



## REQUEST FOR TENDER

<b>Request for Tender (RFT)</b>	<b>PROVISION OF TREE MAINTENANCE AND REMOVAL SERVICES</b>
---------------------------------	---

<b>Deadline:</b>	<b>2.00pm (AWST) Tuesday 1<sup>st</sup> February 2022</b>
------------------	---

<b>Address for Delivery:</b>	THE TENDER BOX Shire of Waroona 52 Hesse Street WAROONA WA 6215
<b>Postal Address:</b>	Or Chief Executive Officer Shire of Waroona PO Box 20 WAROONA WA 6215

<b>RFT Number:</b>	2021/22 - 06
--------------------	--------------

## TABLE OF CONTENTS

<b>1.</b>	<b>PRINCIPAL’S REQUEST.....</b>	<b>5</b>
1.1	CONTRACT REQUIREMENTS IN BRIEF .....	5
1.2	TENDER DOCUMENTS.....	5
1.3	DEFINITIONS.....	5
1.4	HOW TO PREPARE YOUR TENDER.....	6
1.5	CONTACT PERSONS .....	6
1.6	PRE QUALIFICATION REQUIREMENTS .....	6
1.7	TENDER BRIEFING/SITE INSPECTION.....	6
1.8	EVALUATION PROCESS.....	6
1.9	SELECTION CRITERIA .....	7
1.10	PRICE BASIS .....	8
1.11	THE PRINCIPAL’S POLICIES THAT MAY AFFECT SELECTION.....	8
1.12	CONDITIONS OF TENDERING .....	8
1.12.1	LODGEMENT OF TENDERS AND DELIVERY METHOD .....	8
1.12.2	REJECTION OF TENDERS .....	9
1.12.3	LATE TENDERS .....	9
1.12.4	ACCEPTANCE OF TENDERS.....	9
1.12.5	DISCLOSURE OF CONTRACT INFORMATION.....	9
1.12.6	ALTERNATIVE TENDERS.....	9
1.12.7	TENDER VALIDITY PERIOD .....	9
1.12.8	GENERAL CONDITIONS OF CONTRACT.....	10
1.12.9	PRECEDENCE OF DOCUMENTS.....	10
1.12.10	TENDERERS TO INFORM THEMSELVES.....	10
1.12.11	ALTERATIONS.....	10
1.12.12	RISK ASSESSMENT.....	10
1.12.13	OWNERSHIP OF TENDERS.....	10
1.12.14	CANVASSING OF OFFICIALS.....	11
1.12.15	IDENTITY OF THE TENDERER .....	11
1.12.16	TENDER OPENING .....	11
1.12.17	IN-HOUSE TENDERS .....	11
<b>2.</b>	<b>SPECIFICATION.....</b>	<b>12</b>
2.1	CONTRACT REQUIREMENTS IN BRIEF .....	12
2.2	DEFINITIONS.....	12
2.3	GENERAL .....	12
2.4	SITE INSPECTION REPORT .....	13
2.5	REQUEST FOR SERVICE.....	13
2.6	NOTICE OF SERVICE.....	14
2.7	INVOICES .....	14
2.8	UNIFORMS .....	14
2.9	LICENCES AND REGISTRATIONS .....	14
2.10	CONTROL OF CONTRACTOR’S EMPLOYEES .....	14
2.11	ACTS AND REGULATIONS .....	15
2.12	GUARATEE.....	15
2.13	QUOTATIONS.....	15

2.14	MINOR NEW WORKS .....	15
2.15	CLEANING/ REINSTATEMENT .....	15
2.16	INDUSTRY STANDARDS .....	15
2.17	SITE FACILITIES .....	15
2.18	PLANT AND EQUIPMENT.....	16
2.19	PUBLIC PROTECTION.....	16
2.20	RISK ASSESSMENT.....	16
2.21	QUANTIFIED TREE RISK ASSESSMENT.....	16
2.22	NATURE AND QUANTITY OF WORK .....	16
2.23	EXISTING SERVICES .....	17
2.24	TRAFFIC MANAGEMENT .....	17
2.25	TRAFFIC MANAGEMENT PLAN.....	17
2.26	TRAFFIC CONTROLLERS.....	18
2.27	LABOUR AND PLANT .....	18
2.28	APPROVALS AND FEES.....	19
2.29	PRINCIPAL SUPPLIED DOCUMENTS .....	19
2.30	DOCUMENTATION TO BE PROVIDED BY THE CONTRACTOR.....	19
<b>2.30.1</b>	<b>CONTRACTOR’S WORKS SCHEDULE.....</b>	<b>19</b>
<b>2.30.2</b>	<b>AS CONSTRUCTED DRAWINGS.....</b>	<b>19</b>
	NOT APPLICABLE .....	19
<b>3.</b>	<b>TENDERER’S OFFER.....</b>	<b>20</b>
3.1	OFFER FORM .....	20
3.2	TENDERER’S RESPONSE .....	21
3.3	SELECTION CRITERIA .....	23
3.4	PRICE INFORMATION .....	25
<b>4</b>	<b>APPENDIX A – SPECIAL CONDITIONS OF CONTRACT .....</b>	<b>29</b>
4.1	SPECIAL CONDITIONS .....	29
<b>5</b>	<b>APPENDIX B – SITE INSPECTION REPORT.....</b>	<b>32</b>
<b>6</b>	<b>APPENDIX C – GENERAL CONDITIONS OF CONTRACT .....</b>	<b>33</b>
6.1	CONSTRUCTION OF CONTRACT.....	35
6.2	DEFINITIONS .....	35
6.3	EVIDENCE OF CONTRACT.....	36
6.4	NOTICES .....	36
6.5	CONTRACTOR TO HAVE INFORMED ITSELF .....	36
6.6	COMPLYING WITH STATUTORY REQUIREMENTS .....	36
6.7	ASSIGNMENT AND SUBCONTRACTING .....	37
6.8	INDEMNITY.....	37
6.9	PATENT RIGHTS / COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS.....	37
6.10	SPECIFIED BRANDS OF GOODS .....	38
6.11	PRICE VARIATIONS .....	38
6.12	QUALITY OF GOODS AND SERVICES .....	39
6.13	SUPPLY OF GOODS AND SERVICES BY ORDER.....	39
6.14	DELIVERY OF GOODS AND SERVICES .....	40
6.15	EXPENSES OF DELIVERY OF GOODS.....	40
6.16	RECEIPT AND ACCEPTANCE.....	40
6.17	REJECTION AND REMOVAL OF GOODS.....	40
6.18	DEFICIENT GOODS .....	41

6.19	FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES .....	41
6.20	POWER TO ACT FOR THE PRINCIPAL.....	42
6.21	WARRANTIES .....	42
6.22	VARIATION TO CONTRACT TERMS .....	42
6.23	SPECIAL PRICING AND OFFERS .....	42
6.24	PAYMENT .....	42
6.25	SUSPENSION OF PAYMENTS .....	42
6.26	DEDUCTION OF CHARGES OR DEBTS .....	42
6.27	STAMP DUTY.....	43
6.28	GOODS AND SERVICES TAX .....	43
6.29	CUSTOMS AND EXCISE DUTIES .....	43
6.30	SETTLEMENT OF DISPUTES.....	44
6.31	TERMINATION OF CONTRACT .....	44
6.32	WAIVER.....	45
6.33	ENTIRE AGREEMENT .....	45
6.34	RIGHTS AND REMEDIES .....	45
6.35	INSURANCE.....	45
6.36	INDUSTRIAL AWARDS.....	45

# 1. PRINCIPAL'S REQUEST

## 1.1 CONTRACT REQUIREMENTS IN BRIEF

The Principal is seeking submissions from suitably competent Tenderers for the provision of tree maintenance and removal services.

The Contract provides for minor works up to an individual value of \$25,000.

The contract will commence as soon as practical as advised in the letter of acceptance issued to the successful Tenderer and will run for the period of three years from the commencement of the contract until the contract concludes 30 June 2025. The Principal will consider as set out in this contract two twelve month options to extend the term of the contract.

The Contractor will:

- Provide all Occupation Safety and Health documentation
- Complete pre-qualification OH&S induction
- Complete site induction with principal representative

A full statement of the goods and/or services required under the proposed contract appears in the Specification. The successful Tenderer will be required to enter into a Contract with the Principal.

## 1.2 TENDER DOCUMENTS

This Request for Tender is comprised of the following parts:

- (a) Part 1 – Principal's Request (read and keep this part);
- (b) Part 2 – Specification and/or plans/drawings (read and keep this part);
- (c) Part 3 – Tenderer's Offer (complete and return this part);
- (d) Part 4 – Appendix A – Special Conditions of Contract (read and keep this part); and
- (e) Part 5 – Appendix B – Site Inspection Report (read and keep this part); and
- (f) Part 6 – Appendix C – General Conditions of Contract (read and keep this part).

## 1.3 DEFINITIONS

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

<b>Attachments:</b>	The documents you attach as part of your Tender;
<b>Contractor:</b>	Means the person or persons, corporation or corporations whose Tender is accepted by the Principal, and includes the executors or administrators, successors and assigns of such person or persons, corporation or corporations;
<b>Deadline:</b>	The deadline for lodgement of your Tender;
<b>General Conditions of Contract:</b>	Means the General Conditions of Contract nominated in Part 5;
<b>Offer:</b>	Your offer to be selected to supply the Requirements;
<b>Principal:</b>	Shire of Waroona;

<b>Request:</b>	This document;
<b>Requirements:</b>	The goods and/or services requested by the Principal;
<b>Selection Criteria:</b>	The criteria used by the Principal in evaluating your Tender;
<b>Special Conditions:</b>	The additional contractual terms nominated in Part 4;
<b>Specification:</b>	The statement of Requirements that the Principal requests you to provide if selected;
<b>Tender:</b>	Completed Offer form, response to the Selection Criteria and Attachments;
<b>Tenderer:</b>	Someone who has or intends to submit an Offer to the Principal.

#### 1.4 HOW TO PREPARE YOUR TENDER

- (a) Carefully read all parts of this document.
- (b) Ensure you understand the Requirements.
- (c) Complete and return the Offer (Part 3) in all respects and include all Attachments.
- (d) Make sure you have signed the Offer Form and responded to all of the Selection Criteria.
- (e) Lodge your Tender before the Deadline.

#### 1.5 CONTACT PERSONS

Tenderers should not rely on any information provided by any person(s) other than those listed below:

##### Contract and Specifications Enquiries

Name:	<b>Murry Bracknell</b>
Title:	<b>Works Manager and Services</b>
Telephone:	<b>(08) 9733 7817</b>
Mobile:	<b>0427 772 501</b>
Facsimile:	<b>(08) 9733 1883</b>
Email:	<a href="mailto:works@waroona.wa.gov.au">works@waroona.wa.gov.au</a>

#### 1.6 PRE QUALIFICATION REQUIREMENTS

Minimum five years' experience in providing tree maintenance and removal services. Membership of applicable professional bodies will be viewed favourably.

