
CONTRACT CARETAKER
HOPETOUN CARAVAN PARK

CONTRACT NO.

C227/2018

CLOSING AT

TENDER BOX

Main Customer Service Area
Municipal Offices
34 Lyle Street, Warracknabeal

OR

TENDERS CLOSE

Friday 11th May, 2018
At 2.00pm

Contract C227/2018
CONTRACT CARETAKER
HOPETOUN CARAVAN PARK

INVITATION TO TENDER

Council is seeking to engage an appropriately skilled and experienced contractor to undertake the role of caretaker at the Hopetoun Caravan on behalf of Council

This contract will be awarded for an initial two (2) year term with an option at Council's sole discretion to offer a further 1 plus 1 year term of contract. ([13. TERM OF CONTRACT](#) Conditions Apply)

Tenders close 2.00pm Friday 11th May, 2018

Tenders are to be deposited at Council's Tender Box which is located in the main reception area of the Municipal Offices, 34 Lyle Street, Warracknabeal -

*Council is not bound to accept any or lowest tender.
Late tenders will not be considered.*

***All enquiries regarding this for tender please contact Bernie Naylor on 5398 0100 or
bnaylor@yarriambiack.vic.gov.au***



PART A: INFORMATION FOR TENDERERS AND CONDITIONS OF TENDERING

PART A:- INFORMATION FOR TENDERERS AND CONDITIONS OF TENDERING**1. NATURE OF CONTRACT**

The Contract for which tenders are sought is a Lump Sum Contract.

This Contract will be governed by:

- *Services General Conditions prepared by Maddocks Lawyers and Annexure A of these Conditions.*

2. INTERPRETATION

In these Conditions and in the Tender Documents, words and expressions shall have the same meanings assigned to them in the Services General Conditions and the following words and expressions shall have the meanings indicated except where the context otherwise requires:

"Tender" means the documents comprising the Tender Documents completed and executed by or on behalf of the Tenderer and received by the Principal;

"Tenderer" means the person or persons, organisation or company identified as such on Schedule 1: Form of Tender and includes all persons on whose behalf the Tender has been lodged;

"Principal" means the Yarriambiack Shire Council;

"Superintendent" means Manager, Infrastructure Services ;

3. TENDER DOCUMENT

The tender document consists of the following components issued by the Principal to tenderers for the purpose of tendering and are identified as follows:-

- PART A - Information for Tenderers and Conditions of Tendering
- PART B - Form of Tender and Tender Schedules
- PART C - Tender Specification
- PART D - General Conditions of Contract - Services

Tenderers are advised that explanations or amendments to the tender documents shall not be recognised unless in the form of a written addendum issued by the Principal.

Each tender shall be made by completing Part B, Form of Tender and Tender Schedules.

The tender shall be accompanied by all other documents as required.

Notwithstanding any other requirement of the tender document, the Principal may require the tenderer to submit additional information concerning the tender before any tender is accepted.

Should the tenderer fail to submit any of the information so required by the date and time stipulated the tender may not be given further consideration.

4. GOODS AND SERVICES TAX (GST)

All tendered prices must **INCLUDE** GST.

5. ADDITIONAL CONDITIONS OF TENDER

Additional Conditions of Tender or directions to the Tenderer embodied in any note appearing in the Schedules annexed to this document shall be deemed to be Conditions of Tender.

6. APPRECIATION OF REQUIREMENTS

- a) Tenderers are advised and expected to ascertain for themselves the actual extent and nature of the service to be undertaken, as the Council will not entertain any claim whatsoever on account of a failure to do so.
- b) Subject to the provisions of the Specification, Services General Conditions of Contract and Schedules thereto the tenderer will be assumed to have:
 - (i) satisfied itself as to the true nature and extent of the services to be provided.
 - (ii) ascertained the requirements of the principal in respect of the covenants contained in the Services General Conditions of Contract and Schedules thereto.
 - (iii) formed its own assessment of the requirements necessary to carry out the true intent of the Specification, Services General Conditions of Contract and Schedules thereto.
 - (iv) satisfied itself of its financial viability to contract with the Principal and to perform in accordance with the Specification, the Services General Conditions of Contract and Schedules thereto.
- c) Tenderers who are currently under contractual arrangements with the principal should note that any contract arising from this tender invitation stands alone from any other existing contracts.
- d) By submitting a tender, the successful tenderer shall be bound to execute the Services General Conditions of Contract and its Schedules (completed to correspond with the Form of Tender) as they may have been amended in accordance with the previously mentioned provisions prior to acceptance of the tender.

- e) If the tenderer has any doubt as to the meaning or completeness of any portion of the tender documents, the Principal shall be asked for clarification which clarification shall only be valid if issued in writing. Any clarification given pursuant to this clause may also be issued to all other prospective tenderers.
- f) The Principal does not accept any responsibility to tenderers or third parties, under the law of contract, tort or otherwise, for any loss or damage which may arise from anything contained in the tender documents or any other information provided by the Principal or any of its employees or agents.

7. TENDER ON AN ALTERNATIVE BASIS

The tenderer is required to submit a tender in strict conformity with the tender documents. However, the Principal may consider tenders which vary from the specification stipulated but which may nevertheless be considered suitable for its requirements.

Tenderers may therefore submit alternative tenders **in addition** to conforming tenders.

The Principal reserves the right to accept any alternative tender without reference to other tenderers.

Where alternative tenders are submitted the manner in which they differ from specified requirements must be clearly and fully stated.

Tenderers should note that where a tender on an alternative basis only is submitted it shall be deemed non-conforming and shall receive no further consideration.

8. VALIDITY PERIOD

The tender shall be submitted in the Form of Tender provided and shall remain valid and capable for acceptance for 60 days after the date upon which tenders close and during that time no tender shall be able to be withdrawn or amended except with the written consent of the Principal.

9. TENDERED RATES

Tenders are to be submitted on the attached Schedules 1 - 12 and prices shall be on a Lump Sum basis with a schedule of rates for any additional works as requested by the contract superintendent.

Any proposal to vary Contract rates during any period of Contract is to be submitted to Council in writing for approval prior to proposed date of application of any new rates. Any price variation formulae proposed to be applied by the Contractor during the progress of the Contract is to be submitted in the tender.

Council reserves the right accept or reject any proposed fee increase throughout the term of this contract.

10. INSTRUCTIONS TO TENDERERS

Instructions to Tenderers may be issued during the tender period. Any Instruction issued will be numbered by the Principal and shall be included as part of the tender and acknowledged in the space provided on the Form of Tender in Part B.

11. INFLUENCING THE TENDER PROCESS

Any attempts which may be reasonable construed as intended to influence the tender process in any way such as any direct or indirect approach by tenderers themselves or through other parties on their behalf to persons other than those nominated in this document will invalidate the tender. Such tenders will be deemed informal and will be rejected without further consideration.

12. LODGEMENT OF TENDERS

TENDERS CLOSE 2.00pm Friday 11th May, 2018

Tenders marked “Tender C227/2018 Caretaker – Hopetoun Caravan Park” should be deposited at Council’s Tender Box which is located in the main reception area of the 34 Lyle Street Warracknabeal.

*Council is not bound to accept any or lowest tender.
Late tenders will not be considered.*

***All enquiries regarding this for tender please contact Bernie Naylor on 5398 0100 or
bnaylor@yarriambiack.vic.gov.au***

13. TERM OF CONTRACT

This contract will be awarded for an initial two (2) year term with an option at Council’s sole discretion to offer a further 1 plus 1 year term of contract.

At completion of the first sixth month period being 31st December, 2017, a performance review will be undertaken by the contract superintendent. If the services provided by the Contractor do not meet the requirements of the contract (response time frames, quality of workmanship, Legislative compliance etc...) and repeated non-compliances have not been rectified, Council reserves the right to terminate the contract.

Each term of contract will commence on the 1st June and expire on the 31st May each year. A two (2) percent increase to the contract Lump Sum will apply to each year of the contract.

Any proposal to vary Contract rates during any period of Contract is to be submitted to Council in writing for approval prior to proposed date of application of any new rates. Any price variation formulae proposed to be applied by Contractor during the progress of the Contract is to be submitted in the tender.

Council reserves the right accept or reject any proposed fee increase throughout the term of this contract.

14. EVALUATION CRITERIA

All valid tenders will be evaluated in general accordance with the criteria set out below. Criteria are intended to give tenderers an indication of the major factors the Principal will be considering in evaluating the tenders received. Tenderers should therefore ensure that they provide sufficient information to enable their tenders to be given proper consideration.

Knowledge of Council’s facilities is not a weighted criterion, however, will be viewed as a favourable factor during tender evaluations.

Criteria

The method for weighted evaluation of this tender to be employed by the Horsham Rural City Council will be based on the following criteria listed.

Criteria	Weighting
Tendered Lump Sum Pricing and Schedule of Rates	40%
Specification compliance relating to performance, reliability, capacity to undertake the works at the required level	10%
Tenderer's proven experience in similar works, subject to favourable referee checks	20%
Tenderer's intent for local employment opportunities	10%
Tenderers proven ability to comply with all relevant OHS legislation and quality assurance programs	15%
Financial capability to undertake the service	5%
TOTAL	100

15. ACCEPTANCE OF TENDER

The Principal shall not be bound to accept the lowest or any tender and reserves the right to conduct post tender negotiations with one or more short listed tenderers.

A tender shall not be deemed to have been accepted unless and until a letter of acceptance is handed to the tenderer or is delivered to the address of the tenderer stated in the Form of Tender.

The Principal's acceptance of a selected organisation's tender is a conditional acceptance only in that the Principal is not bound to enter into the Contract until the selected tenderer has complied with all the requirements of the tender documents.

