



Request for Tender RFT 2023/113 – Horticulture and Arboriculture Services Panel

Closing Date
2.00pm (Adelaide Time) Tuesday 5 March
2024

Enquiries
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STRUCTURE OF THIS REQUEST FOR TENDER

This Request for Tender (RFT) is comprised of six (6) sections as follows:

Section A – Background and General Information to Tenderers

Section B – Conditions of Tendering

Section C – Conditions of Contract

Section D – Specifications for the Works

Section E – WHS

Section F – Tender Response Schedules

SECTION A – BACKGROUND AND GENERAL INFORMATION

1. The **Port Pirie Regional Council** (the **Council**) invites tenders from Tenderers for the provision of Horticulture and Arboriculture Services (the **Services**).
2. The Council seeks to establish Standing Offers with a number of contractors. The objective of this RFT is to establish a Horticulture and Arboriculture Services Panel to provide the nominated Services to the Council when required. Services include Turf Management, Tree Management, Landscaping and Irrigation, Weed Management, and Mowing and Slashing (including roadside and block slashing). The Council provides no guarantee of engagement of actual work.
3. The Council will enter into a Contract for Services for a term of two (2) years, commencing **1 April 2024**, with possible extension for a further period of two (2) years subject to satisfactory performance of the Contractor in the first two (2) year period each.
4. The terms and conditions for the appointment of the Tenderer to the Panel are set out in the Preferred Contractor Panel Agreement attached as Section C.
5. The applicant is required to identify the service type they wish to be considered for work, and provide a schedule of rates, which may be adjusted annually as agreed by the parties.
6. Tenderers should be aware that the use of this arrangement by the Council is discretionary, and Council is not obligated to enter into a contract for the Services.

SECTION B – CONDITIONS OF TENDERING

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B1. Definitions

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

- B1.1 A reference to a **clause** is a reference to a clause of this RFT.
- B1.2 **Closing Date** means the time and date specified in clause B2.3, or such later time and date as may be notified in writing to Tenderers by the Council.
- B1.3 **Conditions of Tendering** means these Conditions of Tendering as attached to Section B of this RFT.
- B1.4 **Conforming Tender** means a Tender described in clause B6.1.
- B1.5 **Contract for Services** means the contract for the provision of the Services as attached to Section C of this RFT, as may be subsequently amended by agreement between the Council and the successful Tenderer pursuant to clause B11.
- B1.6 **GST** means the Goods and Services Tax payable to the *A New Tax System (Goods and Services Tax) Act 1999*.
- B1.7 **Nominated Contact Person** means the person named in clause B3.1.
- B1.8 **Non-Conforming Tender** means a Tender does not meet the requirements set out in this RFT and/or the Tender Documents.
- B1.9 **Pre-qualified Tenderer** means the Tenderer referred to in clause B11.
- B1.10 **RFT** means this Request for Tender.
- B1.11 **Services** means the Services sought to be purchased by the Council pursuant to this RFT.
- B1.12 **Specifications** means the specifications specified in Section E of this RFT.
- B1.13 **Tender** means a tender submitted by a Tenderer pursuant to this RFT.
- B1.14 **Tender Documents** means the documents specified in clause B2.1.
- B1.15 **Tender Process** means the process for calling, receiving, evaluating, and awarding of Tender(s) as proposed in B2.7 of these Conditions of Tendering.
- B1.16 **Tender Response Schedules** are the forms attached to Section G of this RFT.
- B1.17 **Tenderer** has the meaning given to it in clause B2.2.
- B1.18 **Tenderer's Representative** means the person nominated by a Tenderer under clause B3.2.

B2. Request for Tenders

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

B2.1 Tender Documents

The Tender Documents are comprised of:

- B2.1.1 these Conditions of Tendering.
- B2.1.2 the Contract for Services.
- B2.1.3 the Technical Specifications.
- B2.1.4 the WHS Contractor Management requirements; and
- B2.1.5 the Tender Response Schedules.

B2.2 Eligible Tenderers

This RFT is open to any organisation or person who registers its interest and details with the SA Tenders and Contracts and thereby obtains a copy of the Tender Documents (each such party is a **Tenderer**).

B2.3 Lodgement of Tenders

B2.3.1 Electronic Lodgement of Tenders

- B2.3.1.1 Tenders must be lodged electronically via <https://files.pirie.sa.gov.au/filedrop/HorticultureArboriculturePanel> before the Closing Date **2.00 pm (Adelaide Time) Tuesday 5 March 2024** and in accordance with the tender lodgement procedure set out in this clause.
- B2.3.1.2 Where there is any inconsistency between the lodgement procedure set out on the SA Tenders website and those set out in this RFT, this RFT will prevail.
- B2.3.1.3 Tenders lodged by any other means will not be considered.
 - File format – Documents are to be submitted in word, pdf and/or Excel.
 - Naming conventions – All folders are to be titled “2023/112 – Schedule 1” for example.
 - File sizes – Maximum limit receivable is 10mb.
- B2.3.1.4 By providing a response to this RFT, Tenderers warrant that they have taken all reasonable steps to ensure that their Tenders are free of viruses or any other matter which would cause harm to the Council's website or systems.
- B2.3.1.5 Tenderers acknowledge that it is their sole responsibility to ensure that sufficient time has been allowed for Tender

lodgement, including time that may be required for any problem analysis and resolution prior to the Closing Date.

B2.3.1.6 If Tenderers have any problem submitting/uploading their Tender, they must contact the Nominated Contact Person prior to the Closing Date. Any failure to do so will result in the Tender being a Non-Conforming Tender.

B2.3.1.7 A Tender is deemed to have been lodged by the Tenderer when the Tender has been received by the Council's server.

B2.4 ***Late Tenders***

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

B2.5 ***Extension of Time for the Submission of Tenders***

B2.5.1 The Council may, in its absolute discretion, no less than two (2) business days before the Closing Date, extend the Closing Date by notice in writing to the Tenderers.

B2.5.2 A Tenderer may request the Council to extend the Closing Date for the submission of a Tender by written application to the Nominated Contact Person.

- a) Any such requests must be received by the Nominated Contact Person at least five (5) business days prior to the Closing Date and must provide sufficient reasons to support the request.
- b) It is entirely at the Council's discretion as to whether an extension is granted.
- c) Council will advise all registered parties in writing of such extension of time.

B2.6 ***Tender Validity Period***

B2.6.1 All Tenders will remain open for acceptance by the Council for a period of not less than three (3) months after the Closing Date.

B2.6.2 Once submitted, a Tenderer cannot withdraw its Tender without the prior written consent of the Council, unless the Tender is withdrawn in writing before the Closing Date.

B2.7 ***Proposed Tender Process***

B2.7.1 After the closing date, an evaluation panel formed by the Council will consider all conforming tender responses (and may also consider any non-conforming responses).

B2.7.2 Tender responses considered will be evaluated in a fair, equitable and consistent manner using the information in the tender response and any other information available to the evaluation panel. The evaluation panel will use a weighted

point score evaluation system that allows price and non price criteria to be taken into account in the selection of a preferred tenderer.

B2.8 ***Proposed Timing of Tender Process***

The proposed timing for the tender process is as follows:

Request for Tenders	17 January 2024
Tender Briefing	4.30 pm (Adelaide Time) Wednesday 31 January 2024 at the Memorial Oval Function Centre, 50 Mary Elie Street, Port Pirie
Closing Date	2.00pm (Adelaide Time) Tuesday 1 March 2024
Notification to successful Tenderer	March 2024 (<i>indicative</i>)
Execution of Contract	March 2024 (<i>indicative</i>)
Commencement of Contract	1 April 2024

B2.9 ***Copying of Tenders***

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

B3. **Communication between the Parties**

B3.1 ***Enquiries or Requests for Information or Clarification***

- B3.1.1 Tenderers will be required to register their details with SA Tenders and Contracts. Council will communicate with Tenderers via this web based portal.
- B3.1.2 Any enquiries or requests for information or clarification regarding this RFT or the Tender Documents must be made in writing and addressed to the Nominated Contact Person.
- B3.1.3 The Nominated Contact Person is:
- Debra Scott
Manager Operations
Local Government Association Procurement
Email debra.scott@lga.sa.gov.au

Please note: Telephone communication is not accepted, and all enquiries are required to be provided, in writing, to the Nominated Contact Person email's address provided above.

- B3.1.4 The Nominated Contact Person may (but is not obligated to) respond to a Tenderer's enquiries or requests for information or clarification.
- B3.1.5 If the Council provides any information to a Tenderer by way of clarification, then the Council reserves the right to provide that information to other Tenderers.
- B3.1.6 No statement made by the Nominated Contact Person, or any other representative of the Council should be construed as modifying this RFT or any of the Tender Documents, unless confirmed in writing by the Nominated Contact Person.

B3.2 *Site/Industry Tender Briefing*

- B3.2.1 The Council will conduct a briefing **4.30 pm (Adelaide Time) Wednesday 31 January 2024 at the Memorial Oval Function Centre, 50 Mary Elie Street, Port Pirie**. The briefing is intended to provide Tenderers with background information, and Tenderers are not to treat any statements made at the briefing as variations to this RFT.
- B3.2.2 Details of the briefing will be provided to Tenderers at least five (5) Business Days prior to the briefing. Tenderers may be notified of the briefing by email, and Council may post the details of the briefing on the internet.
- B3.2.3 Each attending Tenderer is to advise the Nominated Contact Person of the details of that Tenderer's Representative (including name and position) at least two (2) Business Days before the briefing.

B3.3 *Tenderer not to solicit the Council and its employees*

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

B3.4 *Discrepancies and Omissions*

Should a Tenderer find discrepancies errors and/or omissions in the Tender Documents or should there be any doubt as to their meaning, the Tenderer should notify the Nominated Contact Person immediately.

B4. *Tender Preparation*

B4.1 *Tenderers to be informed*

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

B4.2 *Evidence of Registration or Licensing*

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

B4.3 *Conflict of Interest*

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

B4.4 *Use of Sub-contractors*

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

B4.5 *Ombudsman Act*

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

B4.6 ICAC Act

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

B4.7 Collusion

The Tenderer must not collude with any other Tenderers or potential Tenderers. Tenderers are reminded that cartel conduct provisions of the Competition and Consumer Act 2010 (Cth) (**CCA Act**) reference such collusion as creating a civil and criminal liability for 'bid rigging'.

B4.8 Unlawful Inducements

Tenderers and their officers, employees, agents, or advisers shall not violate any of the Council's policies regarding the offering of inducements in connection with the preparation and submission of their Tender and taking part in the tender process. The Council may reject a Tender from a Tenderer who contravenes or whose officers, employees, agents, or advisers contravene this requirement.

B4.9 Improper Assistance

The Council may reject a Tender that, in the opinion of the Council, was compiled with the improper assistance of officers or employees or former officers or employees of the Council or with the utilisation of information unlawfully obtained from the Council.

B5. Confidentiality

B5.1 Freedom of Information

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

B5.2 Release of Tender Details

The details of the successful Tenderer, the Tender price and the reasons why the successful Tenderer has been selected as presented in the Council's reports may be made public.

B5.3 Tenderer's Confidential Information

B5.3.1 Subject to Clauses B5.3.2 and B14, the Council will treat as confidential all Tenders submitted by Tenderers in

connection with this RFT. Any area of the Tender which is not compliant must be listed in the Statement of Conformity Schedule.

- B5.3.2 The Council will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:
- (a) is disclosed by the Council to its advisers, officers, employees, or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant agreement.
 - (b) is disclosed to the Councils internal management personnel, solely to enable effective management or auditing of the RFT process.
 - (c) is disclosed by the Council to the responsible Minister.
 - (d) is authorised or required by law to be disclosed; or
 - (e) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

B6. Tender Documents

B6.1 *Conforming Tenders*

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

B6.2 *Non-Conforming Tenders*

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

B6.3 *Content of Tenders*

- B6.3.1 Tenderers are required to complete the Tender Response Schedules and submit them to the Council.
- B6.3.2 Tenderers can also supply any other additional information or documents. The Council may have reference to such additional information or documents in evaluating the Tenders.
- B6.3.3 All prices quoted by Tenderers in their Tender are:
- a) to be in Australian dollars.
 - b) to be exclusive GST; and

- c) (if subject to rise and fall) to provide full details of how the rise and fall applies and the method of determining the price.

- B6.3.4 If a Tenderer proposes to provide the Services on a basis different to that envisaged by the Tender Documents (whether for reasons of innovation, efficiency or otherwise) that proposal should be fully documented and justified with the Tender.
- B6.3.5 The alternative offer must be clearly marked 'Alternative Offer' and the relevant material highlighted in the alternative offer. The Council may consider the alternative offer in its absolute discretion, though it is not obliged to do so.
- B6.3.6 The Council does not warrant that any discussion with the Council's Nominated Contact Person prior to the Closing Date in relation to such a proposal will be taken into account in evaluating the Tenders.

B7. Acknowledgement by Tenderers

Tenderers acknowledges that the Council:

- B7.1 makes no representations and offers no undertakings in issuing this RFT or the Tender Documents.
- B7.2 is not bound to accept the lowest Tender or required to accept any Tender.
- B7.3 may accept all or part of any Tender.
- B7.4 may require one or more Tenderers (but is not obliged to require all) to supply further information and/or attend a conference or interview.
- B7.5 may require one or more Tenderers (but is not obliged to require all) to make presentation(s).
- B7.6 may undertake "due diligence" checks on any Tenderer, including verifying references and/or referees, and undertaking company searches and credit checks.
- B7.7 will not be responsible for any costs or expenses incurred by the Tenderer arising in any way from the preparation and submission of its Tender.
- B7.8 accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this RFT.
- B7.9 will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of a Tender or prior to the signing of any Contract for Services or otherwise; and
- B7.10 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council in respect of the Tender Documents or this RFT but will only be bound only by written advice provided by the Nominated Contact person.

B8. Council's Rights

The Council reserves the right to:

- B8.1 amend, vary, supplement, or terminate this RFT at any time.
- B8.2 accept or reject any Tender, including the lowest price tender.
- B8.3 negotiate with any service provider on all or any part of the Services to be supplied pursuant to this RFT.
- B8.4 vary the timing and process referred to in clause B2.7.
- B8.5 postpone or abandon this RFT.
- B8.6 add or remove any Tenderer.
- B8.7 accept or reject any Tenders whether or not they are Conforming Tenders.
- B8.8 accept all or part of any Tender.
- B8.9 negotiate or not negotiate with one or more Tenderers.
- B8.10 discontinue negotiations with any Tenderer; and/or
- B8.11 include the Tenderers' names in Council reports and make them public. This may include the order of Tenders on the basis of tendered price but without the specific amount tendered in each case. It may, however, include details of the successful Tender's price as per clause B5.2.