#### 1.7 TENDER BRIEFING/SITE INSPECTION

Not applicable.

#### 1.8 EVALUATION PROCESS

This is a Request for Tender (RFT). Your Tender will be evaluated using information provided in your Tender.

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

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

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

## 1.9 SELECTION CRITERIA

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

The Principal has adopted a best value for money approach to this Request. This means that, although price is considered, the tender containing the lowest price will not necessarily be accepted, nor will the Tender ranked the highest on the qualitative criteria.

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

### 1.9.1 COMPLIANCE CRITERIA

These criteria are detailed within Part 3 of this document and will not be point scored. Each Tender will be assessed on a "Yes"/"No" basis as to whether the criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Tender from consideration.

### 1.9.2 QUALITATIVE CRITERIA

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria as detailed within Part 3 of this document. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the goods or services being purchased.

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

Failure to provide the specified information may result in elimination from the Tender evaluation process or a low score.

### 1.9.3 PRICE CONSIDERATIONS

#### CLAUSE A: WEIGHTED COST CRITERIA

The weighted price method is used where price is considered to be crucial to the outcome of the contract. The price is then assessed with quality.

Criteria	Weighting
Tendered price	50%

#### CLAUSE B: NON WEIGHTED COST CRITERIA

Not applicable.

### 1.10 PRICE BASIS

#### OPTION A: FIXED PRICES

Prices for labour, plant and equipment and the percentage mark up for materials purchased to carry out the works under this contract will be fixed for the duration of the contract. Prices for materials will vary due to various influences such as market value, quantities purchased, type and brand of materials, the prevailing conditions under which the materials will be required to perform etc. The Contractor shall, in good faith, source the best prices available given the circumstances of the job at hand. The Principal shall accept or reject such prices via the quote process as set out in the specification.

#### OPTION B: VARIABLE PRICES

Not used

### 1.11 THE PRINCIPAL'S POLICIES THAT MAY AFFECT SELECTION

The following policies may affect this Tender:

- Policy FIN009 – Purchase of Budget Items;
- Policy FIN010 – Local Purchases
- Policy CORP028 – Occupational Health and Safety Statement.
- Policy CORP021 – Risk Management Policy.
- Policy WKS017 – Street Tree Planting, Replacement, Maintenance and removal.
- Policy CORP039 – Contractors Risk and Insurance

### 1.12 CONDITIONS OF TENDERING

#### 1.12.1 LODGEMENT OF TENDERS AND DELIVERY METHOD

The Tender must be lodged by the Deadline. The Deadline for this Request is **2:00 p.m. Tuesday 1<sup>st</sup> February 2022** in Australian Western Standard Time.

The Tender is to be:

- (a) placed in a sealed envelope clearly endorsed with the Tender number and title as shown on the front cover of this Request; and
- (b) delivered by hand and placed in the Tender Box at the Shire of Waroona Administration Office, 52 Hesse Street, Waroona (by the Tenderer or the Tenderer's private agent) or sent through the mail to

Chief Executive Officer  
Shire of Waroona  
PO Box 20  
WAROONA WA 6280

**Electronic mail Tenders and Tenders submitted by facsimile will not be accepted.**



Tenderers must ensure that they have provided **Two** signed copies of their Tender (one to be marked "ORIGINAL", the other to be marked "COPY"). Any brochures or pamphlets must be attached to both the original and the copies.

Where a hard copy is requested, all copies must be bound, and the original must be unbound and clipped (not stapled). All pages must be numbered consecutively and the Response must include an index.

### 1.12.2 REJECTION OF TENDERS

A Tender will be rejected without consideration of its merits in the event that:

- (a) it is not submitted before the Deadline; or
- (b) it is not submitted at the place specified in the Request; or
- (c) if it fails to comply with any other requirements of the Request.

### 1.12.3 LATE TENDERS

Tenders received:

- (a) after the Deadline; or
  - (b) in a place other than that stipulated in this Request
- will not be accepted for evaluation.

### 1.12.4 ACCEPTANCE OF TENDERS

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

### 1.12.5 DISCLOSURE OF CONTRACT INFORMATION

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

All Tenderers will be given particulars of the successful Tenderer(s) or advising that no Tender was accepted. The principal will not provide details of tendered offers.

### 1.12.6 ALTERNATIVE TENDERS

**All Alternative Tenders MUST be accompanied by a conforming Tender.**

Tenders submitted as Alternative Tenders or made subject to conditions other than the General and Special Conditions of Contract must in all cases arising be clearly marked "ALTERNATIVE TENDER".

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

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

### 1.12.7 TENDER VALIDITY PERIOD

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

### **1.12.8 GENERAL CONDITIONS OF CONTRACT**

Tenders will be deemed to have been made on the basis of and to incorporate the General Conditions of Contract for the Supply of Goods and Provision of General Services - refer to Part 5.

### **1.12.9 PRECEDENCE OF DOCUMENTS**

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

### **1.12.10 TENDERERS TO INFORM THEMSELVES**

Tenderers will be deemed to have:

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

### **1.12.11 ALTERATIONS**

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

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

### **1.12.12 RISK ASSESSMENT**

The Principal may have access to and give consideration to:

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

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

### **1.12.13 OWNERSHIP OF TENDERS**

All documents, materials, articles and information submitted by the Tenderer as part of or in support of a Tender will become, upon submission, the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED

that the Tenderer shall be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

#### **1.12.14 CANVASSING OF OFFICIALS**

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

#### **1.12.15 IDENTITY OF THE TENDERER**

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 3 and whose execution appears on the Offer Form in Part 3 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

#### **1.12.16 TENDER OPENING**

Tenders will be opened in the Principal's offices, following the advertised deadline. All Tenderers and members of the public may attend or be represented at the opening of Tenders.

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

The Tender opening will be held at **2.00pm Tuesday 1<sup>st</sup> February 2022 (AWST)** or as soon as practicable thereafter at the Shire of Waroona Administration Offices, 52 Hesse Street, Waroona.

#### **1.12.17 IN-HOUSE TENDERS**

Prospective Tenderers are advised that the Principal will not be submitting a Tender in this instance.

## 2. SPECIFICATION

### 2.1 CONTRACT REQUIREMENTS IN BRIEF

This Contract is for the provision of all labour and plant to complete tree maintenance works which will include scheduled street tree maintenance, western power pruning and rural road pruning. These works will also include unplanned works which may include emergency callout and complete tree removal. These works will be undertaken throughout the Shire of Waroona.

Tree maintenance and removal works required by the Principal is in accordance with all nominated instructions, specifications issued by the Principal and the requirements detailed below and elsewhere in this document.

### 2.2 DEFINITIONS

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

Contractor's Representative:	Means any Officer or person duly authorised by the Contractor, in writing, to act on its behalf for the purpose of the Contract;
Principal's Representative:	Means any Officer or person duly authorised by the Principal, in writing, to act on its behalf for the purpose of the Contract;
Works or Services:	Means the Services which the Contractor is required to provide to the Principal and the Contractor under the Contract;

### 2.3 GENERAL

#### 2.3.1 SCOPE OF WORKS

The works may include but are not limited to:-

- Scheduled tree pruning
- Street tree maintenance
- Western Power tree pruning
- Tree removal
- Stump grinding
- Chipping vegetation (and removal from site to the Principal's depot)
- Provide Quantified Tree Risk Assessment
- Miscellaneous items.

#### 2.3.2 STANDARDS

To meet Australian Standards (Australian Standard 4373 – Pruning of Amenity Trees, Regulation 316A of Electricity Regulations 1947 for Personnel Electrical Safety for Vegetation Control Work Near Live Power lines)

### 2.3.3 NORMAL HOURS OF WORK

Normal hours of works shall be defined as;

- Works conducted between 6:00 am and 5:00pm Monday to Friday
- The works to be undertaken by the Contractor shall be undertaken during normal hours unless notified by the Principal in writing or unless subject to 2.3.3 Emergency Tree/Maintenance or Removal.

Any works conducted within normal hours shall be charged at the fee contained within the Price Schedule as normal hourly rate including continuation of works started on the day and continuing for no more than one hour after 5:00pm

### 2.3.4 AFTER HOURS WORKS

Any after-hours works conducted shall be at the sole discretion of the Principal.

After hours works shall be defined as;

- Public Holidays;
- Weekends;
- Hours between 5pm – 7am Monday to Friday
- After hours works shall be charged at the fee contained within the Price Schedule unless falling within normal works hours as noted in 2.3.1.

### 2.3.5 EMERGENCY TREE MAINTENANCE OR REMOVAL

Emergency tree maintenance or removal requested by the Principal shall be performed urgently unless otherwise directed by the Principal.

Were the Contractor becomes aware of any situation that, where due to its hazardous or critical nature, can be considered an emergency, the Contractor is to make the area safe and notify the Principal immediately. Where the Principal or their representative cannot be reached the Contractor will undertake to repair and/or rectify the situation and advise the Principal as soon as possible.

## 2.4 SITE INSPECTION REPORT

The Principal has conducted a Site Inspection Report as per Appendix B, which is to be used as a guide for the Safety Management Plan. The identified hazards listed are to be used as a guide only. The hazards noted are those that have been identified when inspected, and the Principal takes no responsibility for any hazards that have not been recorded. The contractor must still take responsibility and conduct a thorough site inspection and risk assessment as required under Occupational Safety and Health Act 1984 before any work can commence onsite.

## 2.5 REQUEST FOR SERVICE

No works shall be undertaken by the Contractor without a valid authorised purchase order from the Principal except in the case of an emergency which the Principal shall determine in its sole discretion. In the case or an emergency a purchase order will be raised on the next business day.

The Contractor shall conduct the works within the date and time detailed in the Principal's valid purchase order.

## 2.6 NOTICE OF SERVICE

The Principal is to arrange for the Contractor to have access to a site or premises in order for the Contractor to conduct the works in accordance with this Request and the Principal's timelines detailed in its purchase order.

An extension of time shall be granted to the Contractor to complete the works if the Principal fails to arrange for access by the Contractor to the site or premises.

The Contractor is to give adequate notice of an intention to inspect or carry out any work, of a non-urgent nature, to any building or facility.

## 2.7 INVOICES

Each invoice as a minimum will clearly provide the following details

- Site or premises details;
- Works conducted;
- The Principal's purchase order number;
- Break down of costs (labour and materials with bill of quantities)
- Approved cost and fees to be stated on invoices.
- A service report detailing any other defects to be remedied and the action required to rectify such;

## 2.8 UNIFORMS

The Contractor's employees shall wear a work uniform that displays the Contractor's logo or other form of approved identification.

The uniform is to be neat and presentable at all times.

## 2.9 LICENCES AND REGISTRATIONS

The Contractor and all staff must hold, keep and maintain all appropriate licences as required under Federal, State and Local Government legislation and will be responsible to maintain active professional certification or licensure.

## 2.10 CONTROL OF CONTRACTOR'S EMPLOYEES

The Contractor's employees and any subcontractors shall have a current Western Australian or National Police clearance.

As far as practical, the Contractor shall use the same personnel for all work at the site.

The Contractor shall at all times maintain work practices, procedures and standards to ensure the safety of its employees and full compliance with all Commonwealth and State statutory requirements.

All persons shall use all appropriate personnel safety equipment required for each task.

The Contractor shall engage only the minimum number of staff to work in any building at one time.

The Contractor and all personnel must be experienced and competent operators. The Principal has the right to reject any Contractor's personnel without cause.

## 2.11 ACTS AND REGULATIONS

The Contractor shall comply with the relevant Principal's policies and guidelines, all relevant Commonwealth and State laws and all Occupation Health and Safety regulations.

All Works must be carried out in accordance with the relevant Australian Standards that may apply to works under this contract.

## 2.12 GUARATEE

All Works carried out by the Contractor shall be guaranteed for a minimum of twelve months from completion of the Works. All Works must be completed within a reasonable time, to the appropriate Australian Standards and to a high tradesman-like standard of workmanship.

## 2.13 QUOTATIONS

All quotations and estimates shall include allowances for labour, plant, Contractor's mark up, removal of all rubbish and redundant vegetation from site with any pruning mulch to be delivered to the Principal's depot or approved stockpile, any overtime considered necessary and any GST applicable.

## 2.14 MINOR NEW WORKS

Upon request of the Principal the Contractor will be required to submit quotes for minor works up to the value of \$25,000 (ex GST).

Upon request of the Principal the Contractor will be required to submit quotes for minor works exceeding the value of \$25,000 (ex GST). The Principal may accept the Contractor's quotation or may elect to engage other contractors to undertake this work should the quotation not be acceptable for any reason.

## 2.15 CLEANING/ REINSTATEMENT

While conducting the requirements of this Request the Contractor shall keep the site or premises of the Principal in a manner that is safe and clean to a standard that is acceptable to the Principal.

Upon completion of any Works the Contractor shall remove any materials, equipment, or rubbish from any site or premises of the Principal to the satisfaction of the Principal.

The Contractor is responsible for the re-instatement of all existing infrastructure and surfaces disturbed by the Contractor during the course of his works. The re-instatement shall return, to the satisfaction of the Principal, the disturbed area and/or infrastructure to the condition that it was prior to any works occurring. If required a suitably qualified tradesman shall be engaged by the Contractor to ensure that reinstatement occurs to the required standard.

In the instance the Contractor feels that the works cannot be undertaken without significant damage to existing infrastructure or landscaping then reinstatement shall negotiated with the Principal prior to the commencement of the works.

## 2.16 INDUSTRY STANDARDS

The Contractor shall provide advice to the Principal on any alteration to the maintenance procedures required to meet the industry recommended standards.

## 2.17 SITE FACILITIES

The Contractor shall be responsible for the provision of all normal facilities for the proper performance of the work under the contract including but not limited to:

- access to site;

- storage areas;
- water, light and power supplies;
- sanitary conveniences;
- statutory amenities for drinking water, messing and changing;
- storage of tools;
- first aid and safety measures; and any additional facilities required.

## 2.18 PLANT AND EQUIPMENT

All plant and equipment shall be of high quality and for commercial use and shall conform to the specification and appropriate current Australian Standards specification and be the most suitable for the application proposed.

## 2.19 PUBLIC PROTECTION

Contractors shall report all hazards that occur whilst undertaking contract works to the Principal immediately.

Contractors shall have procedures in place to assess, record, report and investigate hazards that occur on, or to and from, the worksite.

Contractors shall keep a register of all hazard reporting.

Contractors shall ensure they, their staff and their subcontractors know the hazards associated with the specific contract works and worksite/s and that other people are adequately warned of potential hazards through proper use of signs, barriers or by other means as appropriate; and in accordance with relevant legislation

## 2.20 RISK ASSESSMENT

Prior to the commencement of contract work, Contractors shall register all safe work method statements and risk assessments, with specifications of all risk controls that have been implemented to the contract manager or onsite contact person.

Completed Take 5 documentation for each job undertaken will need to be submitted by email prior to the commencement of the job.

## 2.21 QUANTIFIED TREE RISK ASSESSMENT

The contractor will provide Quantified Tree Risk Assessment (QTRA) services or equivalent services. The Contractor shall advise the Principal of the name of the proposed assessor for approval with a signed declaration that they are appropriately qualified.

All QTRA will be in accordance with all nominated instructions, specifications issued by the Principal and the details provided.

The Contractor must hold, keep and maintained all appropriate accreditation as required to carry out QTRA.

## 2.22 NATURE AND QUANTITY OF WORK

The Principal does not give any assurance as to the nature or quantity of work that could be allocated other than providing an indicative quantity of work based on the previous contract period. Depending on the nature and the type of work services may be sourced from more than one Contractor. The Principal, if the need arises, reserves the right to seek services from providers other than those forming part of this Contract. (Reference: 3.4.2 Price Schedule).



## 2.23 EXISTING SERVICES

Where, within the vicinity of the works being performed, there are existing services or facilities, the Contractor shall protect and maintain the same throughout the performances of the works.

## 2.24 TRAFFIC MANAGEMENT

The Contractor shall allow for all traffic control measures to maintain the roads and pathways in a safe trafficable condition however for complex traffic management the Principal will consider other means of providing an appropriate traffic management service.

Should complex Traffic Management be required, the Contractor will be required to provide or engage accredited traffic management services but shall not do so until approval is given by the Principal. The Principal may consider providing traffic management for complex works via the Principal's traffic management contractor.

## 2.25 TRAFFIC MANAGEMENT PLAN

Standards and Codes of practice in this Specification are listed in full below, whilst being cited in the text in the abbreviated form or code indicated.

### **Main Roads Western Australia Code of Practice**

Main Roads Western Australia Traffic Management for Roadworks Code of Practice April 2011. The variations to requirements of AS 1742.3 included in this code shall apply.

### **Australian Standards**

AS 1742.3 2009 –Traffic Control for Works on Roads.

AS 1742.14 2014 - Traffic signals

AS 1743 2018 - Road signs specifications

AS 1744 2015 - Standard alphabets for road signs

AS/NZS 1906.1: 2017 - Retro reflective materials and devices for road traffic control purposes

AS/NZS 1906.1: 2017 - Retro reflective materials.

AS/NZS 1906.4: 2010 - High visibility materials for safety garments.

AS/NZS 3845.1: 2015 - Road safety barrier systems

AS 4191 2015 - Portable traffic signal systems

AS/NZS 4192 2006 - Illuminated flashing arrow signs

AS/NZS 4602.1 2011 - High Visibility Safety Garments

ISO 31000:2018 – Risk Management Principles and Guidelines.

The Contractor shall upon request prepare a Traffic Management Plan which results in a safe working environment for personnel and road users, while minimising disruption to traffic.

The Contractor shall submit, for the Principal's approval, a Traffic Management Plan prepared by an accredited person, in accordance with AS 1742.3-2009 and MRWA's Code of Practice.

Preparation for the Traffic Management Plan must include a recorded site visit by a person holding a current Advanced Worksite Traffic Management (AWTM) accreditation, representing the Contractor.

A person representing the Contractor, accredited as an AWTM, must be available to conduct on-site inspections and/or compliance audits within a four (4) hour period of being contacted.

All variations from the requirements of AS1742.3 must be approved by an accredited Road Traffic Manager (RTM), and any costs associated with the variation(s) shall be borne by the Contractor.

The Traffic Management Plan shall be prepared in accordance with the requirements of this Specification.

The Traffic Management Plan shall be submitted to the Principal for approval, a minimum of 24 hours prior to works commencing.

A copy of the approved Traffic Management Plan shall be kept on site at all times and be used to check the arrangement and maintenance of traffic control devices.

The Traffic Management Plan shall take into consideration peak traffic flows and the impact of proposed traffic management activities on traffic congestion. Where traffic management is likely to cause congestion at peak traffic flow times on primary and distributor roads, the Contractor shall alter start and finish times. These alterations to start and finish times shall be included in the Traffic Management Plan submitted to the Principal for approval, prior to works commencing.

## 2.26 TRAFFIC CONTROLLERS

The Contractor shall ensure that all clauses under AS 1742.3-2009 Section 4.1 are adhered to, with the following additions:

- The Contractor shall advise the Principal of the names of proposed traffic controllers with a signed declaration that they are appropriately trained in the duties of traffic controllers in accordance with AS 1742.3-2009.
- Traffic Controllers must report to the Principal at the start of each day, to be briefed on the working methods to be used and to ensure lines of communication between the Traffic Controllers and personnel on site are established.
- At night, and in poor light, the Principal may direct that flood lighting illuminate the traffic controller and work area adjacent. The flood lighting shall be positioned above the work area and shall be directed downwards and slightly inclined to illuminate the face of the STOP/SLOW bat. The cost of providing flood lighting shall be borne by the Principal.
- Where traffic volumes are high, and the Traffic Guidance Scheme is complex, the Principal may direct that an additional controller over the number required to operate STOP/SLOW bats be provided to ensure that signs and devices are maintained in position, even if the period of operation of the Traffic Guidance Scheme is less than 4 hours.
- All Traffic Controllers employed by the Contractor are to be provided with all the required equipment necessary to perform their role including hand held two way radios. This cost shall be borne by the Contractor.

### Number of Traffic Controllers

The number of Traffic Controllers required for each Traffic Management Plan shall be agreed with the Principal prior to commencement. The number of Traffic Controllers to set up and maintain the Traffic Management need not be constant for each day or part of a day, and the Principal may direct that additional Controllers be made available during set up, take down or for short term traffic direction during the course of the day.

## 2.27 LABOUR AND PLANT

The Contractor shall provide all labour, plant, equipment, tools and everything else necessary for the Works.

The Contractor shall take upon itself the whole risk of executing, completing and maintaining the Works in accordance with these Conditions, the drawings and specification (if any) and such orders as the Principal may issue.

The Contractor shall be solely liable for loss or damage to the Works from any cause whatsoever (except loss or damage caused by any negligent act or omission of the Principal, the Principal or the employees, professional consultants or agents of the Principal) until the Principal has certified that the whole of the Works have been satisfactorily completed by the Contractor.

## **2.28 APPROVALS AND FEES**

The Contractor shall be responsible for the payment of all fees associated with the work in connection with applications, inspections and approvals, such monies to be recovered from the Principal in subsequent progress payment claims. The contractor shall obtain approval and submit evidence of approvals to the Principal.

## **2.29 PRINCIPAL SUPPLIED DOCUMENTS**

The Principal may, where possible, make available to the Contractor drawings and documents detailing existing installations. Notwithstanding, the Principal accepts no responsibility for the accuracy of such drawings. The Contractor shall ensure all due diligence and checking has been undertaken on site prior to commencement of any works.

The Contractor shall make good at his own expense any defect due to a discrepancy between a drawing and/or document and the existing conditions on site that has not been brought to the attention of the Principal prior to the commencement of the works.

## **2.30 DOCUMENTATION TO BE PROVIDED BY THE CONTRACTOR**

### **2.30.1 Contractor's Works schedule**

The contractor once work has been allocated and a works order provided by the Principal shall commit to an agreed schedule for the works to be completed.

### **2.30.2 As Constructed Drawings**

Not Applicable

### 3. TENDERER’S OFFER

#### 3.1 OFFER FORM

The Chief Executive Officer  
Shire of Waroona  
52 Hesse Street  
**WAROONA WA 6215**

I/We \_\_\_\_\_  
(BLOCK LETTERS)

of \_\_\_\_\_  
(ADDRESS)

ABN/GST Status: \_\_\_\_\_ ACN (if any): \_\_\_\_\_

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

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

#### **In response to RFT 2021/22-06- PROVISION OF TREE MAINTENANCE AND REMOVAL SERVICES**

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

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

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

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

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

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

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

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

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

Witness Signature: \_\_\_\_\_

Name of witness: (BLOCK LETTERS): \_\_\_\_\_

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

## 3.2 TENDERER'S RESPONSE

The following checklist has been provided to assist you with your submission. Where it is necessary to provide additional information please ensure that all documents are clearly marked with the relevant attachment title to assist the evaluation panel with their assessment.

**NOTE:** All pages within Part 3 are to be completed and returned to the Principal as they form part of your Tender submission.

### 3.2.1 ORGANISATIONAL PROFILE

Attach a copy of your organisation structure and provide background information on your company and label it <b>"Organisation Structure"</b> .	<b>"Organisation Structure" Attachment 1</b> Tick if attached <input type="checkbox"/>
If companies are involved, attach their current ASIC company extracts search including latest annual return and label it <b>"ASIC Company Extracts"</b> .	<b>"ASIC Company Extracts" Attachment 2</b> Tick if attached <input type="checkbox"/>

### 3.2.2 REFEREES

Attach details of your referees, and label it <b>"Referees"</b> . You should give examples of similar work provided for your referees where possible.	<b>"Referees" Attachment 3</b> Tick if attached <input type="checkbox"/>
---	---

### 3.2.3 AGENTS

Are you acting as an agent for another party?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, attach details (including name and address) of your principal and label it <b>"Agents"</b> .	<b>"Agents" Attachment 4</b> Tick if attached <input type="checkbox"/>

### 3.2.4 TRUSTS

Are you acting as a trustee of a trust?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, in an attachment labelled <b>"Trusts"</b> : (a) give the name of the trust and include a copy of the trust deed (and any related documents); and (b) if there is no trust deed, provide the names and addresses of beneficiaries.	<b>"Trusts" Attachment 5</b> Tick if attached <input type="checkbox"/>

### 3.2.5 SUBCONTRACTORS

Do you intend to subcontract any of the Requirements?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, in an attachment labelled <b>"Subcontractors"</b> , provide details of the subcontractor(s) including: (a) the name, address and the number of people employed; and (b) the Requirements that will be subcontracted.	<b>"Subcontractors" Attachment 6</b> Tick if attached <input type="checkbox"/>

**3.2.6 CONFLICTS OF INTEREST**

Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with and label it <b>“Conflicts of Interest”</b> .	<b>“Conflicts of Interest” Attachment 7</b> Tick if attached <input type="checkbox"/>

**3.2.7 FINANCIAL POSITION**

Are you presently able to pay all your debts in full as and when they fall due?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If you are awarded the Contract, will you be able to fulfil the Requirements from your own resources or from resources readily available to you and remain able to pay all of your debts in full as and when they fall due?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
In order to demonstrate your financial ability to undertake this contract, in an attachment labelled <b>“Financial Position”</b> include a profit and loss statement and the latest financial return for you and each of the other proposed contracting entities, together with a list of financial referees from your bank and/or accountant.	<b>“Financial Position” Attachment 8</b> Tick if attached <input type="checkbox"/>

**3.2.8 QUALITY ASSURANCE**

The Tenderer should have internal quality assurance systems in place, ideally conforming to ISO 9001. Does your organisation have any quality assurance or quality management systems in place?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
If you propose to subcontract, does your subcontractor have a “third party” quality management system in place?	<input type="checkbox"/> Yes / <input type="checkbox"/> No
Supply evidence or details of your quality assurance position and where relevant of your supplier’s or subcontractor’s position, in an attachment labelled <b>“Quality Assurance”</b> .	<b>“Quality Assurance” Attachment 9</b> Tick if attached <input type="checkbox"/>

### 3.2.9 INSURANCE COVERAGE

The insurance requirements for this Request are stipulated in the Special Conditions. Tenderers are to supply evidence of their insurance coverage in a format as outlined below or in an attachment labelled “ <b>Insurance Coverage</b> ”. A copy of the Certificate of Currency is to be provided with this Tender response.				<p style="text-align: center;"><b>“Insurance Coverage” Attachment 10</b></p> <p>Tick if attached <input type="checkbox"/></p>
Type	Insurer – Broker	Policy Number	Value (\$)	Expiry Date
Public Liability				
Workers Compensation and Rehabilitation (WCA)				
Motor Vehicle Insurance				

### 3.3 SELECTION CRITERIA

#### 3.3.1 COMPLIANCE CRITERIA

Please select with a Yes or No whether you have complied with the following compliance criteria:

Description of Compliance Criteria	
(a) Compliance with the Specification contained in the Request.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(b) Compliance with the Conditions of Responding contained in this Request.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(c) Compliance with all necessary Licences and Registrations.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(d) Compliance with the Delivery Date.	<input type="checkbox"/> Yes / <input type="checkbox"/> No
(e) Compliance with and completion of the Price Schedule.	<input type="checkbox"/> Yes / <input type="checkbox"/> No

#### 3.3.2 QUALITATIVE CRITERIA

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

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

<p><b>A) Relevant Experience</b></p> <p>Describe your experience in completing /supplying similar Requirements. Respondents must, as a minimum, address the following information in an attachment and label it “<b>Relevant Experience</b>”:</p> <p>(a) Provide details of similar works;</p> <p>(b) Demonstrate competency and proven track record in the delivery of the requirements; and</p> <p>(c) Demonstrate an understanding of the requirements.</p>	<p style="text-align: center;"><b>Weighting</b></p> <p style="text-align: center;"><b>10%</b></p>	
	<p style="text-align: center;"><b>“Relevant Experience”</b></p>	<p style="text-align: center;">Tick if attached</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p><b>B) Key Personnel skills and experience</b></p> <p>Respondents should provide as a minimum information of proposed personnel to be allocated to this project, such as:</p> <p>(a) Their role in the performance of the Contract;</p> <p>(b) Curriculum vitae;</p> <p>(c) Membership to any professional or business association;</p> <p>(d) Qualifications, with particular emphasis on experience of personnel in projects of a similar requirement; and</p> <p>(d) Any additional information.</p> <p>Supply details in an attachment and label it “<b>Key Personnel</b>”.</p>	<p style="text-align: center;"><b>Weighting</b></p> <p style="text-align: center;"><b>10%</b></p>	
	<p style="text-align: center;"><b>“Key Personnel”</b></p>	<p style="text-align: center;">Tick if attached</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p><b>C) Respondents Resources</b></p> <p>Respondents should demonstrate their ability to supply and sustain the necessary:</p> <p>(a) Plant, equipment and materials;</p> <p>(b) Any contingency measures or back up of resources including personnel (where applicable);</p> <p>As a minimum, Respondents should provide a current commitment schedule and plant/equipment schedule in an attachment and label it “<b>Respondents Resources</b>”.</p>	<p style="text-align: center;"><b>Weighting</b></p> <p style="text-align: center;"><b>10%</b></p>	
	<p style="text-align: center;"><b>“Respondents Resources”</b></p>	<p style="text-align: center;">Tick if attached</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p><b>D) Demonstrated Understanding</b></p> <p>Respondents should detail the process they intend to use to achieve the Requirements of the Specification. Areas that you may wish to cover include:</p> <p>(a) The process for the delivery of the goods/services;</p> <p>(b) A demonstrated understanding of the specifications/ scope of works.</p> <p>(c) Local knowledge</p> <p>Supply details and provide an outline of your proposed methodology in an attachment labelled “<b>Demonstrated Understanding</b>”.</p>	<p style="text-align: center;"><b>Weighting</b></p> <p style="text-align: center;"><b>10%</b></p>	
	<p style="text-align: center;"><b>“Demonstrated Understanding”</b></p>	<p style="text-align: center;">Tick if attached</p> <p style="text-align: center;"><input type="checkbox"/></p>
<p><b>E) Value Adding Proposal</b></p> <p>An opportunity is provided to add extra value to your response through means other than price reduction or improvements to specification. A proposal to provide “value adding” will be assessed and scored based on the benefits it will provide to the Principal. The form of value adding is unrestricted, but as an example, may include areas such as flexibility of service access to various other products, services or supply of new products &amp;/or materials.</p> <p>Supply details and label it “<b>Value Added Proposal</b>”.</p>	<p style="text-align: center;"><b>Weighting</b></p> <p style="text-align: center;"><b>10%</b></p>	
	<p style="text-align: center;"><b>“Value Adding ”</b></p>	<p style="text-align: center;">Tick if attached</p> <p style="text-align: center;"><input type="checkbox"/></p>



### 3.4 PRICE INFORMATION

Tenderers **must** complete the following “Price Schedule”. Before completing the Price Schedule, Tenderers should ensure they have read this entire Request.

#### 3.4.1 DISCOUNTS

Are you prepared to allow a discount for prompt settlement of accounts?	Yes / No
If you are offering different discounts for different periods, or other discounts such as volume discounts, detail them in an attachment labelled “ <b>Discounts</b> ”.	<p style="text-align: center;"><b>“Discounts”</b> <b>Attachment 13</b></p> <p>Tick if attached <input type="checkbox"/></p>

### 3.4.2 PRICE SCHEDULE

#### SCHEDULE OF RATES

The Principal offers no guarantee as to the quantity of the services required. Tenderers are to provide a schedule of rates for each resource it proposes to allocate to projects for the duration of the contract. Rates to be fixed and firm for the contact period commencing as advised in the letter of acceptance issued to the successful Tenderer and will run for the period until the contract concludes 30th June 2025. The Principal will consider as set out in this contract a review of rates on any subsequent application for extension of contact.

Quantities are indicative and may be subject to change. An estimated breakdown is listed below and is based on a 40hour week. The Principal conducts annual street tree pruning, Western Power 30 day notice street tree pruning and street tree removal/ pruning on as required basis.

- Annual Street and Verge Pruning (Town & Rural) – 4-6 Weeks (230hrs)
- Western Power Street Tree Pruning – 2-3 Week (90hrs)
- Normal hours 6:00am – 5:00pm

*(A separate attachment giving rates and prices can be provided but it must be in the same format as this schedule)*

<b>1. DESCRIPTION - NORMAL HOURLY RATES</b>		<b>Quantity</b>	<b>Normal Hourly Rate (excl GST)</b>	<b>(\$) GST</b>	<b>Hourly Rate (Including GST)</b>
<i>Normal hourly labour rates charged for Normal hours worked (2.3.1 Normal hours of Work)</i>					
	<b>Street Tree Pruning – Crew</b>				
1.a	Labourer/ Pruner <i>-Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			
1.b	Leading Hand/ Supervisor <i>Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			
	<b>Western Power Pruning – Crew</b>				
1.c	Labourer/ Pruner <i>- Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			
1.d	Leading Hand/ Supervisor <i>Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			

<b>1.2 TRAFFIC MANAGEMENT</b>			<b>Hourly Rate (excl GST)</b>	<b>(\$) GST</b>	<b>Hourly Rate (Including GST)</b>
<i>(Traffic Management)</i>					
1.2.a	One personnel, one vehicle and all standard signs, cones and bollards to install/remove/amend and maintain worksite traffic control	1			
1.2.b	Additional Traffic Controllers	1			

## After Hours 5:00pm – 6:00am week days, weekends and Public holidays

<b>2. DESCRIPTION- AFTER HOURS RATES</b> <i>After hours hourly labour rates for afterhours works (2.3.2 Afterhours Works)</i>		<b>Quantity</b>	<b>Normal Hourly Rate (excl GST)</b>	<b>(\$) GST</b>	<b>Hourly Rate (Including GST)</b>
	<b>Street Tree Pruning – Crew</b>				
2.a	Labourer/ Pruner <i>-Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			
2.b	Leading Hand/ Supervisor <i>Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			
	<b>Western Power Pruning – Crew</b>				
2.c	Labourer/ Pruner- <i>Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			
2.d	Leading Hand/ Supervisor <i>Including hand tools, equipment (Chainsaws, pole saw, etc.) charge</i>	1			

<b>3. EMERGENCY CALL-OUT CHARGE</b> <i>(2.3.3 Emergency Tree maintenance or Removal)</i>		<b>Quantity</b>	<b>Charge per call-out (excl GST)</b>	<b>(\$) GST</b>	<b>Charge (Including GST)</b>
	Labourer/ Pruner <i>-Including hand tools, equipment (Chainsaws, pole saw, etc.) charge. Minimum of 3 hours call out.</i>	1			

4. DESCRIPTION – EQUIPMENT		Quantity	Hourly Rate (excl GST)	(\$) GST	Hourly Rate (Including GST)
	<b>Equipment Supplied</b>				
3.a	Chipper (Min 15" x 20" Feed Mouth)	1			
3.b	Stump Grinder (Medium to Large)	1			
3.c	Cherry Picker (up to 19m)	1			
3.d	Cherry Picker (19m and above)				
3.e	Self-propelled articulated boom lift	1			
3.f	Support Vehicle	1			
6.g	Tip Truck	1			

4.1 DESCRIPTION – UNSPECIFIED EQUIPMENT		Quantity	Hourly Rate (excl GST)	(\$) GST	Hourly Rate (Including GST)
	<b>Unspecified Equipment</b>				
3.1.a		1			
3.1.b		1			
3.1.c		1			

5. DESCRIPTION – QTRA TREE RISK ASSESSMENTS <i>(Onsite inspection &amp; written report to Council)</i>		Quantity	Charge Per Report (excl GST)	(\$) GST	Per Report (Including GST)
Onsite Quantified Tree Risk Assessment (QTRA) inspection and written report or equivalent.  <i>Report to be provided electronically.</i>		1			

## 4 APPENDIX A – SPECIAL CONDITIONS OF CONTRACT

### 4.1 SPECIAL CONDITIONS

#### 4.1.1 PERIOD OF CONTRACT AND TERMINATION

The Contract will be in force for the period commencing as soon as practical as advised in the letter of acceptance issued to the successful Tenderer and will run for the period until the contract concludes 30th June 2025.

The Contractor shall have two twelve month options to extend the term, commencing on the 1st July 2025 and subsequently the anniversary of the first extension of the contract. The ability of the Contractor to exercise the option shall be conditional upon the Contractor not having breached this contract in any respect during the contract period. The Contractor will have no option to extend the contract at either the end of the initial contract period or the subsequent one year extension unless an extension to the contract is offered in writing by the Principal. The Contractor shall forward a request in writing to the Principal requesting that the Principal consider a request to extend the contract by the prevailing extension. Given that the termination date of the resultant contract is likely to be June 30<sup>th</sup>, the contract review process shall commence no later than two months prior to the contract termination date so that the Principal has sufficient time to review the proposal to extend the contract.

Provided that an extension of the contract or any change in the rates Payable shall occur in the sole, absolute discretion of the Principal.

#### 4.1.2 FINANCIAL OBLIGATION

4.1.2.1 For the first term of the contract providing the Contractor observes and performs the Contractor's obligations under this contract the Principal shall pay rates to the contractor as set out in the Price Schedule of the contract for prescribed works under the contract.

4.1.2.2 The rates Payable by the Principal to the Contractor (Price Schedule) shall be reviewed as part of the Contractor's option to extend the term of the contract (refer to Period of Contract and Termination 4.1.1)

The review may take into account:

- (a) Any increase or decrease in the Perth Consumer Price Index in the financial year prior to the review date
- (b) Any additions or deletions in respect of the services undertaken by the Contractor pursuant to this Contract
- (c) Any increase or decrease in the volume of works in any given year;

Provided that any change in the rates Payable shall occur in the sole, absolute discretion of the Principal.

Given that the termination date of the resultant contract is likely to be 1 July, the review process shall commence no later than two months prior to the review date so that the Principal has sufficient time to incorporate any changes in costs into its annual budget with the changes in rates to take effect at the anniversary date.

### 4.1.2 INSURANCES

The Contractor shall be solely responsible for the services and shall bear the sole risk for any loss or damage whether to any person or property caused by or resulting from, directly or indirectly, any act or omission of the Contractor or any default or negligence by the Contractor irrespective of any negligence, default or breach of statutory duty on the part of the Council.

The Contractor and its subcontractor(s) (if any) will be required to effect and maintain:

- (a) Public liability insurance in the sum of at least \$20,000,000 (twenty million dollars) in respect of any one occurrence and for an unlimited number of claims.
- (b) Workers Compensation or Personal Accident Insurance cover as required by law (whichever may apply).
- (c) Motor Vehicle insurance in the sum of full replacement of the vehicle including all accessories, service agreements and warranties, to be supplied in respect of any one occurrence and for an unlimited number of claims.
- (d) Professional Indemnity - Where the contract involves the provision of professional services and/or advice, the contractor is to take out a Professional Indemnity insurance policy with an insurer approved by the Australian Prudential Regulation Authority (APRA) as per their list of insurers Authority to Conduct new or renew Insurance Business in Australia. The limit of Liability will not be less than \$2 million.
- (e) Product Liability – Where a contractor involves the provision of produces the contractor is to provide a minimum limit of liability of \$10 million in respect of any one occurrence and for an unlimited number of claims
- (f) If the Contractor or any Sub-Contractor employs any person or persons to perform the services or any part thereof, documentation certifying current workers compensation insurance, public liability insurance and third party property damage insurance to the specifications and criteria required by the contractor must be provided to Council before commencement of services.

Or satisfy the Shire of Waroona of its ability to meet obligations arising from the indemnity provisions of the contract. The contractor shall provide council, prior to the commencement date, certificates of currency for all insurances that provides evidence of validity and currency of the insurance policies; such approval shall not be unreasonably withheld.

The successful contractor shall indemnify and keep indemnified the Local Government against:

- Any liability under the *Workers' Compensation and Injury Management Act 1981*, and its subsequent amendments;
- Any other law in force or which during the term of this Contract may come into force, under which any person is entitled to claim or sue for compensation or recover any damages from the Local Government.
- Further to these Special Conditions, *All engagements will be subject to the Shire of Waroona's General Conditions of Contract for Provision of Minor Works and Services. A copy of these Conditions may be viewed upon request.*

### **4.1.3 COMPLIANCE WITH LEGISLATION ETC**

For as long as the Contractor shall continue to perform the Services hereunder the Contractor shall at all times at its own cost and expense observe, perform and comply with all Acts of both Federal and State Parliaments and all regulations, local laws, ordinances or orders made thereunder and the lawful requirements of any public municipal or other authority so far as the same may affect or apply to the Consultant or the Services and the Consultant shall indemnify and keep indemnified the Principal from and against all actions, suits, costs, charges, claims and demands in respect thereof.

With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the work to be done in the performance of the Services.

### **4.1.4 SITE INSPECTION REPORT**

Please note the principle has conducted a Site Inspection Report as per Appendix B, which is to be used as a guide for the Safety Management Plan. The identified hazards listed are to be used as a guide only. The hazards noted are those that have been identified when inspected, and the Shire of Waroona takes no responsibility for any hazards that have not been recorded. The contractor must still take responsibility and conduct a thorough site inspection and risk assessment as required under Occupational Safety and Health Act 1984 before any work can commence onsite.

### **4.1.5 PRICE**

Prices tendered are to as per clause 3.4.2 Price Schedule All prices for goods and/or services offered are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST). Unless otherwise indicated prices tendered must include delivery unloading, packing, marking and all applicable levies, duties, taxes and charges. Any charge not stated in the tender as being additional will not be allowed as a charge for any transaction under any resultant Contract.

## 5 APPENDIX B – SITE INSPECTION REPORT

Prior to the calling of Tenders and or Quotations the Principal will complete a Site Inspection Report, which purpose is to make the Tenderer/Contractor aware of any recorded hazards prior to submitting their Tender and/or Quotation.

This Site Inspection Report is to be added to the Tender and or Quote document as an attachment.

Job Name: Tree maintenance and removal

Location: Various locations with the Shire of Waroona

Inspected By: Murry Bracknell

Date: 25/10/2021

1. ASSESS THE AREA – Does the work site involve any of the following?			
Identify Hazard:	Answer		
Is there a risk of a person falling two metres or more?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the work involve demolition?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve the disturbance or removal of asbestos?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve structural alterations that require temporary support to prevent collapse?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve confined spaces?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve excavation to a depth greater than 1.5 meters?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve the construction of tunnels?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work site situated near pressurized gas pipes, including consumer mains?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work site situated near chemicals, fuel or refrigerant lines?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work near power lines (overhead or underground)?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the work site contaminated?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Does the work involve tilt up and pre-cast concrete?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Is the work site on or adjacent to roadways or railways?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Does the work involved any movement of powered mobile plant?	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	
Is the work site in, over or adjacent to water or other liquids where there is a risk of drowning?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No	
Other:	<input type="checkbox"/> Yes	<input type="checkbox"/> No	

2. FIND THE ENERGIES – Look up / Down / Beside / Inside <input checked="" type="checkbox"/> <input checked="" type="checkbox"/>							
Will the contractor be exposed to?							
1. Vehicles	<input checked="" type="checkbox"/>	Vehicle – person	<input checked="" type="checkbox"/>	Vehicle - Over edge	<input checked="" type="checkbox"/>	Vehicle-jolt-jar	<input type="checkbox"/>
2. Gravity	<input checked="" type="checkbox"/>	People falling/tripping	<input checked="" type="checkbox"/>	Objects falling	<input checked="" type="checkbox"/>	Geotechnical	<input type="checkbox"/>
3. Human	<input checked="" type="checkbox"/>	Lifting	<input checked="" type="checkbox"/>	Pushing	<input checked="" type="checkbox"/>	Pulling	<input checked="" type="checkbox"/>
4. Electrical	<input checked="" type="checkbox"/>	Hand held equipment.	<input type="checkbox"/>	High voltage	<input checked="" type="checkbox"/>	Overhead wires.	<input checked="" type="checkbox"/>
5. Mechanical	<input checked="" type="checkbox"/>	Caught in	<input checked="" type="checkbox"/>	Caught between.	<input checked="" type="checkbox"/>	Struck by	<input checked="" type="checkbox"/>
6. Vibration	<input type="checkbox"/>	Noise	<input checked="" type="checkbox"/>	Hand – arm	<input checked="" type="checkbox"/>	Whole body	<input type="checkbox"/>
7. Chemical	<input checked="" type="checkbox"/>	Liquids	<input checked="" type="checkbox"/>	Vapours	<input checked="" type="checkbox"/>	Solids	<input type="checkbox"/>
8. Radiation	<input checked="" type="checkbox"/>	Sunlight	<input checked="" type="checkbox"/>	Radioactive Source	<input type="checkbox"/>		<input type="checkbox"/>
9. Flying Objects.	<input checked="" type="checkbox"/>	Projectiles	<input checked="" type="checkbox"/>		<input type="checkbox"/>		<input type="checkbox"/>
10. Other	<input type="checkbox"/>	Bites/stings	<input checked="" type="checkbox"/>	Sharp Edges	<input checked="" type="checkbox"/>	Dust	<input type="checkbox"/>

*Disclaimer: The Identified Hazards in this document are to use as a guide only for the Tenderer/Contractor to prepare a Safety Management Plan. The hazards noted are those that have been identified when inspected, and The Shire of Waroona takes no responsibility for any hazards that have not been recorded. The Contactor must still take responsibility and conduct a thorough site inspection and risk assessment as required under Occupational Safety and Health Act 1984 before any work can commence onsite as conditions such as weather, environment and personnel etc can have an impact.*



## 6 APPENDIX C – GENERAL CONDITIONS OF CONTRACT

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

## TABLE OF CONTENTS

<b>6</b>	<b>APPENDIX C – GENERAL CONDITIONS OF CONTRACT .....</b>	<b>33</b>
6.1	CONSTRUCTION OF CONTRACT .....	35
6.2	DEFINITIONS.....	35
6.3	EVIDENCE OF CONTRACT .....	36
6.4	NOTICES .....	36
6.5	CONTRACTOR TO HAVE INFORMED ITSELF .....	36
6.6	COMPLYING WITH STATUTORY REQUIREMENTS.....	36
6.7	ASSIGNMENT AND SUBCONTRACTING .....	37
6.8	INDEMNITY .....	37
6.9	PATENT RIGHTS / COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS.....	37
6.10	SPECIFIED BRANDS OF GOODS .....	38
6.11	PRICE VARIATIONS .....	38
6.12	QUALITY OF GOODS AND SERVICES .....	39
6.13	SUPPLY OF GOODS AND SERVICES BY ORDER .....	39
6.14	DELIVERY OF GOODS AND SERVICES .....	40
6.15	EXPENSES OF DELIVERY OF GOODS .....	40
6.16	RECEIPT AND ACCEPTANCE .....	40
6.17	REJECTION AND REMOVAL OF GOODS .....	40
6.18	DEFICIENT GOODS.....	41
6.19	FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES .....	41
6.20	POWER TO ACT FOR THE PRINCIPAL .....	42
6.21	WARRANTIES .....	42
6.22	VARIATION TO CONTRACT TERMS.....	42
6.23	SPECIAL PRICING AND OFFERS .....	42
6.24	PAYMENT.....	42
6.25	SUSPENSION OF PAYMENTS .....	42
6.26	DEDUCTION OF CHARGES OR DEBTS .....	42
6.27	STAMP DUTY.....	43
6.28	GOODS AND SERVICES TAX .....	43
6.29	CUSTOMS AND EXCISE DUTIES .....	43
6.30	SETTLEMENT OF DISPUTES .....	44
6.31	TERMINATION OF CONTRACT .....	44
6.32	WAIVER .....	45
6.33	ENTIRE AGREEMENT.....	45
6.34	RIGHTS AND REMEDIES .....	45
6.35	INSURANCE.....	45
6.36	INDUSTRIAL AWARDS.....	45

## 6.1 CONSTRUCTION OF CONTRACT

The Contract shall be governed by the laws of the State of Western Australia and the parties hereby submit to the exclusive jurisdiction of the courts of that State.

## 6.2 DEFINITIONS

In the Contract, except where the context otherwise requires:

**'Clause'** means a clause of these General Conditions.

**'Contract'** means the document which constitutes or evidences or, as the case may be, all the documents which constitute or evidence the final and concluded agreement between the Principal and the Contractor.

**'Contract Price'** means:

- (a) the monetary consideration stated in the Contract for the sale of the Goods to the Principal whether expressed as a lump sum or price per unit or by weight or volume or otherwise;
- (b) where payment is to be made on a Lump Sum Basis, the sum which is stated in the contract to be payable to the Contractor for the supply of the Services by the Contractor and the performance of the obligations of the Contractor under the Contract;
- (c) where payment is to be made on a Schedule of Rates basis, the sum ascertained by calculating the product of the rates and the corresponding quantities set out in the Schedule of Rates and adding to the sum thereof the total of any lump sums, provisional sums, contingency sums or other sums included in the Schedule of Rates;
- (d) where payment is to be made on a Lump Sum and a Schedule of Rates Basis, the aggregate of the sums referred to in paragraphs (a), (b), (c) and (d) above,

but excluding any additions or deductions, which may be required to be made pursuant to the Contract.

**'Contractor'** means the party named in the Contract as the seller of the Goods and the supplier of the Services the subject of the Contract.

**'Date for Delivery'** means:

- (a) where the Contract or Order specifies a date for delivery, that date; or
- (b) where the Contract or Order specifies a period of time for delivery, the last day of that period.

**'Goods and Services'** means the goods the subject of the Contract or such of them as shall be described in the Order and the whole of the services, tasks, work and requisites to be supplied rendered provided or performed by the Contractor including all variations provided for by the Contract as more fully set out in the Contract.

**'Local Government'** means any local government established under the *"Local Government Act 1995"* or the Principal.

**'Officer'** means any officer or person authorised by the Principal to act on its behalf for the purpose of the Contract.

**'Order'** means a purchase order from the Principal to the Contractor requiring the supply of specific Goods and Services.

**'Principal'** means the Shire of Waroona.

**'Specification'** means any Special Conditions, Technical Specification, Drawings and Schedules forming part of the Contract; and such Specification shall be read with these General Conditions as an integral part of the Contract, but in the event of any inconsistency between the Specification and these General Conditions the former shall (unless the Contract otherwise provides) prevail.

Unless the context otherwise requires, the singular includes the plural and vice versa. The clause headings of the General Conditions of Contract shall not in any way affect their interpretation. Any one gender includes all genders.

### 6.3 EVIDENCE OF CONTRACT

The Contract shall be evidenced by the Special Conditions of Contract, General Conditions of Contract, Specifications, Response, Letter of Acceptance and all things referred to therein.

The precedence of documents in the event of a conflict or inconsistency shall follow the sequence as detailed above.

Should any part of the Contract be held in law to be invalid, that part shall be severed from the Contract and the remainder of the Contract shall have full force and effect.

### 6.4 NOTICES

Any notice or other communication under the Contract shall be in writing and signed and shall be given or served by:

- (a) Hand delivery or prepaid post to the address of the recipient specified in the Contract or at such other address as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified address: or
- (b) Facsimile transmission to the facsimile number of the recipient specified in the Contract or at such other number as may from time to time be notified in writing to the party giving the notice by the intended recipient but in any event to the last notified number.

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

### 6.5 CONTRACTOR TO HAVE INFORMED ITSELF

The Contractor shall be deemed to have:

- (a) Examined carefully and to have acquired actual knowledge of the contents of the Drawings, Specification, Schedules, Bills of Quantities (if any), Conditions of Response or Quotation, these General Conditions of Contract and the Special Conditions of Contract (if any) and any other information made available in writing by the Principal to the Contractor for the purpose of quoting; and
- (b) Examined the site and its surroundings (if applicable); and
- (c) Satisfied itself as to the correctness and sufficiency of its Submission or Response and that its price covers the cost of complying with all its obligations under the Contract and of all matters and things necessary for the due and proper performance and completion of the contract; and
- (d) Obtained and properly examined all information relevant to the risks, contingencies and other circumstances that may have had an effect on its Submission or Response and which was obtainable by the making of reasonable enquiries.

Failure by the Contractor to do all or any of the things it is deemed to have done under this clause will not relieve the Contractor of its liability to perform and complete the Contract in accordance with the terms and conditions thereof.

