



Agreement for Construction and Installation

Construction and Installation of One (1) Deluxe Luxury
Three Bedroom Transportable Caravan Park Cabin at
Port Vincent Foreshore Caravan Park

Open request for tenders

Tender Number 162-2016

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Schedule

Item 1 Council	Yorke Peninsula Council ABN 82 179 825 615 Fax: 08 8853 2494 Email: admin@yorke.sa.gov.au Phone: 08 8832 0000 Attention: David Harding
Item 2 Supplier	TO BE ADVISED
Item 3 Contract Sum	TO BE ADVISED (being a fixed lump sum price and not subject to any rise and fall escalation)
Item 4 Contract Works	Construction and Installation as detailed in Annexure A
Item 5 Site / Location	Port Vincent Foreshore Caravan Park, 12 Marine Pd. Port Vincent
Item 6 Date for Commencement	To be advised
Item 7 Date for Completion	Prior to 19 th May 2017
Item 8 Defects Liability Period	In accordance with warranty period
Item 9 Warranty Period	TO BE ADVISED
Item 10 Working hours	As negotiated with Park Manager, Port Vincent Foreshore Caravan Park
Item 11 Payment of Contract Sum	The Council must pay to the Supplier, within 30 days following works being completed
Item 12 Contract Superintendent	Shane and Louise Biddell, Caravan Park Managers
Item 13 Supplier's Representative	TO BE ADVISED
Item 14 Special Conditions	TO BE ADVISED

Date

TO BE ADVISED

Parties

Yorke Peninsula Council; for Port Vincent Foreshore Caravan Park, Marine Parade, Port Vincent SA 5581 (Council)

TO BE ADVISED (Supplier)

Background

- A. Pursuant to a Request for Tender, the Council sought tenders from suitably qualified parties for the Contract Works.
- B. The Supplier submitted a quotation for the Supply of Goods and Contract Works, and the Council accepted it.
- C. The Supplier agrees to supply and install the Goods on the terms as set in this agreement.

Agreed Terms

1. Definitions and Interpretation

1.1 Definitions - In this agreement:

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

Annexure refers to an Annexure of this agreement.

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

Clause refers to a clause of this agreement.

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

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

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

Contract Works means the works specified in Item 4 of the Schedule.

Contract Superintendent means the person specified in 12 of the Schedule.

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

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

Date for Completion means the date specified in Item 7 of the Schedule.

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

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

Defects Notice means a written defects notice issued pursuant to clause 16.2.

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

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

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

Goods means the goods and/or materials and/or services specified in item 4 of the Schedule.

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

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

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

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

Non-completion Notice means a written notice of non-completion of the Contract Works issued under clause 15.2.

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

Price means the price for the supply of the Goods, specified in Item 4 of the Schedule

Programme means the programme for the conduct of the Contract Works in item 4 of the Schedule.

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

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

Schedule refers to the Schedule of this agreement.

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

Special Conditions mean the special conditions set out in Annexure A.

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

Supplier's Representative refers to the person specified in Item 13 of the Schedule.

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

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

1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to the Supplier includes any person comprising the Supplier or any Sub-Contractor engaged by them;
- 1.2.7 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 a provision is not construed against a party only because that party drafted it;
- 1.2.12 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.14 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;
- 1.2.15 an expression defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the meaning given by that Act at the date of this agreement.

2. Engagement of Supplier

- 2.1 The Council engages the Supplier who accepts the engagement to supply the Goods in accordance with this agreement.
- 2.2 The Goods must be provided as and when required by the Council in accordance with this agreement.
- 2.3 The Supplier must:
 - 2.3.1 supply the Goods to the Council in the sizes, quantities and types specified by the Council in this agreement.
 - 2.3.2 deliver the Goods to the Location;
 - 2.3.3 supply the Goods to the Council for the Price; and
 - 2.3.4 comply with the reasonable requirements of the Council for the sale, supply and delivery of the Goods.
- 2.4 This agreement is not, and the arrangements contemplated by this agreement are not, an exclusive arrangement and the Council may, at its discretion, engage other suppliers to supply the Goods.

3. Delivery

- 3.1 The Supplier must deliver the Goods to the Location on the Delivery Date.
- 3.2 Upon delivery of the Goods to the Location, the Supplier must provide the Delivery Docket to the Council.
- 3.3 The Supplier bears all risk for the Goods until the Goods are delivered to the Location on the Delivery Date and accepted by the Council's Representative counter signing the Delivery Docket.
- 3.4 No liability to pay for any Goods arises until the Goods are approved by the Council and delivery is accepted by the Council's Representative counter signing the Delivery Docket.
- 3.5 If the Council in its absolute discretion decides that the Goods do not meet the description of the Goods in this agreement, the Council may return such Goods to the Supplier and the Supplier must reimburse the Council for:
 - 3.5.1 all transport and other costs incurred by the Council in returning any such Goods to the Supplier for replacement;
 - 3.5.2 all transport and other costs in the Supplier delivering any replacement Goods to the Council;
 - 3.5.3 any damage or loss caused during transport of any Goods under this clause; and
 - 3.5.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the replacement of the relevant Goods under this clause.
- 3.6 Times for the fulfilment of the Supplier's obligations are essential terms of this agreement.
- 3.7 Title passes to the Council when the Goods are approved by the Council and delivery is accepted by the Council's Representative counter signing the Delivery Docket.