B9. Local Presence of Tenderers

- B9.1 Consistent with its Procurement Policy, the Council aims to stimulate the use of local suppliers and businesses in its procurement activities.
- B9.2 The Council supports the development of the local economy and the enhancement of local supplier capability. The Council intends to foster strong relationships with its local suppliers, however at the same time not guaranteeing that a local supplier will be chosen over an intrastate, interstate or international supplier.
- B9.3 After evaluation of responses to the Request for Tender, where all other factors are equal, the Council may give preference to local Tenderer(s). However, the Council maintains its discretion as to whether or not it will in any particular situation choose a local Tenderer.

B10. Tender Evaluation

B10.1 *Criteria*

Tenders received for this Contract will be evaluated on a Pass/Fail basis.

B10.2 *Assessment*

In assessing Tenders, the Council will determine conformance with tender requirements based on Tenderers completion of all tender response schedules attached to this RFT. The Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):

- B10.2.1 Insurance.
- B10.2.2 compliance with Work Health and Safety.
- B10.2.3 customer service experience and capacity.
- B10.2.4 the tendered prices, including the proposed pricing structure.
- B10.2.5 the level of risk associated with negotiation of an acceptable Contract for Services.
- B10.2.6 environmental management systems (if applicable).
- B10.2.7 local economic benefit & social inclusion.

B10.2.8 degree of compliance with the requirements set out in this RFT and the Tender Documents; and

B10.2.9 such other matters that Council considers relevant, including:

- a) details of current and previous relevant experience in the provision of the Services.
- b) the provision of any aspect of the Services by sub-contractors (if applicable).
- c) financial resources.
- d) staff resources; and
- e) current and future contracts/workload.

B10.3 *Use of Tender Documents*

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

The Council may either retain or dispose of the tender documentation under the terms and conditions as authorised by the State Records Act 1997.

B10.4 *Post Tender Interview*

Once the Tender has closed but before the Contract is awarded Council may require one or more Tenderers to attend a post Tender interview. Minutes of the interview will be produced and agreed to by both the Council and the Tenderer. Such minutes may form part of the Contract with the successful Tenderer.

B10.5 *Debriefing of Tenderers*

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

B11. *Acceptance of Tender*

B11.1 Each Tenderer acknowledges that it may be appointed to a Panel of Pre-qualified Contractors to provide some or all of the Services. Accordingly, the Council reserves the right to negotiate a panel contracting arrangement with the successful Tenderers to supplement the contract terms and conditions.

B11.2 The Council reserves the right to negotiate different terms and conditions for the Contract for Services with any one or more Tenderers (each referred to as a **Preferred Tenderer**).

- B11.3 The Council and the Preferred Tenderer may (if required) enter into negotiations for the award and execution of a Contract for Services.
- B11.4 If, despite their best endeavours and acting in good faith, the Council and the Preferred Tenderer are unable to negotiate and agree on the terms of the Contract for Services, the Council reserves the right to negotiate with any other parties, including other Tenderers, for the provision of the Services.
- B11.5 The Council reserves the right to limit the number of accepted Preferred Tenderers in each category, if it is in Council's best interest to do so.
- B11.6 The successful Tenderer will be notified in writing by the Council of the Council's acceptance of its Tender. The successful Tenderer must not make any oral or written public statements in relation to the awarding of a Contract for Services until written notice is received by the Tenderer.
- B11.7 The notification of the acceptance of Tender by the Council creates an obligation on the Council and the successful Tenderer to enter into the Contract for Services (subject to any variations agreed pursuant to this clause B11).
- B11.8 The successful Tenderer acknowledges and agrees that all intellectual property created by the successful Tenderer arising out of the provision of the Services belongs to the Council, and the successful Tenderer will do all reasonable things necessary to assist the Council in the protection and transfer of ownership of the intellectual property resulting from the provision of the Services.

B12. Unsuccessful Tenders

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

B13. No Legal Requirement

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

B14. Governing Law

- B14.1 The RFT is governed by the law in South Australia.
- B14.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

SECTION C – CONDITIONS OF CONTRACT

The enclosed Preferred Contractor Panel Agreement will form the contract between Council and the Tenderers selected to be included on the Horticulture and Arboriculture Services Panel.



**PREFERRED CONTRACTOR PANEL
AGREEMENT
NO: 2023/113**

BETWEEN

PORT PIRIE REGIONAL COUNCIL

AND

Insert contractor name

**FOR PROVISION OF HORTICULTURE AND ARBORICULTURE
SERVICES PANEL**

Table One – AGREEMENT DETAILS

Item 1	Agreement Number 2023/113 for Horticulture and Arboriculture Services Panel
Item 2	<p>Council's Name: Port Pirie Regional Council</p> <p>ABN: 11 548 839 129</p> <p>Address: 115 Ellen Street (PO Box 45) Port Pirie SA 5540</p>
Item 3	<p>Contractors Name: insert contractors name</p> <p>ABN: insert contractors abn</p> <p>Address: insert contractors address</p>
Item 4	<p>Pre approved subcontractors:</p> <p>The Horticulture and Arboriculture Services categories of works as set out in Schedule B including but not limited to:</p> <ul style="list-style-type: none"> • Turf Management • Tree Management • Landscaping and Irrigation • Weed Management • Mowing and Slashing (including roadside and block slashing)
Item 5	<p>Commencement Date: 1 April 2024</p> <p>Expiry Date: 31 March 2026</p> <p>Extension Period: Two (2) years subject to satisfactory performance</p>
Item 6	<p>Minimum Insurance Policy Amounts</p> <ul style="list-style-type: none"> a) Public Liability Insurance: \$AUS 20 million b) Products Liability Insurance: \$AUS 10 million c) Plant, Equipment & Motor Vehicle Insurance: Full Replacement Value d) Workers Compensation: Current Registration

By the Council

SIGNED by Peter Ackland under delegated authority in the presence of:	
<p>.....</p> <p>Signature</p> <p>Date: ____/____/____</p>	<p>.....</p> <p>Signature of witness</p> <p>.....</p> <p>Name of witness (print)</p> <p>Date: ____/____/____</p>

Signed By the Contractor

Executed by **insert company name** pursuant to Section 127 of the *Corporations Act 2001*

Signature of Director:

Name of Director:

Date:

Signature of Director/Company Secretary:

Name of Director/Company Secretary:

Date:

OR

Signature of Sole Director and Sole Company Secretary:

Name of Sole Director and Sole Company Secretary:

Date:

OR

Signed for **insert company name** by an authorised representative:

Signature of Authorised Representative:

Name of Authorised Representative:

Position of Authorised Representative:

Date:

OR

If the Contractor is an individual

Signature:

Name:

Date:

OR

If the Contractor is a Discretionary Trust

Executed by **insert names of Trustees** as Trustees for the **insert names of Trust**:

Signature of Trustee:

Name of Trustee:

Date:

Signature of Trustee:

Name of Trustee:

Date:

(Add extra execution clauses for additional trustees as necessary)

OR

If the Contractor is a partnership

Signature of Partner:

Name of Partner:

Date:

Signature of Partner:

Name of Partner:

Date:

(Add extra execution clauses for additional partners as necessary)

DRAFT

PREFERRED CONTRACTOR PANEL AGREEMENT

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Preferred Contractor Panel Arrangement

BETWEEN

The Party named in Item 2 of Table One (Council)

AND

The Party named in Item 3 of Table One (Contractor)

RECITALS

- A. The Council issued the Request for Tender for the supply of the Deliverables.
- B. The Contractor submitted the Tender that was accepted by the Council.
- C. The Council and the Contractor have agreed to enter into a preferred contractor arrangement for the supply of the Deliverables on the terms set out in this Agreement.

THIS AGREEMENT WITNESSES

1. INTERPRETATION

In this Agreement unless expressed or implied to the contrary:

1.1 Interpretation

1.1.1 A reference to a party to the Agreement includes:

- 1.1.1.1 in the case of a natural person, that person and his/her personal representatives and assigns (transferees); and
- 1.1.1.2 in the case of a corporation, the corporation, its successors, and assigns (transferees).

1.1.2 Where a party is composed of two (2) or more persons, each item of agreement by the party binds:

- 1.1.2.1 all of those persons collectively; and
- 1.1.2.2 each of them as an individual.

1.1.3 A reference to:

- 1.1.3.1 the singular includes the plural, and vice versa.
- 1.1.3.2 a gender includes each other gender.
- 1.1.3.3 a person includes a corporation, a firm, and a voluntary association.
- 1.1.3.4 an Act is the Act as amended from time to time and any subordinate legislation made under that Act.
- 1.1.3.5 money is a reference to Australian dollars and cents.
- 1.1.3.6 a time of day is a reference to Australian Central Standard Time.
- 1.1.3.7 a month is a calendar month.
- 1.1.3.8 a document includes, but is not limited to, any drawing, specification, material, record, or other means by which information can be stored or reproduced and
- 1.1.3.9 the words 'include', 'included' or 'including' when those words are used, will be interpreted as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative.

1.1.4 No rule of construction or interpretation of this Agreement shall apply to the Council's disadvantage solely because the Council prepared the Agreement or relies on a provision of the Agreement.

- 1.1.5 Clause headings exist for convenience only and are to be disregarded when interpreting this Agreement.
- 1.1.6 All information delivered as part of the Deliverables supplied under this Agreement must be written in English. Where any document is a translation into English, the translation must be accurate.
- 1.1.7 If a provision of this Agreement is void, voidable, illegal, or unenforceable, the provision will be deemed deleted from the Agreement.

2. **SUPPLY UNDER THE PREFERRED CONTRACTOR ARRANGEMENT FOR THE TERM**

2.1 **Preferred Contractor Arrangement**

- 2.1.1 The Contractor must offer to supply the Deliverables to the Council on a non-exclusive basis, upon the terms of this Agreement and the relevant Council Contract, at any time during the Term, upon the receipt of an Order from the Council (**Standing Offer**).
- 2.1.2 The Contractor acknowledges and agrees that the Standing Offer is capable of acceptance by the Council at any time during the Term.
- 2.1.3 The Contractor acknowledges that this Agreement does not:
 - 2.1.3.1 provide or imply that the Contractor is the exclusive provider of the Deliverables to the Council.
 - 2.1.3.2 guarantee any particular volume of purchases or level of Council spend or
 - 2.1.3.3 oblige the Council to place an Order for the Deliverables with the Contractor.
- 2.1.4 The Contractor warrants to the Council that it has entered into this agreement with full knowledge of the Existing Conditions, has not relied on any advice or statements by the Council regarding the Existing Conditions and has taken appropriate advice in response of the Existing Conditions or chosen not to seek such advice. The Council has relied on the Contractors warranties in entering into this Agreement.

2.2 **Term**

- 2.2.1 Subject to clause 2.2.2, this Agreement commences on the Commencement Date and expires on the Expiry Date in Item 5 of Table One, unless earlier terminated in accordance with this Agreement.
- 2.2.2 The Council may at its sole discretion extend this Agreement for the Extension Period, or periods specified as the Extension Period in Item 5 of Table One.
- 2.2.3 A Tender Refresh may, at the absolute discretion of the Council, be undertaken annually or at any other time throughout the term of the Agreement to enable additional Contractors and/or product ranges to be

introduced to ensure the maintenance of the integrity and viability of the Agreement.

- 2.2.4 Notwithstanding the expiry or termination of this Agreement, the terms of this Agreement will continue to apply to all Council Contracts and related Orders entered into during the Term which remain ongoing past the expiry or termination of this Agreement until such time as the relevant Council Contract and related Order is terminated or expires.

2.3 Conflict

- 2.3.1 Where any inconsistency or ambiguity arises between the different documents which constitute this Agreement, the order of precedence to resolve the inconsistency or ambiguity shall be (listed in order of descending importance):

- 2.3.1.1 Special Conditions.
- 2.3.1.2 Agreement.
- 2.3.1.3 Specification.
- 2.3.1.4 Request for Tender and
- 2.3.1.5 Tender.

- 2.3.2 Where the Contractor becomes aware of any inconsistency or ambiguity in the documents which constitute this Agreement, the Contractor shall immediately bring the inconsistency or ambiguity to the attention of the Council who will issue instructions consistent with the order of precedence set out in clause 2.3.1.

- 2.3.3 Once issued, the Council's instructions pursuant to clause 2.3.2 shall be binding on the parties with respect to that inconsistency or ambiguity.

3. DELIVERABLES AND PRICING

3.1 Variation to description or range of Deliverables

- 3.1.1 During the term of this Agreement, the Contractor must:
- 3.1.1.1 notify the Council in writing from time to time as soon as practicable of any proposed variations to the description or range of existing Deliverables offered under this Agreement, or of any proposed new goods/materials/services that the contractor commences producing or sourcing and wishes to offer under this Agreement during the term that at the time of the relevant notice are not included in the Specification; and
 - 3.1.1.2 at the same time provide to the Council the amended Price Schedule incorporating any variations under clause 3.1.1.1.
- 3.1.2 Without limiting the operation of clause 3.1.1, the variations or additions may include superseded or discontinued products, additional or

complementary products, development and improvements, new technologies, revised or amended standards.

3.1.3 Prior to exercise of the Council's right under clause 3.1.2 to accept a proposed variation, the Council will provide other contractors under the initial Request for Tender in relation to Deliverables with an option to supply the varied or additional goods, materials or services.

3.1.4 This clause 3.1 shall only apply to proposed variations which do not materially deviate from the Specification and the basis on which the Contractor's Tender was accepted.

3.2 Acceptance of variations

3.2.1 The Council will notify the Contractor of its acceptance or rejection of a proposed variation to the description or range of Deliverables notified under either clause 3.1.

3.2.2 If the proposed variation is accepted by the Council, the Price Schedule and the Specification will be deemed to be amended to reflect, to the extent agreed by the Council, the proposed variations, as from the date of notification of acceptance.

3.3 Prices for Deliverables

3.3.1 Subject to clauses 3.4, 3.5 and 3.6, the price of the Deliverable to be supplied under this Agreement shall be the Price for that Deliverable, less any applicable discount or plus any applicable margin.

3.3.2 Clause 3.3.1 does not prevent the Contractor from offering, or the Contractor and Council from negotiating to reduce the price or margin or increase the discount for a particular Deliverable provided that the price, margin or discount, is consistent with clause 3.5 of this Agreement.

3.4 Price Adjustment

3.4.1 The Contractor:

3.4.1.1 must not vary the price or discount of a Deliverable during the first twelve-month period of the Term unless negotiated and agreed between the Council.

