Tender for

Material Supply 2016-17 Open request for tenders Tender Number 151/2016	
Tenderer's Name:	
Date:	

Table of Contents

Page No

1. Structure of this RFT 4
2. Section A – Background & General Information 5
3. Section B – Conditions of Tendering 6
3.1 Definitions 6
3.2 Request for Tender 6
3.2.1 Tender Documents 7
3.2.2 Obtaining a Copy of this RFT 7
3.2.3 Lodgement of Tenders 7
3.2.4 Late Tenders 7
3.2.5 Extension of Time for the Submission of Tenders 7
3.2.6 Tender Validity Period 8
3.2.7 Proposed Tender Process 8
3.2.8 Proposed Timing of Tender Process 8
3.2.9 Copying Tenders 8
3.3 Communication between the Parties 8
3.3.1 Enquiries or Requests for Information or Clarification 8
3.3.2 Tenderer's Contact Person 9
3.3.3 Site/Industry Briefing 9
3.3.4 Tenderer not to solicit the Council and its employees 9
3.4 Tender Preparation 9
3.4.1 Tenderers to be informed 9
3.4.2 Evidence of Registration or Licensing 10
3.4.3 Conflict of Interest 10
3.4.4 Use of Sub-contractors 10
3.4.5 Ombudsman Act 10
3.4.6 Freedom of Information 10
3.4.7 Collusion 10
3.4.8 Tenderer's confidential information 10
3.5 Tender Documents 11
3.5.1 Conforming Tenders 11
3.5.2 Non-Conforming Tenders 11
3.5.3 Content of Tenders 11
3.6 Acknowledgement by Tenderers 11
3.7 Council's Rights 12
3.8 Tender Evaluation 12
3.8.2 Use of Tender Documents 13
3.8.3 Debriefing of Tenderers 13
3.9 Acceptance of Tender 13
3.10 Unsuccessful Tenders 14
3.11 No Legal Requirement 14
4. Governing Law 14
5. ICAC 14
6. Section C – Contract for Supply of Goods 15
7. Section D – Specifications for the Goods 16
Section E – Tender Response Schedules 18
Schedule 1 Tender Form - Formal Offer 18
Schedule 2 Tenderer's Details 21
Schedule 3 Licences and Accreditation 22
Schedule 4 Insurance 23
Schedule 5 Environmental Management System 24
Schedule 6 Quality Systems 25
Schedule 7 Referees 26

Schedule 8 Statement of Conformity 27
Schedule 9 Organisation Structure, Facilities and Resources 28
Schedule 10 Experience 29
Schedule 11 Pricing 30

1. Structure of this RFT

This RFT is comprised of five sections, being:

1.1 Section A - Background and General Information to Tenderers

1.2 Section B - Conditions of Tendering

1.3 Section C - Contract for Supply of Goods

1.4 Section D - Specifications

1.5 Section E - Tender Response Schedules

2. Section A – Background & General Information

2.1 The Yorke Peninsula Council (the **Council**) invites tenders from Tenderers for the supply (ex bin) and supply and delivery of road construction materials to support Council's 2016-17 Capital Works Program (the **Goods**). The Council will enter into a Contract for the Supply of Goods with the successful Tenderer.

3. Section B – Conditions of Tendering

3.1 Definitions

In this RFT, the following terms (unless inconsistent with the context) mean:

3.1.1 A reference to a **clause** is a reference to a clause of this RFT.

3.1.2 **Closing Date** means the time and date specified in clause 3.2.3, or such later time and date as may be notified in writing to Tenderers by the Council.

3.1.3 **Conditions of Tendering** means these conditions of Tendering as attached to Section B of this RFT.

3.1.4 **Conforming Tender** means a Tender described in clause 3.5.1.

3.1.5 **Contract for Supply of Goods** means the contract for the supply of the Goods as attached to Section C of this RFT, as may be subsequently amended by agreement between the Council and the successful Tenderer pursuant to clause 3.9.

3.1.6 **Goods** means the goods sought to be purchased by the Council pursuant to this RFT.

3.1.7 **Nominated Contact Person** means the person named in clause 3.3.1.

3.1.8 **Non-Conforming Tender** means a Tender does not meet the requirements set out in this RFT and/or the Tender Documents.

3.1.9 **Preferred Tender** means the Tenderer referred to in clause 3.9.

3.1.10 **RFT** means this Request for Tender.

3.1.11 **Specifications** means the specifications of the Goods specified in Section D of this RFT.

3.1.12 **Tender** means a tender submitted by a Tenderer pursuant to this RFT.

3.1.13 **Tender Documents** means the documents specified in clause 3.2.1.

3.1.14 **Tender Process** means the process for calling, receiving, evaluating and awarding of Tender(s) as proposed in clauses 3.2.7 and 3.2.8 of these Conditions of Tendering.

3.1.15 **Tender Response Schedules** are the forms attached to Section E of this RFT.

3.1.16 **Tenderer** has the meaning given to it in clause 3.2.2.

3.1.17 **Tenderer's Representative** means the person nominated by a Tenderer under clause 3.3.2.

3.2 Request for Tender

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

3.2.1 ***Tender Documents***

The Tender Documents are comprised of:

3.2.1.1 these Conditions of Tendering;

3.2.1.2 the Contract for Supply of Goods;

3.2.1.3 the Specifications; and

3.2.1.4 the Tender Response Schedules.

3.2.2 ***Obtaining a Copy of this RFT***

This RFT is open to any organisation or person who registers its interest and details with the Council and thereby obtains a copy of the Tender Documents (each such party is a **Tenderer**). Parties obtaining the Tender Documents (in soft copy) will be required to register their name and contact details at the time of issue of the documents.

3.2.3 ***Lodgement of Tenders***

3.2.3.1 Tenders must be delivered to the Tender Box at the Council prior to 5.00pm (CST) on Friday 15 July 2016 (the **Closing Date**).

3.2.3.2 Applications must be enclosed in an envelope and marked "CONFIDENTIAL" and be addressed as follows:

Tender 151/2016 – Material Supply 2016-17
Yorke Peninsula Council
PO Box 57
MAITLAND SA 5573

Closing Date: 5.00pm (CST), Friday 15 July 2016

3.2.3.3 Tenderers are required to lodge an original Tender plus eight (8) copies, each of which (including copies of all supporting documentation) is to be certified by the Tenderer to be true copies of the Tender.

3.2.3.4 Facsimile transmissions of Tenders will not be accepted.

3.2.4 ***Late Tenders***

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

3.2.5 ***Extension of Time for the Submission of Tenders***

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

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

(a) Any such requests must be received by the Nominated Contact Person at least five (5) business days prior to the Closing Date, and must provide sufficient reasons to support the request.