16. DISCLOSURE OF INFORMATION

The *Freedom of Information Act 1982* gives members of the public rights of access to information in the possession of the Government and its agencies, limited only by exemptions and exceptions required for the protection of essential public interests and private and business affairs of persons in respect of whom information is collected and held by the Government and its agencies. Until the contract is awarded, the Principal shall endeavour to maintain confidentiality of price and other information submitted by the tenderer. Unsuccessful tenderers will be notified of the name of the successful Tenderer, a general contract description and the price. Release of any additional information regarding the successful tender will be at the sole discretion of the Principal and will be assessed on a case by case basis. No information other than names will be released regarding unsuccessful tenders.

**PART B: FORM OF TENDER AND TENDER
 SCHEDULES**

SCHEDULE 2

TENDER SCHEDULES

LUMP SUM AMOUNT PER ANNUM	\$.....
----------------------------------	---------

Note: All prices must include GST.

Schedule of Rates	
HOURLY RATE For other works as requested (8.00am to 5.00pm)	\$ / hr
AFTER HOURS CALL OUT RATE (If applicable)	\$ / hr
PLANT ITEM HIRE RATES	
1	\$...../ hr
2	\$...../ hr
3	\$...../ hr

****IF INSUFFICIENT SPACE TO LIST PLANT ITEMS PLEASE ATTACH AS A SEPARATE DOCUMENT.**

TENDERER NAME.....
(BLOCK LETTERS)

SIGNATURE.....DATE.....

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 4

TENDERER INFORMATION

Tenderers are required to submit such information as is necessary to enable the Council to assess their ability to carry out the works. This questionnaire has been prepared to assist tenderers in supplying this information

Company/Business Name:

Trading Name:

Address:

Contact/Representative:

Telephone No. BH:.....AH:

Mobile No:

Email Address:

1. Is the Tenderer an individual, partnership or limited liability company?
.....

If partnership, give name and address of partners:
.....
.....

2. How many years has the Tenderer been in business as a contractor under its present business name?
.....

3. In what other types of business has the Tenderer a financial interest?
.....
.....
.....

4. How many years experience has the Tenderer had in the type of work required to be performed under this contract?
.....
.....

TO BE COMPLETED AND SUBMITTED WITH TENDER

5. List work of a similar type that the Tenderer has done in the past?

.....

.....

.....

.....

6. What is the experience of the principal individuals of the Tenderer in the type of work required to be performed under this contract?

.....

.....

.....

.....

7. State the details of any sub-contractors the tenderer may engage under the contract.

NAME	POSITION/ROLE	QUALIFICATIONS AND EXPERIENCE

8. List banks or other financial institutions from which references may be obtained:

.....

.....

.....

.....

.....

.....

TO BE COMPLETED AND SUBMITTED WITH TENDER

9. List names and telephone numbers of professional referees:

Name	Position	Organisation	Telephone
.....
.....
.....
.....
.....
.....

10. List of additional information or documents supplied by the Tenderer:

- 1.....
- 2.....
- 3.....
- 4.....

Signed by or on behalf of Tenderer:

.....
(Signature)

.....
(Name of Tenderer)

Dated this day of.....2018

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 5

INFORMATION TO BE SUPPLIED BY TENDERER

TENDERER OHS MANAGEMENT SYSTEM QUESTIONNAIRE

This questionnaire forms part of Councils tender evaluation process and is to be completed by tenderers and submitted with their tender offer. The objective of the questionnaire is to provide an overview of the status of the tenderers OHS management system. Tenderers will be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters.

Certification
<p>The information provided in this questionnaire is an accurate summary of the company's occupational health and safety management system.</p> <p>Company Name:</p> <p>Signed:</p> <p>Name:</p> <p>Position:</p> <p>Date:</p>
Contact Details
<p>Contact Name:</p> <p>Contact Number:</p>

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 5
(Continued)

INFORMATION TO BE SUPPLIED BY TENDERER

Tenderer OHS Management System Questionnaire

		Yes	No
1 OHS Policy and Management			
1.1	Is there a written company health and safety policy? <i>If yes provide a copy of policy.</i> <i>Comments:</i>	<input type="checkbox"/>	<input type="checkbox"/>
1.2	Does the company have an OHS Management System certified by a recognised independent authority. <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
1.3	Is there a company OHS Management System manual or plan? <i>If yes provide a copy of contents page(s).</i> <i>Comments:</i>	<input type="checkbox"/>	<input type="checkbox"/>
1.4	Are health and safety responsibilities clearly identified for all levels of staff? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2 Safe Work Practices and Procedures			
2.1	Has the company prepared safe operating procedures or specific safety instructions relevant to its operations? <i>If yes, provide a summary listing of procedures or instructions.</i> <i>Comments:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.2	Does the company have any permit to work systems? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.3	Is there a documented incident investigation procedure? <i>If Yes provide a copy of a standard incident report form.</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.4	Are there procedures for maintaining, inspecting and assessing the hazards of plant operated/owned by the company? <i>If Yes, provide a summary listing or permits:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.5	Are there procedures for storing and handling hazardous substances? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
2.6	Are there procedures for identifying, assessing and controlling associated with manual handling? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>

TO BE COMPLETED AND SUBMITTED WITH TENDER

		Yes	No
3	OHS Training		
3.1	Describe how health and safety training is conducted in your company.	<input type="checkbox"/>	<input type="checkbox"/>
3.2	Is a record maintained of all training and induction programs undertaken for employees in your company? <i>If Yes, provide examples of safety training records:</i>	<input type="checkbox"/>	<input type="checkbox"/>
4	Health and Safety Workplace Inspection		
4.1	Are regular health and safety inspections at worksites undertaken? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
4.2	Are standard workplace inspection checklists used to conduct health and safety inspections? <i>If Yes, provide details or examples:</i>	<input type="checkbox"/>	<input type="checkbox"/>
4.3	Is there a procedure by which employees can report hazards at workplaces? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
5	Health and Safety Consultation		
5.1	Is there a workplace health and safety committee?	<input type="checkbox"/>	<input type="checkbox"/>
5.2	Are employees involved in decision making over OHS matters? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
5.3	Are there employee elected health and safety representatives? <i>Comments:</i>	<input type="checkbox"/>	<input type="checkbox"/>
6	OHS Performance Monitoring		
6.1	Is there a system for recording and analysing health and safety performance statistics? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
6.2	Are employees regularly provided with information on company health and safety performance? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>
6.3	Has the company ever been convicted of an occupational health and safety offence? <i>If Yes provide details:</i>	<input type="checkbox"/>	<input type="checkbox"/>

TO BE COMPLETED AND SUBMITTED WITH TENDER

7 Company References

7.1 Please provide the following information for the three (3) most recent contracts completed by the company:

	Contract 1	Contract 2	Contract 3
Contract Description			
Client			
Contact			
Phone No			
Number of lost time injuries			
Number of person days on contract			
Total days lost due to injuries.			

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 6

STATEMENT OF CONFORMANCE

Contract No.: C227/2018 Caretaker – Hopetoun Caravan Park

The Tenderer is to signify whether or not its Tender conforms to the requirements of the Tender Documents by striking out below that which is not applicable.

This Tender **does /does not** conform.

Should the Tender not conform with the requirements of the Tender Documents, the Tenderer shall list below all areas of non-conformance and the reasons for such non-conformance and shall value each such non-conformance so that in the event of the non-conformance being deemed unacceptable, the contract sum can be adjusted accordingly. If the non-conformances are not priced and are determined to be unacceptable, the tender may not be further considered.

Area of Non-Conformance and Reason	* Value of Non Conformance (\$)

TENDERER NAME:
(Block Letters)

SIGNATURE OF TENDERER: **DATE:**
(or authorised representative)

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 7

RECEIPT OF ADDENDA

Contract No.: C227/2018 Caretaker – Hopetoun Caravan Park

The Tenderer is to acknowledge that it received the addenda listed below during the tender period and that the tender has been prepared having regard to these addenda

Addenda No	Brief description (e.g. Specification page No, clause No, Schedule No)	Date received

This Tender has been prepared having regard to the addenda listed above.

TENDERER NAME:.....
(Block Letters)

SIGNATURE OF TENDERER: DATE:
(or authorised representative)

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 9

ENVIRONMENTAL REQUIREMENTS

Tenderers must provide the following information:

1. Do you have a written Environmental Management Policy? If yes, please provide a copy.

Not Applicable

2. Do you have a written Environmental Management System? If yes, please provide a copy.

Not Applicable

3. Provide details of your environmental record for the last 4 years in relation to any accidents, incidents, notices and/or penalties occurring or served in each project that you have conducted.

Not Applicable

TENDERER NAME:
(Block Letters)

SIGNATURE OF TENDERER: DATE:
(or authorised representative)

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 10

QUALITY SYSTEMS

Tenderers must provide the following information:

1. Do you have certification and accreditation for the AS/NZS ISO Standard.

Not Applicable

2. If not, provide:

- (i) a copy of the Quality Manual, Quality Management System and/or any other quality documentation and procedures currently used and intended to apply to the performance of the Contract; and
- (ii) a statement regarding your intention to obtain certification and accreditation.

Not Applicable

TENDERER NAME:
(Block Letters)

SIGNATURE OF TENDERER: DATE:
(or authorised representative)

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 11

TENDERER'S INSURANCE DETAILS

Provide details of insurance currently held which would be extended to provide cover for the performance of the Contract.

Insurance Type	Policy No.	Extent of Cover		Expiry Date	Name of Insurer
		Per incident	Total		
Public Liability					
Worker's Compensation					
Professional Indemnity					
Other					

TO BE COMPLETED AND SUBMITTED WITH TENDER

SCHEDULE 12

STATUTORY DECLARATION

I, [insert name] of [insert address] do solemnly and sincerely declare that:

Definitions

1. In this Statutory Declaration:

"Bidders" means any tenderers for the Contract and includes the Tenderer;

"the Contract" means **Contract C227/2018 caretaker – Hopetoun Caravan Park**, which the Tenderer is offering to perform by its submission of a tender;

"Industry Association" means any organisation of which Bidders are members;

"the Tenderer" means [insert Tenderer's name] and

"Tender Price" means the amount indicated by a Bidder as the lowest amount for which that Bidder is prepared to perform the Contract.