### 6.6 COMPLYING WITH STATUTORY REQUIREMENTS

The Contractor shall comply with the requirements of all Acts of the Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of the State of Western Australia and with the requirements of all ordinances, rules, regulations, by-laws,

orders, codes of practice and proclamations made or issued under any such Act and with the lawful requirements of public and other authorities in any way affecting or applicable to the Services or the performance of the Contract.

Without limiting in any way the generality of the foregoing, the Contractor shall duly and punctually observe, perform and comply with the provisions of the “Occupational Health, Safety and Welfare Act 1984” and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.

If, in the opinion of the Contractor, the provisions of any document forming part of the Contract are at variance with any such requirements, the Contractor shall give written notice to the Principal specifying the departure from such provisions which he considers necessary to comply with such requirements.

If such a requirement necessitates a change to the work under the Contract, the Principal may order a variation. Except to the extent that a variation is ordered by the Principal as set forth above, the Contractor shall bear the cost of complying with the requirement.

## 6.7 ASSIGNMENT AND SUBCONTRACTING

The Contractor shall not without the prior written approval of the Principal:

- (a) Assign the Contract, or any part thereof or any payment thereunder. Approval to assign shall be on terms and conditions determined by the Principal.
- (b) Subcontract the whole or any part of the Contract. Approval to subcontract shall not relieve the Contractor from any liability or obligation under the Contract.

## 6.8 INDEMNITY

The Contractor shall indemnify and keep indemnified the Principal against all loss of or damage to the property of the Principal and from and against any claim, demand, action, suit or proceeding that may be made or brought by any person against the Principal or employees, professional consultants or agents of the Principal or any of them in respect of personal injury to or the death of any person whomsoever or loss of or damage to any property whatsoever arising out of or as a consequence of the sale or delivery of the Goods or the supply or provision of the Services by the Contractor or its employees, agents or subcontractors and also from any costs and expenses that may be incurred in connection with any such claim, demand, action, suit or proceeding.

Notwithstanding the preceding paragraph, the Contractor shall not be rendered liable for personal injury to or the death of any person or loss of or damage to property resulting from any breach by the Principal of any provision of the Contract or any negligent act or omission of the Principal, or the employees, professional consultants or agents of the Principal nor for any claims, demands, actions, suits or proceedings, costs and expenses whatsoever in respect thereof or in relation thereto.

## 6.9 PATENT RIGHTS / COPYRIGHT AND OTHER INTELLECTUAL PROPERTY RIGHTS

The Contractor warrants that neither the Goods or Services nor any design, documents or methods of working provided by the Contractor will infringe any patent, registered design, trademark or name, copyright or other protected right.

The Contractor shall indemnify and at all times keep the Principal indemnified against any action, claim, demand, costs or expenses arising from or incurred by reason of any infringement or alleged infringement of any letters patent, design, trade mark or name, copyright or other protected right in respect of any goods, articles, services, equipment, machinery, plant or thing, system or method of performing, using, fixing, working or arrangement used, fixed, provided or supplied by the Contractor.

All payments and royalties payable in respect of any such letters patent or other protected right, shall be included by the Contractor in the Contract and shall be paid by itself to the person, persons, or body to whom they may be due or payable.

In the event of any claim being made or brought against the Principal in respect of any of the matters stated in this clause, the Contractor shall be immediately notified thereof. The Contractor shall, with the assistance if required of the Principal, but at the Contractor's sole expense, conduct all negotiations for the settlement of the same or any litigation that may arise there from and in the event of the failure by the Contractor so to do, the Principal shall have power to suspend payment of any money due to the Contractor under the Contract until such claim has been satisfied, settled, or withdrawn. Should any money due, or which may thereafter become due, to the Contractor, or which may have been deposited by the Contractor as security under the Contract, be insufficient to satisfy or settle any such claim and such claim has not been satisfied or withdrawn at the date when the Contract would otherwise have been completed, the balance outstanding in respect of the claim shall be a debt due by the Contractor to the Principal.

### **6.10 SPECIFIED BRANDS OF GOODS**

Where a particular brand of Goods is specified in the Contract, no other brand shall be supplied unless otherwise approved in writing by the Principal.

### **6.11 PRICE VARIATIONS**

Contract prices shall be firm unless otherwise stated in the Contract.

Where Contract prices are variable, and the Contractor wishes to claim for a variation in price during the term of the Contract, then the Contractor shall give the Principal full details of the make-up of the claim, including all applicable information as to the cost of materials, direct labour, overheads, profit and such other cost components as the Principal may require to verify any claim for variation. All applications for variation must show in statement form the existing approved Contract prices, the proposed price increase and proposed new Contract price on an item by item basis and shall be accompanied by all relevant determinations and documents in support of the claim.

Where the Contract price is the price ruling at date of performance of the Services the Contractor shall produce to the Principal evidence to verify each claim for payment.

Where trade list prices form the basis of the Contract the Contractor shall identify the trade list referred to by date, number or other suitable reference.

Reductions affecting the Contract rates shall be notified by the Contractor to the Principal immediately they occur and the Contractor shall repay to the Principal the full amount of any overpayment made by the Principal within fourteen (14) days of the reduction being authorised by the Principal.

Applications for variation of variable Contract prices or rates by the Contractor shall be submitted in writing to the Principal as far in advance as practicable of the date from which the variation is sought to commence.

All variations approved by the Principal shall operate from a date determined by the Principal, which shall not be earlier than the date of the formal application for variation.

The onus shall be upon the Contractor to prove to the satisfaction of the Principal all details of any variation claimed.

In all matters of price variations (up or down) the Contractor shall make available to the Principal within the time specified by the Principal such information, records, facts and figures as the Principal shall require. Failure to supply the required information, records, and facts and figures shall entitle the Principal to refuse the variation.

Where the variation is to be determined on the basis of decisions by the Australian Competition and Consumer Commission such variations will be effective on the date nominated by the Australian Competition and Consumer Commission and will be binding on all parties. Should the Australian Competition and Consumer Commission cease to operate during the period of the Contract, a new variation arrangement will be negotiated by mutual agreement. If agreement cannot be reached, the Contract may forthwith be determined by either party by written notice to the other.

## 6.12 QUALITY OF GOODS AND SERVICES

All Goods and Services shall conform to the Specification and the standards specified in the Contract.

Where no standards are specified in the Contract, the Goods and Services shall comply with the appropriate and current standard of the Standards Association of Australia and if there is no such standard then with the appropriate and current standard of the British Standards Institution, the International Standards Organisation or such other standard as the Principal shall consider appropriate.

If no standards are applicable, the Goods supplied shall be suitable for their purpose as stated in the Contract and fully capable of their intended use and the Services shall be of the highest standard and carried out promptly with all due skill, care and diligence.

## 6.13 SUPPLY OF GOODS AND SERVICES BY ORDER

The Contractor shall fulfil all Orders for Goods and Services placed by the Principal during the term or currency of the Contract.

Where the Contract is for the supply of Goods by reference to:

- (a) 'Variable Quantities', the Principal shall not be required to purchase all or any Goods listed EXCEPT such of the Goods as may be ordered by the Principal.
- (b) 'Approximate Quantities', the quantities stated shall be regarded as an estimate only of the quantity which may be required. The Principal shall not be bound to purchase the exact nominated quantity of Goods, but the quantity ordered may vary within a margin not exceeding 25 percent above or below the nominated approximate quantity and any such variance shall not affect the unit price of the Goods.
- (c) 'Fixed Quantities', the Principal shall purchase the actual quantity shown.

The Principal may order requirements of any one type or item of the Goods either in one single lot or instalments or in such quantities as may be required.

Where the Contract is for the supply of Services by reference to:

- (a) A list of Services and prices in a Schedule to the Specification, the Principal shall not be required to take or accept all or any of the Services listed EXCEPT such of the Services as may be ordered by the Principal from time to time during the period of the Contract.
- (b) Where the quantity or value set out in any Schedule to the Specification is described as 'approximate' it shall be regarded only as an estimate of the quantity or value which may be required under the Contract and the Principal shall not be required to take or accept the said nominated approximate quantity or value of Services.

The right is reserved for the Principal to order its requirements of any one type or item of the Services either at one time or in instalments or in such quantities as may be required from time to time.

Nothing herein contained shall oblige the Principal to take or accept all its needs or requirements of the Services solely from the Contractor nor shall be taken to confer any exclusive right upon the Contractor to provide the Services to the Principal. The Principal shall be free at all times to obtain

the Services or any part of them from any other source provider or supplier thereof except Services the subject of an existing order to the Contractor.

#### **6.14 DELIVERY OF GOODS AND SERVICES**

The Contractor shall deliver the Goods and Services in full to the locations and at the times stated in the Contract or Order as the case may be. In this respect time shall be of the essence of the Contract.

Upon it becoming evident to the Contractor that delivery of the Goods and Services is likely to be delayed beyond the Date for Delivery, the Contractor shall promptly notify the Principal in writing. Such notification shall not release the Contractor from its obligation to deliver by the Date for Delivery or from any other obligation under the Contract, unless the Principal otherwise agrees in writing. The Contractor shall not be entitled to any increase in the Contract Price or damages, costs or expenses in connection with the delay.

The Contractor shall be entitled only to such extensions of time for compliance with the Contract as the Principal, upon the written application of the Contractor, may in its absolute discretion grant in writing.

#### **6.15 EXPENSES OF DELIVERY OF GOODS**

Unless otherwise provided in the Contract, the Contractor shall pay all delivery, packaging, freight, insurance, and other charges whatsoever, in connection with the delivery of the Goods and the return of any Goods wrongly supplied.

#### **6.16 RECEIPT AND ACCEPTANCE**

Delivery, receipt and completion of the Goods and Services shall not of itself constitute acceptance of the Goods or Services by the Principal, with acceptance being subject to the approval of the Officer.

The Principal shall be deemed to have accepted the Goods and Services when:

- (a) the Officer notifies the Contractor that the Goods and Services have been accepted; or
- (b) when after the lapse of 14 days the Principal retains the Goods without notifying the Contractor that the Goods have been rejected PROVIDED THAT where it is a term of the Contract that the Goods be installed and/or commissioned that the Principal shall not be deemed to have accepted the Goods unless the Goods are satisfactorily installed and/or commissioned within the period stipulated in the Contract or, if no period is stipulated, within a reasonable period.

The risk of any damage, deterioration, theft or loss of the Goods after delivery but prior to acceptance shall remain with the Contractor except where the damage, deterioration, theft or loss results from a negligent act or omission of the Principal or its agents or employees.

Where prior to acceptance, the Goods are found to be defective or not in accordance with the Contract, the Principal may reject any or all of the Goods (the Rejected Goods).