(b) It is entirely at the Council's discretion as to whether an extension is granted.

3.2.6 ***Tender Validity Period***

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

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

3.2.7 ***Proposed Tender Process***

Tenders will be assessed in accordance with Council's Purchasing and Procurement Policy.

3.2.8 ***Proposed Timing of Tender Process***

The proposed timing for the Tender Process is as follows:

Request for Tenders	1 July 2016
Closing Date	15 July 2016
Notification to Successful Tenderer	Mid-August 2016 ***(indicative)***
Execution of Contract for Supply of Goods	Mid-August 2016 ***(indicative)***
Commencement of Provision of Goods	Mid to Late August 2016 ***(indicative)***

3.2.9 ***Copying Tenders***

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

3.3 **Communication between the Parties**

3.3.1 ***Enquiries or Requests for Information or Clarification***

3.3.1.1 Any enquiries or requests for information or clarification regarding this RFT or the Tender Documents must be made in writing and addressed to the Nominated Contact Person.

The Nominated Contact Person is Mr Roy Dick.

3.3.1.2 The Nominated Contact Person may (but is not obligated to) respond to a Tenderer's enquiries or requests for information or clarification.

3.3.1.3 If the Council provides any information to a Tenderer by way of clarification, then the Council reserves the right to provide that information to other Tenderers.

3.3.1.4 No statement made by the Nominated Contact Person, or any other representative of the Council should be construed as modifying this RFT or any of the Tender Documents, unless confirmed in writing by the Nominated Contact Person.

3.3.2 ***Tenderer's Contact Person***

3.3.2.1 Tenderers are required to nominate a person to be the authorised contact person and supply an address for the service of any notices for the purpose of this RFT (**Tenderer's Representative**).

3.3.2.2 Each Tenderer must notify the Council of its Tenderer's Representative within five (5) business days of obtaining the Tender Documents.

3.3.2.3 All communications with the Tenderer will be via the Tenderer's Representative.

3.3.3 ***Site/Industry Briefing***

3.3.3.1 The Council may conduct a site/industry briefing. The briefing (if conducted) is intended to provide Tenderers with background information, and Tenderers are not to treat any statements made at the briefing as variations to this RFT.

3.3.3.2 The Council reserves the right to require all Tenderers to attend the site/industry briefing.

3.3.3.3 Details of the briefing will be provided to Tenderers at least seven (7) business days prior to the briefing. Tenderers may be notified of the site/industry briefing by email, and Council may post the details of the briefing on the internet.

3.3.3.4 Each attending Tenderer must advise the Nominated Contact Person of the details of that Tenderer's attendees (including name and position) at least two (2) business days before the briefing.

3.3.4 ***Tenderer not to solicit the Council and its employees***

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

3.4 **Tender Preparation**

3.4.1 ***Tenderers to be informed***

Each Tenderer must, prior to submitting its Tender, become acquainted with the Goods to be supplied to the Council, and make all necessary examinations, investigations, inspections and deductions.

3.4.2 ***Evidence of Registration or Licensing***

Each Tenderer must (if applicable) be licensed or registered for the sale of the Goods.

3.4.3 ***Conflict of Interest***

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

3.4.4 ***Use of Sub-contractors***

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

3.4.5 ***Ombudsman* Act**

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

3.4.6 ***Freedom of Information***

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

3.4.7 ***Collusion***

The Tenderer must not collude with any other Tenderers or potential Tenderers.

3.4.8 ***Tenderer's confidential information***

3.4.8.1 Subject to clauses 3.4.8.2 and 4, the Council will treat as confidential all Tenders submitted by Tenderers in connection with this RFT.

3.4.8.2 The Council will not be taken to have breached any obligation to keep information provided by Tenderers confidential to the extent that the information:

(a) is disclosed by the Council to its advisers, officers, employees or subcontractors solely in order to conduct the RFT process or to prepare and manage any resultant agreement;

(b) is disclosed to the Council's internal management personnel, solely to enable effective management or auditing of the RFT process;

(c) is disclosed by the Council to the responsible Minister;

(d) is authorised or required by law to be disclosed; or

(e) is in the public domain otherwise than due to a breach of the relevant obligations of confidentiality.

3.5 Tender Documents

3.5.1 *Conforming Tenders*

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

3.5.2 *Non-Conforming Tenders*

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

3.5.3 *Content of Tenders*

3.5.3.1 Tenderers are required to complete the Tender Response Schedules and submit them to the Council.

3.5.3.2 Tenderers can also supply any other additional information or documents. The Council may have reference to such additional information or documents in evaluating the Tenders.

3.5.3.3 All prices quoted by Tenderers in their Tender are:

(a) to be in Australian dollars;

(b) to be exclusive GST; and

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

3.5.3.4 If a Tenderer proposes to supply the Goods on a basis different to that envisaged by the Tender Documents (whether for reasons of innovation, efficiency or otherwise) that proposal should be fully documented and justified with the Tender. The Council does not warrant that any discussion with the Council's Nominated Contact Person prior to the Closing Date in relation to such a proposal will be taken into account in evaluating the Tenders.

3.6 Acknowledgement by Tenderers

Tenderers acknowledge that the Council:

3.6.1 makes no representations and offers no undertakings in issuing this RFT or the Tender Documents;

3.6.2 is not bound to accept the lowest Tender or required to accept any Tender;

3.6.3 may accept all or part of any Tender;

3.6.4 may require one or more Tenderers (but is not obliged to require all) to supply further information and/or attend a conference or interview;

3.6.5 may require one or more Tenderers (but is not obliged to require all) to make presentation(s);

3.6.6 may undertake "due diligence" checks on any Tenderer, including verifying references and/or referees, and undertaking company searches and credit checks;

3.6.7 will not be responsible for any costs or expenses incurred by the Tenderer arising in any way from the preparation and submission of its Tender;

3.6.8 accepts no responsibility for a Tenderer misunderstanding or failing to respond correctly to this RFT;

3.6.9 will not be liable for or pay any expenses or losses incurred by any party whether in the preparation of a Tender or prior to the signing of any Contract for the Supply of Goods or otherwise; and

3.6.10 will not be bound by any verbal advice given or information furnished by any member, officer or agent of the Council in respect of the Tender Documents or this RFT, but will only be bound by written advice provided by the Nominated Contact Person.