3.4.1.2 may vary the price or discount of a Deliverable after the first twelve-month period of the Term:

3.4.1.2.1 if the variation of the price or discount of a Deliverable was specifically set out in the Tender (and accepted by the Council); or

3.4.1.2.2 otherwise in accordance with this clause 3.4.

3.4.2 After the first twelve (12) month period of the Term, but no more than once during each twelve (12) month period, the Contractor may apply in writing to the Council to increase the price or decrease the discount of a

Deliverable. Any such application must include written substantiation for the price or discount variation.

- 3.4.3 The Council may approve or reject the variation proposed under clause 3.4.2 by written notification to the Contractor. The Council is entitled to accept or reject a price or discount variation application in its absolute discretion. Where the price or discount variation is accepted by the Council, the Price Schedule will be deemed to be amended to the extent agreed by the Council, to include the varied price or discount and such variation will take effect from the date specified by the Council.
- 3.4.4 An application to increase the price shall be in line with CPI – All Groups Adelaide for the quarter immediately preceding that which the application is made, or any other relevant industry standards, unless the circumstances set out in clause 3.4.5 apply.
- 3.4.5 Where extraordinary market circumstances have adversely affected the Contractor's ability to continue to provide the Deliverables at the agreed price under the Agreement, an application to vary the price or discount may be submitted by the Contractor to the Council. Any such Application must be made in writing and must be submitted to the Council as soon as practicable.
- 3.4.6 Without limiting clause 3.4.3, the Council reserves the right to delete a Deliverable from the price Schedule or terminate this Agreement if it considers a price or discount variation application under clause 3.4.2 to be unreasonable.
- 3.4.7 The Contractor is to notify the Council of any decrease in the price or margin or increase in discounts offered. The Contractor is to provide such notification in writing as soon as possible. Upon receipt of such notification, any decrease to the price or margin or increase in discounts offered will have immediate effect.

3.5 Best Price

- 3.5.1 The Contractor represents that the price, margin, or discount for a Deliverable will be no less favourable than the price, margin, or discount applicable to any other public sector purchasers of substantially similar goods and/or services or quantities of goods and/or services (the **Similar Deliverables**) of the Contractor.
- 3.5.2 The Contractor agrees that where it offers a more favourable price, margin, or discount to any other public sector purchaser of Similar Deliverables or to another Customer, it will notify the Council in accordance with clause 3.4.7.
- 3.5.3 The Contractor agrees that a failure to comply with this clause 3.5 will entitle the Council to terminate this Agreement in accordance with clause 8.1.

3.6 Maximum Ceiling Price

The Contractor acknowledges and agrees that:

- 3.6.1 the price for each Deliverable in the Price Schedule is a maximum ceiling price which cannot be exceeded without the Contractor applying for a price variation under clause 3.4 of this Agreement; and
- 3.6.2 the discount for each Deliverable in the price Schedule is a minimum discount which cannot be reduced without the Contractor applying for a discount variation under clause 3.4 of this Agreement.

3.7 Price Audit

Where the price incorporates a discount or margin, the Council, upon giving the Contractor reasonable notice, has the right to inspect and audit the Contractor's cost and price structure at any time throughout the Term to verify the discount or margin provided.

4 SUSPENSION

4.1 Suspension of Contractor

- 4.1.1 The Contractor may be suspended either:
 - 4.1.1.1 on application of the Contractor under clause 4.2.
 - 4.1.1.2 by decision of the Council in accordance with clause 4.3 or
 - 4.1.1.3 on any other basis specifically provided for in this Agreement.
- 4.1.2 A Suspension is based upon an expectation by both the Contractor and the Council that the Contractor will resume the provision of Deliverables after the period of Suspension, providing the cause giving rise to the Suspension is resolved to the Council's satisfaction.
- 4.1.3 During the Suspension Period, the Contractor and the Council are required to keep in regular contact about the prospects and timeframe for the Contractor resuming the provision of Deliverables.
- 4.1.4 During the Suspension Period, the Council may remove or amend the Contractor's Customer Data.
- 4.1.5 During the Suspension Period, the Contractor must not accept any new Orders for the supply of the Deliverables from the Council without the prior written approval of the Council.

4.2 Suspension for Legitimate Business Reasons

- 4.2.1 An application for Suspension may be made by the Contractor where legitimate business reasons affect the Contractor's ability to supply the Deliverables. Legitimate business reasons may include, but are not limited to, business re-location or a Force Majeure Event.
- 4.2.2 An application for Suspension by the Contractor for a suspension must not be made unless the Contractor has no option other than to cease provision of the Deliverables.

- 4.2.3 An application for Suspension by the Contractor must be made in writing. The Contractor must provide the Council with evidence that the Contractor has used their best endeavours to avoid the need for a Suspension.
- 4.2.4 Within five (5) Business Days of receipt of an application for Suspension for legitimate business reasons, the Council will advise the Contractor in writing of whether the Suspension application has been accepted or declined.
- 4.2.5 During the period of Suspension under this clause 4.2, the Contractor must use its best endeavours to resolve the circumstances giving rise to the Suspension.
- 4.2.6 The maximum initial period for Suspension of the Contractor for a legitimate business reason is thirty (30) days.
- 4.2.7 The Contractor may submit a request for an extension of the Suspension Period to the Council. The Suspension Period may be extended by the Council upon consideration of all the circumstances, including the actions of the Contractor during the Suspension Period to overcome the cause of the Suspension, together with the evidence provided by the Contractor to support an extension of the initial Suspension Period.
- 4.2.8 Within five (5) Business Days of receipt of a request for an extension of the Suspension Period, the Council will advise the Contractor whether the application for an extension of the initial Suspension Period has been accepted or declined.

4.3 Suspension by the Council

- 4.3.1 The Council may, by written notice, Suspend the Contractor at any time if, in the reasonable opinion of the Council, the Contractor has breached or is likely to breach the Agreement or a Customer Agreement or as otherwise set out in this Agreement.
- 4.3.2 The Council will notify the Contractor in writing of its Suspension from the Agreement by issuing a "Suspension Notification Form". The Suspension Notification Form must be signed by the Council. The Suspension Notification Form will contain:
 - 4.3.2.1 the reason for the Suspension; and
 - 4.3.2.2 a review date for the Suspension.
- 4.3.3 The Contractor must provide the Deliverables relating to the period up to the Suspension date. All Charges due to the Council by the Contractor must be paid during the Suspension Period as if the Contractor was not Suspended.
- 4.3.4 If the Contractor has been Suspended under this clause 4.3, it will be at the sole discretion of the Council as to whether or not to end the Suspension Period.

- 4.3.5 At the end of a Suspension Period, the Contractor must pay to the Council any outstanding amounts of money the Contractor is required to pay under the Agreement within seven (7) Business Days and
- 4.3.6 The Council is under no obligation to provide the Contractor with a copy of the Customer Data if the Council has Suspended the Contractor under this clause 4.3.

5 SPECIFIC OBLIGATIONS OF THE CONTRACTOR

5.1 Contractor to fulfil all Orders

- 5.1.1 The Contractor must fulfil all Orders which are accepted by it during the Term in accordance with this Agreement and the Council Contract.
- 5.1.2 The Contractor acknowledges and agrees that the Council may place an Order with the Contractor for any one type or item of the Deliverables either at one time or in instalments or in such quantity as may be required from time to time.
- 5.1.3 If the Contractor does not agree to any additional conditions specified by the Council in an Order, the Contractor must promptly contact the Council to negotiate in good faith the application of any additional conditions to the Order.
- 5.1.4 The Contractor agrees not to seek a condition in a Council Agreement which would derogate or diminish the obligations of the Contractor to the Council under the Standard Terms.
- 5.1.5 If the Council so requests, the Contractor must provide the Council with a copy of each Order, in its final form, within 14 days after agreeing the form of the Order with the Customer.

5.2 Conflict of Interest

- 5.2.1 The Contractor warrants that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents, or subcontractors exists or is likely to arise in the performance of its obligations under this Agreement.
- 5.2.2 The Contractor must:
 - 5.2.2.1 Notify in writing, and consult with, the Council immediately upon becoming aware of the existence or possibility of a conflict of interest; and
 - 5.2.2.2 comply with any direction given by the Council in relation to those circumstances directed at managing that conflict of interest, mitigating its effects, or preventing its recurrence.
- 5.2.3 For the purposes of this clause 5.2, "conflict of interest" includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under the Agreement.

- 5.2.4 The Council may immediately terminate the Agreement or Suspend the Contractor in accordance with clause 4 if in its view a conflict of interest exists.

5.3 Contractor to inform itself

The Contractor acknowledges and agrees that it has:

- 5.3.1 examined carefully to have acquired actual knowledge of the contents of all of this Agreement and any other information made available in writing by the Council to the Contractor for the purposes of the Request for Tender and this Agreement; and
- 5.3.2 satisfied itself as to the correctness and sufficiency of its response to the Request for Tender and that the prices in the Price Schedule cover the costs of complying with all of its obligations under the Agreement and of all matters and things necessary for the proper performance and completion of the Agreement.

5.4 Obligation to supply Deliverables at Prices set out in Price Schedule

- 5.4.1 The Contractor must supply the Deliverables at such prices as specified in the Price Schedule, as may be varied in accordance with clause 3.4, except where otherwise agreed with the Council in accordance with this Agreement.
- 5.4.2 The prices, except as specifically provided in the Specification, the Pricing Schedule, or an Order, are inclusive of all the costs, expenses, levies, taxes, duties and other fees that the Contractor incurs in the supply of the Deliverables.

5.5 Minimum insurance requirements

The Contractor must hold and maintain the following insurance policies for the Term, or for such other period as may be specifically required by this Agreement:

- 5.5.1 Public Liability insurance per occurrence and in the aggregate for at least the amount specified in Item 6(a) of Table One in respect of each claim and
- 5.5.2 Professional Indemnity insurance per occurrence and in the aggregate for at least the amount specified in Item 6(b) of Table One and
- 5.5.3 Products Liability insurance in accordance and in the aggregate for at least the amount specified in Item 6 (c) of Table One and
- 5.5.4 Workers Compensation insurance in accordance with applicable legislation for the Contractor's employees and
- 5.5.5 any other type of policy of insurance the Contractor would reasonably be expected to hold by a prudent operator of a similar business as that of the Contractor.

5.6 Evidence of Insurances

- 5.6.1 The Contractor must produce, upon request, to the Council certified true copies of certificates of currency showing that all premiums in respect of the insurances referred to in clause 5.5 have been paid and such insurances are in place.

5.7 Compliance with laws and standards

The Contractor must comply with, and must ensure that its employees, sub-contractors and agents comply with:

- 5.7.1 all applicable Laws, regulations, codes of conduct, and other statutory requirements. This includes, without limitation, laws relating to work health and safety; and
- 5.7.2 all applicable codes, policies, guidelines, industry standards, specifications, procedures, and Australian Standards including those notified in writing by the Council to the Contractor.

5.8 Canvassing

The Council may immediately terminate the Agreement or Suspend the Contractor in accordance with clause 4.3 if it reasonably considers that the Contractor, to solicit support for this preferred contractor arrangement or otherwise seek to influence an outcome of this preferred contractor arrangement, or a Council Contract:

- 5.8.1 offers any inducement, fee or reward to any director or employee of the Council, any member or officer of a Council or any person acting as an advisor for the Council or
- 5.8.2 canvasses, lobbies, or petitions any of the persons referred to in clause 5.8.1 or
- 5.8.3 contacts any director or employee of the Council about the preferred contractor arrangement or any process relating thereto, except as authorised or contemplated by this preferred contractor arrangement including (but without limitation) for the purposes of discussing the possible transfer to the employment of the Contractor of such director or employee.

5.9 Non-collusion

The Council may immediately terminate the Agreement or Suspend the Contractor in accordance with clause 4.3 if in its view the Contractor:

- 5.9.1 seeks to vary a price under this Agreement in accordance with an agreement or arrangement with any other contractor which is a party to a similar preferred contractor arrangement with the Council or
- 5.9.2 enters into any agreement or arrangement with any other contractor that it shall refrain from entering a Council Agreement unless certain additional conditions apply or

- 5.9.3 causes or induces any person to enter such agreement as is mentioned in either paragraph 5.9.1 or 5.9.2 above or
- 5.9.4 canvasses, lobbies or petitions any of the persons referred to in paragraph 5.9.1 or 5.9.2 above in connection with this Agreement or the outcome of this preferred contractor arrangement or
- 5.9.5 offers or agrees to pay or give or does pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other similar preferred contractor arrangement or proposed similar preferred contractor arrangement any act or omission or
- 5.9.6 communicates to competitors of the Contractor any price or the amount of any discount or margin in respect of the Deliverables.

5.10 General Indemnity

- 5.10.1 The Contractor is liable for and indemnifies and must keep indemnified, the Council and its officers, employees and agents against any claim, loss, or expense (including a claim, loss or expense arising out of personal injury, death or damage to property) which any of them suffers, incurs or is liable for (including reasonable legal costs on a solicitor and client basis) (together the **Loss**) as a result of:
 - 5.10.1.1 the defective or negligent supply or non-supply of any Deliverables.
 - 5.10.1.2 any unlawful, negligent, reckless, or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement or
 - 5.10.1.3 any breach by the Contractor of this Agreement.
- 5.10.2 The Contractor's liability in respect of the indemnity given under this clause 5.10 shall be reduced proportionately to the extent that any unlawful, negligent, reckless, or deliberately wrongful act or omission of the Council, its officers, employees or agents caused or contributed to the Loss.
- 5.10.3 Despite clause 5.10.1 and 5.10.2, the Contractor will not be liable for any special, indirect, incidental or consequential damage arising out of or in connection with this Agreement.

6 REQUEST FOR QUOTATION AND ORDERING PROCESS

6.1 Request for Quotations (RFQ)

- 6.1.1 A Customer may submit an RFQ with further information and specifications of their requirements and required goods, services accessories, spare parts, maintenance, and/or training services.
- 6.1.2 If the Contractor is unable to meet any of the requirements of a specific RFQ, this should clearly be noted in the Contractor's RFQ response.

- 6.1.3 Any free services which the Contractor offers to supply, additional to those specified and which the Customer accepts, shall be carried out in accordance with the details supplied by the Contractor at a time and place approved by the Customer.
- 6.1.4 A Council may seek clarifications following a Contractor's RFQ response.
- 6.1.5 Council is not bound to accept an RFQ response received from the Contractor or any other contractor on the preferred contractor arrangement even where such RFQ is the lowest in price.
- 6.1.6 If the Contractor's RFQ response is selected following the RFQ process, the Council shall accept the Contractor's offer by entering into a Council Agreement or issuing an Order in accordance with this Agreement.
- 6.1.7 For the avoidance of doubt, Councils may use an electronic process to issue RFQs. Where a Council makes use of an electronic RFQ process, the Contractor must (if submitting a response) respond via the same electronic process.
- 6.1.8 Council does not accept any liability whatsoever arising from a Contractor's technical inability to receive or respond to electronic RFQ requests.