Introduction

2 I hold the position of [insert Managing Director or other title] of the Tenderer and am duly authorised by the Tenderer to make this declaration on its behalf.

3. I make this declaration on behalf of the Tenderer and on behalf of myself.

No Knowledge of Tender Prices

4. Prior to the Tenderer submitting its tender for the Contract, neither the Tenderer, nor any of its employees or agents, had any knowledge of the Tender Price or proposed Tender Price of any other Bidder who submitted, or of any person, company, other body corporate or firm that proposed to submit, a tender for the Contract.

Disclosure of Tender Price

5. Prior to the close of tenders for the Contract, neither the Tenderer, nor any of its employees or agents, disclosed the Tenderer's Tender Price to:

5.1 any other Bidder who submitted a tender for the Contract;

5.2 any person, company, other body corporate or firm proposing to submit a tender for the Contract; or

5.3 any person or organisation connected or associated with a Bidder, person, company, other body corporate or firm of a kind referred to in clauses 5.1 or 5.2.

Provision of Information

6. Neither the Tenderer, nor any of its employees or agents, has provided information to:
- 6.1 any other Bidder who has submitted a tender for the Contract;
 - 6.2 any person, company, other body corporate or firm proposing to submit a tender for the Contract; or
 - 6.3 any other person, company, other body corporate or firm for the purpose of assisting in the preparation of a tender for the Contract.

Genuine Competition

7. The Tenderer is genuinely competing for the Contract.

Industry Association Agreement

8. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that the successful Bidder for the Contract will pay any money to, or provide any other benefit or other financial advantage to, an Industry Association in respect of the Contract.

Unsuccessful Tenderer's Fees

9. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that the successful Bidder for the Contract will pay any money to, or provide any other benefit or other financial advantage to, any other Bidder who unsuccessfully tendered for the Contract.

Qualifications to Tender

10. Neither the Tenderer, nor any of its employees or agents, has entered into any contract, agreement, arrangement or understanding that Bidders for the Contract would include an identical or similar condition or qualification in their tenders for the Contract.

Conflict of Interest

11. The Tenderer, its employees or agents do not hold any office or possess any property, are not engaged in any business, trade or calling and do not have any obligations by virtue of any contract whereby, directly or indirectly, duties or interests are, or might be, created in conflict with, or might appear to be created in conflict with, the Tenderer's duties and interests under the Contract.

I acknowledge that this declaration is true and correct and I make it in the belief that a person making a false declaration is liable to the penalties of perjury.

DECLARED atin the State of.....

on this day.....of.....20.....)

Before Me:

.....

Signature:

Full Name:

Address:

Qualification:

[Signatory to insert details of basis on which he or she is entitled to witness a Statutory Declaration.

Tenderer Signature:

Tenderer Full Name:

Address:

PART C: SPECIFICATION

PROVISION OF CARETAKER SERVICES – HOPETOUN CARAVAN PARK

CONTRACT C227/2018

1. INTRODUCTION

The Yarriambiack Shire Council owns and operates a the caravan park in the township of Hopetoun.

Council estimates a nominal amount of **16 hours per week** maybe required to undertake the works as specified in this contract, however the tenderer should assess the time requirement for the specified works and cost the tender accordingly. Any other additional works not specified in this contract as requested by the superintendent shall be paid as per the schedule of rates detailed in the contractors tender submission.

2. Caretaker Duties

2.1 Duties

- Answering of mobile phone to take bookings, text messages, message bank enquiries and reply as needed.
- Attending to bookings and placement of vans and campers in the caravan Park
- Refer persons seeking cabins on to appropriate contact number
- Collection of fees, washing machine and drier coins, shower box money and issuing receipts
- Ensuring that appropriate quantities of hand towel and toilet paper are in storage onsite
- Ensure gas bottles are monitored and replaced in a timely manner
- Replacement of globes and fluorescent tubes
- Cleaning and maintaining the shower/toilet block, laundry and BBQ facilities
- Maintaining a high level of cleanliness in the park surrounds, including ensuring the park and roadways are kept tidy and free of litter
- Ensuring that rubbish and recycling bins are ready for collection. including contact Council's Works Supervisor when extra bins are required
- Ensure of the correct waste water disposal by park tenants
- Reporting of any damage and also general repairs that are required to the Contract Superintendent.
- Ensure that tenants with a dog know the park requirements regarding keeping dogs on a leash.

3. QUALITY OF SERVICES

3.2 All works and services shall all be in accordance with the appropriate laws, regulations, standards, codes of practice, and good techniques established within the State of Victoria, and Commonwealth of Australia.

3.3 Service Staff

- 3.3.1 Work under this contract is to be carried out by, or under the direct supervision of an appropriately skilled and experienced persons.
- 3.3.2 The Contractor will be responsible for the action of the staff and ensure adequate supervision is maintained at all times.
- 3.3.3 The contractor and his employees must co-operate and co-ordinate at all times with other contractors or Council staff who may be engaged on or adjacent to the work site.

- 3.3.4 The Contractor at his own expense is to employ a sufficient number of suitably experienced staff necessary to perform his obligations to the highest standard of service under this Contract. The Contractor is solely responsible for payment of all wages and other remuneration to the Contractor's employees and/or sub-contractors, and further the Contractor is responsible for deduction and payment to the appropriate authority of all taxes and superannuation deductions, relative to the Contractor's employees and their wages.
- 3.3.5 The Contractor shall take every precaution that all persons employed by him shall be efficient, sober and honest persons and will not employ any person to whose employment reasonable objection is taken by or on behalf of the Council. The Chief Executive may require removal by the Contractor of any staff or other person employed by the Contractor on the work contracted for; and in the event of the Contractor refusing or neglecting to comply with such requisition; no further payment will be made on account of the work until such removal is carried out.
- 3.3.6 The Contractor must at all times comply with current Occupational Health and Safety Act and Regulations

3.4 Materials, Plant, Equipment and Labour

3.4.1 Council will supply the following Equipment and Materials:

- Globes, Fluorescent Tubes
- handtowels
- Toilet Paper

- Council will be responsible for the mowing of lawns
- Council will be responsible for the collection of waste and recycling bins
- Payment for power, gas, water and sewerage

3.4.2 The Contractor will be responsible to provide all other consumable and equipment necessary to maintain the required level of service.

3.5 Performance Measurement/Review

At completion of the first six month period being **1st November 2018**, a performance review will be undertaken by the contract superintendent. If the services provided by the Contractor do not meet the requirements of the contract (response time frames, quality of workmanship, Legislative compliance etc...) and repeated non-compliances have not been rectified, Council reserves the right to terminate the contract.

The performance of the contractor shall be measured and reviewed against the following criteria:-

- .. Standard of Workmanship provided;
- .. Response times to requests for service;
- .. Attendance of suitably qualified staff;
- .. Time efficiency in which works are carried out.

Should the contractor be unable to carry out certain required works within a reasonable time (as determined by the contract superintendent), quotations may be obtained from an alternative service provider to have those works completed.

If the Contractor's performance does not meet the required level as determined by the Superintendent, the Contractor shall receive a warning by the Superintendent. If the occurrence is repeated and the Superintendent is not satisfied of the Contractor's intent to improve the results, the Principal will advise the Contractor in writing accordingly.

If the Contractor's performance continues to be unsatisfactory following two written warnings from the Principal, then the Contractor will be given seven days notice to show cause why the Contract should not be terminated as per Clause 5.1 of the Services General Conditions.

4. OCCUPATIONAL HEALTH AND SAFETY (OH&S)

4.1 Occupational Health and Safety

While it is recognised that Council (as the Principal) has certain responsibilities for health and safety matters for its employees and contractors, it is the responsibility of the contractor as an employer to ensure that all facets of the work over which they have control comply with the requirements of the Occupational Health and Safety Act 2004, its subsequent regulations and various Codes of Practice.

Upon being awarded the contract, the contractor must, within two (2) weeks of award of Contract, present the contract manager with a copy of all relevant Occupational Health and Safety policies and procedures.

All employees, contractors, sub-contractors, and others performing works under this Contract are to be inducted under Council's Contractor Safety Induction program, to maintain their induction, and to comply with all induction requirements. There is a cost to the Contractor to complete this induction program.

The following constitutes a minimum guideline and is not intended to alter or revise any Commonwealth or State laws, but is in support of and supplements these laws.

The contractor is reminded of their Common Law duty of care to:

- Provide competent personnel to carry out the work
- Provide a safe place in which their personnel work
- Provide safe plant, tools and equipment for their personnel to carry out the work for which they have been employed.
- Provide a safe system or method of work to complete the tasks for which they may have been engaged.
- Ensure that their sub-contractors comply with the requirements of the Occupational Health and Safety Act 2004, its subsequent Regulations and various Codes of Practice in all facets of the work under their control.

The contractor shall supply their employees with all the required safety protective equipment relevant to the particular task.

Contractors shall ensure that their employees are instructed in the correct usage and maintenance of their safety protective equipment.

The contractor is specifically reminded of their obligation to ensure that they, their employees and sub-contractors hold the appropriate licences, registration and certificates necessary to perform particular functions.

4.2 Legislative Requirements

The Contractor must comply with and ensure that its employees, subcontractors and agents comply with any Acts, regulations, local laws and by-laws, Codes of Practice, Australian Standards and Council OHS policy and procedures which are in any way applicable to this contract or the performance of the services under this contract.

4.3 OHS Performance Reporting

The Contractor must when requested by the Superintendent provide evidence of ongoing performance of the Contractor's OHS management system including the following;

- Number of lost time injuries
- Working days lost due to injury
- Current status of any injured personnel, damaged property or environmental damage or pollution.
- Status of the implementation and outcomes of corrective actions undertaken as a result of OHS inspections and risk assessments
- Status of OHS management system audits undertaken

The Contractor shall when requested by Council provide reports on OHS inspections, audits or assessments undertaken during the course of the contract.