3.7 **Council's Rights**

The Council reserves the right to:

3.7.1 amend, vary, supplement or terminate this RFT at any time;

3.7.2 accept or reject any Tender, including the lowest price tender;

3.7.3 negotiate with any supplier regarding all or any part of the Goods to be supplied pursuant to this RFT;

3.7.4 vary the timing and process referred to in clauses 3.2.7 and 3.2.8;

3.7.5 postpone or abandon this RFT;

3.7.6 add or remove any Tenderer;

3.7.7 accept or reject any Tenders whether or not they are Conforming Tenders;

3.7.8 accept all or part of any Tender;

3.7.9 negotiate or not negotiate with one or more Tenderers; and/or

3.7.10 discontinue negotiations with any Tenderer.

3.8 **Tender Evaluation**

3.8.1 In assessing Tenders, the Council will have regard to, but not necessarily be limited to, the following criteria (not listed in any order of priority):

3.8.1.1 insurance;

3.8.1.2 compliance with work health and safety requirements;

3.8.1.3 customer service experience and capacity;

3.8.1.4 the tendered prices, including the proposed pricing structure;

3.8.1.5 the level of risk associated with negotiation of an acceptable Contract for Supply of Goods;

3.8.1.6 environmental management systems (if applicable);

3.8.1.7 degree of compliance with the requirements set out in this RFT and the Tender Documents; and

3.8.1.8 such other matters that Council considers relevant, including:

(a) details of current and previous relevant experience in the supply of the Goods;

(b) the manufacture of any of the Goods;

(c) financial resources;

(d) staff resources; and

(e) current and future contracts/workload.

3.8.2 ***Use of Tender Documents***

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

3.8.3 ***Debriefing of Tenderers***

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

3.9 **Acceptance of Tender**

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

3.9.2 The Council and the Preferred Tenderer may (if required) enter into negotiations for the award and execution of a Contract for Supply of Goods.

3.9.3 If, despite their best endeavours and acting in good faith, the Council and the Preferred Tenderer are unable to negotiate and agree on the terms of the Contract for Supply of Goods, the Council reserves the right to negotiate with any other parties, including other Tenderers, for the supply of the Goods.

3.9.4 The successful Tenderer will be notified in writing by the Council of the Council's acceptance of its Tender. The successful Tenderer must not make any oral or written public statements in relation to the awarding of a Contract for Supply of Goods until written notice is received by the Tenderer.

3.9.5 The notification of the acceptance of Tender by the Council creates an obligation on the Council and the successful Tenderer to enter into the Contract for Supply of Goods (subject to any variations agreed pursuant to this clause 3.9).

3.9.6 The successful Tenderer acknowledges and agrees that all intellectual property created by the successful Tenderer arising out of the supply of Goods belongs to the Council, and the successful Tenderer will do all reasonable things necessary to assist the Council in the protection and transfer of ownership of the intellectual property resulting from the supply of the Goods.

3.10 **Unsuccessful Tenders**

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

3.11 **No Legal Requirement**

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

4. Governing Law

4.1 This RFT is governed by the law in South Australia.

4.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

5. ICAC

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

6. Section C – Contract for Supply of Goods

Please refer to the attached indicative contract which will be completed and executed following appointment of the preferred Tenderer.

7. Section D – Specifications for the Goods

Please supply a written quotation for the **supply** (ex bin) and **supply and delivery** of **PM 2/20 QG** as follows:

Delivery Number	Delivery Date	Stockpile Site	Tonnage
1	August 2016	Stansbury CWMS	3400
2	August 2016	Stansbury CWMS	3400
3	August 2016	Stansbury CWMS	1300
4	August 2016	Spicers Pit, 5km north of Minlaton	3600
5	October 2016	Rear of Edithburgh Cemetery	3500
6	October 2016	Stansbury CWMS	3900
7	October 2016	Cutline Road	3800
8	August 2016	Spicers Pit, 5km north of Minlaton	1800
9	November 2016	Black Gate Road, 1km south of Waterloo Bay Road	3400
10	September 2016	Corny Point CFS Station	200
11	September 2016	Warooka Oval, near the old courts	200

Please refer to the map following for the locations of the stockpile sites.

Please also provide an aggregate test report.

Cartage dockets **must be** supplied to Council upon completion.

Please note that all material **must be** supplied and delivered prior to the end of November 2016.

Please note as per clauses 3.6.3, 3.7.3, 3.7.8 and 3.9.1 Council **will be** accepting parts of this Tender from a number of Tenderers and **will be** enter into contracts for the supply (ex bin) and supply and delivery of the materials with a number of Tenderers.

Should you require clarification of these requirements please contact Council's Nominated Contact Person Mr Roy Dick on telephone 0409 350 279.

Eyre Peninsula
BARNGALA
NUKUNNA
Port Pirie
Jamestown
Crystal Brook
Spencer Gulf
Wallaroo
Kadina
Moonta
NARRUNGA
Port Wakefield
Balaklava
KAUNA
Ardrossan
Gulf St Vincent
Angle Vale
ADELAIDE
Maslin Beach
Aldinga Beach
Sellicks Beach
Willunga
McLaren Vale
Victor Harbor
YORKE PENINSULA
Major Road - Sealed
Secondary Road - Sealed
Secondary Road - Unsealed
Other Road - Sealed
Other Road - Unsealed
Distances in Kilometres
Route Marker
Visitor Information Centre
Information Outlet
Camping Area
Marina
Boat Ramp
Dive Spot
Seal Colony
Aboriginal Cultural Experience
Photo Opportunity
Lighthouse
Cellar Door
Airport
Airfield

Section E – Tender Response Schedules

Schedule 1 Tender Form - Formal Offer

I/We _____ (**Tenderer**) on _____ having read, understood and fully informed myself/ourselves/itself of the contents, requirements and obligations of the Request for Tender, do hereby tender to provide Goods described in the Specifications in accordance with the Contract for the amounts set out in the Tender Return Schedules attached.

The Tenderer:

1. is subject to the terms and conditions set out in the Conditions of Tendering;

2. irrevocably offers to provide the Goods on the terms of the Contract and the Specifications which form part of the Tender Documents subject only to the variations set out in Schedule ;

3. confirms that this Tender has been prepared without any consultation, communication, agreement or other arrangement with any competitor regarding:

    3.1 prices or methods, factors or formulae used to calculate prices;

    3.2 the intention or decision to submit a Tender, or the terms of the Tender;

    3.3 the submission of a Non-Conforming Tender; and

    3.4 the quality, quantity, specifications or particulars of the Goods; and

4. holds this offer open and capable of acceptance by the Council for a period of ninety (90) days from the closing date.