6.2 Orders

- 6.2.1 Each Order placed by a Council with the Contractor shall incorporate:
 - 6.2.1.1 the draft terms and conditions of the Customer Agreement as described in Schedule A (to be issued when the RFQ is released).
 - 6.2.1.2 the requirements of the Order.
 - 6.2.1.3 the requirements of the relevant RFQ.
 - 6.2.1.4 the Contractor's RFQ response and
 - 6.2.1.5 the Specification.
- 6.2.2 Any inconsistency or ambiguity in the documents listed in clause 6.2.1 shall be resolved by according to precedence to the documents in the order listed in that clause.
- 6.2.3 Where the Contractor receives an Order from a person other than a notified Authorised Officer or which does not list the Council's relevant Agreement Number, the Contractor must:
 - 6.2.3.1 not supply the Deliverables identified in the Order; and
 - 6.2.3.2 refer the Order to the relevant Authorised Officer.
- 6.2.4 The only goods and services which a Contractor can supply under this Agreement to the Council are the Deliverables.

6.2.5 Council may include special conditions in an Order which add to the Council Agreement terms and conditions. These special conditions will only be valid should both the Council and Contractor agree to them. For the avoidance of doubt, the Contractor shall be deemed to have agreed to such special conditions where the special conditions are clearly set out in an RFQ issued by the Council and the Contractor commences provision of the Deliverables pursuant to a resulting Order.

6.2.6 If the Council finds that any documents constituting an Order (including for the avoidance of doubt the Council Agreement, RFQ and/or special conditions) substantially conflict with the terms and conditions of the Agreement, the Council shall consult the Contractor to resolve the matter.

7 PERFORMANCE MONITORING

7.1 Monitoring of performance

The Contractor must meet with the Council from time to time, as reasonably directed by the Council, to evaluate and monitor performance of this Agreement (including Council Contracts) by the Contractor on the basis of the criteria specified by the Council or otherwise agreed by the parties.

7.2 Exchange of Contractor information

The Contractor authorises the Council and its employees and agents to make available to Council information concerning the Contractor, including any information provided by the Contractor to the Council and any information relating to the Contractor's performance under the Agreement, or the Contractor's financial position.

8 TERMINATION

8.1 Termination for cause

8.1.1 Without prejudice to its rights at common law, the Council may immediately terminate this Agreement, by written notice to the Contractor (a Notice of Termination for Cause):

8.1.1.1 where the Contractor makes any statement, fact, information, representation or provides material which is false, untrue, or incorrect in a way which adversely affects the Agreement.

8.1.1.2 where proceedings or investigations are commenced or threatened by the Office for Public Integrity (OPI), the Ombudsman, Australian Competition and Consumer Commission or similar public body against the Contractor including for corrupt conduct or for collusive pricing.

8.1.1.3 where the Contractor commits a substantial breach of the Agreement that is not capable of remedy.

8.1.1.4 where the Contractor commits a substantial breach of the Agreement in a manner that is capable of remedy and does not remedy the breach within seven (7) days of receiving a notice from the Council requiring it to do so (Notice of Breach), or such

further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Council may reasonably allow.

- 8.1.1.5 where the Contractor has been suspended from the Agreement pursuant to clause 4 for more than thirty (30) days.
- 8.1.1.6 if the Contractor becomes Insolvent, goes into administration or
- 8.1.1.7 as otherwise explicitly provided for in this Agreement.

8.2 Effect of Termination for cause by Council

- 8.2.1 If the Council terminates this Agreement under clause 8.1.1 the Council may:
 - 8.2.1.1 contract with any other person to complete the provision of the Deliverables including any Order remaining to be filled; and
 - 8.2.1.2 deduct reasonable loss or damages arising from or in connection with the termination, including any loss or damages incurred by the Council under any Council Agreement (which may be ascertained and certified by the Council), from any money due, or which may become due to the Contractor (whether under this Agreement or any Council Contract); or
 - 8.2.1.3 recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Council.
 - 8.2.1.4 The Council's termination under clause 8.1.1 will not affect any Customer Contract, except where a Customer exercises its termination rights under such a contract.

8.3 Termination by convenience

- 8.3.1 Either party may notify the other party that it wishes to discuss terminating this Agreement on the basis that the notifying party's circumstances have changed.
- 8.3.2 The parties agree to discuss the proposed termination in good faith, providing not less than one Month's written notice.
- 8.3.3 The parties may agree to terminate the Agreement on such terms as are considered by them to be mutually beneficial.

8.4 Effect of Termination on Council Agreement and Rights and Obligations of Parties

- 8.4.1 Termination of this Agreement under clause 9 by the Council will not affect any Council Agreement unless the Council exercises its right to terminate the Council Contract.

- 8.4.2 Termination of the Agreement under clause 8 will not affect the rights and obligations of the parties that have accrued up to the date of termination.

8.5 Clauses which Survive Expiry or Termination

Clauses 1, 2.3, 5.5, 5.6, 5.7, 5.10, 8.2, 8.4, 10, 10 and 11 (inclusive) and any clause which provides so expressly or by necessary implication shall survive the expiry or termination of this Agreement.

9 DISPUTE RESOLUTION

9.1 Procedure for Resolving Dispute

- 9.1.1 The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Agreement.
- 9.1.2 Either party may, in a case of genuine urgency, seek immediate interlocutory relief or an interim remedy.
- 9.1.3 If a dispute arises between the parties which cannot be resolved at an operational level, either party may give written notice of the dispute to the other party (a "Dispute Notice"). A Dispute Notice must adequately identify and provide details of the dispute.
- 9.1.4 Following receipt of a Dispute Notice the following process shall be followed:
- 9.1.4.1 each party must submit the dispute to one of its senior officers who has not previously been involved in the dispute ("Negotiators") within three (3) Business Days of receipt of the Dispute Notice.
 - 9.1.4.2 the Negotiators must meet as soon as practicable to resolve the dispute.
 - 9.1.4.3 If the dispute does not involve the Council and the Negotiators cannot resolve the dispute within fourteen (14) days of its reference to them (or such other period as may be agreed), each Negotiator must prepare a written summary of his or her attempts to resolve the dispute and refer that summary to the Council and
 - 9.1.4.4 if the Negotiators cannot resolve the dispute within fourteen (14) days of its reference to them (or such other time period as may be agreed between them), either party may submit the dispute to arbitration in accordance with, and subject to, The Institute of Arbitrators & Mediators Australia Arbitration Rules. The arbitrator's decision shall be final, and the arbitrator's costs shall be borne by the losing party unless otherwise determined by the arbitrator.

9.2 Continuing Obligations & Injunctive Relief

- 9.2.1 Notwithstanding the existence of a dispute each party must continue to perform its obligations under each Council Contract.
- 9.2.2 Nothing in this clause 10 shall prejudice the right of a party to institute proceedings to enforce payment due under the Agreement or to seek injunctive or urgent interlocutory relief in respect of a dispute under this clause 10 or any matter arising under the Agreement.

10 CONFIDENTIALITY, INTELLECTUAL PROPERTY, PRIVACY & RIGHT TO INFORMATION

10.1 Confidentiality

- 10.1.1 Subject to clauses 10.1.2 and 10.1.4, neither party is to disclose any Confidential Information in connection with this Agreement to any person other than the other party without first obtaining the written consent of the other party.
- 10.1.2 Either party may disclose the Confidential Information to its officers, employees and agents, professional advisors or the Council where the disclosure is necessary to carrying out their duties for the purposes of this Agreement.
- 10.1.3 Each party must ensure that the Confidential Information is used solely in connection with, or for the purposes of, the provision of Deliverables or administering the Agreement.
- 10.1.4 This clause 10.1, does not affect either party's obligation to disclose any Confidential Information that is required to be disclosed by law (including for the avoidance of doubt under right to information legislation).

10.2 Intellectual Property

- 10.2.1 Unless otherwise set out in the Specification, this Agreement shall not affect the intellectual property rights of either party.
- 10.2.2 Unless otherwise set out in the relevant Order, all intellectual property rights in any design work commissioned by the Council shall vest in the Customer.

10.3 Privacy

- 10.3.1 Where the Contractor or its subcontractors have access to or are responsible for holding personal information, the Contractor must:
 - 10.3.1.1 comply with all relevant information privacy legislation.
 - 10.3.1.2 ensure that personal information is protected against loss, unauthorised access, use, modification, or disclosure, and against other misuse.
 - 10.3.1.3 not use personal information other than for the purpose of the Agreement, unless required or authorised by law.

- 10.3.1.4 not disclose the personal information without the written agreement of the Council, unless required or authorised by law.
 - 10.3.1.5 not transfer the personal information outside Australia without the consent of the Council.
 - 10.3.1.6 ensure that its personnel do not access, use, or disclose the personal information other than in the performance of their duties.
 - 10.3.1.7 immediately notify the Council if it becomes aware that a disclosure of personal information is, or may be, required or authorised by law.
 - 10.3.1.8 fully cooperate with the Council, to enable the Council to respond to applications for access to, or amendment of, a document containing an individual's personal information and to privacy complaints and
 - 10.3.1.9 comply with such other privacy and security requirements as the Council reasonably advises the Contractor from time to time.
- 10.3.2 Where the Council is not reasonably satisfied, on the basis of information provided to it by the Contractor, that proper practices are in place to ensure that the privacy and disclosure of information requirements for Personal Information are being observed and maintained, the Council may at any time require the Contractor to make its subcontractors aware of its obligations, in accordance with this clause 10.3 including, when requested by the Council, requiring any subcontractor to promptly sign a privacy undertaking in a form approved by the Council.

10.4 Right to Information

- 10.4.1 The Contractor accepts and acknowledges that the Council may be subject to the provisions of right to information legislation and that information relating to the Request for Tender, Tender, this Agreement, a Council Contract, a RFQ and an Order may be subject to disclosure to third parties.
- 10.4.2 The Contractor shall clearly label any information which it believes may cause harm if disclosed (for instance; trade secrets, confidential information, information with a commercial value) and provide the reasoning supporting its position prior to disclosing such information to the Council.
- 10.4.3 Notwithstanding clause 10.4.2 above, the Contractor accepts and acknowledges that the Council is unable to guarantee that any information provided by the Contractor to the Council will not be disclosed under the provisions of the right to information legislation.
- 10.4.4 The Contractor accepts and acknowledges that there is no obligation whatsoever on the Council to advise the Contractor of the receipt of a request for information, the decision made (or reasoning behind any such decision) or the details surrounding the release of any documents.

11 LIABILITY

11.1 Liability

The Contractor acknowledges and agrees that subject to clause 5.10.2, and to the extent any liability of the Council cannot be excluded by law, and to the maximum extent permitted by law, the Council is not liable to the Contractor for any loss, cost, expense or damage (including by way of a claim under contract, tort (including negligence, statute or otherwise) arising out of or in connection with this Agreement except when the Council is acting in its own capacity as a Council.

12 GENERAL

12.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

12.2 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous deeds, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

12.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

12.4 Force Majeure

12.4.1 A party will not be entitled to exercise its rights or remedies upon the default of another party to the Agreement (whether at common law or pursuant to the Agreement) if that default is caused by a Force Majeure Event.

12.4.2 Without limitation, where the Force Majeure Event continues for a period of more than thirty (30) days, the Council may terminate the Agreement by giving written notice to the Contractor.

12.5 No Assignment or Novation

The Contractor must not assign or novate this Agreement without first obtaining the prior written consent of the Council.

12.6 Subcontracting

The Contractor may sub-contract part or all of the performance of any of the Deliverables under a Council Agreement to a subcontractor approved in writing by the Council from time to time or a pre-approved subcontractor identified in Item 4 of Table One.

The Contractor will continue to be bound by, and responsible for the performance of, the Council Agreement and will remain responsible for the acts and omissions of any sub-contractor as if such acts and omissions were those of the Contractor itself, notwithstanding that part or all of it may have been subcontracted.

The Contractor must not, without the Council's prior written permission, sub-contract or assign any part of its rights and obligations under this Council Contract. The Council is not required to make any payment to any sub-contractor or assignee of the Contractor.

12.7 Marketing and Promotion

- 12.7.1 No information relating to the acceptance of any Tender, or the provision of the Deliverables under the Agreement may be published in any advertising medium without the prior written approval of the Council. The written approval must clearly indicate the precise material to which the information is to be provided.
- 12.7.2 The Contractor may only use the Council's logo in the Contractor's marketing strategy upon receipt of the Council's written confirmation to do so. Such use of the Council's logo shall be solely limited to the marketing of the Contractor's services as they apply to the provision of the Deliverables.
- 12.7.3 The Contractor shall actively promote the supply of the Deliverables under the Agreement during the Term and liaise with the Council to establish a marketing plan that ensures that the Contractor's marketing strategy is effective and consistent with the Council's marketing strategies.
- 12.7.4 The Contractor shall ensure that all information contained on the Council's website about their company and the Deliverables is kept up to date at all times and advise the Council promptly when changes need to be made.

12.8 Financial Viability

- 12.8.1 The Contractor shall advise the Council immediately if the Contractor's financial viability is compromised to the extent that the compromise could reasonably be considered to be a risk to the provision of the Deliverables in accordance with the terms and conditions of this Agreement.
- 12.8.2 The Contractor shall provide the Council with a current original signed letter from a qualified accountant addressed to the Council which details and explains the current and prospective financial viability of the Contractor, within fourteen (14) working days of the date of issue of written request from the Council.
- 12.8.3 Where the Council has reasonably held concerns about the financial viability of the Contractor, the Council shall be entitled to Suspend the Contractor in accordance with clause 4.3.

12.9 Notices

- 12.9.1 Notices under the Agreement may be delivered by pre-paid postage or certified mail, by hand, or by email.

12.9.2 Notices are deemed to be given:

12.9.2.1 five (5) days after deposit in the mail with postage pre-paid or certified.

12.9.2.2 when delivered by hand or

12.9.2.3 if sent by email, if and when the recipient confirms that the notice has been read.

12.9.3 The addresses for service of notices are the addresses as shown in Items 1 and 2 of Table One.

12.9.4 A party may change its address for service of notices by giving written notice to the other party to the Agreement.

12.10 Contractor Transition

In the event that the Council changes its Contractor of the Deliverables, and this change of Contractors involves the transfer of infrastructure or information to occur between a previous Contractor and the Contractor or the Contractor and a new Contractor, the Contractor shall at no additional cost to the Council do all things reasonably within its power to ensure the transition is efficient, orderly, prompt and timely.

