



Request for Tender

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| Request for Tender: | <i>Soil Stabilisation in the Shire of Corrigin 2019/20</i> |
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| Deadline: | <i>3pm, Wednesday 6 November 2019</i> |
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|------------------------------|---|
| Address for Delivery: | <i>9 Lynch Street CORRIGIN WA 6375 Please mark envelope Tender 2/2019 electronic mail, and facsimile tenders will not be accepted</i> |
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|--------------------|---------------|
| RFT Number: | <i>2/2019</i> |
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Appendix 1 – Regional Price Policy

Appendix 2 – Treatment Details

Appendix 3 – Stabilisation Contract

1 Conditions of Tendering

1.1 Definitions

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

- Attachments:** The documents you attach as part of your Tender.
- Contractor:** Means the person or persons, corporation or corporations who's Tender is accepted by the Principal including the executors or administrators, successors and assigns of such person or persons, corporation or corporations.
- Deadline:** The deadline for lodgement of your Tender as detailed on the front cover of this Request.
- General Conditions of Contract:** Means the General Conditions of Contract for the provision of soil stabilisation services in Part 3.
- Offer:** Your offer to supply the Requirements.
- Principal:** Shire of Corrigin
- Request OR RTF OR Request for Tender** This document.
- Requirement:** The stabilisation services requested by the Principal.
- Selection Criteria:** The Criteria used by the Principal in evaluating your Tender.
- Special Conditions:** The additional contractual terms.
- Specification:** The Statement of Requirements that the Principal requests you to provide if selected.
- Tender:** Completed Offer form, response to the Selection Criteria and Attachments.
- Tenderer:** Someone who has or intends to submit an Offer to the Principal.

1.2 Tender Documents

This Request for Tender is comprised of the following parts:

- Part 1 – Conditions of Tendering (*read and keep this part*).
- Part 2 – Specification and/or plans/drawings (*read and keep this part*).
- Part 3 – General Conditions of Contract (*read and keep this part*).
- Part 4 – Special Conditions of Contract (*read and keep this part*).
- Part 5 – Tenderer's Offer (*complete and return this part*).

Part 1 READ AND KEEP THIS PART

Part 6 – Contractor’s Occupational Safety and Health Management System Questionnaire
(complete and return this part).

Part 7 – Project Reference Sheet (complete and return this part).

Part 8 – Tenderer’s Resources Schedule (complete and return this part).

Separate Documents

- a) Addenda and any other special correspondence issued to Tenderers by the Principal.
- b) Any other policy or document referred to but not attached to the Request.

1.3 How to Prepare Your Tender

Tenderers must:

- a) Carefully read all parts of this document;
- b) Ensure you understand the Requirements;
- c) Complete and return the Offer (Part 5) in all respects and include all Attachments;
- d) Make sure you have signed the Offer Form and responded to all of the Selection Criteria;
and
- e) Lodge your Tender before the Deadline.

1.4 Contact Persons

Tenderers should not rely on any information provided by any person other than the person listed below:

| | |
|-------------------|------------------------------------|
| Name: | Mr Greg Tomlinson Manager of Works |
| Telephone: | 0429 632 203 |
| Email: | works@corrigin.wa.gov.au |

1.5 Customs Duty

The Tenderer shall allow for any customs duty and primage applicable to all imported materials, plant and equipment required in connection with the works in its Tender.

1.6 Site Allowances

This contract is not subject to adjustment for site allowances.

1.7 Lodgement of Tenders and Delivery Method

The Tender must be lodged by the Deadline. The Deadline for this request is 3pm on Wednesday 6 November 2019.

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| Part 1 READ AND KEEP THIS PART |
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The Tender is to be:

- a) Placed in a sealed envelope clearly endorsed with the tender number and title as shown on the front cover of this Request; and
- b) Delivered by hand and placed in the Tender Box at Shire of Corrigin, 9 Lynch Street CORRIGIN WA 6375 (by the Tenderer or the Tenderer's private agent) or sent through the mail to the Chief Executive Officer, Shire of Corrigin, PO Box 221 CORRIGIN WA 6375.

Electronic mail Tenders and Tenders submitted by Facsimile will not be accepted.

Tenderers must ensure that they have provided 2 signed copies of their Tender; one to be marked "ORIGINAL" and unbound and clipped (not stapled) and the other(s) to be marked "COPY" and bound. All pages must be numbered consecutively and the Tender must include an index. Any brochures or pamphlets must be attached to both the original and the copies.

1.8 Rejection of Tenders

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

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

1.9 Late Tenders

Tenders received:

- a) After the Deadline; or
- b) In a place other than that stipulated in this Request;

will not be accepted for evaluation.

1.10 Acceptance of Tenders

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

1.11 Disclosure of Contract Information

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

All Tenderers will be given particulars of the successful Tenderer(s) or be advised that no Tender was accepted.

1.12 Tender Validity Period

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

1.13 Precedence of Documents

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

1.14 Alternative Tenders

All Alternative Tenders may be accompanied by a conforming Tender.

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

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

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

1.15 Tenderers to Inform Themselves

Tenderers will be deemed to have:

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

- e) satisfied themselves they have a full set of the Request documents and all relevant attachments.

1.16 Alterations

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

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

1.17 Risk Assessment

The Principal may have access to and give consideration to:

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

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

Tenderers may be required to undertake to provide to the Principal (or its nominated agent) upon request all such information as the Principal reasonably requires to satisfy itself that Tenderers are financially viable and have the financial capability to provide the Services for which they are submitting and to otherwise meet their obligations under any proposed Contract. The Principal reserves the right to engage (at its own cost) an independent financial assessor as a nominated agent to conduct financial assessments under conditions of strict confidentiality. For this assessment to be completed, a representative from the nominated agent may contact you concerning the financial information that you are required to provide.

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

1.18 Evaluation Process

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

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

- a) Tenders are checked for completeness and compliance. Tenders that do not contain all information requested (eg completed Offer form and Attachments) may be excluded from evaluation.

- b) Tenders are assessed against the Selection Criteria. Contract costs are evaluated, (eg tendered prices and other relevant whole of life costs are considered).
- c) The most suitable Tenderers may be short listed and may also be required to clarify their Tender, make a presentation, demonstrate the product/solution offered and/or open premises for inspection. Referees may also be contacted prior to the selection of the successful Tenderer.

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

1.19 Selection Criteria

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

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

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

1.20 Compliance Criteria

These criteria are detailed within 5.2.1 of this document and will not be point scored. Each Tender will be assessed on a Yes/No basis as to whether the criterion is satisfactorily met. An assessment of "No" against any criterion may eliminate the Tender from consideration.

1.21 Qualitative Criteria

In determining the most advantageous Tender, the Evaluation Panel will score each Tenderer against the qualitative criteria as detailed within 5.2.2 of this document. Each criterion will be weighted to indicate the relative degree of importance that the Principal places on the technical aspects of the goods or services being purchased.

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

Part 1 READ AND KEEP THIS PART

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

1.22 Value Considerations

Weighted Price Criteria

The Weighted Price method is used where price is considered to be crucial to the outcome of the contract. The price is then assessed with quality. Include any items that may affect any pricing outcomes (eg Regional Price Preference Policy).

| Criteria | Weighting |
|-----------------------------------|------------------|
| Tendered Price | 40% |
| Relevant Company Experience | 10% |
| Operator Skills and Experience | 15% |
| Tenderer’s Resources | 15% |
| Local Knowledge and Understanding | 10% |
| Regional Price Preference | 10% |

1.23 Regional Price Reference

Tenderers for the contract may be afforded a preference in accordance with Regulation 24(A-G) of the Local Government (Functions and General) Regulations and the Shire of Corrigin Regional Preference Policy adopted on 16 October 2018.

The Shire of Corrigin Regional Price Policy is attached in *Appendix 1 – Regional Price Policy* and stipulates that a price preference will apply to suppliers who are based in, operate from or source goods or services from within the Shire Region in relation to all tenders invited by the Shire for the supply of goods, services and construction (building) services, unless the tender document specifically states prior to advertising of the tender that this policy does not apply.

The regional price preference enables tenders to be evaluated as if the proposed tender bid price were reduced in accordance with permitted price preferences as specified below in this policy. This policy will operate in conjunction with the purchasing considerations and procedures for tenders as outlined in the Shire’s ‘Purchasing Policy’ when evaluating and awarding tender contracts.

1.24 Price Basis

All prices for goods/services offered under this Request are to be fixed for the term of the Contract. Tendered prices must include Goods and Services Tax (GST).

Unless otherwise indicated prices tendered must include delivery, unloading, packing, marking and all applicable levies, duties, taxes and charges. Any charge not stated in the Tender, as being additional will not be allowed as a charge for any transaction under any resultant Contract.

1.25 Ownership of Tenders

All documents, materials, articles and information submitted by the Tenderer as part of or in support of the Tender will become upon submission the absolute property of the Principal and will not be returned to the Tenderer at the conclusion of the Tender process PROVIDED that the Tenderer be entitled to retain copyright and other intellectual property rights therein, unless otherwise provided by the Contract.

1.26 Canvassing of Officials

If the Tenderer, whether personally or by an agent, canvasses any of the Shire of Corrigin Councillors with a view to influencing the acceptance of any Tender made by it or any other Tenderer, then regardless of such canvassing having any influence on the acceptance of such Tender, the Principal may at its absolute discretion omit the Tenderer from consideration.

1.27 Identity of the Tenderer

The identity of the Tenderer and the Contractor is fundamental to the Principal. The Tenderer will be the person, persons, corporation or corporations named as the Tenderer in Part 5 and whose execution appears on the Offer Form in 5.1 of this Request. Upon acceptance of the Tender, the Tenderer will become the Contractor.

1.28 Costs of Tendering

The Principal will not be liable for payment to the Tenderer for any costs, losses or expenses incurred by the Tenderer in preparing their Offer.

1.29 Tender Opening

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

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

Part 1 READ AND KEEP THIS PART

The Tender Opening will be held on or as soon as practicable after the Deadline at Shire of Corrigin Administration Office, 9 Lynch Street CORRIGIN WA 6375.

1.30 Monetary Values

Monetary Values that appear in the Tender (such as provisional sums, prime cost amounts, value of Principal supplied items etc) are net values. They do not include Goods and Services Tax (GST).

1.31 In House Tenders

The Principal does not intend to submit an In-house Tender.

2 Specification

2.1 Contract Requirements in Brief

The Bulyee Road was formerly a gravel road prior to being sheeted with additional gravel, wet mixed and bitumised between 2015 and 2017

The quality and clay content of the gravel used on the Bulyee Road has made it is very susceptible to water ingress and areas that are exposed to water ponding in the table drains have failed or the seal is flushing.

The Shire of Corrigin requires soil stabilisation of the Bulyee Road to repair previous failures. The work requires the supply of materials, equipment and operators including:

- Machinery operators,
- Fuel,
- Servicing,
- Mobilisation and demobilisation,
- Registration and licensing.

The work includes cement or lime stabilisation in accordance with this specification. Roads are to remain open to traffic during the currency of the contract to ensure minimal inconvenience and disturbance to the road users.

The Manager of Works will issue a work order detailing the specific requirements for stabilisation in the Shire of Corrigin during the 2019/20 financial year and will check the work to ensure it has been completed as agreed prior to approving payment. Claims for payment are to be submitted monthly and if work is not completed satisfactorily the contractor may be ordered to undertake additional remedial work.

2.2 Definitions

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

| | |
|-------------------------------------|--|
| Contractor's Representative: | Means any Officer or person duly authorised by the Contractor, in writing, to act on their behalf for the purpose of the Contract; |
| Principal's Representative | Means any Officer of person duly authorised by the Principal, in writing, to act on their behalf for the purpose of the Contract; |
| Works or Services: | Means the Services, which the Contractor is required to provide to the Principal and the Contractor under the Contract; |
| Superintendent: | Mr Greg Tomlinson, Manager of Works |

2.3 Scope of Work

This contract is for the rehabilitation of various sections of failed pavement and involves any or all of the following requirements:

- Confirm existing pavement conditions,
- Supply and/or cartage of materials,
- Supply and spreading of additive,
- Provision of an experienced Supervisor and/or Project Manager,
- Supply of soil stabiliser, additive spreader and water trucks with experienced operators,
- Provision of an experienced moisture control person,
- Compaction testing.

2.4 Specific Requirements of the Contract

2.4.1 Preliminary Meeting to Program the Works

The Contractor's Supervisor is to liaise with the Principal's representative to ensure the works proceed smoothly:

- Ensure all worked processes are fully understood and confirm the details of the project.
- Confirm all existing pavement conditions including sampling and testing reports.
- Confirm all details regarding additive type, mix depth and application rates.
- Determine whether pre-ripping of the existing seal is required in order to remove deep asphalt patches.
- Discuss the daily production rate and length of individual sections to be worked with regards time taken to mix and compact and the amount to be completed per day.
- Discuss allowable working days taking note of public holidays and expected traffic volumes.
- Discuss any safety precautions with regards the type of additive to be used and its impact on all on-site personnel required PPE, impact on surrounding properties and management of the general public potentially travelling through the job site.

2.4.2 Resources Supplied by the Principal

The Shire of Corrigin will supply the following resources:

- Site Leading Hand acting as the Principal's representative on site,
- Gravel top-up material delivered to site and placed,
- Water delivered to site,
- Grader with operator,
- Two Water Trucks with operators,
- Pad Foot Roller with operator,
- Smooth Drum Roller with operator,
- Multi tyred roller with operator,
- Front End Loader with operator.

On a daily basis, the Principal representative and Contractor are to discuss and agree on the availability and timing of the resources supplied by the Principal.

2.4.3 Supervision

The Contractor is to supply a suitably qualified and experienced Supervisor to liaise with the Principal's Representative. The Supervisor is to be available on site at all times when works are being undertaken to ensure the works are carried out in accordance with the contract. The

Supervisor is to assist in the planning of the works to ensure the Principal's crew are used efficiently and work within their required working hours on site.

The Supervisor is also required to liaise with the Principal's Representative to check that the materials encountered are similar to those expected based on samples held by the Principal's Representative. Any variation is to be discussed and adjustments made to additive application rates proposed within this document. Rates have been included in the schedule of rates to allow for additional cement or lime to be used.