4.4 Incident Notification

The Contractor must promptly notify Council's Superintendent of any accident, injury, property or environmental damage which occurs during the carrying out of the contract works. All lost time incidents shall be immediately notified to Council. The Contractor must and within 3 days of any such incident provide a report giving complete details of the incident, including results of investigations into its cause, and any recommendations or strategies for prevention in the future.

4.5 Non-Compliance

If during the performance of works under the contract the Superintendent informs the Contractor that it is the opinion of Superintendent that the Contractor is conducting the work in such a way as to endanger the health and safety of Contractors employees or Council's or its Contractors' and subcontractors' employees, plant, equipment or materials, the Contractor shall promptly remedy that breach of health and safety.

The Superintendent may direct the Contractor to suspend the work until such time as the Contractor satisfies Council that the work will be resumed in conformity with the contract.

During periods of suspension referred to above, Council shall not be required to make any payment whatsoever to the Contractor.

If the Contractor fails to rectify any breach of health and safety for which the work has been suspended, or if the Contractors performance has involved recurring breaches of health and safety, the Council may as its option terminate the service forthwith, without further obligation to the Contractor. In this event, Council's liability shall be limited to payment for the work performed and costs incurred by the Contractor up to the time of termination or an earlier suspension of works.

5 GENERAL

- 5.1 All spent consumables resulting from works under this contract are to be disposed of in accordance with all relevant laws, regulations, standards, codes of practice, and good techniques established within the State of Victoria, and Commonwealth of Australia.
- 5.2 The relationship between the parties is that of Principal and contractor.
- 5.3 Any proposed sub-contractors that the tenderer intends to engage in completing any part of this contract are to be nominated in Schedule 1. Any other sub-contractors engaged during the term of the contract are to be approved in writing by the Contract Superintendent prior to their engagement.

Caretaker – Hopetoun Caravan Park



Maddocks

Lawyers
140 William Street
Melbourne Victoria 3000 Australia
Telephone 61 3 9288 0555
Facsimile 61 3 9288 0666
Email info@maddocks.com.au
www.maddocks.com.au
DX 259 Melbourne

PART D: SERVICES GENERAL CONDITIONS

Table of Contents

13. TERM OF CONTRACT	8
INTRODUCTORY ISSUES.....	4
1.1 DEFINITIONS	4
1.2 CONSTRUCTION OF TERMS	6
1.3 INTERPRETATION	6
1.4 NOTICES	8
1.5 NO EXCLUSIVITY	9
2. THE SERVICES.....	9
2.1 WORK TO BE PERFORMED	9
2.2 WARRANTY AND REPRESENTATIONS.....	9
2.3 THE CONTRACTOR'S REPRESENTATIONS	9
2.4 CONTRACT TERM.....	9
2.5 FEES	10
2.6 REPORTS	10
2.7 CONTRACTOR'S REPRESENTATIVE.....	10
2.8 STATUTORY REQUIREMENTS	10
2.9 THE MEDIA	11
2.10 CONFLICTS OF INTEREST	11
2.11 USE OF THE COUNCIL'S NAME OR LOGO.....	12
2.12 CONFIDENTIALITY.....	12
2.13 INTELLECTUAL PROPERTY.....	12
2.14 BEST VALUE PRINCIPLES.....	13
2.15 INFORMATION PRIVACY	14
2.16 MAINTENANCE OF AND ACCESS TO COUNCIL INFORMATION	14
2.17 CHARTER OF HUMAN RIGHTS.....	16
2.18 AUDIT AND INSPECTION	16
3 PAYMENTS.....	17
3.1 OBLIGATION TO PAY	17
3.2 GOODS AND SERVICES TAX	17
3.3 RIGHT OF SET OFF	18
4 VARIATIONS.....	18
4.1 DIRECTION OF VARIATIONS	18
4.2 VALUATION OF VARIATIONS	18
5. DEFAULTS AND TERMINATION	19
5.1 DEFAULT BY CONTRACTOR	19
5.2 CONTRACTOR'S RIGHT TO TERMINATE	19
5.3 PAYMENTS ON TERMINATION	19
5.4 INSOLVENCY OF CONTRACTOR	20
6 SUB-CONTRACTING AND ASSIGNMENT.....	22
6.1 SUB-CONTRACTING.....	22
6.2 ASSIGNMENT	22
7 OCCUPATIONAL HEALTH AND SAFETY.....	22
7.1 GENERAL OCCUPATIONAL HEALTH AND SAFETY	22
7.2 LEGISLATIVE COMPLIANCE	23
7.3 CONTRACTOR OH&S MANAGEMENT SYSTEM.....	23

7.4	OH&S PERFORMANCE REPORTING	24
7.5	INCIDENT NOTIFICATION	24
7.6	NON-COMPLIANCE	24
7.7	SUSPENSION	25
8	INSURANCE AND INDEMNITY	26
8.1	WORKERS' COMPENSATION	26
8.2	PUBLIC LIABILITY INSURANCE	26
8.3	PROFESSIONAL INDEMNITY INSURANCE	26
8.4	PROVISION OF EVIDENCE	27
8.5	FAILURE TO INSURE	27
8.6	INDEMNITY AND ADVANCE RELEASE FROM LIABILITY	27
9	SECURITY	27
10	DISPUTE RESOLUTION	27
10.1	NOTICE OF DISPUTE	27
10.2	ALTERNATIVE DISPUTE RESOLUTION	28
10.3	REFERRAL TO MEDIATION	28
10.4	NO OBLIGATION TO REFER	28
10.5	WORK TO CONTINUE	28
	ANNEXURE A.....	29

Services General Conditions

INTRODUCTORY ISSUES

1.1 Definitions

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

the Annexure means the Annexure to these Services General Conditions - Short Form;

the Best Value Principles means the Best Value Principles described in section 208B of the *Local Government Act 1989*;

the Commencement Date means the date specified as such in the Annexure;

Confidential Information means all information and materials, in any form, not lawfully in the public domain, in the possession of or under the control of the Contractor or to which the Contractor gains access at any time (including the period preceding the execution of this Contract):

1.1.1 concerning the Council, its business, systems, customers, ratepayers, residents, properties, assets and affairs;

1.1.2 concerning the terms and subject matter of this Contract; or

1.1.3 which the Council nominates in writing to be confidential.

this Contract means the contract evidenced by the Contract Documents;

the Contract Documents means the documents specified as such in the Annexure;

Contract Material means all material in any form at all that is, pursuant to this Contract, produced by or provided to the Contractor (including material provided by or to an employee, agent or sub-contractor of the Contractor);

the Contractor means the party specified as such in the Annexure;

the Contractor's Plant means all or any of the vehicles, plant, implements, appliances and equipment used by the Contractor for carrying out its obligations under this Contract, whether or not owned by the Contractor;

the Contractor's Representative has the meaning ascribed to it by sub-clause 2.6;

the Contract Term has the meaning ascribed to it by sub-clause 2.4.1;

the Council means the party specified as such in the Annexure;

Council Information means any database or records created by or for the Council in connection with the subject-matter of this Contract;

the Council Mark means the name and each and every trademark (whether registered or not) of, or used by, the Council from time to time during the Contract Term;

Good Industry Practice means the exercise of that degree of skill, diligence, prudence, foresight and operating practice which would reasonably and ordinarily be expected from a skilled and experienced person (engaged in the same type of undertaking as that of the Contractor) or any sub-contractor under the same or similar circumstances.

Information Privacy Principles means the Information Privacy Principles under the *Information Privacy Act 2000*;

the Initial Contract Term means the period specified as such in the Annexure;

Municipal District means the municipal district of the Council;

OH&S means occupational health and safety;

OH&S Management System has the meaning ascribed to it by sub-clause 7.3;

Option Terms means the terms specified as such in the Annexure;

Party's Representative means:

1.1.4 the Supervisor in respect of the Council; and

1.1.5 the Contractor's Representative in respect of the Contractor;

Personal Information means information or an opinion (including information or an opinion forming part of a database), that is recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion;

Public Holiday means a public holiday, within the meaning of the *Public Holidays Act 1983*, applying in the Municipal District;

the Services means:

1.1.6 the performance of work;

1.1.7 the supply of materials; and

1.1.8 all other things required to be done -

under this Contract by the Contractor, as indicated in the Contract Documents and includes any matters reasonably to be inferred from the Contract Documents or trade usage; and

the Supervisor means -

1.1.9 the person specified as such in the Annexure; or

1.1.10 any other person nominated in writing by the Council -

and includes any person:

1.1.11 to whom powers, duties or functions have been delegated by a person referred to in sub-clause 1.1.9 or sub-clause 1.1.10;

1.1.12 the authority of whom the Contractor has been notified; and

- 1.1.13 in respect of whom no notice of the revocation of his or her authority has been given to the Contractor.

1.2 Construction Of Terms

In this Contract, unless inconsistent with the context:

- 1.2.1 headings and underlining are for convenience only and do not affect interpretation;
- 1.2.2 words expressed in the singular include the plural and vice versa;
- 1.2.3 a reference to a gender includes a reference to each other gender;
- 1.2.4 where a term is assigned a particular meaning, other grammatical forms of that term have a corresponding meaning;
- 1.2.5 a reference to a person includes a reference to a firm, corporation or other corporate body and vice versa;
- 1.2.6 a reference to any Act, regulation, proclamation, planning scheme, local law or by-law includes all Acts, regulations, proclamations, planning schemes, local laws or by-laws amending, consolidating or replacing same;
- 1.2.7 a reference to an Act includes all regulations, proclamations, planning schemes, local laws and by-laws made under that Act;
- 1.2.8 a reference to a party in a document includes that party and its successors, permitted assigns, receivers, receivers and managers, liquidators and legal personal representatives; and
- 1.2.9 a reference to any document includes a reference to that document as amended, rectified or replaced from time to time and to any document so amending, rectifying or replacing the document.