12.11 Meetings and Reporting

The Contractor shall, at no extra cost, supply such reports and attend such meetings as are reasonably requested by the Council from time to time.

12.12 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

12.13 GST

12.13.1 In this clause words that are defined in the GST Act have the same meaning as their definition in the GST Act.

12.13.2 Except as otherwise provided by this clause, all Consideration payable under this Agreement in relation to any supply is exclusive of GST.

12.13.3 If GST is payable in respect of any supply made by a Contractor under this Agreement, subject to clause 12.13.4 the recipient will pay to the Contractor an amount equal to the GST payable on the supply at the same time and in the same manner as the Consideration for the supply is to be provided under this Agreement.

12.13.4 The Contractor must provide a tax invoice to the recipient before the Contractor will be entitled to payment of the GST payable under clause 12.13.3.

12.14 Waiver and Exercise of Rights

- 12.14.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 12.14.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

12.15 Survival of Indemnities Warranties

Each indemnity and warranty in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives the expiry or termination of the Council Agreement or the Agreement.

12.16 Enforcement of Indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

12.17 No Merger

The warranties, undertakings, deeds, and continuing obligations in this Agreement do not merge on completion.

12.18 Negation of Employment Agency

- 12.18.1 The Contractor must not represent itself or allow itself to be represented as being an employee or agent of the Council.
- 12.18.2 The Contractor will not, by virtue of the Agreement, be or become an employee or agent of the Council.
- 12.18.3 Nothing in this Agreement is to be taken or construed as creating the relationship of a partnership, joint venture or Council and agent, between any of the parties to the Agreement.

12.19 Governing Law and Jurisdiction

- 12.19.1 This deed is governed by the law in South Australia.
- 12.19.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

12.20 Council to audit records annually

The Contractor acknowledges and agrees that the Council reserves the right to undertake a full review of the performance of the Agreement and the Contractor after the first six months of the Agreement and annually thereafter and the Contractor must allow the Council upon reasonable notice access to all records relating to the Contractors performance of this agreement including details of individual contracts

with councils to enable the Council to undertake an audit of council usage including council feedback, Contractor feedback and management of the reporting processes.

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ATTACHMENT A – DEFINITIONS

1. Definitions

- 1.1 **Act** means an Act passed by the Commonwealth Parliament or the South Australian Parliament and includes subordinate legislation under an Act.
- 1.2 **Agreement** means this agreement between Port Pirie Regional Council and the Contractor providing for the preferred contractor arrangement between the Council and the Contractor, including any attachments and schedules.
- 1.3 **Agreement Number** means the Agreement Number set out in Item 1 of Table One - Agreement Details.
- 1.4 **Agreement Price** means:
- (a) where payment is to be made on a lump sum basis, the sum which is stated in the Council Agreement to be payable to the Contractor for the supply of the Deliverables by the Contractor and the performance of the obligations of the Contractor under the Council Contract; and
 - (b) where payment is to be made on a schedule of rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the schedule of rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums, or other sums included in the schedule of rates; and
 - (c) where payment is to be made on a lump sum and a schedule of rates basis, the aggregate of the sums referred to in paragraphs (a) and (b), but excluding any additions or deductions, which may be required to be made pursuant to the Council Contract.
- 1.5 **Authorised Officer** means an authorised officer of the Council whose details may be updated from time to time by written notice to the Contractor.
- 1.6 **Business Day** means Monday to Friday excluding public holidays in South Australia.
- 1.7 **Commencement Date** means the commencement date set out in Item 5 of Table One.
- 1.8 **Confidential Information** means in relation to a party, information that:
- (a) is by its nature confidential.
 - (b) is designated by that party as confidential; or
 - (c) the other party knows or ought to know is confidential.
- which is not in the public domain (other than through a breach of this Agreement).
- 1.9 **Consideration** means consideration payable under this Agreement in return for a Taxable Supply but does not include any amount on account of GST.
- 1.10 **Contractor** means the Contractor specified in Item 3 of Table One.
- 1.11 **Contractor's Representative** means the Contractor's authorised representative for the purposes of this Agreement and any Council Agreement whose details may be updated from time to time by written notice.

- 1.12 **Council Agreement** means the Agreement that is made between the Contractor and the Council when the Council places an Order, as provided for in clause 6.2.
- 1.13 **Council Data** means information held by the Council (including electronically) about the Contractor.
- 1.14 **Deliverables** means the goods, services, tasks, work and/or requisites to be supplied by the Contractor in accordance with this Agreement and itemised in the Specification and the Price Schedule as amended from time to time in accordance with this Agreement.
- 1.15 **Existing Conditions** means the conditions as described in the Background to this agreement, a summary of which is described in Schedule E.
- 1.16 **Expiry Date** means the expiry date set out in Item 5 of Table One.
- 1.17 **Extension Period** means the extension period set out in Item 5 of Table One.
- 1.18 **Force Majeure Event** means any occurrence or omission outside a party's reasonable control, by which the party relying on the event is prevented from or delayed in performing its obligations under this Agreement and includes:
- (a) acts of God, lightning strikes, earthquakes, floods, storms, explosions, fires, and any natural disaster and
 - (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, and revolution.
 - (c) a pandemic is declared by a Governmental Agency and measures are implemented by the Governmental Agency to address the pandemic; and/or
 - (d) a suspension or termination of services or works is necessitated by legislative requirement or is ordered by a Governmental Agency.
- But does not include any event or circumstance which the Contractor ought to have reasonably foreseen from or as a result of the Existing conditions, including:
- (a) a payment obligation.
 - (b) an industrial dispute involving the Contractor's own staff or sub-contractors staff; or
 - (c) a change in the law which could have reasonably been anticipated prior to the Commencement Date (including for the avoidance of doubt any carbon trading scheme or emissions tax or any change in taxation rules).
- 1.19 **GST** has the same meaning given to that term in the GST Act.
- 1.20 **GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* and includes other GST related legislation.
- 1.21 **Insolvent** has the same meaning as set out at section 95A of the Corporations Act 2001 (Cth).
- 1.22 **Law** means any statute, regulation, order, rule, subordinate legislation, or other document enforceable under any statute, regulation, order, rule, or subordinate legislation.

- 1.23 **Order** means a purchase order in the form of a written request by a Customer to the Contractor for the supply of any or all of the Deliverables which incorporates the Customer Contract, RFQ and the Contractor's RFQ response (subject to any written variations agreed between the parties) and Ordered has a corresponding meaning.
- 1.24 **Price** means the price payable for a Deliverable as set out in the Price Schedule and includes the price expressed as a lump sum or a rate per unit of quantity, or if applicable, means that price less any agreed discount or plus any agreed margin.
- 1.25 **Price Schedule** means the documents referred to or set out in Schedule D as updated from time to time in accordance with clause 3.
- 1.26 **Request for Quotation** or **RFQ** means a document inviting price quotations from the Contractor which defines the criteria of service, quality and delivery for the Deliverables required by a Customer.
- 1.27 **Request for Tender** or **RFT** means the request issued by the Council which has resulted in this Agreement award.
- 1.28 **Special Conditions** means the special conditions set out in Schedule C (as amended by agreement of the parties) which apply to this Agreement.
- 1.29 **Specification** means the detailed description of the Deliverables as set out in Schedule B.
- 1.30 **Standing Offer** means the written offer (in the form of the Tender response) submitted to the Council by the Contractor to provide the Deliverables and, if applicable, as amended in writing by any post offer negotiations and as described in clause 2.1.1.
- 1.31 **Supply** has the same meaning given to that term in the GST Act.
- 1.32 **Suspension** means a temporary postponement of the Contractor's right to supply the Deliverables to the Council under this Agreement for a period of time and **Suspend** has a corresponding meaning. **Suspension Period** means the period of time during the Term in which the Contractor is Suspended.
- 1.33 **Taxable Supply** has the same meaning given to that term in the GST Act.
- 1.34 **Tender** means the Contractor's tender to the Council in response to the Request for Tender, which tender has been accepted by the Council.

SCHEDULE A – COUNCIL AGREEMENT

A Contractor entering into a Council Agreement acknowledges and agrees with the following only:

- There is no Agreement between the Council and a Contractor under this Agreement.
- Under this Agreement the Contractor makes a standing offer to provide goods and/or services to the Council on terms and conditions determined under this Agreement.
- The Standing Offer is capable of acceptance by the Council at any time during the term of this Agreement.
- A Council Agreement can only come into existence where the Council accepts the standing offer provided under this Agreement.
- The Council has flexibility in the terms of the Council Agreement with the Contractor. The Council Agreement may include a Council specific Purchase Order, Goods Agreement, Services Agreement or any other agreement which may include other special conditions.

SCHEDULE B – CATEGORIES AND SPECIFICATIONS

Insert specifications

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SCHEDULE C – SPECIAL CONDITIONS

Insert special conditions

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SCHEDULE D – PRICING

Insert pricing

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SCHEDULE E – EXISTING CONDITIONS

Emergency Management Directions were made pursuant to Section 25 of the Emergency Act 2004 and declared on 22 March 2020. These Emergency Management Directions are applicable for the duration of this Agreement.

On 24 May 2022 the Major Emergency Directions were lifted, and amendments made to the South Australian Public Health Act 2011 to enable public health measures to be maintained to limit the spread of COVID-19.

Despite the lifting of the Major Emergency Declaration, Emergency Management Directions continue to be in force under Section 90C of the South Australian Public Health Act.

In order to comply with the requirements of this Agreement, please ensure that you are up to date with the relevant directions – refer to the Government of South Australia website (see following link) for directions and updates to these Emergency Directions:

www.legislation.sa.gov.au/legislation/CV19

SECTION E – TECHNICAL SPECIFICATIONS

1 Background and Contractor Engagement

The Contractor shall perform the services shown in categories set out in this specification. The details of each engagement which includes but is not limited to the service description and timing will be provided within the Council purchase order as issued to the Contractor in accordance with clause 1A of the Agreement Agreed Terms.

2 Categories of Services

Tree Management – including but not limited to:

- Pruning – General.
- Clearances – Footpath, Road, Street Light & Signage.
- General Crown Maintenance.
- Tree Trimming & Removal (include rural roadside).
- Stump Grinding.
- Arboricultural Consultancy (tree assessment, technical written reports, tree surveys, audit tree work or reports, utilisation of specialist assessment tools).

Turf Management - including but not limited to:

- Fertilizing.
- Coring/Aerating/Dethatching.
- Pest Management.
- Turf Consultancy.

Landscaping Maintenance - including but not limited to:

- Irrigation – supply, install and repair.
- Plantings.

Weed Management - including but not limited to:

- Vegetation poisoning.
- Roadside Shoulder Spraying.

Mowing & Slashing - including but not limited to:

- Roadside slashing.
- Mowing.
- Block Slashing.

3 Location of the Services

Works may occur at a variety of Council sites and community reserves, including but not limited to:

- Administration buildings.
- Works Depots.
- Libraries/Cultural Precinct.
- Community centres and sporting clubs.
- Council ovals and reserves.

- Public toilets.
- Council offices.
- Leased premises.
- Cemeteries.
- Roads, Footpaths and Verges.
- Private Properties (Block Clearing).

4 Services Specification

4.1 Tree Management

General Method

The Contractor shall assess the structural integrity of each tree. If there is any structural weakness within the crown, it shall be removed or rectified. If a large portion of the crown will be affected by rectifying the structural flaw or the aesthetic value of the tree will be greatly reduced, Council is then to be consulted before the service is undertaken.

If the whole or majority of the crown is structurally suspect to the point that removal of the tree is, in the Contractor's opinion, the best option, the tree is to be noted and referred to the Council for direction.

Pruning may be performed with hand tools or motorised work equipment. Material may be removed in smaller sections to take account of adjacent hazards. Debris may be allowed to fall to the ground or may be guided to the ground by hand or by a lowering system as best determined by the site risk analysis.

All work shall be completed so as to leave each tree with an aesthetically pleasing appearance and, where possible, a well-balanced form.

The Contractor shall take care to prevent any damage or injury occurring to any other part of a tree for example by falling debris, accidental saw damage etc. When using ropes on any tree that is to be retained, 'Cambium Savers' are to be used at all times to prevent damage to the tree by friction caused by a moving rope.

Clearances, Footpath, Road, Street Light and Signage

Clearances for roads, footpaths must allow for clear pedestrian and traffic access and sight lines, particularly for vehicles entering and leaving driveways, approaching intersections or pedestrians or other users utilising footpaths.

General Crown Maintenance

This pruning consists of the removal of dead, diseased, dying, defective and conflicting branches. Consideration is to be given to the future shape, structure, and growth, especially towards roads, footpaths and other structures, while undertaking this type of pruning.

Tree Trimming & Removal (includes rural roadside)

Trees to be trimmed or removed as identified by Council.

- Non-Regulated tree: being those Trees with single trunk or trunk circumference less than 2 metres when measured one metre from ground.
- Hazardous trees: being those that have been identified as having a defect that may cause injury or property damage if not removed.

Dangerous trees that do not comply with the Non-Regulated or Significant Tree removal criteria above must be authorised by Council prior to removal.

The Contractor shall ensure that any trimming or removal of any tree does not damage any service (either above ground or below ground), structure, road, or footpath.

Stump Grinding

A Before You Dig Australia (BYDA) must be obtained by the contractor and if deemed necessary services may need to be located by a locating service provider

The work may be required on one or multiple stumps. Stump size will be variable. The work may include:

- Ground with a proprietary machine (which may be either self-powered or driven from a power take off shaft), to a stated depth below ground level, this includes the removal of all surface roots.
- Treated with an appropriate herbicide to prevent re-growth from the stump if required.
- Removal of debris.
- Reinstatement of the area in keeping with the surrounds (or as specified by Council)

Arboricultural Consultancy

General

The service to be provided is professional arboricultural consultancy on an as-needed basis. The service may be undertaken on tree or trees under the ownership and/or control of the Council or privately owned trees. The work may include:

- Tree assessment.
- Technical written reports.
- Tree surveys.
- Audit tree work or reports.
- Attend meetings.
- Act as an expert witness.
- Utilisation of specialist assessment tools.
- Development site supervision.

All arboricultural consultancies must be undertaken by a fully trained, qualified, competent, and experienced arborist or equivalent qualifications to safely and adequately perform the work specified. The qualifications required include a Diploma of Arboriculture/Australian Qualification Framework Level 5.

The Arborist must declare to the Council any Conflict, or possible perceived conflicts, of interest with any project they may be involved with prior to undertaking any works.