2.4.4 Additive Spreader

The contractor is required to supply stabilising agent spreader, which has been specifically designed for such work. The spreader shall be capable of uniformly distributing additive and be able to accurately control the spread rate such that when mixing is complete, the additive content shall be in accordance with the design requirements.

The spreader shall be equipped with gates to vary the width of spread and with electronic weigh scales to give run totals of product used.

2.4.5 Stabilising Machine

Cutting, pulverising, mixing, adding water and spreading of mixed material shall be accomplished using a stabilising machine specifically designed for stabilisation. The stabilising rotor action shall be such that the rotor revolves in an upwards and forwards cutting direction. The rotor shall be of the recycler type and fitted with bullet teeth cutting tips.

The stabilising machine shall also satisfy the following requirements:

- Be capable of producing a uniformly mixed material throughout the specified depth of the work.
- Be equipped with a variable depth of cut control and an accurate gauge to measure depth of cut which is readily visible to the operator.
- Have provision for adding water into the mixing chamber via a system comprising a pump, variable control valve and full width spray bar. Each nozzle on the spray bar shall be fully and independently adjustable from the ground by the field Moisture Control Person. The water pump shall have the capacity to supply up to 1,500 litres per minute.

2.4.6 Water Trucks

The contractor is to supply one water truck with a minimum capacity of 12,000 litres. This truck is required to be able to self-load from tanks.

2.4.7 Pavement Materials

2.4.7.1 Overlay and Top-up Gravel

Overlay gravel will be carted and laid out by the Principal's crew prior to stabilisation of basecourse for Type 3 repair treatment. A sample of gravel will be supplied to the Contractor for the determination of required cement content. The application of additional Roadbase is to be considered as an option to reducing the cement content to achieve the required strength.

2.4.7.2 Crushed Rock Aggregates

Crushed Rock roadbase is to be supplied and spread, in a controlled manner, by the contractor to ultimately be incorporated into a basecourse layer to improve its quality. Coarse and fine aggregate shall consist of clean, hard, durable, angular fragments of rock produced by crushing sound unweathered rock and shall not include materials which break up when alternately wetted and dried.

The material is to be graded to conform to the following Particle Size Distribution.

| AS 1152 Sieve Size (mm) | % passing by Mass – Target Grading | % Passing by Mass – Minimum and Maximum Limits |
|-------------------------|------------------------------------|--|
| 19.0 | 100 | 99 - 100 |
| 9.5 | 70 | 64 - 82 |
| 4.75 | 50 | 45 - 62 |
| 2.36 | 38 | 33 – 47 |
| 1.18 | 25 | 23 – 37 |
| 0.6 | 19 | 16 – 27 |
| 0.425 | 17 | 14 – 23 |
| 0.30 | 13 | 11 – 20 |
| 0.15 | 10 | 8 – 14 |
| 0.075 | 8 | 6 – 11 |

Table 1 – Particle Size Distribution of aggregate to be supplied by Contractor.

A stockpile site will be made available at SLK 2.8 on the Bulyee Road for the purposes of stockpiling this material.

2.5 Construction Processes

Any or all of the following construction processes may be required as part of the pavement rehabilitation process. The Principal will complete all preliminary works prior to the contractor arriving on site. The Principal will advise the Contractor fourteen (14) working days prior to the site being ready for works by the contractor to commence. A second mobilisation needs to be co-ordinated to allow the Principal to arrange cartage of gravel overlays.

2.5.1 Pavement Removal

Where required, the existing pavement is to be pulverised with a soil stabiliser to the depth nominated by the Principal’s Representative. This material will be removed with the use of a loader and trucks or removed to one side of the pavement with graders and levelled off and compacted to allow traffic to use it. A schedule of rates item has been included to cover the pulverising of the existing pavement.

2.5.2 Cement or Lime Stabilisation of Pavement Layers

All cement and lime stabilisation works are to be completed in accordance with Clause 2.6 below.

Compaction of mixed materials will be carried out by the Principal’s crew.

2.5.2.1 Determination of Required Cement Content

For the basecourse of Treatment Types 2, 3 and 4, the required cement content is to be determined based on achieving a Laboratory Unconfined Compressive Strength (UCS) value (using GP cement) of 0.9 MPa at 7 days. A target relative compaction of 96% is to be used for these tests. Results from a NATA approved Lab are to be supplied to the Principal prior to commencement of these treatments.

For Type 2 and 3 area(s), the gravel sample, supplied by the Principal is to be tested.

For Type 4 areas, a representative sample of the existing material will be supplied by the Principal. This is to be mixed with hydrated lime at close to Optimum Moisture Content (OMC) at the required application rate of 2% by weight then compacted into a suitable mold to approximately 96% of MMDD. The sample is then to be broken down and remixed with 10% by weight of the graded crushed rock aggregates (refer 2.4.7.2) to provide the sample for UCS testing.

2.5.3 Cartage and Placement of Additional Aggregate Pavement Material.

In areas where specified as part of the proposed treatments, additional aggregate conforming to the requirements of clause 2.4.7.2 is to be spread to the required width and length of the section to be mixed. The Contractor is required to supply the purpose built aggregate spreader truck and lay out the material at a tolerance of +/- 10% of the ordered spread rate as shown in the *Appendix 2 – Treatment Details*. Due to safety concerns, only areas programmed to be mixed within the day of work are to be spread with crushed rock aggregate.

The Principal will arrange to load this material from the stockpile onto the Contractor's Aggregate Spreader Truck.

The tonnage of material placed in each section is to be recorded on the Contractor's Daily Work Log. Any spreading outside of the required tolerance is to be reported to the Principal's representative so that a disposition can be arranged prior to spreading of cement and mixing.

2.5.4 Curing of Finished Surface

On completion of the compaction and trimming, the Principal will be responsible for the curing and finished works and application of the bituminous surfacing.

2.6 Description of Critical Processes – Soil Stabilisation

The soil stabilisation process is to be controlled as a critical component of the works. Details of the length, widths, and additive required are nominated in *Appendix 2 – Treatment Details*. The table includes Priority 1 and Priority 2 areas. Due to limited funding, some items listed under "Priority 2" may not be completed. Separate Schedule of rates items have been included covering these sections. The Principal will advise at the time of award which of these additional items are to be completed.

2.6.1 Preliminary Treatment

It shall be the Contractor's responsibility to determine whether pre-ripping the insitu pavement material is necessary. Under no circumstances shall ripping to a depth exceeding the depth to be stabilised be permitted.

If deep asphalt is encountered, its presence is to be discussed with the Principal's Representative to ensure that blending this material into a pavement layer is not going to be detrimental to the finished product.

If contaminated material is encountered the Principal's Representative must be informed in a timely manner so that it can be dealt with accordingly.

2.6.2 Spreading of Additive

The stabilised pavement layer shall contain not less than the proportion of additive as a percentage of the dry mass of pavement material as specified in the pavement design. Additive shall be spread uniformly at a controlled rate over the area to be stabilised using a suitable additive spreader.

A maximum of 15 kg/m² can be spread and mixed in a single pass. When in excess of 15 kg/m² is required in a single layer the additive will need to be spread in equal quantities and mixed in separate passes unless authorised by the Principal's representative.

No additive is to be spread when wind velocity exceeds 20 km/hr.

The Contractor shall keep daily records of the amounts of additive used and actual spread rates obtained per section treated.

The percentage additive shall be determined by either:

- a) placing three (3) trays each of one third one square metre in area in front of the additive spreader and measuring the mass of additive deposited on the trays for each lot, or
- b) by use of an on-board electronic weight scale system.

Part 2 READ AND KEEP THIS PART

The percentage of additive (p%) shall be calculated thus:

$$P\% = \frac{M}{A.t.MDD} \times \frac{100}{1}$$

Where:

M = total mass of additive (kg) as determined by one of the following methods:

- (a) on each tray
- (b) on-board electronic weight scale system.

A = Method (a) total area of the trays (m²)
Method (b) total measured area spread (m²)

T = Thickness to be stabilised (m) (including allowances for tolerances (+/- 10%) and trimming)

MDD = Maximum Dry Density of the pavement material without the addition of additive (kg/m³)

The percentage additive determined for each tray in accordance with this clause shall be maintained within ± 10% by mass of the additive content specified in the pavement design throughout the stabilisation works.

The use of method (b) in determining the values 'M' and 'A' is subject to satisfactory calibration of the measuring device and the production of associated certification in accordance with the Contractor's Quality System. Audits on this method shall be carried out using a weigh bridge.

2.6.3 Spread Cement

Once the additive has been spread, no other plant other than that needed for spreading, or for mixing and spreading the mixed material, shall be permitted to travel over the area to be stabilised.

Any cement spread shall be incorporated into the pavement layer within the same working day.

2.6.4 Spread of Hydrated Lime (Calcium Hydroxide)

Once the additive has been spread, no other plant other than that needed for spreading, or for mixing and spreading the mixed material, shall be permitted to travel over the area to be stabilised. If strong winds are expected, it is acceptable to rip the material to no more than 100mm to limit the amount of additive blown away with the wind.

Any hydrated lime spread shall be incorporated into the pavement layer within the same working day of possible however it can be left overnight unless rain is expected.

2.6.5 Spread Quicklime (Calcium Oxide)

Quicklime can be used instead of hydrated lime for the lime stabilisation process however it must be fully slaked prior to mixing unless the quicklime is being used to dry excessively moist clayey materials. Under these circumstances, an additional mixing pass with water, possibly two, will be required to ensure the quicklime is fully converted to hydrated lime.

The Contractor must confirm that the quicklime is fully slaked. Any indication that the exothermic reaction has not ceased will require remixing with additional water.

Quicklime can be left on the ground overnight unless heavy rain is expected or the site is in close proximity to built up areas. Every effort should be made to complete the mixing once the lime has been slaked.

2.6.6 Incorporation of Additive

The spread additive shall be incorporated into the pavement layer using a suitable stabilising machine immediately following the spreading operation where cement or hydrated lime are being used, and once the exothermic reaction has ceased when using quicklime.

When the specification calls for both hydrated lime and cement to be mixed into a single layer it is acceptable to mix both into the soil in a single pass. When quicklime is used as the source of hydrated lime, it will need to be spread and mixed into the layer in a separate operation from the treatment with cement.

2.6.7 Spreading of Additional Aggregate to Incorporate into Basecourse.

For areas nominated in *Appendix 2 – Treatment Areas* that have been nominated to receive a top-up layer of approved aggregate, aggregate is to be spread at the nominated rate to ensure the finished blended layer of pavement.

The required quantity of aggregate is to be delivered to the stockpile site and will be loaded onto the Contractor's truck by the Principal's front end loader.

2.6.8 Mixing Using Stabilising Machine

Cutting, stabilising, mixing, adding water and screeding of mixed material shall take place as a single operation within the stabilising machine. The Contractor is to minimise the surface variations of the screeded material leaving the rear of the stabilising machine to assist the Principal in the final shaping of the mixed material.

Excessive changes to the screeded surface level will lead to affected sections requiring remixing. This remixing is to be undertaken at the Contractor's expense. Overlaps between consecutive runs are to be checked by the contractor on a regular basis to ensure no material is left un-mixed. Any remixing required to incorporate "missed" strips is to be carried out by the contractor at the contractor's cost.

2.6.9 Control of Addition of Water

The additive and water are to be uniformly incorporated into the mixed material without streaks or pockets of additive. The travel speed of the stabilising machine may need to be limited to ensure a uniform mix is achieved – especially when very dry materials are being mixed.

The Contractor shall achieve and maintain the target moisture content of the mixed material by controlling the amount of water added during the mixing process within the stabilising machine. A suitably experienced Moisture Control Person is required to check the moisture condition of the mixed material and adjust the addition of moisture using spray nozzles, within the mixing chamber, individually controlled from the rear of the machine.

The target moisture content is generally Optimum Moisture Content (OMC) based on laboratory testing. For lime stabilised materials, the target moisture content can be 0.5% above OMC

Any remixing due to excessive or insufficient moisture addition is to be undertaken by the Contractor at no cost to the Principal. The location of areas requiring remixing are to be recorded on the Contractor's Daily Work Log. Costs incurred by the Principal associated with excessive remixing will be recouped from the Contractor.

The Principal may undertake testing to determine whether the Contractor is adding the required moisture content during the mixing process.

2.6.10 Length of Sections of Work

When using cement, the length of individual runs should be limited to ensure two runs can be completed within 1.5 hours. This will give adequate time for reshaping and compaction during the allowable working time. In dry or very hot conditions, the length of a work section may need to be reduced to ensure mixed material does not dry out prior to compaction.

2.6.11 Mixing of Two or More Layers

When mixing an upper layer of multiple layers of stabilisation, the Contractor needs to ensure that the stabiliser cuts into the lower layer by a minimum of 10mm. The following need to be confirmed:

- The finished level of the lower layer is above its design level at all locations,
- The depth of placed material is accurately controlled and above design finished level, and
- The required mix depth of the upper layer to ensure no material is left un-mixed between the upper and lower layers.

The Contractor's Supervisor is responsible for liaising with the Principal's representative to confirm the above details. The Moisture Control Person is responsible for checking that the stabiliser's cutter is striking the lower layer.

2.6.12 Compaction

The Contractor's Supervisor will liaise with the Principal's Representative to arrange the compaction and trimming of the mixed materials to ensure it is done in a timely manner. From time to time, mixing may need to cease whilst the Principal's crew complete the compaction process.

Compaction of the mixed material shall be completed within three (3) hours of the completion of incorporation of additive into the pavement layer with a target compaction Characteristic Dry Density Ratio of 96%.

2.6.13 Construction Joints

If the stabilising work is such that it cannot be completed in one continuous operation, the Contractor shall provide construction joints at each discontinuity in the operation. All construction joints shall be made transverse to and/or parallel to the direction of the stabilising run, and shall be made just prior to the commencement of the next stabilising run.

The joints shall be formed by cutting back into the compacted stabilised material to form a vertical face. The loose trimmed material shall be removed from the joint before the next section is mixed and compacted.