1.3 Interpretation

1.3.1 Amendment

This Contract may be amended only by a written instrument duly executed by the parties.

1.3.2 Precedence

Should the Contract Documents contain any discrepancy or inconsistency, then, for the purpose of removing the discrepancy or resolving the inconsistency, the Contract Documents shall take precedence in the order in which they are listed in the Annexure.

If the discrepancy is not removed or the inconsistency is not resolved by this method, the Supervisor must make a determination removing the discrepancy or resolving the inconsistency.

No determination by the Supervisor under this sub-clause 1.3.2 shall be construed as giving rise to a variation under sub-clause 4.1.

1.3.3 Whole Understanding

This Contract constitutes the whole understanding between the parties and embodies all terms and conditions under which the Services are to be performed by the Contractor. All previous negotiations and understandings between the parties on this subject matter shall cease to have effect from the date of this Contract.

1.3.4 Governing Law

The law of the State of Victoria governs this Contract and any legal proceedings under this Contract.

1.3.5 Counting of Days

Where under any provision of this Contract, any notice is to be given, any payment made or anything else must be done:

1.3.5.1 in a stated period of days, the stated number of days will exclude Saturdays, Sundays and Public Holidays. Any period of days is deemed to be consecutive if interrupted only by days which are not to be taken into account under this clause; and

1.3.5.2 on a Saturday, Sunday or Public Holiday. The notice may be given, the payment made or anything else done on the next day which is not a Saturday, Sunday or Public Holiday.

1.3.6 Several and Joint Liability

If the Contractor consists of 2 or more parties, this Contract binds each of them severally and jointly.

1.3.7 No Waiver

No -

1.3.7.1 time or other indulgence granted by the Council to the Contractor;

1.3.7.2 variation of the terms and conditions of this Contract; or

1.3.7.3 judgment or order obtained by the Contractor against the Council
-

will in any way amount to a waiver of any of the rights or remedies of the Council in relation to the terms of this Contract.

1.3.8 No Restriction of Council's Powers

This Contract does not fetter or restrict the powers or discretions of the Council in relation to any powers or obligations it has under any Act, regulation or local law that may apply to the Services, the Contractor or the Municipal District.

1.3.9 **The Supervisor**

The Supervisor must exercise any powers or functions conferred, and perform any duties imposed, on the Supervisor under sub-clauses 1.3.2, 4.2, 5.3.1 and 5.3.2 reasonably and independently of the parties. Except as expressly provided in this clause or elsewhere in this Contract, the Supervisor may exercise other powers conferred, and perform any other duties imposed or functions conferred, on the Supervisor in the Council's interests.

1.3.10 **Survival of Rights and Obligations**

The rights and obligations of the parties under sub-clauses 2.10, 2.11, 2.15, 5.3 and 6.1.2, clause 7, sub-clause 8.6 and clause 9 shall survive the termination or expiry of this Contract.

1.4 **Notices**

1.4.1 **Method of Giving Notices**

A notice required or permitted to be given by one party to another under this Contract must be in writing, addressed to the party to receive it and:

- 1.4.1.1 handed to that Party's Representative;
- 1.4.1.2 delivered to that party's address;
- 1.4.1.3 sent by pre-paid mail to that party's address; or
- 1.4.1.4 transmitted by facsimile to that party's facsimile number.

1.4.2 **Time of Receipt**

A notice given to a party in accordance with sub-clause 1.4.1 must be treated as having been duly given and received:

- 1.4.2.1 if handed to the Party's Representative, immediately;
- 1.4.2.2 if delivered to a party's address, on the day of delivery;
- 1.4.2.3 if sent by pre-paid mail, on the third day after posting; or
- 1.4.2.4 if transmitted by facsimile to a party's facsimile number and a correct and complete transmission report is received, on the day of transmission.

1.4.3 **Addresses and Facsimile Numbers of Parties**

For the purposes of sub-clauses 1.4.1 and 1.4.2, an address or facsimile number of a party is the address or facsimile number stated in the Annexure unless notice of a new address or facsimile number has been given to the other party.

1.5 No Exclusivity

Nothing in this Contract affects the Council's right to:

1.5.1 itself; or

1.5.2 engage a third party to

perform services which are similar to the Services.

2. THE SERVICES

2.1 Work To Be Performed

The Contractor must perform the Services during the Contract Term in accordance with the Contract Documents.

2.2 Warranty and Representations

The Contractor warrants, represents and undertakes to the Council that it will perform the Services in accordance with:

2.2.1 the terms of this Contract; and

2.2.2 Good Industry Practice.

2.3 The Contractor's Representations

To the extent to which the Contractor's tender, proposal or quotation included a representation as to:

2.3.1 the capacity and capabilities of the Contractor to perform the Services; or

2.3.2 the skills and experience of the Contractor's staff and sub-contractors,

then the Contractor must ensure that the Services are performed in accordance with such representations. The Contractor acknowledges that the Council will have relied upon any such representations in engaging the Contractor to perform the Services.

2.4 Contract Term

2.4.1 Extent of Contract Term

The Contract Term is the Initial Contract Term and any period for which the operation of the Contract is extended under sub-clause 2.4.2, if any.

2.4.2 Extension of Contract Term

The Council may, at its option, extend the operation of this Contract beyond the Initial Contract Term for a period not longer than the period stated in the Annexure from the expiration of the Initial Contract Term, if it gives notice of its intention to extend this Contract at least that period specified in the Annexure prior to the end of the Initial Contract Term.

2.4.3 Extension of Contract – Modified Term

Any extension of this Contract is on the same terms and conditions as the Initial Contract Term, except that after Council has exercised each option there will only be left such number of options as, when combined with each option exercised, equals the total of the Option Terms.

Each term of contract will commence on the 1st August and expire on the 31st July each year. Rates for each year of service will be sought prior to July 31st.

Any proposal to vary Contract rates during any period of Contract is to be submitted to Council in writing for approval prior to proposed date of application of any new rates. Any price variation formulae proposed to be applied by Contractor during the progress of the Contract is to be submitted in the tender.

Council reserves the right accept or reject any proposed fee increase throughout the term of this contract.

2.5 Fees

The Contractor must pay all fees, charges and costs incurred in its performance of the Services, except as expressly stated otherwise in this Contract.

2.6 Reports

The Contractor must provide the Supervisor with written reports on any aspect of the Services if requested to do so by the Supervisor in writing.

2.7 Contractor's Representative

The Contractor must appoint a competent person to be responsible for the day to day performance of the Services and the supervision of all persons employed or engaged in carrying out the Services (**the Contractor's Representative**).

The Contractor must notify the Supervisor of the name of the Contractor's Representative prior to the Commencement Date and must notify the Supervisor immediately should a new Contractor's Representative be appointed.

2.8 Statutory Requirements

The Contractor must -

2.8.1 obey; and

2.8.2 ensure that its employees, sub-contractors and agents obey -

any Acts, regulations, local laws and by-laws in any way applicable to the performance of the Services or this Contract.

2.9 The Media

The Contractor must:

- 2.9.1 not either itself or through its employees, agents or sub-contractors make any statement to the media on behalf of the Council or in relation to the performance of the Services;
- 2.9.2 refer all enquiries from the media relating to the performance of the Services to the Supervisor; and
- 2.9.3 notify the Supervisor immediately of any event arising in the course of performing the Services which may receive media attention.

2.10 Conflicts of Interest

2.10.1 Contractor Warranty

The Contractor warrants that it:

- 2.10.1.1 does not hold any office or possess any property;
- 2.10.1.2 is not engaged in any business, trade or calling; and
- 2.10.1.3 does not have any obligations by virtue of any contract

whereby, directly or indirectly, duties or interests are or might be created in conflict with, or might appear to be created in conflict with, its duties and interests under this Contract.

2.10.2 On going Obligation

The Contractor must immediately make a full disclosure in writing to the Council of the existence, nature and extent of any actual or potential conflict of interest that the Contractor, or any of its employees, agents or sub-contractors, may have between the Contractor's obligations under this Contract and the interests of:

- 2.10.2.1 the Contractor, its employees, agents or sub-contractors;
- 2.10.2.2 an associate of the Contractor, its employees, agents or sub-contractors;
- 2.10.2.3 a company in which the Contractor, its employees, agents or sub-contractors are involved, whether as an officer, shareholder, employee or otherwise; or
- 2.10.2.4 any other person with whom or which the Contractor or its employees, agents or sub-contractors have a financial or business association, whether directly or indirectly.

2.10.3 Breach of On-going Obligation

If the Contractor fails to comply with its obligations under sub-clause 2.10.1, the Council may immediately terminate this Contract. If this Contract is terminated under this clause, sub-clause 5.3 will operate, to the extent that it is applicable, as if the termination had been made by the Council under sub-clause 5.1.

2.11 Use of the Council's Name or Logo

The Contractor must not use a Council Mark without the prior written consent of the Supervisor, which may be given subject to such conditions as the Supervisor considers appropriate.

2.12 Confidentiality

2.12.1 The Contractor must:

2.12.1.1 keep confidential;

2.12.1.2 maintain proper and secure custody of; and

2.12.1.3 not use or reproduce in any form

the Confidential Information without the written consent of the Supervisor, or as required by law.

2.12.2 Immediately upon the Supervisor's request the Contractor must:

2.12.2.1 deliver to the Council all confidential information in its possession that is capable of being delivered; and

2.12.2.2 delete, erase, or otherwise destroy all confidential information contained in computer memory, magnetic, optical, laser, electronic, or other media in its possession or control which is not capable of delivery to the Council.

2.13 Intellectual Property

2.13.1 Subject to this clause, the property and copyright in all Contract Material will vest in the Council. The Contractor must ensure that any person, including employees, agents and sub-contractors, engaged by it in the provision of the Services agrees to assign to the Council all the property and copyright in the Contract Material.

2.13.2 Subject to this clause, the Contractor acknowledges that the Council has property and copyright in any discoveries, inventions, patents, designs or other rights arising out of or in performance of this Contract.