The arborist will work closely and collaboratively with Council's staff.

Where the Council's Representative request services to be undertaken in a number of sites the arborist will ensure best time management principles is undertaken to reduce time spent on travel by grouping site visits together.

The Council may specify expected timeframes for Arboricultural Consultancy Services to be completed; the Arborist must ensure they meet the required timeframes.

Tree Assessment

On site assessment of a tree or trees to determine, health, structure, pest and diseases, impact by tree on adjacent infrastructure, impact of proposed development on a tree, extent and likely long-term effects of tree damage, compliance and/or legal status under the Development Act tree assessment may require above and/or below ground inspection and may require the use of specialised equipment i.e. Resistograph, Picus etc.

The arborist must report in writing as specified by the Council's Representative.

Tree Reports

The arborist may be required to write an arboricultural assessment report. The report may be a short preliminary report or more detailed technical report as specified. A report may be requested for but not limited to:

- Tree condition and risk assessment.
- Legal status.
- Proposed development near regulated or Significant and non-significant trees.
- Assessment of regulated or Significant Trees in relation to a Development Application.

4.2 Turf Management

Fertilizing

The supply and application of liquid and granular fertilisers on ovals, parks, and gardens, as approved and directed by the Council's Representative.

Appropriate watering in shall be undertaken after the application of the fertiliser has been applied.

Coring/Aerating/Dethatching

The supply of appropriate machinery and undertaking hollow and solid coring, aerating, and dethatching of ovals, parks and gardens in accordance with industry standards.

Pest Management

The supply and application of appropriate products on ovals, parks and gardens, as approved and directed by the Council's Representative.

Turf Consultancy

The service to be provided is professional turf consultancy on an as-needed basis. The work may include:

- Turf assessment.
- Technical written reports.
- Soil testing.
- Attend meetings.
- Act as an expert witness.
- Utilisation of specialist assessment tools.
- Site supervision.

All turf consultancies must be undertaken by competent and experienced professionals.

The consultant will work closely and collaboratively with Council's staff.

Where the Council request services to be undertaken in a number of sites the consultant will ensure best time management principles is undertaken to reduce time spent on travel by grouping site visits together.

The Council may specify expected timeframes for the Turf Consultancy Services to be completed; the Consultant must ensure they meet the required timeframes.

4.3 Landscaping Maintenance

Irrigation – supply, install and repair

The design, supply, installation, and repair of irrigation systems located on ovals, parks and gardens in accordance with Australian standards and relevant industry standards.

The services may include the design, supply, installation and maintenance of irrigation controllers, solenoids, pipework, and sprinklers.

The scope of the irrigation works shall be as directed by the Council's Representative.

Plantings

The design, supply, planting (including replacements) of trees, plants and shrubs located within Council public spaces (eg parks and gardens) in accordance with Australian Standards and relevant industry standards.

Tree and plant species will be as directed by the Council's Representative.

4.4 Weed Management

Vegetation Poisoning (chemical control)

The use of poison has to be pre-approved by the Council's Representative.

- Strip poisoning - Poison applied in a line or circle, to create a poisoned strip no more than 200mm wide under or around or along the object/item. **Where vegetation is growing on a slope and there is a possibility of erosion, poisoning is not to be used.**
- Spot spray poison- Poison applied to individual plants only.
- Broadleaf poisoning – Poison applied to large areas targeting specific weeds.
- Foliage or cut stump poison – Poison applied to the foliage (leaves) of the plant to ensure an overall coverage or applied to the cut stump within 20 seconds of it being cut.

Boom sprays are to be used only for roadsides, elsewhere hand spraying shall only be utilised.

Note:

1. Spraying is to be performed under no wind conditions and the nozzle of the applicator is to be as close to the point of application area as possible to reduce no selected kills and drift.
2. Only a foliage or systemic herbicide is to be used when poisoning vegetation.
3. Ensure appropriate rates are used where different.
4. Key performance criteria is that all areas are to be maintained at least 9% weed free for a period of up to three (3) months following the completion of the spray run.

All details outlined in the Environment Protection Act 1993 and the Controlled Substances (Poisons) Regulations 2011 must be followed. It is the responsibility of the Contractor when using herbicides to ensure the provisions laid down in the Environment Protection Act 1993 are not breached. Herbicide label directions must be strictly adhered to. Under no circumstances is any operate to deviate from label directions without first obtaining written approval from the Superintendent.

The Council is committed to avoiding unnecessary use of herbicides and to using chemicals that have the least detrimental effects on persons, animals, and the environment.

Personnel involved in the handling and usage of any chemicals used in the provision of the Scope of Work must be appropriately trained in personal and public safety, hold relevant and current qualifications, and take care at all times.

The Contractor must supply detailed reports of all weed spraying undertaken including, but not limited to, dates, time location, chemicals used, wind conditions, targeted species, and method.

4.5 Mowing and Slashing

Roadside Slashing

Roadside slashing refers to the cutting of grass on roadside shoulders and at intersections on roads within the Council area.

When cut, the remaining vegetation shall be no less than 50mm and no more than 100mm in height.

Grass shall be cut in a manner that spreads cuttings evenly over grassed areas so as not to leave concentrated clumps of cuttings. Cut material should not be deposited on the road surface so as to create a hazard for road users.

Vehicles and machines used in connection with the operation, and which may form a hazard on the road, shall be fitted with two clearly displayed rotating flashing amber warning lamps on the roof of the cabin or, if this is not practicable, in some other suitable position.

All machines shall be fitted with sufficient guards to prevent material being ejected in a dangerous manner.

Mowing

This activity covers the mowing of grassed/lawned areas within the nominated Council areas. Activities include brush cutting around trees, shrubs, inspection lids, hydrants, posts, poles, growth over footpaths, against buildings, along creek lines and under seats and tables.

Lawn and turf areas are to be cared for to maintain the parks and recreation areas in good condition and appearance and suitable for the appropriate sporting/recreational activity by the park users.

The intent is to maintain the grass height levels within the parameters of acceptability throughout the year; seasonal differences may alter the standard at certain times.

The cutting heights required, and the associated type of machinery will vary depending on the specific individual Council standards and the asset to be mowed.

Mowing Standards

Mowing equipment shall be appropriate to the size and topography of each location.

No skidding, dragging or detrimental mowing operations are permitted or use of heavy vehicles or machinery. All cuts shall be clean and even; no wind rows are permitted. Adjoining areas shall be let clear of clippings and any other debris generated by the cutting operation.

Before mowing check sprinkler systems, irrigation covers, rubbish, branches and debris do not protrude into cutting levels.

Litter and deciduous leaf accumulation branches, etc. shall be removed prior to mowing and disposed of at a recycling centre, for suitable material, or a legal tipping facility.

Equipment will be maintained and operated so as to minimise the danger of projecting stones or debris in a dangerous fashion.

Block Slashing

This activity refers to the fuel reduction works undertaken to mitigate the impact of and/or the spread of fire throughout the land. Contractors are engaged to complete these works on private land, where the landowner has failed to comply with the Fire and Emergency Services Act 2005 - Section 105 (f).

These works are generally undertaken prior and during the fire danger season and can be conducted in both townships and rural areas.

- Mowing /slashing of vegetation to a maximum height of 100mm to create fire breaks, establish asset protection zones and clearing vacant land.
- Clearing guttering of any flammable materials or vegetation.
- Modification of Vegetation (reduce/remove ladder fuels).
- Tree removal and or limb removal.

NOTE: Given the scope of the works and the time of year (FDS) that they are undertaken, restrictions apply to the operation of a stationary engine, vehicle, or prescribed appliance. Except in accordance with the fire and Emergency Services Regulations 2005, Part 3 Division 4 Subdivision 3.

5 Utility Services

The Contractor shall be responsible for locating existing services (electricity, gas, water, telephone, drains etc) prior to the commencement of work.

6 Property Damage

Any damage to public or private property that results from the Contractor's works or services is to be made good at the Contractor's expense.

7 Site Cleaning

The Contractor must ensure the site is maintained in a clean, tidy, and safe condition.

All cleared vegetation must be removed from site at the completion of works on the same day or as agreed to by Council.

The work site shall at all times be made safe for pedestrian traffic.

The site shall have all leaf litter, twigs and sawdust swept/raked from the footpath, road kerb or park, leaving the area in a clean, safe manner for pedestrians, road, and park users.

All tree pruning shall be chipped. The Council may elect to accept wood chips at no cost subject to the Contractor arranging delivery to a nominated site in the Council area or otherwise the woodchips will be disposed of by the Contractor at the Contractor's expense.

No cleared vegetation is to be left hanging or wedged in any tree. Cleared vegetation includes all stubs, limbs, branches, twigs, leaves, chips, and sawdust created as a result of any tree pruning or removal works.

8 Plant and Equipment

The Contractor shall provide all plant and equipment necessary for carrying out of the work, unless otherwise directed by the Council.

Vehicles and machines used in connection with the operation, and which may form a hazard on the road, shall be fitted with two clearly displayed rotating flashing amber warning lamps on the roof of the cabin or, if this is not practicable, in some other suitable position.

Operators must carry a water filled knapsack and shovel at all times.

All machines shall be fitted with sufficient guards to prevent material being ejected in a dangerous manner.

9 Chemical and Consumable Supply

The Contractor is required to provide all chemicals and consumables applicable to the services and it is their responsibility to ensure that they are transported, stored, and handled in accordance with any legislative requirements.

Only Class 1 chemicals are to be used.

10 Traffic Management

The Contractor shall take the necessary precautions to ensure the safety of workers in accordance with AS1742 part 3 (1996) "Traffic Control Devices for Works on Roads" as modified by the "Code of Practice for the Installation of Traffic Control devices in South Australia."

The Contractor must also provide records of work zone signage placements in accordance with AS 1742.3. This may be subject to period audits.

11 Dust Management

The Contractor must be mindful of the lead in dust within Port Pirie. For any works likely to generate dust before, during or after, the Contractor is required to implement responsible dust management practices to minimise and manage the generation of dust.

For example, Blower/Vacs cannot be used within Port Pirie. Worksites must be wetted down where practical. Any street sweeping operations must comply with PM-20 and utilise wet suction/sweeping technology.

Further information can be found within Council's Regional Public Health Plan and Dust Management Plan.

12 Standards of Work

All work must be undertaken in a manner that accords to:

- Any applicable legislation.
- Any relevant Australian Standards.
- Any Council Policies and Guidelines.
- This specification.
- Any relevant industry standards, only on the written agreement of the parties and
- Any local requirements ie pest or disease control management.

Where a discrepancy exists between this specification and the Australian Standards the former shall prevail.

No horticultural or arboriculture service are to be undertaken on days of "extreme" fire danger as determined by the Country Fire Services, unless otherwise approved by the Council's Representative.

13 KPI's and Reporting

As part of the Council's requirements, all contractors must demonstrate capability of an effective reporting system that will include, but not be limited to the following:

- Ability to update (engaging them) on the progress of work on a regular basis (as per arrangement) or as requested.
- Track and report progress on any maintenance programs.
- Demonstrate compliance to relevant Australian Standards, for evidence to external bodies/agencies as required.
- The completion or confirmation of each work request to be reported to the Council.

14 Exclusivity

The Contractor acknowledges that they are not the sole provider for these particular services to the Council but will be placed on a register for the Council to use their services, when and if required. Any canvassing of the Council or receipt of any notifications that Companies are promoting their services as the sole provider will result in removal from the Horticulture and Arboriculture Services Panel.

SECTION E – WORK, HEALTH AND SAFETY REQUIREMENTS

Formal Work Health Safety Requirements

Under the Work Health Safety Act 2012 (SA), the Council have a duty as a “person conducting a business or undertaking” (PCBU) to provide and maintain, so far as is reasonably practicable, a safe working environment for its employees, tenderers, contractors, sub-contractors, consultants, visitors, and members of the public. To align with The Council’s WHS duties, the successful Tenderer must comply and ensure that others comply with the following:

1. The Tenderer engaged in providing the Services must identify and engage their own duties as a PCBU.
2. The Tenderer must ensure through a documented and systematic approach, that it complies with any Acts, regulations, local laws and by-laws and guidelines applicable to the performance of the Services and
3. The Tenderer must comply with any reasonable directions of the Council’s Representative relating to safety and environmental matters if they arise.

General Advice

It is the responsibility of the Contractor to comply with relevant state WHS legislation, relevant codes of practice, Australian standards and for reporting unsafe or unsatisfactory working conditions, hazards, and incidents.

The Contractor is to complete and provide all relevant Safe Work documentation to the Council on Agreement appointment, prior to work commencing.

Reporting Hazards / Issues / Near Misses

In the instance of any incident, hazard or near-miss, the Councils Superintendent shall be contacted as soon as practicable or within twenty-four (24) hours and informed of the situation so that the Council can ensure the appropriate steps have been taken, and the incident or hazard is formally reported and investigated where required.

Contractors must report immediately to the Councils Superintendent any issue arising from a Safe Work SA Inspector or Union Representative visit. They must provide the Council with a copy of any document, report, notices, direction, etc. issued by the inspector/visitor.

The Councils Superintendent or a Councils WHS Representative who observes an unsafe practice has the right to direct a Contractor to cease work until the safety concern is addressed to the satisfaction of the Councils Superintendent or the Councils WHS Representative. Council will take into consideration compliance to WHS requirements when selecting Contractors for future work.

SECTION F – TENDER RETURN SCHEDULES

ALL TENDER RETURN SCHEDULES MUST BE COMPLETED. EXCLUSION/EXCLUSIONS AND DEVIATIONS FROM THE TENDER SPECIFICATION MUST BE DETAILED IN SCHEDULE 17 STATEMENT OF CONFORMITY. COVERING LETTERS WILL NOT BE CONSIDERED IN THE TENDER EVALUATION

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Instructions to Tenderers

These forms have been designed to collect information needed to evaluate tenders in accordance with the criteria stated in Section B – Tender Conditions.

1. Use these forms to provide information that demonstrates your compliance to those criteria.
2. All forms must be completed.
3. All information as set out in the forms must be provided.
4. Schedule 1 must be signed in the appropriate signature block.
5. Do not mark a form 'Not applicable' nor leave a form blank.
6. If the information required on a form is provided elsewhere in your tender then please provide a reference as to the location of the information on the relevant form.
7. If you are providing information that does not meet specified requirements then you will need to indicate how you intend to meet those requirements.
8. If in doubt regarding use of any form or information required, then please contact the nominated contact person in accordance with Section B Tender Conditions.

Schedule 1 Tender Form - Formal Offer

I, having read, understood, and fully informed myself of the contents, requirements, and obligations of the Request for Tender, do hereby Tender to provide and complete the Services as described in the Specifications, as per RFT, in accordance with the Agreement for the amounts set out in the Tender Return Schedules attached.