The undersigned undertakes that if selected as the successful Tenderer, I/we/it will execute and be bound by the Contract in accordance with the Conditions of Tendering.

If the Tenderer is a company, it must execute this Tender as follows:

Executed by _____ pursuant to section 127 of the *Corporations Act 2001:*	
Signature of Director	Signature of Director/Company Secretary (*Please delete as applicable)*
Name of Director (print)	Name of Director/Company Secretary (print)
OR Signature of Sole Director and Sole Company Secretary	
Name of Sole Director and Sole Company Secretary (print)	
OR **Signed** for _____ by an authorised representative in the presence of:	
Signature of witness	Signature of authorised representative
Name of witness (print)	Name of authorised representative (print)
	Position of authorised representative (print)

If the Tenderer is an individual, the document must be executed as follows:

Signed by _____ in the presence of:	
..... Signature of witness	..... Tenderer
..... Name of witness (print)	

If the Tenderer is a partnership, the Tender must be executed as follows:

Partner 1:

Signed sealed and delivered by _____ in the presence of:	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

Partner 2:

Signed sealed and delivered by _____ in the presence of:	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

Schedule 2 Tenderer's Details

1.	**Name of Tenderer** State in full the name(s) of the person(s) or the registered name(s) of the company(s) and trading names. ABN number	
2.	**Contact person** Nominate a contact person for this tender to deal with any questions or queries that may arise.	
3.	**Registered address**	
4.	**Postal address**	
5.	**Telephone**	
6.	**Fax**	
7.	**Email**	
8.	**Tender conditions** Tenderer to sign that it has read and understood this RFT and the Conditions of Tender.	
9.	**Amendments to Tender Documents** Tenderer to indicate the amendments it requests.	

Schedule 3 Licences and Accreditation

Please list details of any licences or accreditations required or relevant to this Tender.

Schedule 4 Insurance

Please complete and return the attached Contractor Information Request and associated documentation.

Schedule 5 Environmental Management System

Please provide details of your environmental management system and where possible, examples of:

- Reports on environmental performance.
- Incident reports including actions taken to address the incident and improvements to processes to reduce risk of occurring again.
- Environmental management plans established for other contracts.

Schedule 6 Quality Systems

Please describe the level of quality assurance in place in your organisation and plans to move to quality accreditation if not presently accredited.

_____

_____

_____

Provide details of contracts performed under your Quality Assurance System

_____

_____

_____

Schedule 7 Referees

Please provide details of at least three (3) references for similar work and information on the approximate date when work was completed as well as the approximate value of the work undertaken.

Reuse this page if more than three (3) references are provided.

Client Name:	
Address:	
Contact Name:	
Telephone:	
Completion Date:	
Value of Work:	

Client Name:	
Address:	
Contact Name:	
Telephone:	
Completion Date:	
Value of Work:	

Client Name:	
Address:	
Contact Name:	
Telephone:	
Completion Date:	
Value of Work:	

Schedule 8 Statement of Conformity

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

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

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

NC = Non-conforming

PC = Partially conforming

AO = Alternate offer

Area of non-conformity and reason	NC/PC/AO

Schedule 9 Organisation Structure, Facilities and Resources

1. Organisation structure

Please provide details of the staff and the organisation structure proposed to be used for provision of the Goods. Details must include but not be limited to:

- Company structure, including size and location of office, and organisation structure.
- Number of staff proposed to be used and their qualifications and experience.

2. Employees

Please provide details.

3. Other details (e.g. specific plant and equipment, vehicles, etc.)

4. Facilities

Please provide details.

5. Proposed subcontractors

Please provide details, in the Table below, of the proposed major subcontractors or other representatives to be employed or engaged for this Tender.

Please also specify and define the Goods to be provided by subcontractors.

Subcontractor's Name and Address	Goods to be Provided	Item(s)

6. Contingency arrangements

Please provide details of contingency arrangements should any facilities or sites required to facilitate the Contract become unavailable in the short and long term.

Schedule 10 Experience

1. Past performance

For how many years have you engaged in the type of work required by the Contract?

_____

_____

_____

Have you had an appointment terminated on a project in the last five (5) years? If yes, please provide brief details.

_____

_____

_____

Have you terminated a project in the last five (5) years? If yes, please provide brief details.

_____

_____

_____

Have you refused to continue providing goods under a contract in the last five years unless the terms or payments were changed from those which were originally agreed? If yes, please provide brief details.

_____

_____

_____

2. Other commitments

Please provide details of other work commitments expected to continue during the term of the Contract.

Schedule 11 Pricing

All prices must be listed exclusive of GST

Please provide a breakdown of the costs for the Goods in the table below:

Delivery Number	Delivery Date	Stockpile Site	Tonnage	Supply (Ex Bin) Price (GST Excl.)	Supply and Delivery Price (GST Excl.)
1	August 2016	Stansbury CWMS	3400		
2	August 2016	Stansbury CWMS	3400		
3	August 2016	Stansbury CWMS	1300		
4	August 2016	Spicers Pit, 5km north of Minlaton	3600		
5	October 2016	Rear of Edithburgh Cemetery	3500		
6	October 2016	Stansbury CWMS	3900		
7	October 2016	Cutline Road	3800		
8	August 2016	Spicers Pit, 5km north of Minlaton	1800		
9	November 2016	Black Gate Road, 1km south of Waterloo Bay Road	3400		
10	September 2016	Corny Point CFS Station	200		
11	September 2016	Warooka Oval, near the old courts	200		

INDICATIVE CONTRACT

Contract for

Material Supply 2016-17

In accordance with Request for Tender 151/2016

Table of Contents

Page No

Schedule **4**
Date **5**
Parties **5**
Background **5**
Agreed Terms **5**
1. **Definitions and Interpretation** **5**
   1.1 Definitions 5
   1.2 Interpretation 7
2. **Engagement of Supplier** **7**
3. **Delivery** **8**
4. **Payment Terms** **8**
   4.1 Payment of Price 8
   4.2 Payment terms 9
   4.3 Effect of payment 9
   4.4 Right of set off 9
5. **Warranty** **9**
6. **Statutory Requirements** **10**
7. **Variation to Services** **10**
8. **Supplier's Staff** **10**
9. **Insurance** **11**
10. **Indemnity and Exclusion of Liability** **11**
11. **Non Performance by Supplier** **12**
12. **Force Majeure** **12**
13. **Termination** **13**
   13.1 Termination by Council 13
   13.2 Termination by Supplier 13
   13.3 Accrued rights and remedies 13
14. **Confidential Information and Freedom of Information** **13**
15. **Dispute Resolution** **14**
   15.1 General 14
   15.2 Mediation 14
   15.3 Arbitration 15
   15.4 Performance 15
16. **Relationship** **15**
17. **Subcontracting and Assigning** **15**
18. **Miscellaneous** **16**
   18.1 Special Conditions 16
   18.2 Alteration 16
   18.3 Entire agreement 16
   18.4 Waiver 16
   18.5 Exercise of power 16
   18.6 Survival 16
   18.7 Further action 17
   18.8 Governing law 17
   18.9 Ombudsman 17
   18.10 Work Health and Safety 17
   18.11 ICAC 17
19. **Goods and Services Tax** **17**
   19.1 Consideration does not include GST 17
   19.2 Gross up of consideration 17