2.13.3 Notwithstanding sub-clauses 2.13.1 and 2.13.2 nothing in this Contract affects or in any way alters the Contractor's ownership of or rights to any pre-existing intellectual property specified in the Annexure.

- 2.13.4 Except to the extent that the Contract Material contains the Contractor's rights arising from sub-clause 2.13.3, the Contractor will not use, reproduce or publish, other than for the Council, the Contract Material, without the prior written consent of the Supervisor.
- 2.13.5 The Contractor, in performing the Services, must use its best endeavours not to breach the intellectual property rights of any third party.
- 2.13.6 If the Contractor is using any pre-existing or third party intellectual property in the performance of its obligations under this Contract, and the existence of such rights affects or limits the benefit which the Council derives from the performance of the Contractor's obligations under this Contract, then the Contractor:
 - 2.13.6.1 grants the Council, without further condition, an irrevocable, non-exclusive, global, fee and royalty free licence to use for the purposes of this Contract the Contractor's intellectual property used in relation to this Contract as the Council deems necessary to enable it to derive the full benefit the Council reasonably expected from the Contract; and
 - 2.13.6.2 must, at its cost, obtain for the Council from any third party whose intellectual property the Contractor is using in connection with this Contract a licence in equivalent terms to the form of licence stipulated in sub-clause 2.13.6.1

2.14 Best Value Principles

- 2.14.1 The Contractor must, in performing or purporting to perform the Services, comply with the Best Value Principles.
- 2.14.2 The Contractor must indemnify and keep indemnified and hold harmless Council and its Commissioners, Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Commissioners, Councillors or members of staff arising out of the Contractor's failure to comply with the Best Value Principles when performing or purporting to perform the Services.
- 2.14.3 If, during the Contract Term, the Council gives notice to the Contractor that it proposes to
 - 2.14.3.1 evaluate the Contractor's performance of the Services by reference to the Best Value Principles; or
 - 2.14.3.2 review what future options exist for the procurement of services of the kind performed under this Contract,the Contractor must, upon receipt of a request from the Council so to do, supply the Council with such information as the Council reasonably requires to carry out the evaluation or review (as the case may be).

2.15 Information Privacy

- 2.15.1 The Contractor must, in respect of Personal Information held in connection with this Contract:
- 2.15.1.1 comply with the Information Privacy Principles with respect to any act done, or practice engaged in, by the Contractor, its employees and agents including, without limitation, using Personal Information only for the purposes of fulfilling the Contractor's obligations under this Contract and not disclosing Personal Information without the Supervisor's written authority except for the purpose of fulfilling the Contractor's obligations under this Contract;
 - 2.15.1.2 immediately notify the Supervisor where it becomes aware of a breach of sub-clause 2.15.1.1 by the Contractor, its employees or agents; and
 - 2.15.1.3 indemnify and keep indemnified and hold harmless the Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors or members of staff arising out of or in connection with a breach of sub-clause 2.15.1.1 by the Contractor, its employees or agents.
- 2.15.2 If, during the Contract Term, the Council gives notice to the Contractor that it proposes to audit, either directly or through its auditors, the Contractor's information handling practices, the Contractor must provide all reasonable assistance to the party conducting such an audit.

2.16 Maintenance of and Access to Council Information

2.16.1 Application of Clause

This sub-clause 2.16 applies if, in this Contract, provision is made for the Contractor to have access to Council Information.

2.16.1.1 Council Information System

The Contractor must:

- 2.16.1.1.1 maintain the existing Council Information in an accurate and up-to-date condition;
- 2.16.1.1.2 not change the form or structure of the Council Information without the prior written consent of the Council; and
- 2.16.1.1.3 provide the Council with access to the Council Information in a form (whether electronic or otherwise) required by the Council, upon demand, on the termination or expiry of the Contract or as otherwise agreed from time to time.

2.16.1.2 The property in the existing Council Information is and will remain property of the Council.

2.16.1.3 The property in additions to or modifications of the Council Information by the Contractor vests in the Council.

2.16.2 Protection of Information

The Contractor must protect the Council Information from harm, including, but not limited to:

2.16.2.1 preventing unauthorised update;

2.16.2.2 employing appropriate back-up and recovery processes (of which the detail of the back-up regime, the off-site storage environment and the security and documentation of the back-up process must be approved in advance by the Supervisor);

2.16.2.3 minimising the risk of accidental damage, including the introduction of errors; and

2.16.2.4 returning all of the Council Information to the Council at the end of the Contract Term in a form or forms (whether electronic and/or otherwise), format and reasonable time specified by the Council. The return of the Council Information under this sub-clause 2.11.2.4 must be done in a manner that reasonably facilitates the ongoing use of the Council Information by Council or the New Contractor of the Services in the ongoing delivery of the Services after the end of this Contract.

2.16.3 Inspection of the Council Information

2.16.3.1 The Contractor must:

2.16.3.1.1 allow any person authorised by the Council to inspect and verify from time to time during the ordinary business hours of the Contractor all or any part of the Council Information and the Contractor must give any assistance necessary for the carrying out of such an inspection and verification and permit the taking of copies of any information or related documents or data; and

2.16.3.1.2 enable any person authorised by the Council to review the contents of the Council Information and the processes for using and maintaining the Council Information.

2.16.3.2 For the purposes of sub-clause 2.16.3.1.2, review of the contents of the Council Information may include access to and analysis of:

2.16.3.2.1 manual records;

2.16.3.2.2 databases;

2.16.3.2.3 application programs; and

2.16.3.2.4 back-up processes and documentation.

2.16.3.3 For the purposes of sub-clause 2.16.3.2.1, review of the processes for using and maintaining the Council Information includes observation testing and the conduct of interviews regarding processes and standards for:

2.16.3.3.1 granting and revoking access to data and application;

2.16.3.3.2 password usage;

2.16.3.3.3 data entry, including audit trails; and

2.16.3.3.4 analysis and correction of data errors.

2.17 Charter of Human Rights

2.17.1 The Contractor must, in performing the Services, comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act 2006*.

2.17.2 The Contractor must indemnify and keep indemnified and hold harmless Council and its Councillors and all members of Council staff against any liability incurred or loss or damage suffered by the Council or its Councillors and all members of Council staff arising out of the Contractor's failure to comply with the requirements of section 38(1) of the *Charter of Human Rights and Responsibilities Act* when performing or purporting to perform the Services.

2.18 Audit and Inspection

2.18.1 The Contractor will, at its own cost, co-operate fully and in a timely manner with any auditor (whether internal or external) of the Council or any government inspection agency who wishes to audit the Contractor's performance of its obligations under this Contract. The Contractor will not be required to participate in any such audit initiated by the Council more frequently than twice in any year during the Contract Term unless the Council agrees to pay the Contractor's reasonable costs incurred in relation to any third or subsequent audit. Nothing in this sub-clause 2.18.1 will, however, require the Council to pay any costs incurred by the Contractor in relation to any audit which:

2.18.1.1 is required by law; or

2.18.1.2 arises from an irregularity detected by or on behalf of the Council which would cause any prudent person to conduct a further audit.

2.18.2 Except as mentioned in sub-clause 2.18.3, the Contractor will provide to any auditor described in sub-clause 2.18.1 all information (including any documents relating to the performance of the Services) and staff to which such auditor requires access in discharging the auditor's responsibilities under the audit. For the avoidance of doubt, the obligations of the Contractor extend to:

- 2.18.2.1 ensuring that any members of its staff, any sub-contractor and any staff of any sub-contractor attend any interview reasonably required by the auditor;
 - 2.18.2.2 supplying copies to the auditor of all documents to which access has been provided to the auditor; and
 - 2.18.2.3 providing such assistance and access as the auditor may reasonably require.
- 2.18.3 Nothing in this sub-clause 2.18 entitles the Council or any auditor (whether internal or external) engaged by it to have access to or obtain originals of any documents unrelated to the performance of the Services.
- 2.18.4 To facilitate the Council's monitoring of the Contractor's performance of the Services, the Contractor agrees that an agent of the Council may, at any time, enter upon any property used by the Contractor to perform the Services under this Contract, and there inspect or observe the performance of the Services and monitor compliance by the Contractor of its obligations under this Contract.
- 2.18.5 If the Council exercises the right conferred by sub-clause 2.18.4, it must ensure that:
- 2.18.5.1 any disruption caused to the Contractor and the performance of the Services is minimised;
 - 2.18.5.2 its agent at all times complies with any OH&S requirements reasonably imposed by the Contractor; and
 - 2.18.5.3 if its agent has caused any material damage to any property belonging to the Contractor then all reasonable costs directly caused by such damage are paid to the Contractor.

3 PAYMENTS

3.1 Obligation to Pay

If the Contractor complies with its obligations under this Contract, the Council must make the payment or payments specified in the Annexure on the basis stated in the Annexure.

3.2 Goods and Services Tax

3.2.1 In this sub-clause 3.2:

adjustment has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

adjustment note has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*;

GST means a Goods and Services Tax, Value Added Tax, Consumption Tax or tax of similar effect, whether authorised by *A New Tax System (Goods and Services Tax) Act 1999* or otherwise;

taxable supply has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*; and

taxable income has the meaning set out in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999*.

- 3.2.2 To the extent that the performance of the Services constitutes a taxable supply:
- 3.2.2.1 if the payment or payments described in sub-clause 3.1 has or have been described as exclusive of GST, the payment or payments will be increased by the applicable amount of GST (GST Amount) which will be calculated by multiplying the amount upon which GST is payable by the prevailing rate of GST;
 - 3.2.2.2 the Contractor must provide to the Council a valid tax invoice at or prior to the time of payment of any GST Amount; and
 - 3.2.2.3 and any adjustment occurs in relation to the taxable supply, the Contractor must issue an adjustment note to the Council within 7 days of becoming aware of the adjustment and any payment necessary to give effect to such adjustment must be made within 7 days after the date of receipt of the adjustment note.

3.3 Right of Set Off

Notwithstanding anything else contained in this Contract, the Council may deduct from any amount otherwise payable to the Contractor any money which is due from the Contractor to the Council, whether due under this Contract or otherwise.

4 VARIATIONS

4.1 Direction of Variations

During the Contract Term, the Supervisor may direct the Contractor to:

- 4.1.1 alter the extent of the Services;
- 4.1.2 alter the character, quality or mode of performance of the Services; or
- 4.1.3 carry out any work of a character similar to the Services.

4.2 Valuation Of Variations

The value, if any, of any variation must be added to or subtracted from any payment to the Contractor under sub-clause 3.1. The value of each variation must be determined by the Supervisor by applying:

- 4.2.1 any relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause; or
- 4.2.2 reasonable rates or prices if there are no relevant rates or prices contained in the Contract Documents which are expressly stated to be provided for the purposes, or partly for the purposes, of this clause. If the variation involves a

decrease in the Services or the omission of part of the Services, the Supervisor must make a reasonable allowance for the Contractor's profit and overheads.

5. DEFAULTS AND TERMINATION

5.1 Default By Contractor

If the Contractor defaults in the performance or observance of any obligation it has under this Contract, the Supervisor may, without limiting any other rights that the Council may have, give notice to the Contractor to show cause why the powers contained in this clause should not be exercised.

Such notice must:

- 5.1.1 not be unreasonably given;
- 5.1.2 state that it is a notice under this clause; and
- 5.1.3 specify the default on the part of the Contractor upon which it is based.

If, within 7 days after receipt of the notice, the Contractor fails to show, to the satisfaction of the Supervisor, that the default will be rectified and this Contract will be satisfactorily completed in accordance with its terms, the Council, without prejudice to any other rights that it may have under this Contract or at common law against the Contractor, may:

- 5.1.4 suspend payment under this Contract; or
- 5.1.5 terminate this Contract.

5.2 Contractor's Right To Terminate

If, within 14 days of any period for payment stated in the Annexure, the Council has failed to pay to the Contractor any amount due under sub-clause 3.1 (other than an amount being the subject of a dispute or difference under this Contract), the Contractor may by notice to the Council either suspend the Services or terminate this Contract.

5.3 Payments On Termination

5.3.1 Limit of Payments

If this Contract is terminated under sub-clause 5.1 or 5.2, or otherwise, the Council is liable to make payments to the Contractor only in respect of any portion of the Services which have been properly performed and not paid for at the date of termination, as determined by the Supervisor.

5.3.1 Payment for Losses and Expenses

If this Contract is terminated by the Council under sub-clause 5.1 or otherwise, the Contractor must, within 14 days, pay to the Council the amount of the loss and expenses incurred by the Council by reason of or arising from the termination, as determined by the Supervisor.

5.3.3 The Council May Retain Moneys

The Council may retain the moneys payable to the Contractor under sub-clause 5.3.1 until any amount payable by the Contractor to the Council under sub-clause 5.3.2 has been determined by the Supervisor and paid by the Contractor.

5.4 Insolvency Of Contractor

If the Contractor -

5.4.1 being a person:

5.4.1.1 becomes bankrupt or files or is served with a petition in bankruptcy;

5.4.1.2 is served with a bankruptcy notice;

5.4.1.3 makes an assignment for the benefit of his or her creditors;

5.4.1.4 becomes bound as a debtor by any scheme of arrangement;

5.4.1.5 executes as a debtor any deed of assignment or deed of arrangement; or

5.4.1.6 has a mortgagee or other creditor take possession of any of his or her assets;

5.4.2 being a partnership:

5.4.2.1 is dissolved;

5.4.2.2 any of the partners becomes bankrupt, or files, or is served with, a petition in bankruptcy;

5.4.2.3 any of the partners is served with a bankruptcy notice;

5.4.2.4 any of the partners makes an assignment for the benefit of his or her creditors;

5.4.2.5 any of the partners becomes bound by any scheme of arrangement;

5.4.2.6 any of the partners executes, as a debtor, any deed of assignment or deed of arrangement; or

5.4.2.7 any of the partners has a mortgagee or other creditor take possession of any of his or her assets; or

5.4.3 being a company or other body corporate:

5.4.3.1 takes, or has taken or instituted against it, any action or proceeding, whether voluntary or compulsory, having as its object the winding-up of the company or other body corporate;

- 5.4.3.2 an administrator is appointed, or steps are taken for the appointment of an administrator, under the Corporations Act 2001 in respect of it;
- 5.4.3.3 enters into a composition or other arrangement with its creditors, other than a voluntary winding-up by members for the purpose of reconstruction or amalgamation;
- 5.4.3.4 has a mortgagee or other creditor take possession of any of its assets;
- 5.4.3.5 a receiver or receiver and manager is appointed, or steps are taken for the appointment of a receiver or receiver and manager, in respect of it; or
- 5.4.3.6 in the case of an incorporated association, takes or institutes, or has taken or instituted against it, any action or proceeding having as its object the cancellation of the incorporation of the incorporated association -

the Council may terminate this Contract immediately and sub-clause 5.3 shall, to the extent that it is applicable, operate as if the termination had been made by the Council under sub-clause 5.1.

6 SUB-CONTRACTING AND ASSIGNMENT

6.1 Sub-Contracting

6.1.1 General

The Contractor must not sub-contract the whole or any portion of its rights and obligations under this Contract, except with the prior written consent of the Supervisor, which may be given subject to such conditions as the Supervisor considers appropriate. Except in so far as any consent given by the Supervisor under this sub-clause 6.1.1 expressly provides otherwise, no sub-contractors will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

6.1.2 Contractor still to be Liable

Unless otherwise agreed in writing by the Supervisor, no sub-contracting of any rights or obligations of the Contractor under this Contract will relieve the Contractor from any liability under this Contract or at law in respect of the performance or purported performance of this Contract and the Contractor will be responsible for the acts and omissions of any sub-contractor, or any sub-contractor's employees and agents, as if they were the acts or omissions of the Contractor.

6.2 Assignment

6.2.1 General

The Contractor must not assign the whole or any of its rights under this Contract, except with the prior written consent of the Supervisor, which may be given subject to such conditions as the Supervisor considers appropriate. Except in so far as any consent given by the Supervisor under this sub-clause 6.2.1 expressly provides otherwise, no assignees will have any rights under this Contract against the Council or be entitled to receive any payments under this Contract from the Council.

6.2.2 Change in Beneficial Ownership

For the purpose of this clause, an assignment of this Contract includes any change in the beneficial ownership of the share capital of the Contractor, if it is a company, which alters the effective control of the Contractor.

7 OCCUPATIONAL HEALTH AND SAFETY

7.1 General Occupational Health and Safety

The Council is obliged to provide and maintain, so far as is practicable, a working environment for its employees and members of the public that is safe and without risk to health.

The Contractor must itself, and must ensure that any sub-contractors of the Contractor, at all times identify and take all necessary precautions for the health and safety of all

persons, including the Contractor's employees and sub-contractors, staff of the Council and members of the public, who may be affected by the performance of the Services.

The Contractor must inform itself of all OH&S policies, procedures or measures implemented or adopted by the Council. The Contractor must comply with all such policies, procedures or measures.

The Contractor must immediately comply with any and all directions by the Supervisor relating to OH&S.

7.2 Legislative Compliance

The Contractor must -

7.2.1 comply with; and

7.2.2 ensure that its employees, sub-contractors and agents comply with -

any Acts, regulations, local laws, codes of practice and Australian Standards which are in any way applicable to OH&S and the performance of the Services.

7.3 Contractor OH&S Management System

The Contractor must establish and implement an OH&S management system which ensures compliance with all duties of an employer under the *Occupational Health and Safety Act 2004 (the OH&S Management System)*.

The OH&S Management System must be:

7.3.1 submitted to the Supervisor for approval prior to the Commencement Date; and

7.3.2 updated during each year of the Contract Term, and such updated OH&S Management System submitted to the Supervisor for approval prior to each anniversary of the Commencement Date.

The Contractor must make any amendments to the OH&S Management System, or any update of the OH&S Management System, submitted for the approval of the Supervisor, which the Supervisor may direct.

The Contractor must implement the OH&S Management System or updated OH&S Management System, as the case may be, throughout the Contract Term.

The OH&S Management System must at least include:

7.3.3 the Contractor's OH&S policy and objectives;

7.3.4 the Contractor's organisational structure and responsibilities;

7.3.5 details of safe work practices and procedures to be implemented by the Contractor;

7.3.6 the Contractor's OH&S training and induction;

7.3.7 the Contractor's OH&S auditing and inspection procedures;

- 7.3.8 the Contractor's OH&S consultation procedures;
- 7.3.9 the Contractor's OH&S performance monitoring; and
- 7.3.10 the Contractor's assessment of all risks arising from its performance of its obligations under this Contract.

7.4 OH&S Performance Reporting

The Contractor must, when requested by the Supervisor, provide evidence of the Contractor's ongoing implementation of the OH&S Management System. The Contractor must also provide the following information to the Supervisor monthly:

- 7.4.1 the number of 'lost time' injuries suffered by the Contractor's employees or sub-contractors;
- 7.4.2 the number of working days lost due to injury;
- 7.4.3 the status of the implementation and outcomes of corrective actions undertaken as a result of OH&S inspections and risk assessments; and
- 7.4.4 the status of OH&S Management System audits undertaken by the Contractor.

The Contractor must, when requested by the Supervisor, provide reports on OH&S inspections, audits or assessments undertaken during the Contract Term.

7.5 Incident Notification

If the Contractor is required by the *Occupational Health and Safety (Incident Notification) Regulations 1997*, or by any other Act or regulation, to give any notice of an accident occurring during the performance by the Contractor of its obligations under this Contract, the Contractor must, at the same time, or as soon thereafter as is possible in the circumstances, give a copy of the notice to the Council.

The Contractor must promptly notify the Council of any accident, injury, property damage or environmental damage which occurs during the performance of the Services. The Contractor must, within 3 days after any such incident, provide a report giving complete details of the incident, including:

- 7.5.1 results of investigations into its cause; and
- 7.5.2 any recommendations or strategies for future prevention.

7.6 Non-Compliance

If, during the Contract Term, the Supervisor gives the Contractor notice that, in the opinion of the Supervisor, the Contractor is -

- 7.6.1 not performing the Contractor's obligations under the Contract in compliance with the OH&S Management System or any other obligation contained in this clause 7; or
- 7.6.2 performing the Contractor's obligations under the Contract in such a way as to endanger the health or safety of the Contractor's employees or sub-contractors, the Council's staff or the public -

the Contractor must promptly -

7.6.3 rectify the Contractor's failure to comply with its obligations; or

7.6.4 ensure that it performs its obligations under this Contract so as not to endanger the health or safety of the Contractor's employees, sub-contractors, the Council's staff or the public -

as appropriate.

7.7 Suspension

7.7.1 Procedure

The Supervisor may, without limiting any right that the Council or the Supervisor may have under this Contract, direct the Contractor to suspend the Contractor's performance of the Services until such time as the Contractor satisfies the Supervisor that the Contractor is willing and able to perform the Services:

7.7.1.1 in accordance with its obligations under this clause 7; and

7.7.1.2 without endangering the health and safety of the Contractor's employees or sub-contractors, the Council's staff or the public.

The Council is not required to make any payment to the Contractor in respect of any period for which the performance of the Services is suspended in accordance with this clause.

7.7.2 Council's Rights

If the Contractor's performance of the Services has been suspended under clause 7.7.1, the Council may:

7.7.2.1 itself, or by employing or engaging any other person, perform -

7.7.2.1.1 the Services; or

7.7.2.1.2 such part of the Services as the Council considers it desirable to perform -

which, so far as practicable, must be carried out in accordance with this Contract, provided that the Council is not required to use the least expensive means of performing the Services; or

7.7.2.2 do any other thing which the Council, in its absolute discretion, considers necessary in the circumstances.

7.7.3 Payments

The Contractor must pay to the Council the amount of -

7.7.3.1 all costs incurred by the Council in exercising any power or performing any function conferred on it under sub-clause 7.7.1 or 7.7.2; and

7.7.3.2 any other losses and expenses incurred by the Council due to, or in connection with (including, without limitation, indirect losses, consequential losses and all legal costs on a full indemnity basis), any breach of the Contractor's obligations under this clause 7 or the suspension of the performance of the Services -

as determined by the Supervisor, within 7 days of receiving notice of the Supervisor's determination.

8 INSURANCE AND INDEMNITY

8.1 Workers' Compensation

The Contractor must -

8.1.1 itself effect; and

8.1.2 ensure that each of its sub-contractors effects -

a WorkCover policy of insurance complying with the provisions of the *Accident Compensation Act 1985* in respect of all of its employees.

8.2 Public Liability Insurance

The Contractor must, at all times during the Contract Term, be the holder of a current public liability policy of insurance (**the Public Liability Policy**):

8.2.1 in the joint names of the Contractor, its sub-contractors and the Council; or

8.2.2 containing a principal's indemnity extension

(at the option of the Council), providing coverage for an amount per event of at least that stated in the Annexure.

The Public Liability Policy must:

8.2.3 be effected with an insurer; and

8.2.4 cover such risks, and be subject only to such conditions and exclusions, as are - approved by the Supervisor.

8.3 Professional Indemnity Insurance

The Contractor must, at all times during the Contract Term, be the holder of a current professional indemnity policy of insurance (**the Professional Indemnity Policy**) providing coverage for an amount per event of at least that stated in the Annexure.

The Professional Indemnity Policy must -

8.3.1 be effected with an insurer; and

8.3.2 cover such risks, and be subject only to such conditions and exclusions, as are - approved by the Supervisor.

8.4 Provision Of Evidence

8.4.1 Proof of Payment

The Contractor must produce to the Supervisor policies of insurance and receipts evidencing that the premiums for the insurances referred to in sub-clauses 8.1, 8.2 and 8.3 have been paid not less than 7 days before the Commencement Date.

8.4.2 Certificates of Currency

The Contractor must provide the Council with certificates of currency in respect of the insurances referred to in sub-clauses 8.1, 8.2 and 8.3 within 2 days of a written request by the Supervisor.

8.5 Failure To Insure

If the Contractor fails to comply with its obligations under sub-clause 8.1, 8.2 and 8.3, the Council may immediately terminate this Contract.

If this Contract is terminated under this sub-clause 8.5, sub-clause 5.3 will, to the extent that it is applicable, operate as if the termination had been made by the Council under sub-clause 5.1.

8.6 Indemnity and Advance Release from Liability

Without limiting anything contained in any other sub-clauses, the Contractor must indemnify, keep indemnified and hold harmless the Council, and its Councillors and staff, from and against all actions, claims, losses, damages, penalties, demands or costs (including, without limitation, all indirect losses, consequential losses and legal costs on a full indemnity basis) consequent upon, occasioned by or arising from its performance or purported performance of its obligations under this Contract, including, without limitation, any acts or omissions of the Contractor's sub-contractors, agents and employees.

9 SECURITY

Upon the execution of this Contract, the Contractor must deliver to the Supervisor an irrevocable bank guarantee or insurance bond payable to the Council for the sum stated in the Annexure and in a form approved by the Council (**the Performance Security**).

If the Contractor fails to carry out and complete its obligations under this Contract, the Council may have recourse to the Performance Security in respect of any moneys for which the Contractor may be liable to the Council under this Contract or otherwise.

10 DISPUTE RESOLUTION

10.1 Notice of Dispute

In the event of any dispute or difference arising between the Council and the Contractor, either during the period of this Contract or after the termination, abandonment or breach of this Contract, as to any matter or thing connected with this Contract or arising under this Contract, the Council or the Contractor may give to the other party notice of the dispute or difference.

Such notice must:

- 10.1.1 not be unreasonably given;
- 10.1.2 indicate that it is a notice under this sub-clause 13.1; and
- 10.1.3 give sufficient details of the dispute or difference as to enable the party receiving the notice to ascertain the nature of the dispute or difference alleged.

10.2 Alternative Dispute Resolution

Within seven (7) days of the receipt of any notice of dispute under sub-clause 10.1 by either party, a representative of each party must meet to discuss ways of resolving the dispute or difference. The representatives may resolve the dispute or difference themselves or refer the dispute or difference to any form of alternative dispute resolution procedure on which they agree. The representatives must be authorised by the parties to resolve the dispute or difference on their behalf should this prove to be practicable.

10.3 Referral to Mediation

Unless a dispute or difference of which notice has been given under sub-clause 10.1 is settled, either party may, not less than seven (7) days after the notice of dispute or difference was given, give notice referring the dispute or difference to mediation. The mediator must be agreed between the parties within fourteen (14) days from the date of the receipt of the notice referring the dispute to mediation by the Contractor or the Council, as the case may be, or, failing agreement, must be nominated by the person stated in the Annexure.

10.4 No Obligation to Refer

Sub-clause 10.3 does not in any way require the Council or the Contractor to refer to mediation any dispute or difference or in any way act as a bar to the bringing of legal proceedings by the Council or the Contractor, except that no dispute or difference must be the subject of legal proceedings, except for legal proceedings concerning the conduct of the mediation itself or a question of law, from the time it is referred to mediation under sub-clause 10.3 to the end of any subsequent mediation.

10.5 Work to Continue

If reasonably possible, performance of obligations under the Contract must continue during mediation or legal proceedings, and no payment due or payable by the Council that is not in dispute must be withheld on account of the mediation or legal proceedings, unless so authorised by the Contractor or by this Contract.

Annexure A

The Council is (sub-clause 1.1):

YARRIAMBIACK SHIRE COUNCIL

The Contractor is (sub-clause 1.1):

The Commencement Date is (sub-clause 1.1):

1st June, 2018

The Contract Documents are (sub-clause 1.1):

1. FORM OF AGREEMENT.
2. ACCEPTED TENDER.
3. COUNCIL'S LETTER OF ACCEPTANCE.
4. ADDENDA (IF ANY).
5. SERVICES GENERAL CONDITIONS.
6. ANNEXURE A OF GENERAL CONDITIONS OF CONTRACT.
7. TENDER DOCUMENTS FOR CONTRACT 16/024.

The Superintendent is (sub-clause 1.1):

Manager, Infrastructure Services

The address of the Council is (sub-clause 1.4.3):

34 LYLE STREET, WARRACKNABEAL

PO BOX 243
warracknabeal vic 3393

Email Address: bnaylor@yarriambiack.vic.gov.au

The address of the Contractor is (sub-clause 1.4.3):

The Initial Contract Term is (sub-clause 2.4):

TWO YEARS

The Option Terms are (sub-clause 2.4):

ONE PLUS ONE YEAR TERM – *(Terms subject to Part A, Item 13, of Information for Tenderers and Part C Item 3.6 of the Specification)*

Period (eg number of days or months) before Expiry by which Option must be exercised is (sub-clause 2.4):

THREE (3) MONTHS

Fees, charges and costs for which the Contractor is not to be responsible (sub-clause 2.5):

NIL

Pre-existing Intellectual Property is (sub-clause 2.13):

NOT APPLICABLE

The payments to be made to the Contractor are (sub-clause 3.1):

WITHIN 28 DAYS OF COUNCIL APPROVING A TAX INVOICE

The basis of payments to the Contractor is (sub-clause 3.1):

SUPERINTENDENT TO APPROVE PAYMENT FOR SERVICES CLAIMED.

The minimum amount of coverage under the Public Liability Policy is (sub-clause 8.2):

TEN MILLION DOLLARS

The minimum amount of coverage under the Professional Indemnity Policy is (sub-clause 8.3):

NIL

The amount of the performance security is (clause 9):

NIL