The Tenderer:

1. is subject to the terms and conditions set out in the Conditions of Contract.
2. irrevocably offers to perform the Works on the terms of the Contract and the Specification which form part of the Tender Documents subject only to the variations set out in Schedule 17.
3. confirms that this Tender has been prepared without any consultation, communication, agreement, or other arrangement with any competitor regarding:
 - 3.1 prices or methods, factors or formulae used to calculate prices.
 - 3.2 the intention or decision to submit a Tender, or the terms of the Tender.
 - 3.3 the submission of a Non Conforming Tender; and
 - 3.4 the quality, quantity, specifications or particulars of the Works the subject of this Tender;
4. holds this offer open and capable of acceptance by the Council for a period of ninety (90) days from the closing date.
5. Has sufficient resources to provide the Services required in the context of any other current and anticipated work commitments.
6. Confirms that its Tender takes into account conditions such as a pandemic which is declared by a Government Agency and measures are implemented by the Government Agency to address the pandemic, and the Tenderer has had regard to the knowledge of existence and impact of the Existing Conditions when entering into this RFT.
7. Confirms that any Addendums provided with this Tender have been reviewed and included in the Response.
8. The undersigned undertakes that if selected as the successful Tenderer, I will execute and be bound by the Agreement in accordance with the Conditions of Contract.

Authorised Person Signature:	
Authorised Person Name:	
Authorised Person Title/Position:	
Name of Organisation:	
Date:	

Should the Request for Tender provided be successful, the Agreement will be executed in accordance with the following:

<input type="checkbox"/> Director/Company Secretary (Sec 127 Corp Act) Name of Director: <input type="text" value="insert name of director"/> Email of Director: <input type="text" value="insert email for director"/>
<input type="checkbox"/> Sole Company Director & Sole Company Secretary (Sec 127 Corp Act) Name of Sole Director/Company Secretary: <input type="text" value="insert name sole director/company secretary"/> Email of Sole Director/Company Secretary: <input type="text" value="insert email sole director/company secretary"/>
<input type="checkbox"/> Authorised Representative (Sec 127 Corp Act) Name of Authorised Representative: <input type="text" value="insert name authorised representative"/> Position of Authorised Representative: <input type="text" value="insert position authorised representative"/> Email of Authorised Representative: <input type="text" value="insert email authorised representative"/>
<input type="checkbox"/> Individual Name of Individual: <input type="text" value="insert name of individual"/> Email of Individual: <input type="text" value="insert email of individual"/>
<input type="checkbox"/> Discretionary Trust Name of Trust: <input type="text" value="insert name of trust"/> Trustees: <input type="text" value="insert name of trustees"/> Email for Trustees: <input type="text" value="insert email for trustees"/>
<input type="checkbox"/> Partnership Name of Partner 1: <input type="text" value="insert partner name"/> Email of Partner 1: <input type="text" value="insert email for partner"/> Name of Partner 2: <input type="text" value="insert partner name"/> Email of Partner 2: <input type="text" value="insert email for partner"/>

Contractors Representative

Nominate the Contractor's Representative for Execution of an Agreement

Name:	
Position:	
Telephone (mobile):	
Email:	

Schedule 2 Tenderer's Details

Name of Tenderer	
1. Entity name (as listed on ABR and ASIC): (mandatory)	
2. State in full the name(s) of the person(s) listed in any Trust(s) or Partnership(s).	
3. State in full the registered business name(s) of the company(s) .	
4. State in full the trading name(s) of the business.	
5. Australian Company Name (ACN):	
6. Australian Business Number (ABN):	
7. Registered address:	
8. Postal address:	
9. Telephone:	
10. Email:	
Contact Person	
Nominate a contact person for this tender to deal with any questions or queries that may arise.	
Name:	
Position:	
Telephone (mobile):	
Email:	

Schedule 3 Financial Capacity

To enable Council to evaluate the capacity of your Organisation to undertake the provision of the Services, the Tenderer is required to provide the following information.

Tenderers are required to demonstrate they have the financial capacity to provide, over the term of the Agreement for the Services, all the requirements specified. Tenderers are required to consider the information below and complete the schedule accordingly.

Tenderers are required to undertake to provide Council, upon request, all such information as Council reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to provide the Services for which they are tendering, and to otherwise meet their obligations under the proposed Agreement for Services.

Council 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 the Tenderer concerning the financial information that the Tenderer is required to provide.

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

Question	Detail	Yes	No
1	The Tenderer must indicate whether or not it agrees to assist in a financial assessment process (if required)	<input type="checkbox"/>	<input type="checkbox"/>
2	The Tenderer must indicate that, if required, it will submit copies of its annual audited documents including but not limited to annual reports and balance sheets, profit and loss statements, and cash flow statements for the last two (2) financial years.	<input type="checkbox"/>	<input type="checkbox"/>
3	The Tenderer must indicate whether or not it will co-operate with an independent financial assessor during the conduct of financial assessments	<input type="checkbox"/>	<input type="checkbox"/>
4	<p>If the Tenderer provides a 'no' response to any of the above, please provide a statement detailing the Tenderer's reasons (the statement should not exceed 300 words)</p> <p>Attach response to Question 4 here or as an attachment, if required, but clearly titled.</p> <p>.....</p>		
5	Has the Tenderer, related or parent company of the Tenderer been subject to any liquidation, receivership, or other form of insolvency administration in the last three (3) years?	<input type="checkbox"/>	<input type="checkbox"/>
	If yes provide brief details.		

6	Have any of the Tenderer's directors or officers been declared as bankrupt in the past three (3) years?	<input type="checkbox"/>	<input type="checkbox"/>
	If yes provide brief details.		
7	Tenderers are required to disclose any significant event, matter or circumstance that has occurred in the past three (3) years which may affect the operations of the Tenderer.		

Schedule 4 Licences and Accreditation

Licences

List details of any licences or accreditations required or relevant to this Tender.
Tenderers ***MUST*** provide copies of all relevant licences for all stages engaged under the Contract in your response.

ALL CATEGORIES

Licence Type	Licence Holder	Licence No	Date of Expiry	Permitted Activity
(please tick ✓ where applicable)				
<input type="checkbox"/> White Card				
<input type="checkbox"/> WorkZone Traffic Management (if required)				
<input type="checkbox"/> DHS Working with Children Check – Certificates must be provided prior to award OR National Police Check				
<input type="checkbox"/> National Heavy Vehicle Accreditation (applicable for all vehicles over 4.5 GVM) – Provide Accreditation Certificate or procedure. Details: e.g. Mass and Dimension Management, Fatigue Management, Speed Compliance, Loading and Load Restraint and/or Maintenance and Vehicle Standards				
<input type="checkbox"/> Other Licences				

CATEGORIES (please select whichever are applicable based on tendered works)

TREE MANAGEMENT SERVICES

Licence Type	Licence Holder	Licence No	Date of Expiry	Permitted Activity
<input type="checkbox"/> Chainsaw				
<input type="checkbox"/> Working at Heights				
<input type="checkbox"/> White Card				
<input type="checkbox"/> Elevated Work Platform (Yellow Card – under 11 metres)	<input type="checkbox"/>			
<input type="checkbox"/> Boom Type elevating work platform (11 metres or more) Must have Perform High Risk Work licence				
<input type="checkbox"/> Licence to Perform High Risk Work				
<input type="checkbox"/> Big Shot Line Launcher (Licence/permit required)				
<input type="checkbox"/> Cert II or III in Horticulture (Arboriculture)				
<input type="checkbox"/> Diploma of Arboriculture/Australian Qualification Framework Level 5				
<input type="checkbox"/> Other Licences				

TURF MANAGEMENT AND WEED SPRAYING

Licence Type	Licence Holder	Licence No	Date of Expiry	Permitted Activity
<input type="checkbox"/> Pest Controller's Licence (Company)				
<input type="checkbox"/> Pest Management Technician's Licence (Staff)				
<input type="checkbox"/> Hazardous Chemicals				
<input type="checkbox"/> Chem Cert				
<input type="checkbox"/> Other Licences				

Please include and attach any other relevant licences or accreditations you may have.

Schedule 5 Insurances

Provide details of insurances currently held by you and any proposed subcontractor that would be extended to provide cover for Works under the Contract. A copy of all current insurance policies or a certificate of currency giving all details is to be attached to the Tender when submitted.

Insurance Type	Policy No.	Extent of Cover		Expiry Date	Name of Insurer
		Per incident \$A	In aggregate \$A		
Public and products liability (min \$20 million)					
Return to Work SA Registration					
OR					
Personal Accident/Injury Insurance (Sole Trader)					
Vehicles plant & equipment					
Property and facilities					
Contents					
Directors and officers (if applicable)					
Other					

Schedule 6 Work Health & Safety & Risk Management Systems

Tenderers shall complete the following Work Health and Safety (WHS) Questionnaire. The intent of the questionnaire is to assess the Tenderer's capability to meet the Council's WHS requirements.

Item	Detail	Yes	No
1	WHS Policy and Management System		
1.1	Is there a written company WHS Policy? If yes, please attach a copy of the WHS Policy. Please ensure that the WHS Policy identifies its compliance to legal obligations under the Work Health and Safety Act 2012, is signed, dated, and includes a review date.	<input type="checkbox"/>	<input type="checkbox"/>
1.2	Do you have a WHS Management System in place? If no, you will need to ensure you have appropriate safety systems in place to manage the Health and Safety of employees and members of the public, in line with the WHS Act and Regulations 2012. Please provide further details in the form of an index or extract of your system. If yes, and it has been accredited, please attach a copy of the accreditation certificate. If yes, and it is not accredited, please provide further details, and answer the following questions below.	<input type="checkbox"/>	<input type="checkbox"/>
1.3	Has the Tenderer identified any WHS risks in the provision of the Services and if so, determined measures to ensure so far as is reasonably practicable, the health and safety of personnel involved in the provision of the Services?	<input type="checkbox"/>	<input type="checkbox"/>
1.4	Has the Tenderer made personnel aware of their WHS obligations and WHS risks in the provision of the Services?	<input type="checkbox"/>	<input type="checkbox"/>
2	Safe Work Practices/Written Procedures		
2.1	Has the company prepared Safe Operating Procedures (SOP)/Safe Work Procedures (SWP) specific to its operations?	<input type="checkbox"/>	<input type="checkbox"/>
2.2	Has the company prepared Safe Work Method Statements (SWMS)/Job Safety Analysis (JSA) or Task Risk Assessment (TSA) specific to its operations? Has the company captured COVID-19 pandemic within these documents? If yes, please provide a copy. If no, please provide reason why:	<input type="checkbox"/>	<input type="checkbox"/>
2.3	Is there a documented incident investigation procedure?	<input type="checkbox"/>	<input type="checkbox"/>
2.4	Is there a procedure by which employees can report hazards at workplaces?	<input type="checkbox"/>	<input type="checkbox"/>

2.5	If the project is over \$450,000 a site specific WHS Management Plan is required to be developed for the project. If yes, please provide a copy.	<input type="checkbox"/>	<input type="checkbox"/>
2.6	Does the company keep records of hazards, incidents, and lost time injuries?	<input type="checkbox"/>	<input type="checkbox"/>
3	WHS Induction and Training		
3.1	Does the company have an induction and training program in place?	<input type="checkbox"/>	<input type="checkbox"/>
3.2	Are records maintained of all induction and training programs?	<input type="checkbox"/>	<input type="checkbox"/>
4	WHS Inspections		
4.1	Are regular safety inspections undertaken at worksites?	<input type="checkbox"/>	<input type="checkbox"/>
5	Has the Tenderer been investigated in regard to a WHS incident and, if so, provide the circumstances of the incident and outcome of the investigation.	<input type="checkbox"/>	<input type="checkbox"/>
6	Has the Tenderer been convicted of a work health and safety offence and if so, what were the circumstances?	<input type="checkbox"/>	<input type="checkbox"/>
7	Has the Company assessed its proposed subcontractors in relation to WHS compliance?	<input type="checkbox"/>	<input type="checkbox"/>

☐ Please check this box to confirm you acknowledge your obligations as 'principal contractor' under Regulation 293 of the *Work Health and Safety Regulations 2012 (SA)*.

Injuries	
Please provide details of any injuries and the outcome of any investigations or prosecutions	
Detail of Injury	Outcome of any Investigation/Prosecution

Please note: Council is committed to ensuring the safety of all workers and visitors. This commitment extends to ensuring Services acquired meet, or exceed, all safety requirements and will not, in normal use, pose any or unexpected risks.

The successful Tenderer will be required to undertake individual Inductions on site for each body of works to be undertaken.

The successful Tenderer must acknowledge that it will, when on any Council premises, comply with all reasonable directions of the Council, including, but not limited to, documented procedures relating to WHS, and any security requirements. This obligation extends to all procedures which are notified to the successful Tenderer by the Council, or which might reasonably be inferred by the successful Tenderer in all circumstances. The successful Tenderer must comply with all requirements under statutory WHS legislations.