INDICATIVE CONTRACT ONLY

19.3 Reimbursements 18
19.4 Tax invoices 18
19.5 Adjustments 18
20. **Notices** **18**
21. **Costs** **19**
Annexure A **Goods** **20**
Annexure B **Fee** **21**
Annexure C **Special Conditions** **22**
EXECUTED as an agreement **23**

INDICATIVE CONTRACT ONLY

Schedule

Item 1 Council	Yorke Peninsula Council PO Box 57 MAITLAND SA 5573 ABN: 82 179 825 615 Fax: 08 8853 2494 Email: admin@yorke.sa.gov.au Phone: 08 8832 0000
Item 2 Supplier	[Insert name of Supplier] ABN: [ABN of Supplier] Fax: [Fax no] Email: [Email address] Phone: [Phone no]
Item 3 Reimbursable Expenses	Nil
Item 4 Insurance requirements	**Public liability insurance** Company: [Company] Policy: [Policy] Expiry: [Expiry] Amount: $[Insert amount] for any one incident
Item 5 Commencement Date	XX August 2016
Item 6 Termination Date	30 November 2016
Item 7 Council's Representative	Mr Roy Dick, Works Manager and any other person as may be advised by the Council in writing.
Item 8 Supplier's Staff	[Insert names and positions of staff members] and any other person as may be approved by the Council in writing.
Item 9 Confidential Sections	Nil
Item 10 Supplier's Representative	[Insert name and position of representative] and any other person as may be advised by the Consultant in writing.

INDICATIVE CONTRACT ONLY

Date

[Insert Date]

Parties

Yorke Peninsula Council ABN 82 179 825 615 of 8 Elizabeth Street, Maitland, SA (**Council**)

The person specified in Item 2 of the Schedule (**Supplier**)

Background

A. Pursuant to a Request for Tender process, the Council sought submissions from suitably qualified parties for the supply of the Goods.

B. The Supplier submitted a Tender for the supply of the Goods, and the Council accepted it.

C. The Supplier agrees to supply the Goods on the terms 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 includes any authorisation, agreement, approval, licence, permit, consent, qualification, accreditation, registration, certificate, declaration or exemption and any renewal and variation of them by or with a Governmental Agency.

Cartage Docket means the document issued by the Supplier detailing the product tonnages delivered onsite.

Clause refers to a clause of this agreement.

Commencement Date means the date specified in Item 5 of the Schedule.

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

INDICATIVE CONTRACT ONLY

information which has been previously published or otherwise disclosed to the general public or is required to be disclosed by Law.

Confidential Sections are those clauses, Schedules and/or Annexures specified in Item 9 of the Schedule that are deemed to be confidential for the purposes of the FOI Act.

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

Council's Representative means the person specified in Item 7 of the Schedule.

FOI Act means *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 specified in Annexure A of the Schedule.

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

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

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

Price means the price for the supply of the Goods, specified in Annexure B.

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

Reimbursable Expenses means the expenses specified in Item 3 of the Schedule.

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.

Special Conditions mean the special conditions set out in Annexure C, if any.

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 means the person specified in Item 10 of the Schedule.

Supplier's Staff means the people approved by the Council to supply the Goods, being those persons specified in Item 8 of the Schedule.

Term means the period starting on the Commencement Date and finishing on the Termination Date.

INDICATIVE CONTRACT ONLY

Termination Date means the date specified in Item 6 of the Schedule, unless this agreement is terminated in accordance with this agreement.

Variation means any change to the supply of the Goods including any addition, increase, decrease, omission, deletion, demolition or removal to or from the supply of the Goods.

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 a reference to a party includes its executors, administrators, successors and permitted assigns;

1.2.4 a reference to a person includes a partnership, corporation, association, government body and any other entity;

1.2.5 a reference to this agreement includes any schedules and annexures to this agreement;

1.2.6 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;

1.2.7 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;

1.2.8 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;

1.2.9 a provision is not construed against a party only because that party drafted it;

1.2.10 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;

1.2.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;

1.2.12 an expression defined in the *Corporations Act 2001* (Cth) has the meaning given by that Act at the date of this agreement;

1.2.13 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 and Annexure A.

INDICATIVE CONTRACT ONLY

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 and Annexure A;

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 Cartage 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.

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.

3.5 If the Council in its absolute discretion decides that the Goods do not meet the description of the Goods in this agreement and/or Annexure A, 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.

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.

INDICATIVE CONTRACT ONLY

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 fourteen (14) days of the Delivery Date.

4.2.2 The Council must pay the Price within thirty (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 displays the Council's purchase order number;

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

4.2.3.5 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. Warranty

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

5.1.1 will conform to the description and specifications of the Goods in this agreement and Annexure A;

5.1.2 will be of good merchantable quality and fit for the purpose for which they are sold;

5.1.3 will be free from all liens and encumbrances and the Supplier has good marketable title to the Goods; and

5.1.4 will be delivered to the Location on the Delivery Date.

5.2 If any of the Goods is defective or fails to meet the specifications for the Goods the Council may return the defective Goods to the Supplier and the Supplier must replace the returned defective Goods at no cost to the Council.

5.3 The Supplier is responsible for:

INDICATIVE CONTRACT ONLY

5.3.1 all transport and other costs incurred by the Council in returning any defective Goods to the Supplier for replacement;

5.3.2 all transport and other costs in the Supplier delivering any replacement Goods to the Council;

5.3.3 any damage or loss caused during transport of any Goods under this clause; and

5.3.4 all losses suffered and all costs incurred by the Council as a result (direct and indirect) of the defective Goods.

6. Statutory Requirements

6.1 The Supplier must ensure that its supply and delivery of the Goods comply with all Laws applicable to the sale, supply and delivery of goods and materials.

6.2 Where required, the Supplier must, at its cost in all things, obtain all approvals and pay all fees incurred on the sale, supply and delivery of the Goods to the Council.