2.6.14 Construction Considerations

The Contractor’s Supervisor is to liaise with the Principal’s Representative to ensure the shaping grading and compaction are being completed prior to commencement of following sections.

During initial shaping and compacting, the shape shall be checked frequently and corrected as necessary by grading to avoid rollers “bridging” during the compaction process.

2.6.15 Curing

The Principal’s water truck will be used to apply a regular light watering for the duration of the day and a heavy watering at night to assist in reducing the dust and protecting the surface integrity. Then watering as necessary to control the dust and maintain the surface to ensure safety for the public.

The finished surface shall be maintained to the specified standards of surface shape, level, compaction and finish up to the time of application of the bituminous surfacing.

2.7 Production Rates and Production Timetable

As the Principal’s crew need to compact all mixed materials production limits will be applied so that compaction and trimming can be completed in a timely manner. Tenderers are to note these proposed production rates when determining their pricing.

It is proposed that the works will be carried out in the following order with the proposed daily production rates.

| Item | Works Process | Proposed Production Rate |
|-----------------------|--|---------------------------------|
| <i>Mobilisation 1</i> | | |
| 1 | Type 4 treatment of existing pavement with hydrated lime – 350mm depth. | 4000 m2 per day |
| 2 | Type 3 treatment – cement stabilisation of existing – 250mm depth. | 5000 m2 per day |
| 3 | Type 1 treatment areas including pulverizing and sub-base treatment. Pulv 175mm, Stab SB 250mm | 3000 m2 per day |
| <i>Mobilisation 2</i> | | |
| 4 | Type 1 treatment areas – Basecourse – 200mm depth | 5000 m2 per day |
| 5 | Type 2 treatment of Basecourse – 200mm depth | 5000 m2 per day |
| 6 | Type 3 treatment of Basecourse – 200mm depth | 5000 m2 per day |
| 7 | Type 4 – Spread Crushed Rock and cement stabilise basecourse – 200mm depth | 5000 m2 per day |

2.8 Failures and Remedies

The Principal will be checking the application rates of additives and crushed rock aggregates to ensure applied quantities conform to the specification. Any non-conformance will need to be discussed with the Principal's representative and dealt with without having a detrimental effect on the finished works.

The Principal will, from time to time, check that the addition of moisture during the mixing process is as close to OMC as possible. Any remixing required as a result of poor control of moisture addition will be at the contractor's cost. Additional additive may also need to be applied which will also be at the Contractor's cost.

2.9 Implementation Timetable

It is proposed that the on ground works will commence in March 2020 and to be completed by June 2020 with specific timing to be arranged in consultation with the Shire of Corrigin, Manager of Works.

3 General Conditions of Contract

The general conditions of contract is based on the AS4906 General Conditions of Contract for the Provision of Minor Works and can be found at Appendix 2

3.1 Insurances

The Contractor will require the following insurance:

Public Liability—\$10,000,000 in one occurrence and \$10,000,000 aggregate to protect against claims arising from personal injury or property damage caused by the actions and operations of the insured.

Workers' Compensation or Personal Accident Insurance Cover— All employees in Australia must be insured by their employer for Workers' Compensation. Or in the case of a sole business owner or operator then Personal Accident Insurance Cover is required. The company or person appointed will be required to have the appropriate insurance in effect.

Vehicle Insurance – cover for the value of plant and equipment.

3.2 Period of Contract and Termination

The Contract will be in force for the period of one year. In the event of the Contractor failing in any manner to carry out the Contract to the Principal's satisfaction, the Principal may forthwith determine the Contract by written notice to the Contractor.

4 Special Conditions of Contract

4.1 Administrative Requirements

The Contractor is required to provide the following during the course of their contractual obligations in terms of this tender:

| Activity | Frequency |
|---|--------------------------------|
| Any variations to the contract or additional works to be undertaken | Prior to commencement |
| Observations of dangerous circumstances that require attention to obviate potential public harm or public liability claims | Immediately |
| Accidents or related claims of a public liability nature | Immediately |
| Damage to property or persons as a result of the performance or non-performance of the contract service requirements | Immediately |
| All instances of misbehaviour or illegal activity that contravenes Commonwealth, State or Local laws or that impedes the performance of the contract service or that may result in damage to any Council or community property or misconduct towards the public | Immediately as incident occurs |

4.2 Dress Code

All contractors are to wear appropriate clothing, footwear and any safety equipment as required by the nature of the services provided.

All contractors and their employees are to wear high visibility upper garments at all times while working outside of plant and vehicles within road reserves.

All appropriate clothing and equipment is to be provided by the contractor.

4.3 Plant, Vehicles and Equipment

The Contractor is to provide, operate and maintain the plant, vehicles and equipment necessary for the proper performance of the required services.

All plant, vehicles and equipment used in the Contract services shall be maintained in good working order and clean condition to the satisfaction of the Principal.

The Contractor shall ensure that all vehicles and plant operated whilst undertaking this contract are maintained in roadworthy condition and carry the required licensing and registration as required under the Road Traffic Act at all times.

All plant items and vehicles are to conform to AS1742.3 – 1996 (Manual of uniform Traffic Control Devices) in terms of vehicle mounted warning devices.

Part 4 READ AND KEEP THIS PART

The operation of all vehicles, plant and equipment shall be such that it does not cause undue noise, and that minimises atmospheric pollution.

All plant and equipment must be operated with all guards and safety devices in place at all times and with no exception.

The Contractor must ensure that no vehicle is overloaded by carrying or towing loads beyond legal capacity.

Any vehicle plant or item of equipment, which, in the opinion of the Principal, is substandard in regards to the above, shall be required to be promptly removed from the maintenance area.

In all regards, the requirements of the Department of Environment and Water Catchment Protection shall be met.

The Contractor shall ensure that all vehicles, plant and equipment shall not be driven at speeds in excess of those displayed.

All drivers and operators of plant and equipment must have appropriate, current Western Australian or National Vehicle Drivers Licenses.

The Contractor shall ensure that hazard identification, risk assessment and risk control processes have been carried out and documented in relation to all plant and equipment.

Plant and equipment will include as a minimum machinery will be in good working order and will be fitted with the following operational safety devices:

- Rotating amber beacons
- Reversing beeper
- Safe access and egress points
- Spare tyre
- UHF Radio

4.4 Quality Control

The Principal shall conduct regular inspections to audit works carried out. The contractor shall be responsible for ensuring the following outcomes:

- That activities scheduled in the maintenance program will conform to the specification.
- Resources allocated to the service delivery will enable the specified outcomes.
- That work is carried out with the specified time constraints.

4.5 Environmental Protection

4.5.1 Site Control

The Contractor shall, at all times:

- a) Comply with the regulations and restrictions imposed by the Superintendent relating to the storage of materials, the routing of construction traffic, the interruption of existing services and facilities and any other regulations in force on the Site;
- b) Comply with all statutes, regulations and bylaws relating to the protection of the environment;
- c) Obtain written approval from the Superintendent for the formation of any temporary roads, the erection of temporary structures or any Site clearing not specifically documented;
- d) Ensure that no trees or shrubs shall be removed or destroyed without the written approval of the Superintendent;
- e) Ensure that no fire shall be lit without the written approval of the Superintendent;
and
- f) Store flammable or explosive products in accordance with the relevant statutes and to the approval of the Superintendent.

4.5.2 Soil Erosion

The contractor shall take all proper precautions to prevent soil erosion from any land used or occupied by the Contractor in the execution of the work under the Contract.

4.5.3 Dust, Dirt, Water and Fumes

The contractor shall prevent any nuisance occurring through the discharge of dust, dirt, water, fumes and the like onto persons or property.

The generation of dust is to be minimised by the use of water, applied as required across all trafficked areas. In dry conditions, dust control is to be maintained over weekend periods.

4.5.4 Vehicles

All debris, spoil, rubbish or materials shall be suitably contained and covered in vehicles during transportation to or from the Site to prevent spillage or contamination of adjoining and other areas or property.

The Contractor shall maintain vehicles, wheels and tracks in a suitable clean condition to prevent transfer of mud onto adjacent roads or other areas. The Contractor will be required to repair any damage to landowner's property.

4.5.5 Refuse Disposal

All Site refuse (including foodstuffs) shall be handled and disposed of in accordance with the requirements of relevant statutes and to the approval of the Superintendent.

4.6 Advertisements and Promotions on Site

The Contractor may erect on the Site or permit to be erected on Site only those signs:

- a) required by law;
- b) specified in the Contract documents; and
- c) required to identify the Contractor's premises

The Contractor shall not erect on Site, or permit to be erected on site, any other sign, advertisement, promotion or other display without the written approval of the Superintendent.

4.7 Publicity

The Contractor shall not issue any information, publication, document or article for publication in any media which includes details of the work under the Contract without the written approval of the Principal.

4.8 Documents Generally, Drawings and Specifications

4.8.1 Drawings

Additional drawings and maps may be supplied to the Contractor during the progress of the works. Where the Contractor requires copies of the documents in addition to its entitlements to one (1), such additional copies of the documents will be available to the Contractor at the charge current at the time of request.

4.9 Contractor's Representative

The Contractor's Representative shall have sufficient command of the English language and of Australian construction and technical terminology, to be able to read, converse and receive instructions in English.

4.10 Existing Improvements

Where, within the Site there are a range of existing improvements, roads, drainage and other services, the Contractor shall protect and maintain the same throughout the Contract.

The Contractor shall allow for all traffic control measures to maintain the roads in a safe trafficable condition.

4.11 Materials and Work

4.11.1 Regulations

The Contractor shall comply with the Occupational Safety and Health Act 1984 (the "Act") and the Occupational Safety and Health Regulations 1996 (the "Regulations") and with any amendments that may be made to the Act and Regulations from time to time.

The Contractor shall be solely responsible for ensuring that wherever practicable, its employees and those of the sub-contractors and employees of separate contractors, the Principal, Superintendents, and visitors to the Site, are not exposed to hazards.

Attention is drawn to the requirement to supply manufacturers/suppliers "Material Safety Data Sheets". These sheets should be consistent with the "Work Safe" information and format.

A copy of all "Material Safety Data Sheets" shall be supplied to the Superintendent with another copy kept on Site by the Contractor.

4.11.2 Safety Management Plan

The Contractor shall, throughout the Works, implement and maintain a "Safety Management Plan".

The Contractor shall prepare the Safety Management Plan in conjunction with a person suitably experience and qualified in safety matters.

Prior to the commencement of the Works, the Contractor shall supply to the Superintendent in writing, its Safety Management Plan. If the Contractor does not have a Safety Management plan then they will be required to comply with the Shire of Corrigin Safety Management Plan.

4.11.3 Induction Training

Employees of the Contractor and its Subcontractors and Employees of Separate Contractors shall not commence work on the Site until they have been inducted.

Upon commencement of work on the Site, the Contractor shall further induct each employee with regard to all significant hazards associated with their particular activity and area of employment on the Site and where relevant shall include the use of powered plant, tools and equipment.

4.11.4 Pre-Job Planning

Where legislation or codes of practice identify particularly hazardous activities including but not limited to excavation work or working near power lines the Contractor shall supply to the Superintendent a Safe Work Procedure prior to the commencing such activity or type of work on the Site.

4.11.5 Goods and Services Tax (GST)

For the purposes of this clause:

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

Part 4 READ AND KEEP THIS PART

Where the Requirement's, the subject of this Request, or any part thereof is a taxable supply under the GST Act, the price, fee or rates tendered by the Tenderer **shall be inclusive of all applicable GST** at the rate in force for the time being.

In evaluating the Tenders, the Principal shall be entitled (though not obliged) to take into account the effect of the GST upon each Tender.

5 Tenderer's Offer

5.1 Form of Tender

The Chief Executive Officer
Shire of Corrigin
PO Box 221
CORRIGIN WA 6375

I/We (Registered Entity Name): _____
(BLOCK LETTERS)

of: _____
(REGISTERED STREET ADDRESS)

ABN _____ ACN (if any) _____

Telephone No: _____ Facsimile No: _____

E-mail: _____

In response to Request for Tender (RFT) 2/2019 Soil Stabilisation in Shire of Corrigin 2019/20

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

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

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

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

Dated this _____ day of _____ 20____

Signature of authorised signatory of Tenderer: _____

Name of authorised signatory (BLOCK LETTERS): _____

Position: _____

Telephone Number: _____

Authorised signatory Postal address: _____

Email Address: _____

Part 5 COMPLETE AND RETURN THIS PART

5.2 Selection Criteria

5.2.1 Compliance Criteria

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

| Description of Compliance Criteria | |
|---|----------|
| a) Tenderers are to provide acknowledgment that your organisation has submitted in accordance with the Conditions of Tender including completion of the Offer Form and provision of your pricing submitted in the format required by the Principal. | Yes / No |
| b) Compliance with the Specification contained in the Request. | Yes / No |
| c) Compliance with the Delivery Date. | Yes / No |
| d) Risk Assessment Tenderers must address the following information in an attachment and label it “ Risk Assessment ”: | |
| i) <i>An outline of your organisational structure inclusive of any branches and number of personnel.</i> | Yes / No |
| ii) <i>If companies are involved, attach their current ASC company extracts search including latest annual return.</i> | Yes / No |
| iii) <i>Provide the organisation’s directors/company owners and any other positions held with other organisations.</i> | Yes / No |
| iv) <i>Provide a summary of the number of years your organisation has been in business.</i> | Yes / No |
| v) <i>Attach details of your referees. You should give examples of work provided for your referees where possible.</i> | Yes / No |
| vi) <i>Are you acting as an agent for another party? If Yes, attach details (including name and address) of your principal.</i> | Yes / No |
| vii) <i>Are you acting as a trustee of a trust? If Yes, give the name of the trust and provide the names and addresses of beneficiaries.</i> | Yes / No |
| viii) <i>Do you intend to subcontract any of the Requirements? If Yes provide details of the subcontractor(s) including; the name, address and the number of people employed; and the</i> | Yes / No |