Hazard Identification

Hazard Identification

- | | |
|--|---|
| <input type="checkbox"/> Asbestos / lead | <input checked="" type="checkbox"/> Remote / isolated work |
| <input checked="" type="checkbox"/> Chemical exposure | <input checked="" type="checkbox"/> Restricted access |
| <input type="checkbox"/> Compressed air / pressure / vacuum | <input checked="" type="checkbox"/> Site access / security |
| <input type="checkbox"/> Confined Space / hazardous atmosphere | <input type="checkbox"/> Soil contamination |
| <input type="checkbox"/> Demolition | <input checked="" type="checkbox"/> Traffic / pedestrians |
| <input type="checkbox"/> Diving | |
| <input type="checkbox"/> Electrical | <input checked="" type="checkbox"/> Underground / overhead services |
| <input type="checkbox"/> Excavation / trenching | <input checked="" type="checkbox"/> Uneven / slippery surfaces |
| <input checked="" type="checkbox"/> Falling objects | <input checked="" type="checkbox"/> Untrained / unlicensed workers |
| <input checked="" type="checkbox"/> Fire / explosion | <input checked="" type="checkbox"/> UV exposure |
| <input type="checkbox"/> Gas / fumes | <input type="checkbox"/> Welding |
| <input type="checkbox"/> Heat sources | <input checked="" type="checkbox"/> Working at heights |
| <input checked="" type="checkbox"/> Inclement weather | <input checked="" type="checkbox"/> Working on or near live electricity |
| <input checked="" type="checkbox"/> Lack of first aid / emergency plan | <input type="checkbox"/> Working over a pit hole |
| <input checked="" type="checkbox"/> Lighting | Other (add to monitoring checklist): |
| <input checked="" type="checkbox"/> Manual handling / ergonomics | <input checked="" type="checkbox"/> Elevated Work Platform |
| <input checked="" type="checkbox"/> Noise | <input type="checkbox"/> |
| <input type="checkbox"/> Open bodies of water | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Others Working in the vicinity | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Plant / equipment / machinery | <input type="checkbox"/> |
| <input checked="" type="checkbox"/> Powered mobile plant | <input type="checkbox"/> |

Controls or precautions in relation to this Agreement

Physical isolations	Plant & Equipment	Personal Protective Equipment
<input type="checkbox"/> Barricading	<input type="checkbox"/> Elevating work platform	<input type="checkbox"/> Clothing (<i>long sleeved shirt, trousers, overalls</i>)
<input type="checkbox"/> Electrical	<input type="checkbox"/> Forklift	<input type="checkbox"/> Eye wear (<i>sunglasses, safety glasses, goggles, face shield</i>)
<input type="checkbox"/> Gas	<input type="checkbox"/> Ladder	<input type="checkbox"/> Gloves (<i>safety, chemical, heavy duty, riggers</i>)
<input type="checkbox"/> Hydraulic	<input type="checkbox"/> Safety data sheet	<input type="checkbox"/> Head wear (<i>broad brimmed hat, hard hat, welding helmet</i>)
<input type="checkbox"/> Traffic	Permits to Work:	<input type="checkbox"/> Hearing protection
<input type="checkbox"/> Pneumatic	<input type="checkbox"/> Confined space	<input type="checkbox"/> High visibility vest or clothing
<input type="checkbox"/> Water	<input type="checkbox"/> Hot work	<input type="checkbox"/> Respirator/mask
Other:	<input type="checkbox"/> Working at heights	<input type="checkbox"/> Safety boots
<input type="checkbox"/>	Other:	<input type="checkbox"/> Safety harness
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Spill containment kit
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/> Wet weather gear

Chain of Responsibility Policy and Procedures (for vehicles over 4.5GVM)

Detail	Yes	No
WHS Policy and Management System		
<p>Does your Organisation have policy/policies and procedures in relation to the Chain of Responsibility legislative requirements?</p> <p>Do these documents outline arrangements to ensure compliance in the following areas:</p> <ul style="list-style-type: none"> Mass and Dimension Management. Fatigue Management. Speed Compliance. Loading and Load Restraint and Maintenance and Vehicle Standards. <p>Please provide all relevant details (e.g. Accreditation Certificate)</p>	<input type="checkbox"/>	<input type="checkbox"/>

Schedule 7 Environmental Management Systems and Quality Systems

1. Environmental Management System	Yes	No
Do you hold a current ISO 14001 Environmental Management (EMS) certification or an alternative Third-Party Certification?	<input type="checkbox"/>	<input type="checkbox"/>
<i>If yes, please advise which Certification and provide a copy.</i>		

2. Quality Systems	Yes	No
Do you hold a current ISO 9001 Quality Management (QMS) certification or an alternative Third-Party Certification?	<input type="checkbox"/>	<input type="checkbox"/>
<i>If yes, please advise which Certification and provide a copy.</i>		

If you hold the above third-party certification, you have finished completing Schedule 7. If you do not hold third party certification complete the following section.

1. Environmental Management System
1.1. Has the Tenderer: <ul style="list-style-type: none"> Considered any environmental risks in the provision of the Services; and Identified practicable measures to remove or substantially mitigate these risks?
<i>If yes, please provide overview of mitigation strategy.</i>
1.2. Tenderers are to provide details of their environmental management system and where possible, examples of: <ul style="list-style-type: none"> Reports on environmental performance; Incident reports including actions taken to address the incident and improvements to processes to reduce risk of occurring again; and Environmental management plans established for other agreements.

2. Quality System
<p>2.1. Has the Tenderer:</p> <ul style="list-style-type: none"> • Considered any risks to Quality in the provision of the Services; • Identified practicable measures to remove or substantially mitigate these risks.
If yes, please provide overview of mitigation strategy.
<p>2.2. Describe the level of quality assurance in place in the Tenderer's organisation and plans to move to quality accreditation if not presently accredited.</p>
<p>2.3. Provide details of agreements performed by the Tenderer under its Quality Assurance System.</p>

Schedule 8 Industrial Relations Record

Industrial Relations Record
Provide a summary of the Tenderers industrial relations record over the three (3) years.

Schedule 9 Conflict of Interest

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

Schedule 10 Referees

Referees			
<p>The Tenderer is required to provide information on past agreements, including referees. Referees may be contacted regarding the provision of Services offered in the Tenderer's response. The Tenderer must provide the information requested in the tables below for three (3) agreements for the provision of Services of a similar nature to those detailed in the Specifications undertaken in the last three (3) years or current. The Referees are not to be current employees of the Council or the Council itself.</p>			
Referee #1			
Client Name:			
Address:			
Contact Name & Position Title:			
Telephone:		Email:	
Period of Service Delivery:		Value of Services (ex GST)	\$
Relevance to Project Tendered:			
Referee #2			
Client Name:			
Address:			
Contact Name & Position Title:			
Telephone:		Email:	
Period of Service Delivery:		Value of Services (ex GST)	\$
Relevance to Project Tendered:			
Referee #3			
Client Name:			
Address:			
Contact Name & Position Title:			
Telephone:		Email:	
Period of Service Delivery:		Value of Services (ex GST)	\$
Relevance to			

Project Tendered:	
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Schedule 11 Organisation Structure, Facilities & Resources

1. Organisation structure

Provide details of the staff and the organisation structure proposed to be used for the performance of the Services. Details **must** include, but not be limited to, company and organisation structure, including size and location of office/s.

NOTE: Organisation chart to be provided as part of the tender response.

2. Fair Work Act

Yes No

The Tenderer confirms that staff are paid all statutory entitlements, are remunerated in line with the current awards or any other future relevant award (new, updated or amalgamated) and in accordance with the Fair Work Act 2009?

☐
☐

If no, please provide brief details/reasons of why not

3. Modern Slavery Act

Yes No

Does the Modern Slavery Act 2018 apply to your Company?

☐
☐

If yes, can you confirm that you comply with the requirements contained within the Act?

☐
☐

If no, please provide brief details/reasons of why not

4. Site Facilities

Provide details of the facilities to be provided to support the staff on site.

5. Proposed Subcontractors

Provide details in the table below the proposed major sub-contractors or other representatives to be employed or engaged by the Tenderer. The Tenderer must define the Services to be provided by Sub-Contractors.

NOTE : Council reserves the right to reject any of the subcontractors listed by the Tenderer in this schedule and request the name(s) of alternative subcontractors

Services to be provided	Subcontractors Name & Address	Relevant Experience

☐ **Licences/insurances adequate and current for all listed subcontractors.**

The Tenderer **must** declare that all subcontractors have adequate licences and/or insurances, and that they have been sighted to ensure they are current. Tenderers must provide copies, if requested by the Council.

6. Proposed Plant and Equipment

The Tenderer shall provide details of the plant and equipment proposed to be provided to complete the Services.

Item	Make	Capacity/No	Part of Works

7. Contingency Arrangements

Provide details of contingency arrangements should any facilities or sites required to facilitate the Services become unavailable in the short and long term or any key personnel resign or breakdown in critical plant and equipment.

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Schedule 12 Local Economic Benefit & Social Inclusion

In assessing tender responses, the Council considers economic and social inclusion elements such as employment creation and training opportunities, specifically within the Port Pirie Regional Council area.

In support of this commitment, Tenderers are requested to provide evidence regarding where staff, subcontractors, equipment, and material supplies are sourced.

Employment		
The Council is seeking the numbers of labour personnel your business will employ directly to deliver the contract from within the Council area, should you be successful.		
Area of labour source - Employees	Number of Personnel	
Port Pirie Regional Council		
Other South Australia		
Interstate (include name of state)		
Subcontractors		
Area of labour source - Subcontractors	Number of Personnel	
Port Pirie Regional Council		
Other South Australia		
Interstate (include name of state)		
Supply Inputs (eg equipment, machinery, merchandise, products, food & beverage, supplies and raw materials)		
Name of supplier and location (head office)	Location of product manufacturer for materials/equipment required to deliver the Works	Estimated \$ value of materials/equipment

Training / Social Inclusion
Please provide details of traineeships, apprenticeships and support programs offered by your organisation to disadvantaged groups.

Schedule 13 Experience

Past Performance
(a) For how many years has the Tenderer engaged in the type of work required by the contract?
(b) Has the Tenderer had an appointment terminated on a project in the last three (3) years? If yes, please provide brief details.
(c) Has the Tenderer terminated a project in the last three (3) years? If yes, please provide brief details.
(d) Has the Tenderer refused to continue providing works under a contract in the last three (3) years unless the terms or payments were changed from those which were originally agreed? If yes, please provide brief details.
(e) For the last three (3) years please provide brief details of any breaches and/or findings against your organisation in relation to tax compliance, employment law, privacy legislation and any other relevant legislation.

Schedule 14 Services

Tenderers should indicate which of the services shown below they wish to tender for as part of the Panel.

Horticulture & Arboriculture Services		
Item	Description	(Please indicate)
a	Tree Management	<input type="checkbox"/>
b	Tree Management (Arboriculture Consultancy only)	<input type="checkbox"/>
c	Turf Management	<input type="checkbox"/>
d	Landscaping and Irrigation	<input type="checkbox"/>
e	Weed Management	<input type="checkbox"/>
f	Mowing and Slashing	<input type="checkbox"/>
g	Block Clearing	<input type="checkbox"/>

Schedule 15 Warranties on the Goods/Materials/Parts

In addition to any defects liability period stated in the Draft Conditions of Contract, Tenderers must detail below any extended warranty/s offered, including any conditions and/or exclusions.

Warranties on the Goods	Yes	No
Please indicate if there are any warranties, including any conditions and/or exclusions?	<input type="checkbox"/>	<input type="checkbox"/>
<i>If yes please provide brief details(Provide evidence of any warranties)</i>		

Schedule 16 Pricing

1. Labour & Materials

The Tenderer submits the following schedule of rates (before GST):

Base Labour Rates		
		Labour
*Standard Hourly Rate	hour	\$
After Hours Hourly Rate (1700 – 0700)	Hour	\$
Public Holiday Hourly Rate	hour	\$
<p>Note : subject to annual CPI increase</p> <p>*Where tendering for both tree management and arboricultural consultancy please indicate separate pricing for each service (if applicable).</p>		

Minimum Callout (After Hours)	
Minimum callout after hours:	hours

Emergency Callouts	
Do you wish to be contacted for emergency callouts	<input type="checkbox"/> YES <input type="checkbox"/> NO
If yes, what is your emergency callout fee	\$

Material Rates		
Item	Description	Percentage mark-up %
	Materials Mark-up Rate*	%
	Plant & Equipment hire	%
*Third party invoice to be attached to all payment claims		

Rates stated above:

- (1) Are fixed for the first year of the Contract. The prices will be reviewed by the Supplier and Council's Representative prior to each anniversary date to take into account changes in CPI (for Adelaide).
- (2) Are before any GST. In addition to those rates, the Tenderer may recover from the Council any GST for which the Tenderer is liable on account of a taxable supply to the Council.

- (3) The nominated rates will be inclusive of all overheads and profit and expenses for work to which the schedule of rates applies, including without limitation:
- costs of all direct and indirect labour (including on-costs);
 - in case of goods, any weighing, packaging, delivery, installation, commissioning - in case of services, any fee, levy (including CITB levy), duty, cost, expense or tax incurred by the Contractor in providing the service.
 - Any item not specifically covered by the schedule of rates may be compared with other similar items in that schedule to determine the acceptability or otherwise of a claim by the successful Tenderer for that item.

Schedule 17 Statement of conformity

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

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

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

NC = Non-compliance

PC = Partial compliance

AO = Alternate offer

Statement of Conformity		Yes	No
Does the Tender conform to the requirements of the Tender Documents?		<input type="checkbox"/>	<input type="checkbox"/>
Tenderer to confirm any requested changes to the Draft Agreement provided as part of this Tender.		<input type="checkbox"/>	<input type="checkbox"/>
<p>PLEASE NOTE: Changes will <u>not</u> be considered to the Draft Agreement after the Tender period has concluded should your Tender be successful.</p> <p>If your Tender does not conform, or you request changes to the Draft Agreement, please identify the areas of non-conformity/changes below:</p>			
Area/Clause/Schedule of Non-conformity	Reason/Alternative Wording for Consideration by Council	NC/PC/AO	

Schedule 18 List of Information returned with Tender

ALL TENDER RETURN SCHEDULES MUST BE COMPLETED. EXCLUSION/EXCLUSIONS AND DEVIATIONS FROM THE TENDER SPECIFICATION MUST BE DETAILED IN SCHEDULE 17 STATEMENT OF CONFORMITY. COVERING LETTERS WILL NOT BE CONSIDERED IN THE TENDER EVALUATION

The Tenderer shall complete the checklist below and list any additional information returned with the Tender.

Tender Return Schedules		Check
Schedule 1	Tender form	<input type="checkbox"/>
Schedule 2	Tenderer's details	<input type="checkbox"/>
Schedule 3	Financial capacity	<input type="checkbox"/>
Schedule 4	Licences and accreditation	<input type="checkbox"/>
Schedule 5	Insurances	<input type="checkbox"/>
Schedule 6	Work Health & Safety and Risk Management Systems	<input type="checkbox"/>
Schedule 7	Environmental Management Systems & Quality Systems	<input type="checkbox"/>
Schedule 8	Industrial Relations Record	<input type="checkbox"/>
Schedule 9	Conflict of Interest	<input type="checkbox"/>
Schedule 10	Referees	<input type="checkbox"/>
Schedule 11	Organisational structure, facilities & resources	<input type="checkbox"/>
Schedule 12	Local Economic Benefit & Social Inclusion	<input type="checkbox"/>
Schedule 13	Experience	<input type="checkbox"/>
Schedule 14	Services	<input type="checkbox"/>
Schedule 15	Warranties on Goods/Materials/Parts	<input type="checkbox"/>
Schedule 16	Pricing	<input type="checkbox"/>
Schedule 17	Statement of Conformity	<input type="checkbox"/>
Schedule 18	List of information returned with Tender	<input type="checkbox"/>
Copies of licences and accreditations		<input type="checkbox"/>
Copies of insurances		<input type="checkbox"/>
WHS		<input type="checkbox"/>
Environmental Management Systems		<input type="checkbox"/>
Quality Systems		<input type="checkbox"/>

List any other information returned with Tender: