably practicable following the end of each calendar month, (or as otherwise agreed by the Parties), the Contractor must provide to the Principal a Progress Claim or if the Principal directs, an Invoice.
- 32.2 Upon approval of a Progress Claim by the Principal:
- (a) if the Contractor has entered into an RCTI Agreement, the Principal will, generate a Recipient Created Tax Invoice. References to 'Invoice' in the remainder of this Clause 32 should be taken to include RCTI where applicable; or

(b) if the Contractor has not entered into an RCTI Agreement, the Contractor will submit an Invoice, in respect of the Goods and/or Services that are the subject of the approved Progress Claim.

32.3 A Progress Claim and any Invoice must include the details set out in the Contract Specifics.

32.4 Subject to any right of the Principal to retain, withhold, reduce or set-off any amount due to the Contractor, the Principal must pay all Invoices that comply with Clause 32.3 within 20 Business Days (or such other period as the Principal's Representative and Contractor agree) of their generation or receipt (as the case may be), except where the Principal:

- (a) is required by any Legal Requirement to pay within a shorter time frame, in which case the Principal must pay within that time frame;
- (b) exercises any right to retain, withhold, reduce or set-off any amount due to the Contractor; or
- (c) disputes the Invoice, in which case:
  - (i) to the extent permitted by any Legal Requirement, the Principal may withhold payment of the disputed part of the relevant Invoice pending resolution of the Dispute; and
  - (ii) if the resolution of the Dispute determines that the Principal must pay an amount to the Contractor, the Principal must pay that amount upon resolution of that Dispute.

32.5 A payment made pursuant to this Contract will not be taken or construed as proof or admission that the Goods delivered or the Services performed (or any part thereof) were to the satisfaction of the Principal but will only be taken to be payment on account.

32.6 Failure by the Principal to pay the amount payable at the due time will not be grounds to invalidate or avoid this Contract.

32.7 The Contractor shall not be entitled to any interest or charge for extending credit or allowing time for the payment of the Contract Price.

### **33 CONFIDENTIAL INFORMATION AND PUBLICITY**

33.1 The Contractor must not advertise, publish or release to the public:

- (a) the Confidential Information; or
- (b) other information concerning the Goods and/or Services, or this Contract, without the prior written approval of the Principal.

33.2 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:

- (c) use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or
- (d) disclose the Confidential Information:
  - (i) other than (to the extent they require the information to enable the Contractor to fulfil its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or
  - (ii) where disclosure is required by Law (including disclosure to any stock exchange).

33.3 The rights and obligations under this Clause 33 continue after the End Date.

### **34 GOODS AND SERVICES TAX**

34.1 Any reference in this Clause to a term defined or used in the A New Tax System (Goods and Services Tax) Act 1999 is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.

- 34.2 Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this Clause.
- 34.3 Any amount referred to in this Contract (other than an amount referred to in Clause 34.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 34.4 To the extent that GST is payable in respect of any supply made by a Party (**Supplier**) under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 34.5 The recipient must pay the additional amount payable under Clause 34.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- 34.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 34.4 or at such other time as the Parties agree.
- 34.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 34.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 34.8 If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 34.4.

## **35 CONSEQUENTIAL LOSS**

In relation to Consequential Loss:

- (a) subject to Clauses 11 and 35(b) but notwithstanding any other Clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by Law; and
- (b) Clause 35(a) does not exclude liability of the Contractor for Consequential Loss, if, but for Clause 35(a) the Contractor would have insurance cover for that Consequential Loss under an Insurance.

## **36 LIMITS ON LIABILITY**

"Not Used"

## **37 FORCE MAJEURE EVENT**

- 37.1 A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under this Contract (**'Affected Obligations'**) and must either:
- (a) to the extent practicable, specify in the notice the length of delay in the Completion Date that will result from the Force Majeure Event; or
  - (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.

- 37.2 The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- 37.3 The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- 37.4 If a Force Majeure Event continues to affect the supply of the Goods and/or Services for a continuous period of 180 days, the Principal may terminate this Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of this Contract being terminated.

## **38 SETTLEMENT OF DISPUTES**

- 38.1 In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute ('**Notice of Dispute**').
- 38.2 The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:
- (a) alleged facts on which the claim is based
  - (b) legal basis on which the claim is made; and
  - (c) relief that is claimed.
- 38.3 Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:
- (a) its position in relation to the Dispute; and
  - (b) the basis for its position.
- 38.4 Within 10 Business Days of receipt of the response referred to in Clause 38.3, the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.
- 38.5 If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with Clause 38.4, either Party may initiate proceedings in a court of competent jurisdiction.
- 38.6 Either Party may, with the agreement of the other Party, at any time, refer the Goods and/or Services (or any part thereof) to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with this Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.

## **39 TERMINATION OF CONTRACT**

- 39.1 If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under this Contract or under any applicable Legal Requirement.
- 39.2 The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than 5 Business Days written notice to the Contractor. The Principal shall pay to the Contractor:
- (a) the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and
  - (b) the cost of materials and equipment reasonably ordered by the Contractor for the Goods and/or Services and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,
- and shall have no further liability to the Contractor.

39.3 If the Contractor:

- (a) subject to Clause 38, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
- (b) (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;
- (c) (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
- (d) assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;
- (e) or any Contractor's Personnel, are found guilty of any criminal act related to the Goods and/or Services that may bring the Principal into disrepute;
- (f) includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- (g) or the Contractor's Personnel:
  - (i) cause a safety issue, condition or any risk to health in breach of this Contract; and
  - (ii) the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,

then the Principal may by notice in writing to the Contractor immediately terminate this Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete this Contract.

39.4 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in Clause 39.3 above and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.

39.5 When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.

39.6 The termination of this Contract does not affect:

- (a) any rights of the Parties accrued before the End Date; and
- (b) the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after the End Date.

## **40 WAIVERS AND AMENDMENTS**

40.1 This Contract may only be amended, or its provisions waived, in writing by the Parties.

40.2 No forbearance, delay or indulgence by the Principal in enforcing the provisions of this Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

## **41 ENTIRE AGREEMENT**

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

## **42 RIGHTS AND REMEDIES**

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

## **43 INSURANCE**

- 43.1 The Contractor must, at its own cost and expense, as a minimum procure and maintain the Insurances:
- (a) on the terms and conditions set out in this Clause and otherwise on terms acceptable to the Principal; and
  - (b) from insurers approved by the Principal which either:
    - (i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
    - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
- 43.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
- 43.3 Without limiting Clause 43.1, the Contractor must:
- (a) pay all premiums and all deductibles applicable to the Insurance when due; and
  - (b) promptly reinstate any Insurance required under this Clause 43 if it lapses or if cover is exhausted.
- 43.4 To the extent available at the times of placement and each renewal, each Insurance must:
- (a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
  - (b) except for compulsory statutory workers' compensation insurance, compulsory motor vehicle insurance and professional indemnity insurance, include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each Party insured and a failure by any insured Party to observe and fulfil the terms and conditions will not affect any other Party;
  - (c) provide that where the Principal is not a named insured the insurer must waive rights of subrogation against the Principal;
  - (d) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal; and
  - (e) state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.
- 43.5 The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.

- 43.6 The Contractor must maintain *public and product liability insurance*. The public and product liability policy must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (b) be in the joint names of the Contractor and the Principal and the Principal's Personnel;
  - (c) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate during any one 12 month period of insurance;
  - (d) cover the liability of the Contractor, the Contractor's Personnel and the Principal in respect of:
    - (i) loss of, damage to, or loss of use of, any real or personal property; and
    - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by any Legal Requirement to be insured under a workers compensation policy),  
  
arising out of or in connection with the performance of this Contract (including the provision of the Goods and/or Services) by the Contractor; and
  - (e) be endorsed to cover:
    - (i) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract; and
    - (ii) sudden and accidental pollution.
- 43.7 In addition to any *compulsory motor vehicle third party insurance* required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain *vehicle and equipment insurance* for the Contractor's vehicles, registered plant and equipment used in connection with this Contract whether owned, hired or leased (**'Contractor's Vehicles'**). The vehicle and equipment liability policy must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (b) cover against all loss and/or damage to the Contractor's Vehicles;
  - (c) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;
  - (d) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the aggregate; and
  - (e) other than compulsory motor vehicle third party insurance required by virtue of any Legal Requirement, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal.
- 43.8 The Contractor must insure against *liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor* including liability by statute and at common law. This insurance cover must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
  - (b) to the extent permitted by any Legal Requirement, be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor; and
  - (c) be for not less than the amount set out in the Contract Specifics in respect of any one event.
- 43.9 "NOT USED"
- 43.10 The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.

- 43.11 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.
- 43.12 The Contractor must ensure that its Subcontractors are insured as required by this Clause 43, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
- 43.13 The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal evidence reasonably required by the Principal including terms to the extent necessary to demonstrate compliance with this Contract. Nothing in this Clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- 43.14 If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the Principal may, but is not obliged to procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.
- 43.15 Whenever a claim is made under any of the Insurance, the Contractor is liable for any excess or deductible payable as a consequence.
- 43.16 The Contractor must:
- (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
  - (b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.
- 43.17 The Insurances are primary, and not secondary, to the indemnities referred to in this Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.
- 43.18 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2004 Risk Management.

#### **44 INDUSTRIAL AWARDS**

- 44.1 With respect to all work done in Western Australia under this Contract, the Contractor shall observe, perform and comply in all material respects with all relevant industrial awards, industrial agreements and orders of courts or industrial tribunals applicable to the Services and this Contract.
- 44.2 Failure by the Contractor to comply with Clause 44.1 hereof shall entitle the Principal by notice in writing to the Contractor to immediately terminate this Contract, but without prejudice to any other rights or remedies of the Principal.

#### **45 GOVERNING LAW**

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



## 46 PROPORTIONATE LIABILITY

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

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

## 47 CONSTRUCTION CONTRACTS ACT

47.1 The Contractor must promptly and without delay, give the Principal's Representative a copy of any written communication of whatever nature in relation to the Construction Contracts Act that the Contractor gives to the Principal or receives from a Subcontractor.

47.2 If the Principal's Representative becomes aware that a Subcontractor engaged by the Contractor is entitled to suspend or has suspended work pursuant to the Construction Contracts Act, the Principal may in its absolute discretion pay the Subcontractor such money that may be owing to the Subcontractor in respect of that work and any amount paid by the Principal will be a debt due from the Contractor to the Principal.

47.3 The Contractor must ensure that none of its subcontracts contain terms which are prohibited by the Construction Contracts Act.

## 48 PERSONAL PROPERTY SECURITIES ACT

48.1 For the purposes of this Clause 48:

- (a) the '**Principal's Personal Property**' means all personal property the subject of a security interest granted under this Contract; and
- (b) words and phrases used in this Clause 48 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

48.2 If the Principal determines that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
- (c) enabling the Principal to exercise rights in connection with the security interest.

48.3 The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

48.4 The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:

- (a) if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
- (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal property.

48.5 The Contractor must not:

- (a) create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);

- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Goods; or
- (e) change its name without first giving the Principal 15 Business Days notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

48.6 Everything the Contractor is required to do under this Clause 48 is at the Contractor's expense.

48.7 Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This Clause 48 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

## **49 APPLICATION OF THIS CONTRACT**

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

## Schedule 1 Contract Specifics

<b>Framework Agreement</b>	No
<b>Contract Price</b>	
<b>Principal's Representative</b>	<b>[NAME / TITLE]</b> Address: Telephone: Facsimile: Email:
<b>Contractor's Representative</b>	<b>[NAME / TITLE]</b> Address: Telephone: Facsimile: Email:
<b>Start Date</b>	TBA
<b>End Date</b>	The earlier of: (a) As described in the RFT Document. (b) the date this Contract is terminated under Clause 39.
<b>Goods to be supplied</b>	
<b>Services to be provided</b>	As described in the contract document (s).
<b>Completion Date</b>	As described in the contract document (s).
<b>Delivery Point</b>	As described in the contract document (s).
<b>Site</b>	As described in the contract document (s).
<b>Defects Liability Period</b>	N/A
<b>Minimum level of Public Liability Insurance Cover required</b>	As per RFT document (s)
<b>Minimum level of Product Liability Insurance Cover required</b>	As per RFT document (s)
<b>Minimum level of Contractor's Vehicle Insurance Cover required</b>	As per RFT document (s)

<b>Minimum Employee Insurance Cover required</b>	As per RFT document (s)
<b>Public and Product Liability Insurance End Date</b>	12 months from the date of delivery of the Goods or 12 months from the End Date, whichever is earlier.
<b>Contractor's Vehicles Insurance End Date</b>	2 months from the date of delivery of the Goods or 2 months from the End Date, whichever is earlier.
<b>Employee Insurance End Date</b>	2 months from the date of delivery of the Goods or 2 months from the End Date, whichever is earlier.
<b>Details required in Progress Claims and Invoices</b>	As described in the contract document (s).
<b>Liquidated Damages</b>	N/A

## Executed as an agreement

In accordance with the Council resolution concerning this tender and subsequent contract, signed by

### **Principal, Shire of Jerramungup**

*sign here* ► \_\_\_\_\_  
Chairperson / Mayor / Shire President

*print name* \_\_\_\_\_

*sign here* ► \_\_\_\_\_  
Chief Executive Officer

*print name* \_\_\_\_\_

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**Contractor**

Signed by

**[CONTRACTOR]**

In accordance with Section 127 of the Corporations Act 2001 (Cth) by

*sign here* ▶ \_\_\_\_\_  
Company Secretary / Director

*print name* \_\_\_\_\_

*sign here* ▶ \_\_\_\_\_  
Director

*print name* \_\_\_\_\_

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