7. Variation to Services

7.1 The Council may, by written notice to the Supplier, request a Variation to the supply of the Goods. This may consist of a direction to the Supplier to change the character, quality or quantity of the Goods.

7.2 Subject to clause 7.4, the Supplier must not carry out a Variation unless and until the Council provides to the Supplier a written Variation and the Variation is valued.

7.3 A Variation is valued as follows:

7.3.1 where the Variation can be valued by the application of rates accepted by the Council - by the application of those rates; or

7.3.2 where there are no relevant rates - the Council's Representative must determine a reasonable value.

7.4 If the Council gives the Supplier a written instruction that a matter is so urgent that the Supplier should proceed with the Variation before it is valued, the Supplier may proceed with the Variation and the Variation must be valued afterwards by the Council's Representative.

7.5 No Variation invalidates this agreement irrespective of the character or value of the Variation.

7.6 All Variations must be in writing and signed by the Council's Representative.

8. Supplier's Staff

8.1 The Supplier acknowledges that the Council enters into this agreement on the basis of the skills, reputation, qualifications, experience and knowledge of the Supplier's Staff and that the Goods must be provided only by the Supplier's Staff.

8.2 The Supplier may request in writing that the Council approve further people as Supplier's Staff.

INDICATIVE CONTRACT ONLY

8.3 The Council may, in its absolute discretion, give (conditionally or unconditionally) or withhold such approval.

8.4 The Supplier is responsible for the supply of the Goods by the Supplier's Staff and will not be relieved of its obligations or liabilities under this agreement.

8.5 The Supplier is responsible for labour management and industrial relations in respect of the supply of the Goods by the Supplier's Staff.

8.5.1 The Council does not bear or accept any additional costs as a result of the impact of any industrial dispute on the supply of the Goods.

8.5.2 In the event of an industrial dispute, the Supplier must take all reasonable steps to ensure the continuation of the supply of the Goods without adverse impact on the Council.

9. Insurance

9.1 During the Term, the Supplier must maintain all insurances required by Law and this agreement, including:

9.1.1 public liability insurance for the amount specified in Item 4 of the Schedule in respect of any one incident arising during or in consequence of the supply of the Goods. The insurance policy must bear an endorsement from the insurer acknowledging the indemnities given by the Supplier under this agreement;

9.1.2 any other insurances specified in Item 4 of the Schedule.

9.2 The Supplier must produce evidence of those insurances to the Council upon request.

9.3 All insurance policies must bear an endorsement from the insurer that it will notify the Council if the policy is cancelled or altered or allowed to lapse.

9.4 The Supplier must not allow any act or omission which would make any policy of insurance void or unenforceable.

9.5 The Supplier must register itself with Return to Work SA and maintain that registration and pay all levies pursuant to the *Return to Work Act 2014* (SA) at all times during the Term. The Supplier must produce evidence of that registration to the Council upon request.

9.6 The Supplier must ensure that its subcontractors (so long as they have been approved by the Council) comply with this clause.

10. Indemnity and Exclusion of Liability

10.1 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.

10.2 This indemnity is reduced by the extent to which the Council contributed to the event giving rise to the claim for indemnity.

INDICATIVE CONTRACT ONLY

10.3 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.

11. 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:

11.1 suspend any or all payment of the Price until the breach is remedied;

11.2 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;

11.3 terminate this agreement in accordance with clause 13.1; and/or

11.4 pursue any other legal remedies available to the Council.

12. Force Majeure

12.1 If a Force Majeure Event causes delay or failure by a party to perform its obligations under this agreement:

12.1.1 neither party is liable for such delay or failure; and

12.1.2 all obligations of a party under this agreement are suspended until the Force Majeure Event ceases to apply.

12.2 A party which is, by reason of a Force Majeure Event, unable to perform any obligation or condition required by this agreement must:

12.2.1 notify the other party as soon as possible giving:

12.2.1.1 reasonably full particulars of the Force Majeure Event;

12.2.1.2 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

12.2.1.3 where possible, the means proposed to be adopted to remedy or abate the Force Majeure Event.

12.2.2 use all reasonable diligence and employ all reasonable means to remedy or abate the Force Majeure Event as soon as possible;

12.2.3 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;

12.2.4 notify the other party when the Force Majeure Event terminates or abates to an extent which permits resumption of performance; and

12.2.5 notify the other party when resumption of performance occurs.

INDICATIVE CONTRACT ONLY

12.3 If a delay or failure under this clause exceeds sixty (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 termination in respect of the Goods supplied to the Force Majeure Event. Without limiting the effect of this clause 12.3, 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.

13. Termination

13.1 Termination by Council

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

13.1.1.1 ceases to carry on business or becomes otherwise unable to perform its obligations under this agreement; or

13.1.1.2 breaches a material or essential term of this agreement and fails to remedy the breach within a reasonable time after receiving notice requiring it to do so; or

13.1.1.3 becomes an externally-administered body corporate or an insolvent under administration; or

13.1.1.4 becomes insolvent or bankrupt.

13.1.2 In such circumstances, the Council will be liable to the Supplier only in respect of the fees properly owing up to the date of termination in respect of the Goods supplied to that time. Without limiting the effect of this clause 13.1.2, 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.

13.2 Termination by Supplier

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.

13.3 Accrued rights and remedies

Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

14. Confidential Information and Freedom of Information

14.1 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:

14.1.1 keep confidential;

INDICATIVE CONTRACT ONLY

14.1.2 take reasonable steps to ensure that the party's officers and employees do not disclose to a third party;

14.1.3 maintain proper and secure custody of; and

14.1.4 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.

14.2 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.

14.3 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.

14.4 Unauthorised disclosure of any Confidential Sections constitutes a breach of a party's obligations under this agreement.

15. Dispute Resolution

15.1 **General**

15.1.1 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.

15.1.2 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.

15.1.3 On receipt of that notice by the other party, the parties must negotiate in good faith to resolve the dispute.

15.1.4 If the parties are unable to resolve the dispute within ten (10) business days, they must promptly refer the dispute:

15.1.4.1 in the case of the Council to the Chief Executive Officer; and

15.1.4.2 in the case of the Supplier to the Supplier's Representative.

15.1.5 Those persons must meet to resolve the dispute and must be authorised to resolve the dispute.

15.2 **Mediation**

15.2.1 If those persons are unable to resolve the dispute within ten (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:

15.2.1.1 a mediator agreed by the parties; or

INDICATIVE CONTRACT ONLY

15.2.1.2 if the parties are unable to agree to a mediator within five (5) business days, a mediator nominated by the President of the Law Society or the President's nominee.

15.2.2 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.

15.2.3 Any information or documents disclosed by a party under this clause:

15.2.3.1 must be kept confidential; and

15.2.3.2 may not be used except to attempt to resolve the dispute.

15.2.4 Each party must bear its own mediation costs. The parties must bear equally the costs of any mediator.

15.3 **Arbitration**

15.3.1 If the dispute is not resolved within ten (10) business days of appointment of the mediator, a party may refer the dispute to:

15.3.1.1 an arbitrator agreed by the parties; or

15.3.1.2 if the parties are unable to agree to an arbitrator within five (5) 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.

15.3.2 A referral to arbitration is a submission to arbitration within the meaning of the *Commercial Arbitration Act 2011* (SA).

15.3.3 The party serving the notice of arbitration must lodge with the arbitrator a security deposit for the cost of the arbitration proceedings.

15.3.4 The arbitrator may determine the amount of costs, how costs are to be apportioned and by whom they must be paid.

15.4 **Performance**

If possible, each party must perform its obligations under this agreement during negotiations, mediation and arbitration proceedings.

16. Relationship

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

17. Subcontracting and Assigning

17.1 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 by the Council in its absolute discretion.

INDICATIVE CONTRACT ONLY

17.2 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 Services to be assigned or subcontracted.

17.3 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.

17.4 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.

18. Miscellaneous

18.1 Special Conditions

If there is an inconsistency between a Special Condition set out in Annexure C and the rest of this agreement, the Special Condition prevails to the extent of the inconsistency.

18.2 Alteration

This agreement may be altered only in writing signed by each party.

18.3 Entire agreement

This agreement:

18.3.1 constitutes the entire agreement between the parties about its subject matter; and

18.3.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

18.4 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.

18.5 Exercise of power

18.5.1 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.

18.5.2 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.

18.6 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.

INDICATIVE CONTRACT ONLY

18.7 **Further action**

Each party must do all things necessary to give full effect to this agreement and the transactions contemplated by this agreement.

18.8 **Governing law**

18.8.1 This agreement is governed by the law in South Australia.

18.8.2 The parties irrevocably submit to the exclusive jurisdiction of the courts in South Australia.

18.9 **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 Act and all applicable Laws.

18.10 **Work Health and Safety**

In complying with its obligations pursuant to this agreement, the Supplier agrees to:

18.10.1 comply with any environmental requirements of the Council communicated from time to time by the Council to the Supplier;

18.10.2 comply with all requirements of the *Work Health and Safety Act 2012* (SA) and any regulations made under it;

18.10.3 comply with any reasonable requests of the Council in relation to the Supplier's performance of its obligations pursuant to this agreement; and

18.10.4 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 complete details, including the results of investigations into its cause and recommendations or strategies for prevention in the future.

INDICATIVE CONTRACT ONLY

18.11 **ICAC**

The Supplier acknowledges and agrees that by entering into this agreement with the Council the Supplier will be considered to be a public officer for the purposes of the *Independent Commissioner Against Corruption Act 2012* (SA) (**ICAC Act**) and is obliged to comply with the ICAC Act and the Directions and Guidelines issued pursuant to the ICAC Act.

19. Goods and Services Tax

19.1 **Consideration does not include GST**

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

19.2 **Gross up of consideration**

Where a supply by a Supplier to a Recipient under this agreement is subject to GST (other than a supply specifically described as 'GST inclusive'):

19.2.1 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

19.2.2 the Recipient must pay that additional amount at the same time and in the same manner as the expressed consideration.

19.3 **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.

19.4 **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.

19.5 **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 twenty-eight (28) days after the Supplier first becomes aware that the adjustment event has occurred.

20. Notices

20.1 A Notice must be:

20.1.1 in writing, in English and signed by a person authorised by the sender; and

20.1.2 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.

20.2 A Notice is deemed to be received:

20.2.1 if hand delivered, on delivery;

20.2.2 if sent by prepaid post, two (2) business days after posting (or seven (7) business days after posting if posting to or from a place outside Australia);

20.2.3 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;

20.2.4 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.

INDICATIVE CONTRACT ONLY

20.3 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.

21. Costs

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

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Annexure A Goods

As per the specifications within the Request for Tender documentation for Material Supply 2016-17 (Tender number 151/2016).

INDICATIVE CONTRACT ONLY

Annexure B Fee

As per the completed Pricing Schedule (Schedule 11) submitted within the Tender submission.

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Annexure C Special Conditions

Nil

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EXECUTED as an agreement

By the Council

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

By the Supplier

Drafting Note: *Use the below execution clause if the Supplier is a company executing under common seal.*

The common seal of _____ was affixed in accordance with its Constitution and by the authority of its directors:	
..... Director	..... Director/Secretary

Drafting Note: *Use the below execution clause if the Supplier is a company but is NOT executing under common seal.*

Executed by _____ in accordance with section 127(1) of the *Corporations Act* by the authority of its directors:	
..... Signature of Director	..... Signature of Director/Secretary
..... Name of Director (print)	..... Name of Director/Secretary (print)

INDICATIVE CONTRACT ONLY

Drafting Note: *Use the below execution clause if the Supplier is an individual.*

Signed by _____ in the presence of:	
..... Signature	..... Signature of witness
	..... Name of witness (print)

Drafting Note: *Use the below execution clause if the Supplier is a Partnership - please add extra execution clauses for additional partners as necessary.*

Partner 1:

Signed by _____ in the presence of:	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

Partner 2:

Signed by _____ in the presence of:	
..... Signature of witness	..... Signature of partner
..... Name of witness (print)	
..... Address of witness (print)	

INDICATIVE CONTRACT ONLY

PRINCIPAL OFFICE:
8 Elizabeth Street, Maitland
Telephone (08) 8832 0000
ALL CORRESPONDENCE TO:
PO Box 57, MAITLAND, SA 5573
Fax (08) 8853 2494
Email: admin@yorke.sa.gov.au
Website: www.yorke.sa.gov.au

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CONTRACTOR INFORMATION REQUEST	SF228
	Responsible Officer: Risk Management Officer
	Issue Date: 18/05/2016
	Next Review Date: April 2019

ALL CONTRACTORS MUST COMPLETE THIS FORM AND PROVIDE RELEVANT INFORMATION BEFORE COMMENCING WORK

Business Name:			
Personal Name:			
Address:	…… ……		
Phone:	H:	Fax:	Mob:
Email:			

The above stated Contractor acknowledges this Agreement relates to any services provided which require the production of a specified result on behalf of Yorke Peninsula Council (Principal Contractor) for the negotiated price based on the specific work required. The contractor is not committed to personally carry out any negotiated contract and may engage others to do the work but agrees to fix any defects before any final payment is released.

To enable Council to comply with Australian taxation and other applicable Legislation, the Contractor provides the following information and warrants it to be true and correct:

Description of Trade:			
Type of Business:	Sole Trader:	Yes ☐	No ☐
	Company:	Yes ☐	No ☐
	Partnership:	Yes ☐	No ☐
Company and/or Business Number:	ABN:	ACN:	

Unless there is an ABN or ACN provided, Council is obliged to deduct tax at the full rate from any payments due to the contractor.

Contractor General and Insurance Information

Public Liability Insurance

What is Public Liability Insurance? Insurance indemnifying the Insured against legal liability for personal injury and/or property damage claims made by third parties as a result of an accident occurring in connection with the Insured's (Contractor's) business. Required by all companies to protect them against claims arising from personal injury or property damage caused by their actions.	Do you have Public Liability Insurance?	Yes☐ No ☐
	Public Liability Insurance Expiry Date:	_____/_____/_____
	Copy of your certificate of currency attached?	Yes☐ No ☐

A Certificate of Currency is ONLY issued by your insurance company or Broker.

Professional Indemnity Insurance

What is Professional Indemnity Insurance? Insurance indemnifying the insured against claims for breach of "Professional Duty" arising out of any negligent act, error or omission. It is relevant for professionals who give advice or act on behalf of Council and covers legal liability resulting from their negligence or a breach of their duty of care. Examples of professionals where this would be required include consultants, lawyers, doctors, accountants and insurance brokers.	Do you have Professional Indemnity Insurance?	Yes☐ No ☐
	Professional Indemnity Insurance Expiry Date:	_____/_____/_____
	Copy of your certificate of currency attached?	Yes☐ No ☐

Return to Work Corporation of SA Act

Do you employ staff?	Yes☐ No ☐
If yes, are you a registered employer with Return to Work SA?	Yes☐ No ☐
Policy Expire Date:	_____/_____/_____
Copy of Policy attached?	Yes☐ No ☐

Sickness/Accident Insurance

Do you have Sickness/Accident Insurance?	Yes☐ No ☐
Insurance Expiry Date:	_____/_____/_____
Copy of Insurance Certificate attached?	Yes☐ No ☐

CONTRACTOR WORK HEALTH AND SAFETY

WHS Policies and Procedures

Do you have WHS Policies and Procedures for your company?	Policies: Yes☐ No ☐	Procedures: Yes☐ No ☐
Copies of relevant documents attached?		Yes☐ No ☐

Health and Safety Record

Has your company ever been prosecuted or fined under the WHS Act or related legislation?	Yes☐ No ☐

Safe Systems of Work

It is Councils requirement that all Contractors complete a JSA prior to starting any works or contract.

Does your company undertake?	Job Safety Analysis (JSA):	Yes☐ No ☐
	Safe Operating Procedures (SOP):	Yes☐ No ☐
	Safe Work Instructions (SWI):	Yes☐ No ☐
Copy of JSA/SOP/SWI attached?		Yes☐ No ☐
Have workers been provided with appropriate personal protective equipment (PPE), suitable for the work to be performed?		Yes☐ No ☐
Are first aid kits in all vehicles and have workers been instructed in the use of their contents (if appropriate)?		Yes☐ No ☐
Do you have an accident/incident reporting and investigation process?		Yes☐ No ☐
Are Safety Data Sheets readily available for all chemicals to be used onsite?		Yes☐ No ☐
Does your company undertake regular worksite WHS Inspections?		Yes☐ No ☐

The Contractor acknowledges this Contractor Agreement relates to the Principal Contractors WHS Induction to sites and agrees with the controls as listed below:

Induction:	Before commencing on Council sites, Contractors are required to ensure the following: 1. General Induction: a. Council Contractor Agreement completed and signed. b. Contractor to provide the Principal Contractor with a copy of their WHS policy/statement. For contracts over $250,000, the Contractor is to provide a WHS Management Plan and ensure their team members are aware of the Plan which must be followed in conjunction with the Principal Contractors WHS requirements. The plan must be kept with the contractor at any time. c. The contractor must inform all sub-contractors of the Principal Contractors site requirements and ensure they are followed at all times. This Plan must be kept in the contractors and/or team members at any time 2. Site Induction: a. Contractor Site Risk Assessment upon commencement on each specific Councils site.

CONTRACTOR ENVIRONMENTAL RULES AND CONTROL MEASURES

Everybody has a legal responsibility to take all reasonable and practicable measures to minimise or prevent environmental harm.

Council implements Environmental Protection best practice management designed to comply with the State Environmental Protection laws and local Council by-laws. This will include erosion control, sediment control and barriers, street sweeping and stabilised entry, where practicable.

The Contractor shall ensure these practices are respected through due diligence, thoughtful work practices and proper clean up. These practices include awareness of community expectations in relation to noise and dust control, minimisation of sediment run-off through silt/debris collection and minimisation of soil disturbance and erosion from excavating and earth movement.

Sand and soil stockpiles shall be placed wholly on the construction site behind sediment barriers.
The Site Supervisor must approve removal of any such barriers. Soil/sediment build-up in or near gutters must be cleaned if there is a *real or potential* threat to the environment.

Concrete waste, household paint, oil, fuel, herbicides and pesticides must not be allowed to wash into gutters.
The Contractor must ensure immediate clean-up if this occurs.

Entry and exit to work site should be by stabilised area
Any stabilised site access must not be altered without the Site Supervisor's approval.

During the provision of *Services* the Contractor will not place any material that is *reasonably expected to move* in a position on the site that has the "potential" of eroding or washing away.

The Contractor shall clean-up any *real or potential* environmental problem at the end of the day and before a rain event. Refuse must be placed in the designated containment area before the Contractor leaves each day.

Breach of these Site Environmental Protection and Control Measures constitutes a breach of the Contractor's Agreement with Council.

CONTRACTOR TRADE AND QUALIFICATIONS

Company Name:			
Contractor Name:			
Builder/Trade Licence No.		Expiry Date:	_____/_____/_____

If Applicable

Sub-Contracting Company Name:			
Sub-Contractor Name:			
Builder/Trade Licence No.		Expiry Date:	_____/_____/_____

Employee Full Name	**Builders Licence**	**White Card Number**	**Certificates Required to carry out Work i.e. Scaffolder/rigger**	**Date Council Received**