#### **6.17 REJECTION AND REMOVAL OF GOODS**

The Officer shall notify the Contractor in writing within a reasonable time of the rejection of Goods and may direct that the rejected Goods be removed and either replaced or rectified by the Contractor at the Contractor's expense within such reasonable time as the Officer may direct.

Should the Contractor fail to duly and properly remove, replace or rectify the rejected Goods within the time specified in the notice of rejection the Principal shall be entitled to:



- (a) Exercise a general lien upon the Goods to cover all costs, fees and expenses of the Principal; and
- (b) Sell the rejected Goods; or
- (c) Have the Goods redelivered at the Contractor's risk and expense to the Contractor's premises, where the Contractor shall afford every facility to accept redelivery of the rejected Goods.

The Principal shall not be responsible for the care or custody of any rejected Goods.

Where the Contractor fails to deliver the Goods by the Date for Delivery, or where Goods are rejected and the Contractor fails to replace the rejected Goods or to deliver Goods conforming to the Contract forthwith upon written notice to do so, the Principal;

- (a) Shall have the right to purchase from another supplier substitute Goods of the kind and quality ordered; or
- (b) Where it is not possible or practicable to purchase from another supplier substitute Goods of the kind or quality ordered, purchase Goods which in the opinion of the Principal are most suitable, even though such Goods be of a superior kind and quality.

In both cases any extra cost or expense incurred over and above the Contract Price, shall be a debt due from the Contractor to the Principal.

## 6.18 DEFICIENT GOODS

Where after acceptance, the Goods are subsequently found not to be in accordance with the Contract or of an inferior quality, or differing from those ordered (whether by sample or quality), ("the deficient Goods"), the Principal may notify the Contractor of the deficiency, and require the Contractor to forthwith:

- (a) Remove the deficient Goods from the Principal's premises and at the Contractor's expense either to replace them with Goods conforming to the Contract or to rectify them to conform; or
- (b) Refund the price paid and thereupon to remove the deficient Goods from the Principal's premises; and
- (c) Upon a refund of the price paid for the deficient goods, property therein shall revert to the Contractor.

Any expense incurred by the Principal shall be a debt due from the Contractor to the Principal.

The Principal shall not be entitled to exercise any rights under this clause in respect of any defects or deficiencies that ought to have been apparent on reasonable examination of the Goods prior to acceptance.

Where the deficient Goods are not forthwith replaced or rectified by the Contractor as aforesaid the Principal may exercise the powers contained in Clauses 5.17 and 5.30 as if the same referred to the deficient Goods under the provisions of this Clause and the provisions of Clauses 5.17 and 5.30 were set out herein.

## 6.19 FAILURE TO PROVIDE GOODS AND SUPPLY SERVICES

Where a state of emergency exists or where the Contractor is unable or fails (for whatever reason) to supply and provide the goods and services at any time or in any place the Principal may without being liable in any way to the Contractor obtain or acquire such Goods and Services as it requires during the state of emergency or at that time or in that place (as the case may be) from any other supplier or provider thereof. The existence of a state of emergency shall be determined by the Principal in its sole discretion.

## **6.20 POWER TO ACT FOR THE PRINCIPAL**

Anything to be done or performed by the Principal may be done and performed by any person duly authorised by the Principal.

## **6.21 WARRANTIES**

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

## **6.22 VARIATION TO CONTRACT TERMS**

None of the terms of the Contract shall be varied, waived, discharged or released either at law or in equity, except by the express written agreement of the Principal.

## **6.23 SPECIAL PRICING AND OFFERS**

Any special price, licence fee, rate or charge in relation to the Goods and Services, or goods and services of a like nature which is offered by the Contractor to any Local Government and which is lower than under the Contract, shall be made available to the Principal and all purchasers.

The Contractor, through the period within which that special price, licence fee, rate or charge is being offered, shall only be bound to comply with the above, where the purchase is of similar circumstances and under substantially the same terms and conditions.

## **6.24 PAYMENT**

Unless otherwise provided in the Contract all payments shall be made within 30 days of receipt of the Contractor's invoice or claim, provided that the Goods and Services have been accepted and approved by the Officer.

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

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

## **6.25 SUSPENSION OF PAYMENTS**

Should the Contractor refuse or neglect to carry out the instructions of the Principal in regard to any matter connected with the Contract, the Principal may suspend all payments to the Contractor until such instructions have been complied with.

## **6.26 DEDUCTION OF CHARGES OR DEBTS**

Without limiting the Principal's rights under the any of the foregoing clauses hereof any debt due from the Contractor to the Principal may be deducted by the Principal from any moneys which may be or thereafter become payable to the Contractor by the Principal, and if such moneys are insufficient for this purpose, then from the Contractor's security under the Contract. Nothing in this clause shall affect the right of the Principal to recover from the Contractor the whole of the debt or any balance that remains owing after deduction.

The Contractor hereby acknowledges and agrees that all moneys becoming payable by the Contractor in respect of the Contract and all costs, expenses, losses, and damages hereinbefore mentioned, and for which the Contractor shall become liable at any time under the Contract, may be deducted and paid by the Principal from any sum or sums due, or which may become due, to

the Contractor under or in respect of any other contract or contracts which may be subsisting between the Contractor and the Principal for the time being.

## 6.27 STAMP DUTY

The Contractor shall pay all stamp duties in connection with the Contract.

## 6.28 GOODS AND SERVICES TAX

For the purposes of this clause:

- (a) "GST" means goods and services tax applicable to any taxable supplies as determined under the GST Act.
- (b) "GST Act" means "A New Tax System (Goods and Services Tax) Act 1999" and (where the context permits) includes the Regulations and the Commissioner of Taxation's Goods and Services Tax Rulings and Determinations made thereunder and any other written law dealing with GST applying for the time being in the State of Western Australia.
- (c) "Supply", "taxable supply" and "tax invoices" have the same meanings as in the GST Act.

Where the supply of the Goods and Services or any part thereof is a taxable supply under the GST Act:

- (a) The Contract Price shall be inclusive of all applicable GST at the rate in force or the time being.
- (b) The obligation of the Principal to pay the Contract Price or any instalment thereof, and the right of the Contractor to recover the Contract Price or any instalment thereof, shall be subject to and conditional upon the prior issue by the Contractor and the prior receipt by the Principal of a tax invoice in respect of the Contract Price, or the relevant instalment thereof, which complies in all respects with the GST Act.

This provision applies notwithstanding any other provision of the Contract or any legislation or rule of law to the contrary, but does not apply if the Contractor is not registered for GST, and is not required to be so registered, under the GST Act.

The Contractor shall at all times observe, perform and comply with all applicable provisions of the GST Act relative to the supply of the Goods and Services under the Contract.

## 6.29 CUSTOMS AND EXCISE DUTIES

The Contract Price shall, unless otherwise stated, be inclusive of all applicable customs excise, levies, duties, taxes and charges at the rates in force at the date of closing of the Response.

The Contractor shall, if so requested, provide information as to the Customs Tariff classification, the amount of duty payable, its application to the Contract Price and date or proposed date of importation.

The Contractor shall:

- (a) If the Principal so requires, pay any dumping duty or security therefore which may be levied or demanded under the "Australian Customs Tariff (Anti Dumping) Act 1975", in respect of the Goods supplied under the Contract direct to the Principal or to the Australian Customs Service as the case may be.
- (b) Indemnify and keep indemnified the Principal against any liability for such dumping duty or security.

### 6.30 SETTLEMENT OF DISPUTES

The parties agree to attempt in good faith to resolve through negotiation any dispute regarding the Contract.

Either party may refer to an appropriate independent expert, agreed to by the parties, any Goods and Services for examination and report as to their compliance with the Contract. The decision of the expert shall be final and binding upon both parties, and the expense of such reference shall be paid by the unsuccessful party.

Subject to the provisions of 5.30, any dispute or unresolved claim arising out of or relating to the Contract or the breach, termination or invalidity thereof ('the dispute') shall first be the subject of conciliation before a conciliator who is either agreed to by the parties or, failing agreement, who is appointed by the President of the Institute of Arbitrators and Mediators (WA Branch).

If the dispute has not been resolved within 28 days (or such other period agreed in writing between the parties) after the appointment of the conciliator, the dispute shall be referred to arbitration to be effected:

- (a) By an arbitrator mutually agreed upon between the parties; or
- (b) In default of such mutual agreement, by an arbitrator appointed by the President of the Institute of Arbitrators and Mediators,
- (c) In accordance with the provisions of the "*Commercial Arbitration Act 1985*".

### 6.31 TERMINATION OF CONTRACT

- (a) Subject to Clause 5.30, if the Contractor fails to duly and punctually observe perform and comply with any term, condition or stipulation on the part of the Contractor contained or implied in the Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe perform and comply with such term, condition or stipulation or otherwise to remedy the breach; or
- (b) If the Contractor (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary administration; or
- (c) If the Contractor (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a Deed of Arrangement for the benefit of its creditors; or
- (d) If the Contractor assigns or subcontracts the Contract or any part thereof without the prior written consent of the Principal; or
- (e) If the Contractor includes in its Response any statement, representation, fact, matter, information or thing which is false untrue incorrect or inaccurate, whether known to the Contractor or not;

THEN and in any of the said cases, if the Principal considers that damages may not be an adequate remedy, the Principal may by notice in writing to the Contractor forthwith terminate the Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete the Contract.

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

### **6.32 WAIVER**

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

### **6.33 ENTIRE AGREEMENT**

The Contract supersedes all prior agreements, arrangements and undertakings between the parties and constitutes the entire agreement between the Principal and the Contractor relating to the Goods and Services.

### **6.34 RIGHTS AND REMEDIES**

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

### **6.35 INSURANCE**

Without limiting its obligations and responsibilities the Contractor, in the joint names of itself and the Principal for their respective rights interests and liabilities, shall effect and keep in effect during the currency of the Contract insurance policies covering all matters referred to in Clause 4.1.2

The insurance policies shall contain a cross-liability clause and otherwise be in terms, and effected with an insurance company, approved by the Principal which approval shall not be unreasonably withheld.

The Contractor shall lodge certificates of proof of the required insurance policies with the Principal before the commencement of the Services provision and at such other times as the Principal may require.

### **6.36 INDUSTRIAL AWARDS**

With respect to all work done in Western Australia under the Contract, the Contractor shall observe, perform and comply in all material respects with all relevant Industrial Awards, Industrial Agreements and orders of Competent Courts or Industrial Tribunals applicable to the Services and the work to be done under the Contract.

Failure by the Contractor to comply with sub clause 5.36 hereof shall entitle the Principal by notice in writing to the Contractor to forthwith terminate the Contract, but without prejudice to any other rights or remedies of the Principal.