Part 5 COMPLETE AND RETURN THIS PART

| | |
|--|----------|
| <i>Requirements that will be subcontracted.</i> | |
| <i>ix) Will any actual or potential conflict of interest in the performance of your obligations under the Contract exist if you are awarded the Contract, or are any such conflicts of interest likely to arise during the Contract? If Yes, please supply in an attachment details of any actual or potential conflict of interest and the way in which any conflict will be dealt with.</i> | Yes / No |
| <i>x) Are you presently able to pay all your debts in full as and when they fall due?</i> | Yes / No |
| <i>xi) Are you currently engaged in litigation as a result of which you may be liable for \$50,000 or more? If Yes please provide details.</i> | Yes / No |
| <p>The insurance requirements for this Request are stipulated in Part 3 of this Request. Tenderers are to supply evidence of their insurance coverage including, insurer, expiry date, value and type of insurance. If Tenderer holds “umbrella Insurance” please ensure a breakdown of the required insurances are provided. A copy of the Certificate of Currency is to be provided to the Principal within 30 days of acceptance.</p> | |

5.2.2 Qualitative Criteria

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

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

Part 5 COMPLETE AND RETURN THIS PART

| | | |
|--|---|--|
| <p>A. Cost</p> <p>Tenderers must attach the Pricing Schedule “Cost”:</p> | <p>Weighting</p> <p>40%</p> | |
| <p>B. Relevant Company Experience</p> <p>Tenderers must address the following information in an attachment and label it Relevant Company Experience:</p> | <p>Weighting</p> <p>10%</p> | |
| <p>a) <i>Provide details of similar work undertaken.</i></p> <p>b) <i>Provide scope of the Tenderer’s involvement including details of outcomes.</i></p> <p>c) <i>Provide details of issues that arose during the project and how these were managed.</i></p> <p>d) <i>Demonstrate competency and proven track record of achieving outcomes.</i></p> <p>e) <i>Project reference sheet.</i></p> | <p>Relevant Experience</p> | <p>Tick if attached</p> <p><input type="checkbox"/></p> |
| <p>C. Operator Skills and Experience</p> <p>Tenderers must address the following information in an attachment and label it Operator Skills and Experience:</p> | <p>Weighting</p> <p>15%</p> | |
| <p>a) <i>The Tenderer’s role in the performance of the Contract.</i></p> <p>b) <i>Curriculum vitae of key staff inclusive of membership to any professional or business association, qualifications etc.</i></p> <p>c) <i>Any other relevant details relating to personnel skills and experience.</i></p> | <p>Key Personnel</p> | <p>Tick if attached</p> <p><input type="checkbox"/></p> |

Part 5 COMPLETE AND RETURN THIS PART

| | | |
|---|---|--|
| <p>D. Tenderer’s Resources</p> <p>Tenderers must address the following information in an attachment and label it Tenderer’s Resources:</p> | <p>Weighting</p> <p>15%</p> | |
| <p>a) <i>Plant, equipment and materials.</i></p> <p>b) <i>Any contingency measures or backup of resources including personnel (where applicable).</i></p> <p>c) <i>Safety Record.</i></p> <p>d) <i>Other current commitments.</i></p> | <p>Tenderer’s Resources</p> | <p>Tick if attached</p> <p><input type="checkbox"/></p> |
| <p>E. Local Knowledge</p> <p>Tenderers must address the following information in an attachment and label it Local Knowledge:</p> | <p>Weighting</p> <p>10%</p> | |
| <p>a) <i>Understanding of shire boundary, local geography, soil conditions and gravel quality.</i></p> <p>b) <i>Understanding of the Scope of Work.</i></p> | <p>Demonstrated Understanding</p> | <p>Tick if attached</p> <p><input type="checkbox"/></p> |
| <p>F. Regional Price Preference</p> <p>A price preference of 10% for businesses based in the Shire of Corrigin.</p> | <p>Weighting</p> <p>10%</p> | |
| <p>a) <i>Evidence of business based in region as per Regional Price Preference Policy.</i></p> | <p>Regional Organisation</p> | <p>Tick if attached</p> <p><input type="checkbox"/></p> |

5.3 Price Information

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

The items listed in *Appendix 2 – Treatment Details* as Priority 2 sections may not all be completed as funding is limited. The Contractor will be advised as to which sections are to be completed at the time of award. The nominated sections will be completed in conjunction with the Priority 1 sections.

The Schedule lists rates for adjustment for both cement and lime that will be applied where additive application rates have been specified for “tender purposes”.

Part 5 COMPLETE AND RETURN THIS PART

5.3.1 Schedule of Rates

Tenderers shall complete the following schedule of rates. Quantities are referenced from *Appendix 2 – Treatment Details*. The rates shall include allowance for an experienced operator, fuel, consumable, overheads and profit. Rates are to be shown exclusive of GST. GST is to be calculated and included in the schedule at the appropriate location.

| Description | Unit | Quantity | Rate (Exclusive of GST) | Amount |
|---|----------------|-----------|-------------------------|--------|
| Mobilisation to Site for all equipment | Item | 2 | \$ | \$ |
| Demobilisation from Site for all equipment | Item | 2 | \$ | \$ |
| <u>Treatment Type 1</u> | | | | |
| Pulverise Existing Pavement | m ² | 3148 | \$ | \$ |
| Stabilise SB with 4% Hydrated Lime to 250mm depth | m ² | 3148 | \$ | \$ |
| Stabilise BC with 1.5% cement to 200mm depth | m ² | 3148 | \$ | \$ |
| <u>Treatment Type 2</u> | | | | |
| Cement Stabilise new overlay to 200mm depth with 1.5% cement (tender purposes) | m ² | 2700 | \$ | \$ |
| <u>Treatment Type 3</u> | | | | |
| Cement Stabilise existing pavement 250mm with 2% cement. | m ² | 4860 | \$ | \$ |
| Cement Stabilise new overlay to 200mm depth with 1.2% cement (tender purposes) | m ² | 4860 | \$ | \$ |
| Supply and spread road base aggregate – spread rate 32 kg/m ² . (Provisional quantity) | Tonne | 175 | \$ | \$ |
| <u>Treatment Type 4</u> | | | | |
| Lime Stabilise existing pavement 350mm with 2% hydrated lime. | m ² | 31860 | \$ | \$ |
| Cement Stabilise 200mm depth with 1.2% cement (tender purposes). | m ² | 31860 | \$ | \$ |
| Supply and spread road base aggregate – spread rate 32 kg/m ² . | Tonne | 1020 | \$ | \$ |
| <u>Treatment Type 4 – Priority 2 sections</u> | | | | |
| Lime Stabilise existing pavement 350mm with 2% hydrated lime. | m ² | 10250 | \$ | \$ |
| Cement Stabilise 200mm depth with 1.2% cement (tender purposes). | m ² | 10250 | \$ | \$ |
| Supply and spread road base aggregate – spread rate 32 kg/m ² . | Tonne | 328 | \$ | \$ |
| <u>Change of Application Rates for Additive</u> | | | | |
| Cement – Rate for Adjustment | Tonne | Rate Only | \$ | |
| Hydrate Lime – Rate for Adjustment | Tonne | Rate Only | \$ | |
| Sub-total | | | | \$ |
| GST | | | | \$ |
| Total Including GST | | | | \$ |

6 Contractor’s Occupational Safety and Health Management System Questionnaire

This questionnaire forms part of the Principal’s Tender evaluation process and is to be completed by tenderers and submitted with their Tenders and labelled as **Contractor’s Safety and Health Questionnaire**. The objective of the questionnaire is to provide an overview of the status of Contractor’s safety management system. Contractors may be required to verify their responses noted in their questionnaire by providing evidence of their ability and capacity in relevant matters.

| Occupational Safety and Health Policy and Management | Yes | No |
|--|--------------------------|--------------------------|
| Is there a written company Health and Safety Policy? If Yes, provide a copy of the policy. | <input type="checkbox"/> | <input type="checkbox"/> |
| Does the company have an Occupational Safety and Health (OSH) Management System? If Yes, provide details: _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| Is the OSH Management System audited or reviewed on a regular basis? If Yes, provide details of last audit and outcomes. _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> |
| Is there a company OSH Organisation Chart? If Yes, provide a copy | <input type="checkbox"/> | <input type="checkbox"/> |
| Has the company prepared Safe Operating Procedures or specific safety instructions relevant to its operations? If Yes, provide a summary listing of procedures or instructions. _____ _____ | <input type="checkbox"/> | <input type="checkbox"/> |

Part 6 COMPLETE AND RETURN THIS PART

| | | |
|---|--------------------------|--------------------------|
| <p>Are safe operating procedures or specific safety instructions issued to employees?</p> <p>If Yes, explain how this is done.</p> <p>_____</p> <p>_____</p> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Are there procedures for storing and handling hazardous substances?</p> <p>If Yes, provide details.</p> <p>_____</p> <p>_____</p> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Is there a procedure by which employees can report hazards at workplaces?</p> <p>If Yes, provide details</p> <p>_____</p> <p>_____</p> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Do you have a plan for dealing with emergencies such as injury to operators, bushfires, break down on site or vehicle accident?</p> <p>If Yes, provide details _____</p> | <input type="checkbox"/> | <input type="checkbox"/> |
| <p>Has the company ever been convicted of an Occupation Health and Safety offence?</p> <p>If Yes, provide details.</p> <p>_____</p> | <input type="checkbox"/> | <input type="checkbox"/> |

7 Project Reference Sheet

Complete the following details and submit with your Tender labelled as **Project Reference Sheet**.

| Name of Project | Value (approx.) | Date Started | Date Completed | Client | Referees Name | Telephone Number |
|-----------------|-----------------|--------------|----------------|--------|---------------|------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

8 Tenderer's Resource Schedule

8.1 Tenderer's Current Commitment Schedule for 2019/20

| Project | Description | Value as Let | Date Started | Referees Name Telephone Number |
|---------|-------------|--------------|--------------|-----------------------------------|
| | | | | |
| | | | | |
| | | | | |

8.2 Tenderer's Human Resources Schedule

| Staff/ Operator Name | Role/ Qualification | Years of Experience |
|----------------------|---------------------|---------------------|
| | | |
| | | |
| | | |
| | | |

2.11 REGIONAL PRICE PREFERENCE POLICY

| | |
|----------------------------|----------------------------------|
| Policy Owner: | Corporate and Community Services |
| Person Responsible: | Deputy Chief Executive Officer |
| Date of Approval: | 21 June 2016 |
| Amended: | 17 October 2017 |

Objective: To stimulate economic activity and growth in the Shire by maximising the use of competitive local businesses in supplying goods, services and works purchased or contracted on behalf of the Shire of Corrigin (the 'Shire').

Legislative Requirements:

This policy sets out the requirements that must be complied with by the Shire for the implementation and application of a regional price preference when purchasing goods and/or services through a tender process. The policy is compliant with the *Local Government (Functions and General) Regulations 1996*, as the relevant legislation.

Policy:

A price preference will apply to suppliers who are based in, operate from or source goods or services from within the Shire Region in relation to all tenders invited by the Shire for the supply of goods, services and construction (building) services, unless the tender document specifically states prior to advertising of the tender that this policy does not apply. The regional price preference enables tenders to be evaluated as if the proposed tender bid price were reduced in accordance with permitted price preferences as specified below in this policy. This policy will operate in conjunction with the purchasing considerations and procedures for tenders as outlined in the Shire's 'Purchasing Policy' when evaluating and awarding tender contracts.

Qualifying Criteria:

Regional Tenderer

A supplier of goods or services who submits a tender is regarded as being a regional tenderer if:

- a) that supplier has been operating a business continuously out of premises in the Region for at least six months before the time after which further tenders cannot be submitted. This is further defined as follows and the supplier will be required to meet all of these criteria:
 - i. the supplier to have a physical business premises (in the form of an office, depot, shop, outlet, headquarters or other premises where goods or services are being supplied from), located in the Region. This does not exclude suppliers whose registered business is located outside the Region but undertake the business from premises located in the Region;

- ii. the physical location of the business premises in the Region has been operating on an ongoing basis for more than six months prior to the closing date for the tender;
 - iii. a business having permanent staff that are based at the business premises located in the Region;
 - iv. management or delivery of the majority of the tendered outcomes will be carried out from the business premises located in the Region; and
 - v. the business being registered or licensed in Western Australia; or
- b) some or all of the goods or services are to be supplied from regional sources. Goods and/or services that form a part of a tender submitted may be wholly supplied from regional sources; or partly supplied from regional sources, and partly supplied from non-regional sources. Only those goods or services identified in the tender as being from regional sources may be included in the discounted calculations that form a part of the assessments of a tender when the regional price preference policy is in operation.

In order for the policy to apply, the tenderer is required to provide to the Shire written evidence within the tender submission which demonstrates compliance with the above criteria. Tenderers who claim that they will use goods, materials or services supplied from regional sources in the delivery of the contract outcomes will be required, as part of the contract conditions, to demonstrate that they have actually used them.

Regional Price Preference Categories

The following levels of regional price preference will be applied (where relevant) to tenders received from a regional tenderer, as outlined above under this policy:

- ***Where the contract is for goods and services:*** Up to a 10% price preference (to a maximum price reduction of \$50,000 excluding GST) where goods and services are sourced from within the Shire Region.
- ***Where the contract is for construction (building) services:*** Up to a 5% price preference (up to a maximum price reduction of \$50,000 excluding GST) where construction (building) services are sourced from within the Shire Region.
- ***Where the contract is for goods or services (including construction (building) services), if the Shire is seeking tenders for the provision of those goods or services for the first time, due to those goods or services having been, until then, undertaken by the Shire:***

Up to 5% price preference (up to a maximum price reduction of \$200,000 excluding GST) where goods or services (including construction (building) services) are sourced from within the Shire Region

Competitive Purchasing

Whilst price is a competitive consideration in the provision of goods and/or services via tender, it is only one aspect of the tender evaluation process. Value for money principles, as described within the Shire's 'Purchasing Policy', will be employed by assessing the price component in conjunction with the tender selection criteria and requirements in order to determine value for money. The tender offering the lowest price may not necessarily be successful.

Terminology

Construction (building) services: is defined as the construction of and improvement to buildings (including housing) on or over any area of land, lake, river or ocean and any services related to that activity in the Shire Region.

Goods: include tangible, quantifiable material requirements usually capable of being moved or transported that are purchased, rented, leased or hired by the Shire.

Region: for the purposes of this policy the Region is specified as the entire geographical area encompassed within the boundaries of the Shire of Corrigin.

Services: means any task, consultancy, work or advice to be performed or provided that is procured by the Shire. Included are services such as management consultancies, outsourcing, maintenance contract/agreement, cleaning, waste removal, equipment repairs, external auditors, utilities and services, public infrastructure construction and repair etc.

Priority 1 sections.

SLK 0.0 - Brookton Highway

| Patch | SLk From | SLK To | Length km | Width m | Area m2 | Side | Treatment | By Area T1 | T2 | T3 | T4 |
|-------|----------|--------|-----------|---------|---------|------|-----------|------------|------|------|-------|
| 1 | 0.5 | 0.97 | 0.47 | 2.4 | 1128 | LHS | T1 | 1128 | | | |
| 2 | 0.68 | 0.98 | 0.3 | 3.6 | 1080 | LHS | T1 | 1080 | | | |
| 2 | 0.68 | 0.98 | 0.3 | 9 | 2700 | FW | T2 | | 2700 | | |
| 3 | 0.98 | 1.52 | 0.54 | 9 | 4860 | FW | T3 | | | 4860 | |
| 3a | 1.24 | 1.28 | 0.04 | 10 | 400 | FW | T1 | 400 | | | |
| 4 | 3.43 | 3.84 | 0.41 | 9 | 3690 | FW | T4 | | | | 3690 |
| 5 | 4.2 | 4.26 | 0.06 | 9 | 540 | RHS | T1 | 540 | | | |
| 6 | 5.27 | 5.45 | 0.18 | 9 | 1620 | RHS | T4 | | | | 1620 |
| 9 | 7.26 | 7.45 | 0.19 | 9 | 1710 | FW | T4 | | | | 1710 |
| 11 | 7.61 | 7.75 | 0.14 | 4.5 | 630 | RHS | T4 | | | | 630 |
| 12 | 7.75 | 7.91 | 0.16 | 9 | 1440 | FW | T4 | | | | 1440 |
| 13 | 8.22 | 9 | 0.78 | 9 | 7020 | FW | T4 | | | | 7020 |
| 14 | 9.01 | 9.27 | 0.26 | 4.5 | 1170 | RHS | T4 | | | | 1170 |
| 15 | 9.27 | 9.47 | 0.2 | 9 | 1800 | FW | T4 | | | | 1800 |
| 18 | 10.56 | 11.98 | 1.42 | 9 | 12780 | RHS | T4 | | | | 12780 |

42568

3148

2700

4860

31860

Seprable Portion - Priority 2 sections.

| Patch | SLk From | SLK To | Length km | Width m | Area m2 | Side | Treatment | By Area T1 | T2 | T3 | T4 |
|-------|----------|--------|-----------|---------|---------|------|-----------|------------|----|----|------|
| 7 | 6.08 | 6.25 | 0.17 | 9 | 1530 | FW | T4 | | | | 1530 |
| 8 | 6.82 | 7.2 | 0.38 | 4 | 1520 | RHS | T4 | | | | 1520 |
| 10 | 7.45 | 7.61 | 0.16 | 4.5 | 720 | RHS | T4 | | | | 720 |
| 16 | 9.6 | 10.1 | 0.5 | 4.5 | 2250 | RHS | T4 | | | | 2250 |
| 17 | 10.1 | 10.57 | 0.47 | 9 | 4230 | RHS | T4 | | | | 4230 |

10250

0

0

0

10250

Proposed Treatments and Details

| | |
|----|---|
| T1 | 2 layer repair - Pulverise Existing, Stab SB with 4% HL at 250mm then BC 1.5% with GB Cement at 200mm. |
| T2 | Cement Stabilise new 150mm overlay of gravel to a depth of - 200mm @ 1.5% cement |
| T3 | Stabilise Existing - 2% cement at 250mm then Overlay with 200mm gravel - cement stabilise using a cement content to be determined by the Contractor. Allow 1.2% for tender purposes. As an option, additional stone may need to be added to this material - a provisional quantity has been included. |
| T4 | Lime Stabilise - 2% lime into top 350mm - fully compact, Apply Crushed Rock topping at a spread rate of 32kg/m2 +/- 10% , Mix top 200mm with a cement content determined from laboratory testing using Contractor's supplied aggregate. Allow 1.2% for tender purposes. |

NOTE: - Assumed MDD of all pavement and subgrade materials - 2.1 t/m3

GENERAL CONDITIONS OF CONTRACT

FOR THE PROVISION OF MINOR WORKS

Shire of Corrigin

And

insert contractor (ABN insert ABN)

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DATE

PARTIES

Shire of Corrigin of PO Box 221 CORRIGIN WA 6375 99880773647 ('Principal');
and

Insert contractor of insert address ABN insert ABN ('Contractor')

BACKGROUND

- (a) The Principal wishes to engage the Contractor to undertake provision of the Works.
- (b) The Contractor has agreed to perform and complete the Works on the terms of this Contract.

The Parties agree as set out in the Operative part of this Contract, in consideration of, among other things, the mutual promises contained in this Contract.

1 DEFINITIONS

In this Contract except where the context otherwise requires:

'Approval' means any certificate, licence, consent, permit, approval, authority or requirement of any Legal Requirement or any organisation having jurisdiction in connection with the provision of the Works.

'Australian Statistician' means the person appointed as the 'Australian Statistician' under the *Australian Bureau of Statistics Act 1975* (Cth) (and acting in that capacity).

'Authority' means any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

'Business Days' means a day that is not a Saturday, Sunday, a public holiday in Western Australia or 27, 28, 29, 30 or 31 December.

'Clause' means a clause of this document.

'Completion' is that stage in the carrying out and completion of the Works when the Principal determines that:

- (a) the Works are complete and meet the requirements of this Contract except for Minor Defects; and
- (b) all certificates, documents, warranties, guarantees and other information which, in the Principal's opinion, are essential for the use, operation and maintenance of the Works have been supplied to the Principal.

'Completion Certificate' means a certificate issued by the Principal under Clause 26.1 evidencing the Date of Completion.

'Confidential Information' means all of the Principal's information which:

- (a) is disclosed or otherwise made available to, or acquired directly or indirectly by, the Contractor at any time;
- (b) relates to the Principal's or any Local Government's past, existing or future business, strategic plans or operations, finances, or customers (including any information that is derived from such information); and
- (c) is in oral or visual form, or is recorded or stored in a Document,

and includes this Contract, but does not include information which:

- (d) is or becomes generally and publically available other than as a result of a breach of this Contract;
- (e) is in the possession of the Contractor without restriction in relation to disclosure on or before the date on which it is disclosed to or acquired by the Contractor; or

- (f) has been independently developed by the Contractor or acquired from a third party not the subject to a duty of confidence to the Principal.

'Consequential Loss' means any loss of production, loss of revenue, loss of profit, loss of business reputation, business interruptions, loss of opportunities, loss of anticipated savings or wasted overheads.

'Construction Contracts Act' means the *Construction Contracts Act 2004* (WA).

'Construction Program' means the program prepared by the Contractor and approved (or otherwise) by the Principal under Clause 22 and, where updated and approved in writing by the Principal's Representative in accordance with Clause **Error! Reference source not found.**, the latest updated Construction Program.

'Contamination' has the same meaning given to 'Contaminated' under the *Contaminated Sites Act 2003* (WA).

'Contract' means this document (including all schedules, attachments, annexures and clarifications) and any Order. For the avoidance of doubt, if this Contract is a Framework Agreement then each Order issued under this Contract constitutes an individual Contract (comprising this document and that Order).

'Contract Price' means the amount specified in the Contract Specifics but excluding any additions or deductions, which may be required to be made pursuant to this Contract.

'Contract Specifics' means the contract information attached at Schedule 1.

'Contractor Maximum Liability Amount' means the amount specified as such set out in the Contract Specifics.

'Contractor's Personnel' means any and all personnel engaged by the Contractor or a related body corporate, including its directors, officers, employees, agents, representatives, Subcontractors and any director, officer, employee, agent or representatives of any Subcontractor, and any other person engaged or employed by, or on behalf of, the Contractor.

'Contractor's Representative' is the person named as such in the Contract Specifics or any replacement person notified to the Principal.

'Date for Completion' means the date for Completion specified in the Contract Specifics.

'Date of Completion' means the date determined by the Principal's Representative (acting reasonably) as the date upon which Completion was reached and evidenced in the Completion Certificate.

'Defect' means:

- (a) any errors, deficiency, omission, non-conformity, fault, failure, malfunction, irregularity or other defect in the Works; or
- (b) any aspect of the Works which is not in accordance with the requirements of this Contract.

'Defect Liability Period' means, subject to Clause 27.4, the period of time beginning on the Date of Completion and ending on the expiry of the time stated in the Contract Specifics.

'Design Documents' means the drawings, specifications and other design documents required by this Contract and created (or, where the context requires, to be created) by the Contractor for the performance of the Works.

'Dispute' means any dispute or difference between the Parties arising in connection with the subject matter of this Contract.

'Document' includes any note, memorandum, record, report, financial information, summary, analysis, calculation, strategic assessment, market survey, business plan, computer program, computer record, drawing, specification, material or any other means by which information may be stored or reproduced.

'Environment' has the same meaning as under the *Environmental Protection Act 1986* (WA).

'Environmental Laws' means all present and future Legal Requirements and Approvals concerning Environmental matters and any common law relating to the Environment.

'Force Majeure Event' means any one of the following events which is beyond the control of either Party, could not have been reasonably foreseen by either Party and which prevents a Party from discharging an obligation under this Contract, which, in the case of the Contractor, is critical to the Contractor undertaking the Works:

- (a) a civil war, insurrection, riot, fire, flood, explosion, earthquake, operation of the forces of nature of catastrophic proportion or an act of a public enemy;
- (b) a general strike or general industrial action of Western Australia wide application, which did not arise at the Contractor's premises and has not been caused by the Contractor; or
- (c) the enactment of any statute or regulation by the parliaments of the Commonwealth of Australia or Western Australia, which the Contractor could not have been aware of prior to the execution of this Contract,

but is not an event which arises from any of the following:

- (d) a breach of a contract, including this Contract, or Law, by the Contractor;
- (e) negligence by the Contractor relating to the performance of its obligations under this Contract;
- (f) an occurrence that is a risk assumed by the Contractor under this Contract; or
- (g) a shortage or delay in the supply of materials or equipment or other things required under this Contract; or
- (h) wet or inclement weather.

'Framework Agreement' means a Contract designated as such in the Contract Specifics.

'Good Industry Practice' means:

- (a) the exercise of that degree of skill, diligence, prudence and foresight that would reasonably be expected from a Professional Contractor;
- (b) compliance with applicable standards and codes being the standards and codes specified in the Contract or if not specified, the standards and codes as would be applied by a Principal in the circumstances; and
- (c) compliance with applicable Legal Requirements.

'GST' means goods and services tax applicable to any taxable supplies as determined under the GST Law.

'GST Law' means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax and includes any subordinate legislation in respect of these acts.

'Insurance' means the insurances which the Contractor is required to obtain under Clause 19 and the Contract Specifics.

'Insurance End Date' means the date set out in the Contract Specifics as an Insurance End Date for a specific Insurance.

'Intellectual Property Right' means all intellectual and industrial property rights and interests throughout the world, whether registered or unregistered, including trade marks, designs, patents, inventions, semi conductor, circuit and other eligible layouts, copyright and analogous rights, trade secrets, know how, processes, concepts, plant breeder's rights, confidential information and all other intellectual property rights as defined in Article 2 of the Convention establishing the World Intellectual Property Organisation on 14 July 1967 as amended from time to time.

'Intended Purpose' means the intended purpose of the Works as stated in this Contract or as could be reasonably inferred from this Contract by a Professional Contractor.

'Invoice' means an invoice which meets all the requirements of a valid tax invoice for GST purposes under the GST Law.

'Law' means:

- (a) any act, ordinance, regulation, by-law, order, award and proclamation of the Commonwealth and the State of Western Australia and any Local Government (including the Principal); and
- (b) any common or customary law and equity.

'Legal Requirement' means:

- (a) Laws;
- (b) Approvals; and
- (c) fees and charges payable in connection with the foregoing.

'Liquidated Damages' means the liquidated damages described as such in the Contract Specifics.

'Local Government' means any local government established under the *Local Government Act 1995* (WA) other than the Principal.

'Loss' means liability, loss, damage (of any nature, including aggravated and punitive), cost (including all litigation costs on a full indemnity basis), claim, suit, charge, diminution in value, action, statutory or equitable compensation, demand, expense or proceeding or loss of any nature and of any kind whatsoever whether present or future, actual, contingent or prospective and whether known or unknown, and howsoever arising including under any Legal Requirement or any Authority.

'Materials and Equipment' means all materials, equipment, plant, tools, vehicles and machinery necessary and incidental to the performance of the Contractor's obligations under this Contract.

'Minor Defects' means Defects which do not prevent the Works from being reasonably capable of being used for their stated purpose and which can be rectified by the Contractor without prejudicing the convenient use of the Works by the Principal.

'Order' means a purchase order from the Principal to the Contractor which requires specific Works to be performed under this Contract where this Contract is a Framework Agreement.

'Party' means the Principal and/or the Contractor (as the context requires).

'Payment Certificate' means the certificate issued by the Principal under Clause **Error! eference source not found.**

'PPS Law' means the PPSA and any amendment made at any time to the *Corporations Act 2001* (Cth) or any other legislation as a consequence of the PPSA.

'PPSA' means the *Personal Property Securities Act 2009* (Cth).

'Principal Maximum Liability Amount' means the amount specified as such in the Contract Specifics.

'Principal's Personnel' means directors, employees, agents, contractors or subcontractors of the Principal but does not include the Contractor or the Contractor's Personnel.

'Principal's Representative' is the person named as such in the Contract Specifics or any replacement person notified to the Contractor.

'Professional Contractor' means a contractor with skill and experience in, and the expertise and resources necessary to carry out and complete works of a similar nature to the Works.

'Progress Claim' means a document in a form approved by the Principal evidencing the performance of the Works since the previous Progress Claim (or, if the Progress Claim is the first Progress Claim, since the Start Date) and which includes the information set out in the Contract Specifics.

'RCTI Agreement' means an agreement in the form provided by the Principal pursuant to which the Parties have agreed that the Principal will issue Recipient Created Tax Invoices in respect of the Works.

'Recipient Created Tax Invoice (or RCTI)' has the meaning prescribed in the GST Law.

'Related Works' means any works and any operation or maintenance service, performed or undertaken or to be performed or undertaken by:

- (a) the Principal;
 - (b) contractors, consultants or suppliers (other than the Contractor or the Contractor's Personnel) on behalf of the Principal; or
 - (c) public or private utilities or a statutory or other relevant authorities,
- either concurrently or sequentially with the Works:
- (d) at, on, over or adjacent to the Site; or
 - (e) which may be connected to, associated with, ancillary to or otherwise related or relevant to the Works.

'Representative' means the Principal's Representative or the Contractor's Representative.

'Review Date' means each 12 month anniversary of the execution of this Contract.

'Schedule of Rates' means the schedule of rates attached in Schedule 4.

'Site' has the meaning given in the Contract Specifics.

'Site Standards and Procedures' means the documents listed in Schedule 3 and any other guidelines, rules, requirements or Site specific conditions which the Principal makes available to the Contractor from time to time.

'Specification' means the specification attached in Schedule 2.

'Start Date' has the meaning given in the Contract Specifics.

'Subcontractor' means any person engaged by the Contractor in connection with the Work and includes consultants, subcontractors, suppliers and other contractors.

'Tax' means any income (including payroll), land, indirect and other taxes, excise, levies, imposts, deductions, charges, duties, compulsory loans and withholdings, including withholding payments, financial institutions duty, debits tax or other taxes whether incurred by, payable by return or passed on to another person and includes any interest, penalties, charges, fees, fines or other amounts imposed in respect of any of the above, but does not include GST or stamp duty.

'Tender' means the offer submitted by the Contractor to carry out the Works under this Contract and includes associated documentation.

'Third Party' means a person not being the Principal, the Principal's Representative, the Contractor, the Contractor's Representative or the Contractor's Personnel.

'Variation' means any change to the Works, including any addition to, reduction in, omission from or change in the character, quantity or quality of the Works.

'Variation Order' means a written direction by the Principal to carry out a Variation in accordance with Clause 29.

'Variation Quotation' has the meaning given in Clause 29.2.

'Wilful Misconduct' means any act or failure to act which was a deliberate and wrongful act or omission, or involved reckless disregard or wanton indifference to the likely consequences, including an intentional breach of this Contract.

'Works' means the whole of the work to be carried out and completed by the Contractor in accordance with this Contract, including Variations provided for by this Contract.

2 INTERPRETATION

In this Contract (unless the context otherwise requires):

- (a) a reference to this Contract means this Contract as amended, novated, supplemented, varied or replaced from time to time;
- (b) a reference to 'including', 'includes' or 'include' must be read as if it is followed by '(without limitation)';
- (c) a reference to 'approved' or 'approval' will be deemed to mean 'approved in writing' or 'approval in writing';

- (d) where a word or an expression is defined, any other part of speech or grammatical form of that word or expression has a corresponding meaning;
- (e) words in the singular include the plural and vice-versa;
- (f) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any sub-ordinate legislation issued under, that legislation or legislative provision;
- (g) a reference to any Party includes that Party's executors, administrators, substitutes, successors and permitted assigns;
- (h) a reference to a 'day', 'month', 'quarter' or 'year' is a reference to a calendar day, calendar month, calendar quarter or calendar year;
- (i) headings are for convenience only and do not affect interpretation of this Contract;
- (j) a promise on the part of 2 or more persons binds them jointly and severally; and
- (k) no rule of construction applies to the disadvantage of a Party on the basis that the Party put forward this Contract or any part of it.

3 ORDER OF PRECEDENCE

To the extent of any inconsistency between the several parts of this Contract, the following parts are listed in order of precedence:

- (a) this document;
- (b) the Specification;
- (c) any other schedules, attachments or annexures to this document; and
- (d) any Order.

4 SEVERABILITY

Should any part of this Contract be invalid or unenforceable, that part shall be:

- (a) read down, if possible, so as to be valid and enforceable; and
- (b) severed from this Contract to the extent of the invalidity or unenforceability,

and the remainder of this Contract shall not be affected by such invalidity or unenforceability.

5 NOTICES

5.1 Any notice or other communication under this Contract shall be in legible writing, in English and signed and shall be given or served by:

- (a) hand delivery or prepaid post to the address of the recipient specified in this Contract or at such other address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified address;
- (b) facsimile transmission to the facsimile number of the recipient specified in this Contract or at such other number as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified number; or
- (c) email to the email address of the recipient specified in this Contract or at such other email address as may from time to time be notified in writing to the Party giving the notice by the intended recipient but in any event to the last notified email address.

5.2 Any notice or other communication to or by a Party is regarded as being given by the sender and received by the addressee:

- (a) if by delivery in person, when delivered to the address of the recipient;

- (b) if by post, 3 Business Days from and including the date of postage;
- (c) if by facsimile transmission, when a facsimile confirmation receipt is received indicating successful delivery; and
- (d) if sent by email, when a delivery confirmation report is received by the sender which records the time that the email was delivered to the recipient's email address (unless the sender receives a delivery failure notification indicating that the email has not been delivered to the recipient),

but if the delivery or receipt is on a day which is not a Business Day or is after 5.00pm (recipient's time) it is regarded as received at 9.00am on the following Business Day.

5.3 In this Clause 5, reference to a recipient includes a reference to a recipient's officers, agents or employees.

5.4 A notice or other communication must not be given by electronic means of communication (other than facsimile and email as permitted in Clause 5.1).

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

6 PERFORMANCE AND PAYMENT

6.1 The Contractor must perform and complete the Works (including all design) by the Date for Completion and in accordance with:

- (a) this Contract;
- (b) Good Industry Practice; and
- (c) all Legal Requirements.

6.2 The Contractor must ensure that the Works when Completed will be fit for the Intended Purpose.

6.3 The Principal must pay the Contractor the Contract Price in accordance with this Contract.

7 ORDERS

7.1 If this Contract is a Framework Agreement, this Clause 7 applies.

7.2 The Principal:

- (a) may require the Contractor to provide Works from time to time by giving the Contractor an Order; but
- (b) is not obliged to issue Orders or otherwise purchase Works.

7.3 Within 5 Business Days after receipt of an Order the Contractor must give notice to the Principal if it:

- (a) disagrees with any of the information and/or requirements contained in the Order, and include in the notice details of the aspects in which it disagrees with the information and/or requirements; or
- (b) recommends any change to any of the information and/or requirements contained in the Order and include in the notice the Contractor's reasons for the recommendation.

7.4 If the Contractor:

- (a) gives notice under Clause 7.3, the Parties must attempt to agree on the information and requirements. Once the information and requirements have been agreed, the Principal must re-issue an Order containing the agreed information

and requirements and the Contractor must perform its obligations under the Order in accordance with this Contract; or

- (b) does not give notice pursuant to Clause 7.3 the Contractor must perform its obligations under the Order in accordance with this Contract.

7.5 If, pursuant to a notice issued under Clause 7.3, the Parties cannot agree on the Contract Price or any other information or requirements for an Order, the Principal, acting reasonably (and having regard to the Schedule of Rates where appropriate), may determine:

- (a) the contract price applicable to that Order and such contract price will be deemed to be the Contract Price for that Order; and
- (b) the relevant information or requirements for that Order provided that such determination does not otherwise breach the terms of the Framework Agreement.

7.6 The Principal or the Principal's Representative may cancel any Order by providing written notice to the Contractor for any reason, but the Principal must pay for any Works completed prior to the date the cancellation is notified to the Contractor.

8 SITE RISKS

8.1 The Contractor warrants that before the Start Date the Contractor has had access to the Site, carried out its own inspections of the Site and the Environment, and has conducted its own enquiries in order to establish, understand and satisfy itself as to the nature and status of:

- (a) the Site and the Environment; and
- (b) all risks and contingencies associated with the Site and the Environment,

or has chosen not to carry out any inspections or conduct its own enquiries, as the case may be, in which case the Contractor acknowledges that there will be no adjustment to the Contract Price or Date for Completion, except as expressly stated in this Contract.

8.2 The Contractor accepts sole responsibility for, and assumes the risk of, all Loss, delay and disruption arising out of the physical conditions and characteristics of the Site and the Environment.

8.3 Without limiting Clauses 8.1 and 8.2, the Contractor accepts sole responsibility for, and assumes the risk of, all Loss, delay and disruption arising out of, or in connection with, all Contamination in, under or around the Site and the Environment which came into existence after the Start Date.

9 COOPERATION

9.1 The Contractor acknowledges that all contractual communications between the Contractor and those Third Parties responsible for carrying out the Related Works must be directed through the Principal.

9.2 In performing the Works, the Contractor must:

- (a) take all reasonable steps to plan, coordinate and program, and to the maximum extent possible integrate, the performance of the Works (including the work of Subcontractors) with the Related Works; and
- (b) not carry out the Works in a manner which may cause damage to, or inconvenience the execution of, the Related Works, and at all times take all necessary steps to protect the Works from accidental damage caused by the Related Works.

9.3 The Contractor accepts that it has an obligation to ensure the accuracy of information provided by the Contractor to those responsible for carrying out the Related Works and to act in accordance with detailed information provided by those responsible for carrying out the Related Works.

9.4 If the Contractor fails to comply with this Clause and additional work or any alterations or remedial work to either the Works or the Related Works becomes necessary as a result, the additional costs, if any, will be a debt due and payable immediately from the Contractor to the Principal.

10 ASSIGNMENT AND SUBCONTRACTING

10.1 The Contractor shall not:

- (a) assign this Contract, or any part thereof or any payment thereunder; or
- (b) subcontract the whole or any part of this Contract,

without the Principal's prior written approval (not to be unreasonably withheld). The Principal's approval to assign or subcontract shall not relieve the Contractor from any liability or obligation under this Contract.

10.2 The Principal may, without the Contractor's consent, assign or novate this Contract or assign any payment or any other right, benefit or interest under this Contract to another local government.

11 INDEMNITY

11.1 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel from and against all Loss and other liabilities of any kind suffered or incurred in connection with any act or omission of the Contractor or the Contractor's Personnel arising from or in connection with the performance or non-performance of the Works, including any:

- (a) breach of contract;
- (b) breach of Intellectual Property Rights;
- (c) Contamination;
- (d) Wilful Misconduct;
- (e) tort, including negligence or breach of a Legal Requirement; or
- (f) breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty.

11.2 The Contractor shall indemnify and keep indemnified the Principal and the Principal's Personnel against any Loss suffered or incurred in connection with any claim by a Third Party against the Principal arising from or in connection with the performance or non-performance of the Works including any:

- (a) breach of contract;
- (b) breach of Intellectual Property Rights;
- (c) Contamination;
- (d) Wilful Misconduct;
- (e) tort, including negligence or breach of a Legal Requirement; or
- (f) breach of equitable duty, including breach of confidentiality or a breach of fiduciary duty.

11.3 The indemnities set out in Clauses 11.1 and 11.2 do not apply to any Loss to the extent that the Loss is caused by the Wilful Misconduct or a negligent act or omission of the Principal or the Principal's Personnel.

11.4 The Principal need not incur any cost or make any payment before enforcing any right of indemnity under this Clause 11.

12 DAMAGE TO PROPERTY

- 12.1 If the Contractor or the Personnel of the Contractor damage property, including property on or adjacent to the Site, the Contractor must promptly:
- (a) make good the damage; and
 - (b) pay any compensation which the Contractor is required to pay under the Contract or under any Legal Requirement.
- 12.2 If the Contractor fails to comply with an obligation under Clause 12.1, the Principal may, in addition to any other remedy which the Principal may have, perform or have performed that obligation on the Contractor's behalf and any cost incurred by the Principal will be a debt due and payable by the Contractor.

13 PROTECTION OF PROPERTY

If urgent action is necessary to protect the Works, other property or people and the Contractor fails to take such action, then, in addition to any other remedies of the Principal, the:

- (a) Principal or Principal's Representative may take the necessary action; and
- (b) reasonable cost incurred by Principal or Principal's Representative in the circumstances will be a debt due and payable immediately from the Contractor to the Principal.

14 INTELLECTUAL PROPERTY RIGHTS

- 14.1 The Contractor warrants that the Works and any design, documents or methods of working provided by the Contractor, including the Design Documents, do not infringe any Intellectual Property Right.
- 14.2 The Contractor shall indemnify the Principal against any Loss resulting from any alleged or actual infringement of any Intellectual Property Right.
- 14.3 All payments and royalties payable in respect of any Intellectual Property Rights required in respect of performance of the obligations under this Contract shall be included in the Contract Price and shall be paid by the Contractor to the person, persons, or body to whom they may be due or payable.
- 14.4 Except as otherwise provided in this Contract, ownership of Intellectual Property Rights (other than third party Intellectual Property Rights) associated with the Works and any documentation provided by the Contractor pursuant to this Contract vests in and shall remain vested in the Contractor.
- 14.5 Ownership of the Principal's Intellectual Property Rights (other than third party Intellectual Property Rights) vests in and shall remain vested in the Principal.
- 14.6 The Contractor grants to the Principal an irrevocable, perpetual, worldwide, royalty free and transferrable licence to use and reproduce all Intellectual Property Rights associated with the Works and any documentation provided pursuant to this Contract.

15 NO ADJUSTMENT TO CONTRACT PRICE

- 15.1 Unless otherwise stated in this Contract, the Contract Price shall be firm and not subject to rise and fall.
- 15.2 If this Contract is a Framework Agreement, on each Review Date, the Contractor shall be entitled to adjust the rates (if any) set out in the Schedule of Rates by, except as otherwise

provided in Schedule 1, the percentage movement as published in the Consumer Price Index since the last Review Date.

- 15.3 If the rates (if any) set out in the Schedule of Rates are adjusted in accordance with clause 15.2, those rates will apply to Orders issued under clause 7 during the period commencing the relevant Review Date and ending on the immediately following Review Date (but only if the Contract Price for such Orders are to be calculated at the rates set out in the Schedule of Rates).
- 15.4 For clarity, the Contract Price for Orders issued by the Principal before a Review Date will not be affected by any adjustment to the rates (if any) set out in the Schedule of Rates in accordance with clause 15.2.
- 15.5 The Contractor is not entitled to any adjustment in the Contract Price for any reason except in accordance with Clause 29 as a result of a Variation.

16 CONTRACTOR ACKNOWLEDGMENT AND WARRANTIES

The Contractor represents and warrants to the Principal that the Contractor will:

- (a) at all times, be suitably qualified and experienced, and must exercise the skill, care and diligence to be expected of a Professional Contractor in the performance and Completion of the Works (including all design);
- (b) develop and complete the Design Documents so that the Design Documents are accurate, suitable, appropriate and adequate for the Intended Purpose taking into account the Site and the Environment; and
- (c) perform and complete the Works in accordance with the Design Documents so that when completed, the Works will be fit for the Intended Purpose and be in accordance with this Contract.

17 MATERIALS AND EQUIPMENT

- 17.1 The Contractor must provide all Materials and Equipment, labour and haulage necessary for the performance of the Works.
- 17.2 The Contractor must ensure that all Materials and Equipment and any other items which the Contractor uses or supplies in the performance of the Works are of merchantable quality, comply with this Contract and all Legal Requirements, and are fit for their usual and intended purpose.

18 COMPLYING WITH LEGAL REQUIREMENTS

- 18.1 The Contractor shall (at its own cost) comply with all Legal Requirements in any way affecting or applicable to the Works or the performance of this Contract.
- 18.2 Without limiting in any way the generality of the foregoing or Clause 35, the Contractor shall identify and duly and punctually observe, perform and comply with the provisions of any Legal Requirements for workplace safety and health, including but not limited to the *Occupational Safety and Health Act 1984* (WA) and all improvement notices, prohibition notices and codes of practice (if any) issued thereunder and having application to this Contract.
- 18.3 If a Legal Requirement is at variance with a term of this Contract the Contractor shall notify the Principal in writing. If such Legal Requirement necessitates a change to the Works and/or the way in which they must be provided, the Principal may direct the Contractor as to how the inconsistency must be addressed. Such inconsistency shall be at the Contractor's risk and the direction will not entitle the Contractor to any adjustment of the Contract Price or to make any other claim for relief.

19 INSURANCE

- 19.1 The Contractor must, at its own cost and expense, as a minimum, procure and maintain the Insurances:
- (a) on the terms and conditions set out in this Clause and otherwise on terms acceptable to the Principal; and
 - (b) from insurers having a financial performance rating of at least A- by Standard and Poor's (Australia) Pty Limited, or an equivalent rating from another internationally recognised rating agency and approved by the Principal which either:
 - (i) carry on business in Australia and are authorised by the Australian Prudential Regulation Authority; or
 - (ii) if an overseas insurer, covers claims lodged and determined in the jurisdiction of Australia. Any limitations regarding this requirement must be notified and agreed to by the Principal.
- 19.2 The Principal must not unreasonably withhold or delay its approval of an insurer or the terms and conditions of the Insurance.
- 19.3 Without limiting Clause 19.1, the Contractor must:
- (a) pay all premiums and all deductibles applicable to the Insurance when due; and
 - (b) promptly reinstate any Insurance required under this Clause 19 if it lapses or if cover is exhausted.
- 19.4 To the extent available, at the times of placement and each renewal, each Insurance must:
- (a) provide that the Insurance is primary with respect to the interests of the Principal and any other insurance maintained by the Principal is excess to and not contributory with the Insurance;
 - (b) except for compulsory statutory workers' compensation insurance, compulsory motor vehicle insurance and professional indemnity insurance, include a cross liability endorsement that all agreements and endorsements except limits of liability must operate in the same manner as if there was a separate policy of insurance covering each Party insured and a failure by any insured Party to observe and fulfil the terms and conditions will not affect any other Party;
 - (c) provide that where the Principal is not a named insured the insurer must waive rights of subrogation against the Principal;
 - (d) provide that a notice of claim given to the insurer by an insured under the Insurance must be accepted by the insurer as a notice of claim given by the Principal;
 - (e) provide, where the Principal is an insured under the Insurance, that any breach of the conditions of that Insurance by an insured other than the Principal must not in any way prejudice or diminish any rights which the Principal has under that Insurance; and
 - (f) state that it is governed by the Laws of the Commonwealth of Australia and that courts of Australia shall have exclusive jurisdiction in any dispute under the policy.
- 19.5 The effecting and maintaining of the Insurance by the Contractor does not, in any way, affect or limit the liabilities or obligations of the Contractor under this Contract.
- 19.6 The Contractor must maintain public liability insurance. The public liability policy must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - (b) be in the joint names of the Contractor and the Principal and the Principal's Personnel;

- (c) be for an amount of not less than the amount set out in the Contract Specifics in respect of any one claim and not less than the amount set out in the Contract Specifics in the aggregate during any one 12 month period of insurance;
 - (d) cover the liability of the Contractor, the Contractor's Personnel, the Principal and the Principal's Personnel in respect of:
 - (i) loss of, damage to, or loss of use of, any real or personal property; and
 - (ii) the bodily injury of, disease or illness (including mental illness) to, or death of, any person (other than liability which is required by Legal Requirement to be insured under a workers compensation policy),
 arising out of or in connection with the performance of this Contract by the Contractor; and
 - (e) be endorsed to cover:
 - (i) the use of unregistered motor vehicles or unregistered mobile plant and equipment used in connection with this Contract; and
 - (ii) sudden and accidental pollution.
- 19.7 In addition to any compulsory motor vehicle third party insurance required to be taken out by the Contractor under any Legal Requirement, the Contractor must also maintain vehicle and equipment insurance for the Contractor's vehicles, registered plant and equipment used in connection with this Contract whether owned, hired or leased ('**Contractor's Vehicles**'). The vehicle and equipment liability policy must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - (b) cover against all loss and/or damage to the Contractor's Vehicles;
 - (c) cover third party personal injury or death and third party property damage liability (and include bodily injury gap protection) involving the Contractor's Vehicles;
 - (d) be for an amount of not less than the market value of the plant and equipment, and otherwise for not less than the amount set out in the Contract Specifics for any one claim or occurrence and unlimited in the aggregate; and
 - (e) other than compulsory motor vehicle third party insurance required by virtue of any Legal Requirement, to the extent available from the insurance market from time to time, be endorsed to contain a principal's indemnity extension in favour of the Principal.
- 19.8 The Contractor must insure against liability for death of or injury to persons employed by or deemed by a Legal Requirement to be employed by the Contractor including liability by statute and at common law. This insurance cover must:
- (a) come into effect on or before the Start Date and be maintained until the Insurance End Date;
 - (b) to the extent permitted by any Legal Requirement, be extended to indemnify the Principal and Principal's Personnel for their statutory and common law liability to natural persons employed or engaged by the Contractor; and
 - (c) be for not less than the amount set out in the Contract Specifics in respect of any one event.
- 19.9 Not used
- 19.10 The Contractor must not do or omit to do any act that would be grounds for an insurer to refuse to pay a claim made under any of the Insurance.
- 19.11 The Contractor must give the Principal at least 20 Business Days prior notice of cancellation, non-renewal or a material alteration of the Insurance.

- 19.12 The Contractor must ensure that its Subcontractors are insured as required by this Clause 19, as appropriate (including as to amounts of insurance and type of insurance) given the nature of work to be performed by them, as if they were the Contractor.
- 19.13 The Contractor must, on or prior to the Start Date and otherwise when requested by the Principal, promptly satisfy the Principal that each Insurance it is required to procure and maintain under this Contract is current by providing to the Principal the terms and conditions (including schedules) of the Insurances, to demonstrate compliance with this Contract. Nothing in this Clause will fix the Principal with notice of the contents of any policy and must not be raised as a defence to any claim by the Principal against the Contractor.
- 19.14 If the Contractor fails to procure and maintain the Insurance in accordance with this Contract, the Principal may, but is not obliged to procure and maintain any such Insurance and the cost of doing so will be a debt due and immediately payable from the Contractor to the Principal.
- 19.15 Whenever a claim is made under any of the Insurances, the Contractor is liable for any excess or deductible payable as a consequence.
- 19.16 The Contractor must:
- (a) inform the Principal in writing immediately if it becomes aware of any actual, threatened or likely claims in connection with this Contract under any of the Insurances, except claims which the Principal may have against the Contractor; and
 - (b) where relevant provide all such assistance to the Principal as may be required for the preparation and negotiation of insurance claims.
- 19.17 The Insurances are primary, and not secondary, to the indemnities referred to in this Contract. The Principal is not obliged to make a claim or institute proceedings against any insurer under the Insurance before enforcing any of its rights or remedies under the indemnities referred to in this Contract. In addition, the Parties acknowledge that if a claim is made under an Insurance policy by the Principal, it is their intention that the insurer cannot require the Principal to exhaust any indemnities referred to in this Contract before the insurer considers or meets the relevant claim.
- 19.18 The Contractor at the discretion of the Principal may be required to provide the Principal with a risk management plan relating to this Contract in accordance with AS/NZS 4360-2004 Risk Management.

20 ACCESS

- 20.1 From the Start Date until the Date of Completion, the Principal must provide non-exclusive access to the Contractor to the Site.
- 20.2 The Contractor must comply with the directions of the Principal's rules, procedures and practices, including the:
- (a) Site Standards and Procedures;
 - (b) Specifications;
 - (c) Safety requirements set out in this Contract;
 - (d) Environmental requirements set out in this Contract and the Environmental Laws; and
 - (e) any other policies set out in the Contract Specifics.

21 TIME FOR COMMENCEMENT AND EXTENSIONS OF TIME

- 21.1 The Contractor must commence the Works on the Start Date.

- 21.2 The Contractor must:
- (a) perform the Works with due expedition and without delay; and
 - (b) achieve Completion by the Date for Completion.
- 21.3 Subject to Clauses 21.4, 21.5 and 21.6, if the Works are unlikely to achieve Completion by the Date for Completion the Contractor is entitled to an extension to the Date for Completion if the delay is due to:
- (a) breach by the Principal of its obligations under this Contract;
 - (b) delay or disruption caused by the Principal or the Principal's Representative, but does not include any delay or disruption caused by the Principal or the Principal's Representative acting in accordance with this Contract;
 - (c) a Force Majeure Event occurring before the Date for Completion;
 - (d) suspension of this Contract under Clause 30, other than suspension of this Contract for breach of this Contract by the Contractor or the Contractor's Personnel; or
 - (e) a Variation being granted under Clause 29.
- 21.4 The Contractor may only claim an extension to the Date for Completion under Clause 21.3 if the Contractor:
- (a) could not reasonably have been expected to foresee the delay at the date of signing this Contract;
 - (b) has taken all reasonable steps to mitigate the delay and the effect of the delay; and
 - (c) or the Contractor's Personnel, did not cause the delay, whether by breach of this Contract or otherwise.
- 21.5 The Contractor's claim for an extension to the Date for Completion must:
- (a) be made within 10 Business Days (or any other period agreed in writing by the Parties) after the cause of delay has arisen; and
 - (b) include the facts on which the claim to the extension to the Date for Completion is based.
- 21.6 If the Principal's Representative reasonably considers that:
- (a) the claim for an extension of time under Clause 21.5 relates to an event listed in Clause 21.3; and
 - (b) Clauses 21.4 and 21.5 have been satisfied,
- the Principal must notify the Contractor within 10 Business Days of the claim for an extension of time under Clause 21.5 (or such other time agreed by the Parties) that an extension of time to the Date for Completion is granted. The notice must include the period of extension granted by the Principal, which will be reasonable having regard to the nature of the event specified in Clause 21.3 (as determined by the Principal, acting reasonably).
- 21.7 The Principal may by written notice to the Contractor direct an extension of time to the Date for Completion at:
- (a) any time that the Principal directs a Variation; or
 - (b) at any other time at the absolute discretion of the Principal,
- notwithstanding that the Contractor has not submitted, and/or is not entitled to submit, a claim for an extension to the Date for Completion. The Contractor acknowledges that the mechanism in this Clause 21.7 is a discretionary right of the Principal which may be exercised by the Principal for the sole benefit of the Principal and does not:

- (c) impose any obligations on the Principal;
- (d) to the maximum extent permitted by Law, give rise to any duty to act in good faith;
- (e) in any way constitute a waiver or relaxation of any of the requirements under this Clause 21; or
- (f) entitle the Contractor to claim any Loss of whatever nature arising out of, or in connection with, any extension of time granted by the Principal in accordance with this Clause 21.7.

21.8 If the Principal considers (acting reasonably) that the Contractor is not entitled to an extension of time, the Principal's Representative must notify the Contractor within 10 Business Days (or any other period agreed in writing by the Parties) of receipt of the claim under Clause 21.5 that the Date for Completion remains unchanged.

21.9 If the Contractor fails to comply with Clause 21.5, the Contractor will have no entitlement to an extension of time of the Date for Completion.

21.10 If an extension of time is granted in accordance with this Clause 21, provided that those costs are not also reimbursable pursuant to Clauses 29 or 30, the Principal will reimburse the Contractor for any costs reasonably incurred and directly attributable to the delay but without regards to overheads, profit or any other cost, loss, expense or damage.

22 PROGRAMMING

22.1 The Contractor must prepare and submit to the Principal's Representative its proposed soil stabilisation program in a form acceptable to the Principal for approval by the Principal within 10 Business Days following the Start Date.

22.2 The soil stabilisation program must take into account the requirements and the program constraints set out in the Specifications.

22.3 Each week, or as otherwise directed by the Principal's Representative, the Principal's Representative and the Contractor must meet to review the progress of the Works.

23 LIQUIDATED DAMAGES

23.1 Subject to Clauses 21, 29 and 30, if the Contractor does not achieve Completion by the Date for Completion, the Contractor must pay to the Principal, Liquidated Damages for every day after the Date for Completion to and including the earliest of:

- (a) the Date of Completion; or
- (b) termination of this Contract.