4. Payment Terms

4.1 Payment of Price

4.1.1 Subject to the terms of this agreement, the Council must pay to the Supplier the Price for the supply of the Goods.

4.1.2 The Price includes all freight and other charges connected with the Supplier delivering the Goods to the location nominated by the Council and otherwise complying with the Supplier's obligations under this agreement.

4.2 Payment terms

4.2.1 The Supplier must issue invoices within seven days of the Delivery Date.

4.2.2 The Council must pay the Price within 30 days from the end of the month in which the Council receives a correctly rendered tax invoice from the Supplier.

4.2.3 A tax invoice is correctly rendered when it:

4.2.3.1 describes the Goods supplied;

4.2.3.2 displays the terms of payment of the Price set out in the invoice;

4.2.3.3 is addressed to the Council's address specified in Item 1 of the Schedule;
and

4.2.3.4 sets out in reasonable detail the manner and basis of the calculation of the Price, including the component of GST.

4.3 Effect of payment

A payment of all or part of the Price is not an acceptance of the Goods or a waiver of a right or action of the Council.

4.4 Right of set off

The Council may deduct from amounts otherwise payable to the Supplier any amount due from the Supplier to the Council.

5. Goods and Services Tax

5.1 Consideration does not include GST

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

5.2 Gross up of consideration

Where a supply by one party (**supplier**) to another party (**recipient**) under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'): the expressed consideration for that supply must be increased by, and the recipient must pay to the supplier, an amount equal to the GST payable by the supplier in respect of that supply; and the recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

5.3 **Reimbursements**

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

5.4 **Tax invoices**

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

5.5 **Adjustments**

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

6. **Warranty**

6.1 The Supplier warrants that all Goods supplied to the Council:

- 6.1.1 will conform to the description and specifications of the Goods in this agreement
- 6.1.2 will be of good merchantable quality and fit for the purpose for which they are sold;
- 6.1.3 will be new ;
- 6.1.4 will be free from all liens and encumbrances and the Supplier has good marketable title to the Goods; and
- 6.1.5 will be constructed and delivered to the Location on the Delivery Date;
- 6.1.6 be free from defects in design, material and workmanship; and
- 6.1.7 operate in accordance with their intended use and in accordance with any operating instructions or specifications for the Goods.

6.2 The Supplier must, throughout the PL Insurance Period and at its cost, effect product liability insurance in respect of the Goods from a reputable insurance carrier, for at least AUD \$10,000,000 combined single limit, for bodily injury and property damage. The policy must note the Council's interest under this agreement.

6.3 If any of the Goods is defective or fails to operate in accordance with its intended use and/or in accordance with any operating instructions or specifications for the Goods within the Warranty Period, the Council may return the defective Goods to the Supplier and the Supplier must repair or replace the returned defective Goods at no cost to the Council.

6.4 The Supplier is responsible for:

- 6.4.1 all transport and other costs incurred by the Council in returning any defective Goods to the Supplier for repair or replacement;
- 6.4.2 all transport and other costs in the Supplier delivering any repaired or replacement Goods to the Council;

- 6.4.3 any damage or loss caused during transport of any Goods under this clause; and
- 6.4.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the defective Goods.
- 6.5 Any Goods repaired or replaced under this clause are subject to the warranty under this clause for the full Warranty Period.
- 6.6 Any work undertaken by third party Sub-Contractors

7. Statutory Requirements

- 7.1 The Supplier must ensure that the contract works comply with all applicable Laws.
- 7.2 Where required, the Supplier must, at its cost in all things, obtain all approvals and pay all fees incurred relating to the contract works.

8. Execution of Contract Works

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

- 8.1 execute and complete the Contract Works in accordance with this agreement to Completion by no later than the Date for Completion and to the reasonable satisfaction of the Council, and perform its other obligations under this agreement;
- 8.2 supply at the Supplier's expense all facilities and services required at or about the Site for the execution of the Contract Works. Those facilities and services must comply with all Authorisations and the standards and other requirements of all applicable Laws and of any relevant Governmental Agency;
- 8.3 comply with reasonable directions of the Council in the execution of the Contract Works;
- 8.4 comply with all Laws and Authorisations affecting or applicable to the Contract Works or the execution of the Contract Works;
- 8.5 not interfere with or damage property on or adjacent to the Site;
- 8.6 repair all damage caused to property on or adjacent to the Site by any Contractor, its employees, agents or sub-contractors or their respective employees, and provide any necessary temporary protection;
- 8.7 pay all fees in respect of the execution of the Contract Works to any Governmental Agency, and procure any Authorisation required in respect of the execution of the Contract Works;
- 8.8 before Completion and during the Defects Liability Period and any operational maintenance period specified:
 - 8.8.1 keep the Contract Works and the Site clean and tidy;
 - 8.8.2 regularly remove from the Site all surplus materials;
 - 8.8.3 clean up rubbish on a daily basis;
 - 8.8.4 place all rubbish in a bin provided on-site or other areas as directed by the Council.

Failure to do so may result in the Council carrying out this work at the cost of the Supplier without notice;

- 8.9 unless otherwise agreed with the Council in writing, carry out the Contract Works only between the working hours set out in Item 10 of the Schedule.

9. Access, Work Health and Safety

9.1 Access to Site and Contract Works

- 9.1.1 The Council must provide the Supplier with sufficient access to the Site to enable the Supplier to undertake and complete the Contract Works.
- 9.1.2 The Supplier must allow the Council access to the Site and the Contract Works at all times.

9.2 Work Health and Safety

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

9.3 Supplier responsible

- 9.3.1 Without limiting its other obligations under this agreement, the Supplier has complete responsibility and liability for health and safety on the Site. In this regard the Supplier must develop and implement appropriate rules, systems and procedures and generally monitor, manage and administer the operations of the Site and the Contract Works in a proper and professional manner and, without limiting this, the Supplier must take and enforce all necessary or desirable measures to ensure safety in respect of persons and property while performing its obligations under this agreement.
- 9.3.2 Without limiting clause 9.3.1, the Supplier must at its own cost:
- 9.3.2.1 erect and at all times during the day and night maintain in or around the Site suitable signs warning the public of the execution of the Contract Works; and
- 9.3.2.2 during all hours of darkness keep all machinery and other obstructions or traps created in the course of the Contract Works adequately illuminated for the protection of the public.

9.4 Suspension of Contract Works

- 9.4.1 If the Council considers that the suspension of the whole or part of the Contract Works is necessary because of a breach of this clause by the Supplier or for any other reason, the Council may direct the Supplier to suspend the progress of the whole or part of the Contract Works for such time as the Council thinks fit.
- 9.4.2 As soon as the Council becomes aware that the reason for suspension no longer exists, the Council must direct the Supplier to recommence work on the whole or relevant part of the Contract Works.
- 9.4.3 The Supplier bears any cost incurred by it by reason of a suspension under this clause.
- 9.4.4 Suspension under this clause does not affect the Date for Completion, but the cause of the suspension may be a ground for time extension under clause 14.3.

10. Materials and Work

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

11. Subcontracting and Assigning

- 11.1 The Supplier must not assign or subcontract this agreement or any right or obligation under it without the prior written consent of the Council, which may be granted or withheld in the Council's absolute discretion.
- 11.2 With any application for such consent, the Supplier must provide all information required by the Council, including evidence that the proposed assignee or subcontractor is capable of performing the Contract Works to be assigned or subcontracted.
- 11.3 Unless otherwise agreed in writing by the Council, no such assignment or subcontract relieves the Supplier from any liability under this agreement or at Law in respect of the performance or purported performance of this agreement and the Supplier is responsible for the acts and

omissions of any assignee or subcontractor or any assignee's or subcontractor's employees and agents as if they were the acts or omissions of the Supplier.

- 11.4 For the purpose of this clause, if the Supplier is a company, an assignment of this agreement includes any change in the beneficial ownership of the share capital of the Supplier, or the resignation, death or appointment of any director of the company, which alters the effective control of the Supplier.

12. Workforce

12.1 Control of employees

- 12.1.1 The Supplier must employ and must ensure that its subcontractors employ only persons who are appropriately licenced (where applicable), careful, skilled and experienced in their respective trades and callings.
- 12.1.2 The Council may object to and direct the Supplier to remove or have removed from the Site or from any activity connected with the Contract Works within such time as the Council directs any person employed by the Supplier or by any subcontractor who (in the Council's opinion) is incompetent or negligent in the performance of that person's duties or whose conduct is (in the Council's opinion) prejudicial to the competent, safe and timely execution of the Contract Works.
- 12.1.3 The Supplier must comply with such direction and any such person must not again be employed on the Site or on activities connected with the Contract Works without the prior approval of the Council.

12.2 Industrial relations

- 12.2.1 The Supplier is responsible for industrial relations with all workers engaged in and about the execution of the Contract Works.
- 12.2.2 The Supplier must keep the Council fully informed of any disputes with or demands by workers or their representatives and any other circumstances which could result in industrial action affecting the normal working of the Site or otherwise affecting the competent and timely execution of the Contract Works.
- 12.2.3 If the workers of the Supplier or the workers of any subcontractor of the Supplier take industrial action which affects the normal working of the Site or otherwise affects the competent and timely execution of the Contract Works and that industrial action is prohibited by Law, then the Supplier must at its own cost take all action necessary to seek urgent injunctive relief preventing such industrial action and must at all times keep the Council fully informed of the progress of such action.
- 12.2.4 If the Supplier fails to seek injunctive relief in accordance with this clause, or if the Supplier does not do so with all expedience, the Council may take such action, and the Supplier is liable to the Council for all costs incurred in so doing.

13. Variations

13.1 Variations

No Variation invalidates this agreement.

- 13.2 **No unauthorised variation**
The Supplier must not make any Variation of the Contract Works except a Variation instructed by the Council.
- 13.3 **Execute Variations**
The Supplier must carry out as part of the Contract Works or omit from the Contract Works (as is required) any Variation instructed by the Council.
- 13.4 **Adjustment of Contract Sum**
For the purpose of any adjustment of the Contract Sum for a Variation:
- 13.4.1 if practicable, the value of a Variation must be agreed by the Supplier and the Council before the Supplier commences to execute the Variation;
- 13.4.2 if the value of a Variation is not agreed by the Supplier and the Council, the value must be determined by the Council.
- 13.4.3 a Variation must be valued as soon as practicable, and the Supplier must promptly and diligently supply to the Council all information relevant to the valuation.

14. Time

- 14.1 **Commencement of Contract Works**
The Supplier must commence the execution of the Contract Works on or before the Date for Commencement and must execute the Contract Works with due diligence, and maintain a rate of progress appropriate to bring the Contract Works to Completion in accordance with this agreement.
- 14.2 **Completion of Contract Works**
The Supplier must bring the Contract Works to Completion on or before the Date for Completion.
- 14.3 **Claim for time extension**
- 14.3.1 The Supplier by written notice to the Council may claim a time extension if progress of the Contract Works is delayed or will be delayed by:
- 14.3.1.1 a breach of this agreement by the Council;
- 14.3.1.2 construction and execution of a Variation unless made necessary by an act or omission of the Supplier;
- 14.3.1.3 civil commotion, any combination of workmen on or off site, lockouts or similar actions undertaken by employers of labour provided such actions have not been caused or contributed to by an act or omission of the Supplier or a company related to the Supplier;
- 14.3.1.4 a Latent Condition;
- 14.3.1.5 a strike, ban or other industrial action affecting the progress of the Contract Works which is of general application throughout the relevant industry or industries; or
- 14.3.1.6 inclement weather or its consequences affecting the Contract Works at the Site.
- 14.3.2 The Supplier may only claim a time extension made reasonably necessary by the delays caused by these factors.

- 14.3.3 The claim must state with reasonable particularity the cause of delay, and an estimate (if practicable) of the extent or likely extent of the delay in bringing the Contract Works to Completion.
- 14.3.4 The claim must be made before or within seven days after the commencement of the delay, whether or not it is practicable to estimate the delay or its consequences.
- 14.3.5 The Supplier may provide to the Council any information the Supplier considers appropriate for any ongoing review by the Council of the time extension.
- 14.3.6 The Supplier must promptly provide to the Council all information requested by the Council for any ongoing review by the Council of the time extension.

14.4 **Extension of time**

If progress of the Contract Works is delayed by a cause beyond the control of the Supplier and listed in clause 14.3.1, and if Completion of the Contract Works is thereby delayed, the Supplier is entitled, subject to clauses 14.5 and 14.6, to a fair and reasonable extension of the time for bringing the Contract Works to completion, and the Date for Completion must be extended under clause 14.6.

14.5 **Conditions precedent**

The Supplier is entitled to a time extension only if:

- 14.5.1 the Supplier claimed a time extension in strict compliance with clause 14.3;
- 14.5.2 the Supplier took reasonable steps to minimise the delay in Completion of the Contract Works; and
- 14.5.3 the delayed activities are critical to the Programme.

14.6 **Council's determination**

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

14.7 **Extraordinary grant**

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

14.8 **No costs or damages**

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

15. **Completion of Contract Works**

15.1 **Inspection of Contract Works**

The Supplier must notify the Council in writing to arrange an inspection or inspections of the Contract Works when, or as soon as practicable after, they are brought to Completion. The Supplier must at that time provide to the Council all warranties, certificates, operating and

maintenance manuals and other information necessary for the use, operation and maintenance of the Contract Works, including a copy of the 'as built' drawings, plans and specifications for the Contract Works.

15.2 Certificate of Completion

The Council must then inspect the Contract Works and:

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

If the Council fails to give to the Supplier either a Certificate of Completion or a Non-completion Notice within 10 days after receipt of the written notice from the Supplier under clause 15.1, the Supplier may give the Council a further written notice requiring the Council to issue a Certificate of Completion or a Non-completion Notice within seven days after receipt of that further notice. If the Council fails to do so, the Council is deemed to give a Certificate of Completion of the Contract Works upon the expiration of seven days.

The Supplier may give the Council a notice under clause 15.1 more than once.

15.3 Completion of Contract Works

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

16. Defects Liability

16.1 Defects Liability Period

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

16.2 Remedy Defects

If before the expiry of the Defects Liability Period, in the Council's opinion a Defect is apparent or has been detected in the Contract Works, the Council may give written notice to the Supplier in the form of a Defects Notice requiring the Supplier to remedy that Defect. The Defects Notice must state:

- 16.2.1 the Defect which is required to be remedied; and
- 16.2.2 the date by which the Defect is to be remedied.

16.3 Carry out instructions

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

16.4 Council may rectify

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

16.5 **Further Defects Liability Period**

If the Supplier executes remedial work under this clause, the Council may by written notice to the Supplier fix a further Defects Liability Period in respect of the remedial work (being no longer than the initial Defects Liability Period) commencing upon the date of completion of the remedial work. This clause applies to that remedial work as if the further Defects Liability Period was the Defects Liability Period referred to in clause 16.1.

16.6 **Access for remedial works**

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

16.7 **Deemed Variation**

If it is established that a Defect identified as such by the Council is not a Defect or is a Defect in the design of the Contract Works as prepared by any consultant of the Council, the works carried out by the Supplier pursuant to an instruction under clause 16.2 are deemed a Variation.

17. **Adjustment of Contract Sum**

17.1 **No adjustment unless authorised**

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

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

17.2 **Adjustment for Variations**

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

17.2.1 the Council has expressly stated in writing that the instruction is a Variation;

17.2.2 the Council has expressly stated in writing that the Contract Sum will be adjusted for the Variation; or

17.2.3 the works carried out are deemed a Variation under clause 16.7.

18. **Right of Council to Recover Money**

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

19. Risks, Indemnities and Insurances

19.1 Supplier's risk

- 19.1.1 The Contract Works are at the Supplier's risk until the Contract Works are brought to Completion.
- 19.1.2 The Council's insurance does not cover material loss or damage to any property, plant or equipment or materials of the Supplier. The Supplier must take out appropriate insurance to cover these items.
- 19.1.3 Security for plant, equipment and unfixed materials on Site is the sole responsibility of the Supplier.

19.2 Property damage

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

19.3 Public risk

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

19.4 Supplier's insurance

- 19.4.1 The Supplier must effect and maintain at all material times during the currency of this agreement insurance in the joint names or otherwise for the benefit of the Council, the Supplier and all subcontractors and suppliers (**Insured**). The insurance must at all times cover liability to the public (including the Council) for at least \$10,000,000 in respect of personal injury to or death arising by accident to any person and in respect of any injury loss or damage arising by accident to any property real or personal including property (other than the Contract Works) belonging to the Council or in which the Council is interested and where the accident arises out of or is caused by the execution of the Contract Works.
- 19.4.2 The Supplier must keep the insurance current until the expiry of the Defects Liability Period.
- 19.4.3 The Supplier must ensure that each policy of insurance required by this clause contains provisions acceptable to the Council that:
 - 19.4.3.1 require the insurer to accept the term 'insured' as applying to each of the persons comprising the Insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby); and
 - 19.4.3.2 require the insurer, whenever the insurer gives to the Supplier a notice of cancellation or any other notice under or in relation to the policy, at the same time to inform the Council in writing that the notice has been given to the Supplier; and

19.4.3.3 provide that a notice of the occurrence of an event out of which the particular Insured giving the notice alleges that it has suffered or could suffer a loss or damage must be accepted by the insurer as a notice of the occurrence given by the Insured. If an event occurs which in the opinion of the Supplier may give rise to a claim involving the Council or the Supplier under the policy of insurance effected by the Supplier it must notify the Council and must ensure that the Council is kept fully informed of subsequent action and developments concerning the claim.

19.5 **WorkCover**

19.5.1 Subject to clause 19.5.2, the Supplier must ensure that it is at all times registered as an employer under the *Return to Work Act, 2014 (SA) (Act)* and that it pays all monthly levies due under it in respect of its employees engaged in and about the Contract Works. The Supplier must produce to the Council on execution of this agreement a current Certificate of Registration as an employer under the Act. The Supplier must ensure that all subcontractors engaged by it have at all times current Certificates of Registration as employers under the Act, and must produce them to the Council upon request in writing by the Council.

19.5.2 Notwithstanding clause 19.5.1, if the Supplier (or any sub-contractor) is unable to register as an employer under the Act, then the Supplier must instead adequately insure against accident, personal injury and disability. The Supplier must maintain such insurance at all times during the currency of this agreement (including the Defects Liability Period) and must produce evidence of:

19.5.2.1 the existence and adequacy of such insurance; and

19.5.2.2 the Supplier's (and/or any sub-contractor's) inability to register as an employer under the Act.

19.6 **Inspection of insurance policies**

19.6.1 Whenever requested by the Council, the Supplier must produce evidence (to the satisfaction of the Council) of the insurances effected and maintained by the Supplier pursuant to this clause.

19.6.2 If the Supplier fails to do so, the Council may effect and maintain any such insurance and pay the premiums. The amount paid is a debt due from the Supplier to the Council.

20. Indemnity and Exclusion of Liability

- 20.1 The Supplier must indemnify the Council and its employees, officers and contractors against all claims, demands, expenses, loss or damage in respect of loss or damage to any property, or the death of or personal injury to any person caused or contributed to by the Supplier, a breach by the Supplier of any term of this agreement, a wilful, unlawful or negligent act or omission of the Supplier and any claim, action or proceeding by a third party against the Council or its employees, officers, and contractors caused or contributed to by the Supplier.
- 20.2 This indemnity is reduced by the extent to which the Council contributed to the event giving rise to the claim for indemnity.
- 20.3 The Supplier must supply the Goods at its own risk in all things and releases the Council and its employees, officers, members and contractors from all claims, actions, proceedings, costs, expenses, losses, suffering and liabilities incurred by the Supplier or its employees, agents, subcontractors, third parties, and customers which arise from the supply of the Goods.

21. Non Performance by Supplier

If the Supplier breaches a provision of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so, the Council may:

- 21.1 suspend any or all payment of the Price until the breach is remedied;
- 21.2 remedy the breach itself whether by the use of the Council's employees or other suppliers and deduct the cost of remediation from sums due to the Supplier;
- 21.3 terminate this agreement in accordance with clause 23.1; and/or
- 21.4 pursue any other legal remedies available to the Council.

22. Force Majeure

- 22.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:
- 22.1.1 neither party is liable for such delay or failure; and
- 22.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.
- 22.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:
- 22.2.1 notify the other party as soon as possible giving:
- 22.2.1.1 reasonably full particulars of the Force Majeure Event;
- 22.2.1.2 the date of commencement of the Force Majeure Event and an estimate of the time required to enable it to resume full performance of its obligations; and
- 22.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event;

- 22.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;
 - 22.2.3 resume performance as soon as possible after termination of the Force Majeure Event or after the Force Majeure Event abates to an extent which permits resumption of performance;
 - 22.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and
 - 22.2.5 notify the other party when resumption of performance occurs.
- 22.3 If a delay or failure under this clause exceeds 60 days, the Council may immediately terminate this agreement by written notice to the Supplier. In such circumstances the Council will be liable to the Supplier only in respect of the fees properly owing up to the date of the termination in respect of the goods supplied to the Force Majeure Event. Without limiting the effect of this clause 23.3, the Council will not be liable to compensate the Supplier for loss of potential profits or other consequential loss incurred by the supplier arising from termination by the Council pursuant to this clause.

23. Termination by Council

23.1 Termination by Council

The Council may immediately terminate this agreement by giving notice to the Supplier if the Supplier:

- 23.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement;
- 23.1.2 breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so;
- 23.1.3 becomes an externally-administered body corporate or an insolvent under administration;
- 23.1.4 becomes insolvent or bankrupt.
- 23.1.5 execution is levied against the Supplier or its assets for more than \$1,000 and execution is not stayed or satisfied within 14 days;
- 23.1.6 the Supplier fails, or ceases, to hold an Authorisation required by Law for carrying out the Contract Works;
- 23.1.7 any industrial action affects the execution or progress of the Contract Works or any industrial action which may affect the execution or progress of the Contract Works is threatened, except industrial action of a general application throughout the relevant industry or industries;
- 23.1.8 the Supplier's engagement under any other agreement with the Council in respect of the Site or any adjacent site is terminated or if the Council lawfully excludes the Suppliers from the Site or any adjacent site under any such agreement;

- 23.1.9 the Supplier:
- 23.1.9.1 fails to provide the Security;
 - 23.1.9.2 fails to proceed diligently and competently with the execution of the Contract Works;
 - 23.1.9.3 commits a breach of this agreement; or
 - 23.1.9.4 fails to comply with an instruction or direction of the Council; and
- the Council gives written notice to the Supplier specifying the breach and requiring it to be remedied within seven days of receipt or any shorter reasonable period specified in the notice and stating the Council's intention to terminate the Supplier's engagement under this agreement if the breach is not remedied within that period, and the Supplier does not so remedy the breach within that period;

without limiting its other rights, the Council may:

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

24. Termination by Supplier

- 24.1 The Supplier may immediately terminate this agreement if the Council breaches a material term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so.
- 24.2 **Accrued rights and remedies**
Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

25. Confidential Information and Freedom of Information

- 25.1 Each party agrees that it will not use any Confidential Information of the other party or allow any Confidential Information of the other party to be used for any purpose, except for the purposes of and in the manner contemplated by this agreement, and agrees that it will:
- 25.1.1 keep confidential;
 - 25.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;
 - 25.1.3 maintain proper and secure custody of; and
 - 25.1.4 not use or reproduce in any form;
- any Confidential Information belonging to the other party. Any departure from a party's obligations pursuant to this clause may only be with the written consent of the other party or as required by law or the terms of this agreement.
- 25.2 The FOI Act gives members of the public rights to access Council documents. The FOI Act promotes openness in governance and accountability of government agencies and to achieve these objects confers on members of the public a legally enforceable right to be given access to documents, including contracts held by the Council but excluding Contracts which should be kept confidential for public interest purposes, contracts which are commercial in confidence or for the preservation of personal privacy.
- 25.3 The Supplier consents to any disclosures made as a result of the Council complying with its obligations under the FOI Act, subject to any legally required consultation.
- 25.4 Unauthorised disclosure of any Confidential Sections constitutes a breach of a party's obligations under this agreement.

26. Dispute Resolution

- 26.1 **General**
- 26.1.1 A party must not commence arbitration or court proceedings (except for urgent equitable or injunctive relief) in respect of a dispute under this agreement, unless it first attempts to resolve the dispute by negotiation and mediation under this clause.
 - 26.1.2 A party claiming that a dispute has arisen under this agreement must give written notice to the other party specifying the nature and details of the dispute.
 - 26.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

- 26.1.4 If the parties are unable to resolve the dispute within 10 business days, they must promptly refer the dispute:
- 26.1.4.1 in the case of the Council to the Chief Executive Officer; and
 - 26.1.4.2 in the case of the Supplier, to the Supplier's Representative.
- 26.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.
- 26.2 Mediation**
- 26.2.1 If those persons are unable to resolve the dispute within 10 business days of referral, a party may refer the dispute for mediation under the mediation rules of the Law Society of South Australia Inc to:
- 26.2.1.1 a mediator agreed by the parties; or
 - 26.2.1.2 if the parties are unable to agree a mediator within five business days, a mediator nominated by the President of the Law Society or the President's nominee.
- 26.2.2 The role of a mediator is to assist in negotiating a resolution of the dispute. A mediator may not make a decision that is binding on a party unless that party has agreed in writing.
- 26.2.3 Any information or documents disclosed by a party under this clause:
- 26.2.3.1 must be kept confidential; and
 - 26.2.3.2 may not be used except to attempt to resolve the dispute.
- 26.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.
- 26.3 Arbitration**
- 26.3.1 If the dispute is not resolved within 10 business days of appointment of the mediator, a party may refer the dispute to:
- 26.3.1.1 an arbitrator agreed by the parties; or
 - 26.3.1.2 if the parties are unable to agree an arbitrator within five business days, an arbitrator nominated by the Chairperson of the South Australian Chapter of The Institute of Arbitrators and Mediators Australia or the Chairperson's nominee.
- 26.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011 (SA)*.
- 26.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.
- 26.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.
- 26.4 Performance**
- If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

27. Representatives

- 27.1 The Council nominates the Council's Representative as its agent for the purpose of this agreement.
- 27.2 The Supplier nominates the Supplier's Representative as its agent for the purposes of this agreement.
- 27.3 Each party's representative has the authority to make or give instructions, approvals and decisions in respect of the Contract Works, unless a party notifies the other in writing of limits on the powers of its representative.

28. Relationship

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

29. Miscellaneous

- 29.1 **Special Conditions**
If there is an inconsistency between a Special Condition set out in Annexure A and the rest of this agreement, this agreement governs to the extent of the inconsistency.
- 29.2 **Business Days**
Except for the commencement carrying out or completion of any works, if the day on which an act is to be done under this agreement is not a business day, that act may be done on the next business day.
- 29.3 **Alteration**
This agreement may be altered only in writing signed by each party.
- 29.4 **Approvals and consents**
Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.
- 29.5 **Entire agreement**
This agreement:
- 29.5.1 constitutes the entire agreement between the parties about its subject matter;
 - 29.5.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.
- 29.6 **Waiver**
A waiver of a provision of or right under this agreement must be in writing signed by the party giving the waiver and is effective only to the extent set out in the written waiver.
- 29.7 **Exercise of power**
- 29.7.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.
 - 29.7.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

- 29.8 **Survival**
Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.
- 29.9 **Further action**
Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement.
- 29.10 **Governing law**
29.10.1 This agreement is governed by the law in South Australia.
29.10.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.
- 29.11 **Ombudsman**
The Supplier acknowledges that the *Ombudsman Act 1972 (SA)* empowers the Ombudsman to investigate matters in the public interest. The Supplier must ensure compliance with all obligations arising under that or any other Act.
- 29.12 **Work Health and Safety**
In complying with its obligations pursuant to this agreement, the Supplier agrees to:
29.12.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Supplier;
29.12.2 comply with all requirements of the *Work Health and Safety Act 2012 (SA)* and any regulations made under it;
29.12.3 comply with any reasonable requests of the Council in relation to the Supplier's performance of its obligations pursuant to this agreement;
29.12.4 promptly notify the Council of any accident, injury, property or environmental damage or any potential breach of any law (reportable incident) that occurs during or as a result of this agreement. Within 24 hours of a reportable incident, the Supplier must provide a report to the Council's Representative giving details, including the result of investigations into its cause and recommendations or strategies for prevention in the future.
- 29.13 **ICAC**
The Supplier acknowledges and agrees that by entering into this agreement with the Council they will be considered to be public officers for the purposes of the *Independent Commissioner Against Corruption Act, 2012 (SA) (ICAC Act)* and are obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.
- 29.14 **CITB Levy**
The Contractor is responsible for the payment of the Construction Industry Training Board (CITB) Levy (if applicable), proof of which must be provided to Council upon completion of the Services.

30. Notices

- 30.1 A Notice must be:
- 30.1.1 in writing, in English and signed by a person authorised by the sender; and
 - 30.1.2 hand delivered or sent by pre paid post or facsimile or electronic communication to the recipient's address or facsimile number specified in the Schedule, as varied by any Notice given by the recipient to the sender.
- 30.2 A Notice is deemed to be received:
- 30.2.1 if hand delivered, on delivery;
 - 30.2.2 if sent by prepaid mail, two business days after posting (or seven business days after posting if posting to or from a place outside Australia);
 - 30.2.3 if sent by facsimile, at the time and on the day shown in the sender's transmission report, if it shows that the entire Notice was sent to the recipient's facsimile number last Notified by the recipient to the sender;
 - 30.2.4 if sent by electronic communication, at the time deemed to be the time of receipt under the *Electronic Transactions Act 1999* (Cth) if the notice was being given under a law of the Commonwealth of Australia.
- However if the Notice is deemed to be received on a day that is not a business day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next business day.
- 30.3 If two or more people comprise a party, Notice to one is effective Notice to all.

31. Costs

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

INDICATIVE ONLY

EXECUTED as an agreement

By the Council

SIGNED by Andrew Cameron under delegated authority in the presence of:	
..... Signature Signature of witness
 Name of witness (print)

By the Supplier

EXECUTED on behalf of TO BE ADVISED by it's duly authorised representative as detailed below in the presence of:	
..... Signature of Authorised Representative Signature of Witness
..... Name of Authorised Representative(print) Name of Witness (print)
..... Date Signed Date Signed

INDICATIVE ONLY

Annexure A Special Conditions

Specifications to be met are as follows;

Provision of one (1) three (3) bedroom luxury deluxe transportable caravan park cabin from start to finish at the Port Vincent Foreshore Caravan Park in accordance with the following specifications;

- Built in accordance with approved building and design plans as attached to this tender document
- All footings and site preparations
- All interiors to be painted in a relevant washable paint
- Any paint used on the exterior of the building should be appropriate for external conditions
- Interior and exterior lighting as per approved plan
- Reading lights in bedrooms with switches beside beds
- Living room lighting to include dimming ability
- Built in robes as per approved plans
- Suitable flooring provided; tiles in bathrooms and quality commercial timber planks throughout bedrooms, living and kitchen areas
- Hardwired and interconnected smoke detectors to be fitted in accordance with the National Construction Code and AS 3786-2014
- Ducted heating and cooling
- Television points as required (Minimum of 3 outlets)
- Waterproofing of wet areas in accordance with the National Construction Code and AS 3740-2010
- Kitchen splash back to be glass
- Rainwater with back-up mains water plumbed to all hot and cold water points
- 10,000L Rainwater tank in accordance with Building Approval Condition
- Appropriate luxury tapware relevant to cabin requirements – Quality ½ turn taps
- All showers, basins and kitchen to have quality mixer taps
- Large luxury raincloud shower heads to be in both bathrooms
- Instantaneous gas hot water service
- Exhaust fan over shower and in kitchen area
- Quality towel rails, toilet seat etc in bathroom area
- Suitable quality window treatments for all windows
- Fly screens on all windows and doors
- Powder coated aluminium sliding windows and doors with key locks to all windows and doors
- Power points including USB ports as relevant. (Minimum of 25)
- Energy efficiency as per the approved plan
- Appropriate electrical meter box and safety switches
- Sewerage connection points as per the approved plan
- Relevant access and egress including steps and ramps suitably finished in an exterior finish
- Guttering and downpipes installed and connected
- Infill around base of cabin as per approved plan
- Certificate(s) of Compliance from licenced tradespersons to be provided upon completion of work
- Specify applicable warranty periods (minimum 5 years)

- Cabin is to be completed and Certificate of Occupancy Issued prior to Friday, 19th May 2017.
- Oven, range hood, stovetop, washing machine, dryer, refrigerator and dishwasher to be included in tender submission
- No furnishings (other than those detailed above) are to be included in tender submission

Clarification in relation to site specific details should be directed to the Port Vincent Foreshore Caravan Park Managers on 08 8853 7073.

INDICATIVE ONLY