23.2 If an extension of time is granted in accordance with Clause 21.6 after the Contractor has paid or the Principal has set off the Liquidated Damages payable under Clause 23.1, the Principal shall repay to the Contractor such of those Liquidated Damages as represent the days the subject of the extension of time.

23.3 The payment of Liquidated Damages will not relieve the Contractor from its obligations to deliver the Works, achieving Completion or from any of its obligations and liabilities under this Contract.

23.4 Liquidated Damages shall become due upon the issue of a notice by the Principal setting out the amount of Liquidated Damages payable by the Contractor to the Principal.

23.5 The Principal may recover the amount of Liquidated Damages:

- (a) on demand from the Contractor; or
- (b) by deducting such amount from any amount owed to the Contractor by the Principal,

after the elapse of the Date for Completion.

- 23.6 The Contractor acknowledges that all sums payable by the Contractor to the Principal pursuant to this Clause 23 represent the Principal's genuine pre-estimate of the damages likely to be suffered by it if Completion is not achieved by the Date for Completion and such sums shall not be construed as a penalty.

24 PROCEDURE FOR COMPLETION TESTS

- 24.1 The Contractor must prepare and perform the Completion tests in accordance with this Contract and the Specification. The Contractor will be fully responsible for the proper conduct and results of the Completion tests.
- 24.2 The Contractor must provide to the Principal full and substantiated test results for all Completion tests by the earlier of:
- (a) 5 Business Days after completion of the relevant test; or
 - (b) the date required (if any) under the Specification or Construction Program.
- 24.3 Except:
- (a) with the prior written consent of the Principal; or
 - (b) to the extent necessary to comply with Clause 24.4(a),
- the Contractor must not adjust (and will not allow the adjustment of) any part of the Works following completion of any Completion test.
- 24.4 If the whole or any part of the Works fails to pass a Completion test, the Contractor must:
- (a) promptly execute such work of replacement, amendment, reconstruction, rectification and make good any Defects, failures, imperfections or other faults as may be required to ensure that all Completion tests are satisfied;
 - (b) be responsible for all costs and expenses incurred or sustained (including the cost of the Completion tests being borne by the Contractor); and
 - (c) if so required by the Principal, submit to the Principal for its review, details of the work which it proposes to execute.
- 24.5 If the Contractor fails to perform any Completion test in accordance with this Contract:
- (a) the Principal is to provide notice to the Contractor stating:
 - (i) the Contractor's failure to perform the Completion test; and
 - (ii) that the Contractor has 5 Business Days, or as otherwise agreed with the Principal at the Principal's absolute discretion, from the date of the notice to perform the Completion test;
 - (b) if the Contractor fails to satisfy the requirement in 24.5(a)(ii), the Principal may perform that Completion test at a date and time determined by the Principal; and
 - (c) the cost incurred by the Principal in performing that Completion test will be a debt due and payable immediately from the Contractor to the Principal.

25 INFORMATION

The Contractor must, on request by the Principal or the Principal's Representative, provide to the Principal and its employees, agents and consultants any information and assistance required to identify, evaluate, implement and report on any matter required by Legal Requirement, in respect of anything used, produced or created in connection with the performance of the Contractor's obligations under this Contract.

26 COMPLETION

- 26.1 The Contractor must give the Principal at least 21 days written notice of the date on which the Contractor anticipates that Completion will be achieved. When the Principal is satisfied that Completion has been achieved, the Principal must issue a Completion Certificate for the Works.
- 26.2 On the issue of the Completion Certificate, the Principal will take over the Works.

26.3 The Principal must pay the Contractor (or the Contractor must pay the Principal, as the case may be) within 28 days after the issue of the Completion Certificate, the amount stated in that certificate as being due by the Principal (or by the Contractor, as the case may be).

26.4 The issue of a Completion Certificate does not constitute approval of any work or other matter and does not prejudice any claim by the Principal.

27 DEFECTS LIABILITY PERIOD

27.1 The Principal may, at any time up to Completion and during the Defects Liability Period, conduct performance reviews of the Works. The Principal may notify the Contractor of any failure by the Contractor to comply with this Contract.

27.2 The Contractor must, within a reasonable time (but no later than 30 days), from receipt of a notice from the Principal, rectify any Defect notified to the Contractor before or at Completion, or during the Defects Liability Period.

27.3 If the Contractor fails to rectify any Defect in accordance with this Clause 27, the Principal may rectify the Defect and any resulting liability incurred by the Principal in so doing will be a debt due from the Contractor to the Principal.

27.4 The Defects Liability Period applicable to any work performed for the purposes of rectifying Defects, is the period commencing on the date of completion of that remedial work and ending on the expiry of the times stated in the Contract Specifics.

28 REPRESENTATIVES

28.1 Each Party must appoint a Representative who will be authorised to act on behalf of the relevant Party in relation to this Contract.

28.2 The Principal's Representative may exercise all of the Principal's rights and functions under this Contract (including giving directions), except in connection with terminating this Contract, or resolving a Dispute which is the subject of the Dispute resolution procedure in Clause 39 or in respect of any matter that the Principal's Representative does not have delegated authority to bind the Principal in respect of.

28.3 The Contractor's Representative is authorised to exercise any functions of the Contractor under this Contract. The Contractor is liable for all acts and omissions of the Contractor's Representative.

29 VARIATIONS

29.1 The Principal may, in its absolute discretion, give the Contractor a Variation Order and, subject to this Clause 29, the Contractor must carry out a Variation which is the subject of a Variation Order.

29.2 The Principal may, in its absolute discretion, require the Contractor to provide a quotation for a proposed Variation (in a form approved by the Principal) before the Principal notifies the Contractor of whether the work is to proceed and the Contractor must provide the quotation ('**Variation Quotation**') within 7 days after receipt of the request.

29.3 The Contract Price will be adjusted for the value of a Variation as determined in accordance with Clause 29.4, which is the subject of a Variation Order and performed by the Contractor.

29.4 The value of the Variation will be ascertained by the Principal as follows:

- (a) if accepted in writing by the Principal, as set out in the Variation Quotation;
- (b) to the extent that Clause 29.4(a) does not apply, the rates or prices in the Schedule of Rates shall be used; or
- (c) to the extent that neither Clauses 29.4(a) or 29.4(b) apply, as determined by the Principal (acting reasonably).

- 29.5 Any claim for an extension of time to the Date for Completion in connection with a Variation will be:
- (a) if accepted in writing by the Principal, as set out in the Variation Quotation; or
 - (b) where Clause 29.5(a) does not apply, as determined by the Principal (acting reasonably and having regard to whether the Contractor can take reasonable steps to minimise the consequences of any delay).
- 29.6 Any Variation which is the subject of a Variation Order will be included in the next Progress Claim after completion of all of the Works the subject of that Variation Order, and paid in accordance with Clause 31.
- 29.7 The Contractor acknowledges that the Principal is not liable for, or in connection with, any Loss, incurred by the Contractor (and the Contractor is not entitled to any payment or compensation) arising out of or in connection with any Variation to the Works except where it is expressly directed pursuant to a Variation Order issued in writing by the Principal pursuant to this Clause 29.

30 SUSPENDING THIS CONTRACT

- 30.1 The Principal or the Principal's Representative may, at any time and for any reason, suspend this Contract or any part of this Contract.
- 30.2 When the Contractor receives a written notice of suspension from the Principal or the Principal's Representative, the Contractor must suspend the performance of its obligations under this Contract until such time that the Principal or the Principal's Representative directs that this Contract is no longer suspended. At such time the Contractor must promptly recommence the performance of the Contractor's obligations under this Contract.
- 30.3 Where the suspension of this Contract is not a result of any default or action by the Contractor or the Contractor's Personnel, the Principal will reimburse the Contractor for the Contractor's verified reasonable additional costs incurred as a direct consequence of the suspension of this Contract. For the avoidance of doubt, such costs must not include Consequential Losses.
- 30.4 If the Principal or the Principal's Representative suspends this Contract or any part of it in accordance with Clause 30.1 (other than where such suspension is due to default or action by the Contractor or the Contractor's Personnel), the Date for Completion is extended by the period of that suspension.
- 30.5 The remedies set out in Clauses 30.3 and 30.4 are the Contractor's sole and exclusive remedy in respect of the Principal suspending this Contract.

31 PAYMENT

- 31.1 The Contractor must submit a Progress Claim:
- (a) at the time or times in the Contract Specifics;
 - (b) specifying:
 - (i) the value of the Works carried out;
 - (ii) any other amounts the Principal owes to the Contractor; and
 - (iii) any other information that the Principal requests; and
- 31.2 Within 28 days after the Principal receiving the progress claim, the Principal must pay the Contractor the balance of the amounts set out in the invoice after:
- (a) exercising any right of set-off in accordance with Clause 50; and
 - (b) deducting retention monies in accordance with Clause 32.

- 31.3 If the setting off referred to in Clause 31.2(a) produces a negative balance, then the Contractor must pay that balance to the Principal within 28 days after receiving notice of it.
- 31.4 Neither an invoice nor any payment is evidence that any work has been carried out satisfactorily. Payment is on account only.
- 31.5 Subject to its rights of set-off under Clause 50, the Principal must pay the Contractor:
- (a) 50% of the aggregated retention monies retained by the Principal under Clause 32 within 28 days after the date of the Completion Certificate; and
 - (b) the remainder of the aggregated retention monies within 28 days of the expiry of the Defects Liability Period (unless there are notified Defects that remain to be rectified, in which case the payment must be made within 28 days after the last notified Defect has been rectified).
- 31.6 Without limiting the Contractor's obligations under Clause 31.1 to submit Progress Claims, within 28 days after each of the following:
- (a) receiving the Completion Certificate; and
 - (b) the expiry of the Defects Liability Period (unless there are notified Defects that remain to be rectified, in which case 28 days after the last notified Defect has been rectified),
- the Contractor must submit a Progress Claim.
- 31.7 The Progress Claim lodged under Clause 31.6 must:
- (a) comply with Clauses 31.1(b);
 - (b) subject to Clause 31.1(b)(iii), include the details of all sums then claimed as being due to the Contractor arising out of, or in connection with, this Contract; and
 - (c) include any documents and other information that, in the Principal's reasonable opinion, are necessary to ascertain the amounts the Contractor is owed.
- 31.8 The Principal must treat valid Progress Claims submitted under Clause 31.6 as though they were Progress Claims submitted under Clause 31.1.
- 31.9 Upon the expiration of the periods referred to in Clause 31.2, except as set out in valid Progress Claims submitted in accordance with Clause 31.6:
- (a) the Principal has no liability to the Contractor in connection with this Contract; and
 - (b) the Contractor is absolutely barred from making any claim against the Principal (including by way of proceeding in any court) for any amount whatsoever in connection with this Contract.
- 31.10 Without limiting its other rights and remedies, the Principal may deduct any debts the Contractor owes it from:
- (a) retention monies retained by the Principal under Clause 32; and
 - (b) any amounts the Principal must otherwise pay the Contractor in connection with this Contract.
- 31.11 No deduction in accordance with Clause 31.10 affects the Principal's rights to recover the balance of any debt that remains owing after the deduction.

32 SECURITY AND RETENTION MONEY NOT USED

33 GOODS AND SERVICES TAX

- 33.1 Any reference in this Clause to a term defined or used in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- 33.2 Unless expressly included, the consideration for any supply made under or in connection with this Contract does not include an amount on account of GST in respect of the supply (**'GST Exclusive Consideration'**) except as provided under this Clause.
- 33.3 Any amount referred to in this Contract (other than an amount referred to in Clause 33.8) which is relevant in determining a payment to be made by one of the Parties to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- 33.4 To the extent that GST is payable in respect of any supply made by a Party (**'Supplier'**) under or in connection with this Contract, the consideration to be provided under this Contract for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the relevant part of the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- 33.5 The recipient must pay the additional amount payable under Clause 33.4 to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- 33.6 The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under Clause 33.4 or at such other time as the Parties agree.
- 33.7 Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Contract the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under Clause 33.5, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- 33.8 If one of the Parties to this Contract is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Contract, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the Party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with Clause 33.4.

34 CONFIDENTIAL INFORMATION AND PUBLICITY

- 34.1 The Contractor must not advertise, publish or release to the public:
- (a) the Confidential Information; or
 - (b) other information concerning the Works, or this Contract, without the prior written approval of the Principal.
- 34.2 The Contractor must not, and must ensure that the Contractor's Personnel do not, without the prior written approval of the Principal:
- (a) use Confidential Information except as necessary for the purposes of fulfilling its obligations under this Contract; or

- (b) disclose the Confidential Information:
 - (i) other than (to the extent they require the information to enable the Contractor to fulfill its obligations under this Contract) to the Contractor's legal advisors, accountants or auditors; or
 - (ii) where disclosure is required by Law (including disclosure to any stock exchange).

34.3 The rights and obligations under this Clause 34 continue after the termination or expiry of this Contract.

35 WORKPLACE HEALTH AND SAFETY

35.1 The Contractor must:

- (a) perform all relevant functions and fulfil all relevant duties of an employer, occupier and all other obligations as a duty holder under all Legal Requirements applicable to workplace health and safety;
- (b) co-operate with any other contractors or other persons engaged in or associated with the business of the Principal in order to maintain uniform safety and industry practices;
- (c) co-operate with the Principal to enable the Principal to comply with any Legal Requirements for workplace health and safety;
- (d) immediately advise the Principal in writing of any act, fact or circumstance associated with the activities of the Contractor or any other person relevant to the ability of the Contractor to perform the Works in a manner that is safe and without risk to health;
- (e) as soon as practicable, but in any event, within 24 hours, notify the Principal of any accident, incident which is notifiable under any Legal Requirement, injury or property damage which:
 - (i) occurs during the execution of the Works; and
 - (ii) is associated with the Works;
- (f) provide the Principal with any further information relating to workplace health and safety when requested by the Principal;
- (g) supply all Materials and Equipment necessary to ensure performance of the Works in a manner that is safe and without risk to health. The Contractor must ensure that all Materials and Equipment supplied by it is, and is maintained, in a condition that is safe and without risk to any person;
- (h) provide all assistance reasonably requested by the Principal in connection with any workplace health and safety investigation related to this Contract or the execution of the Works; and
- (i) at its cost, comply with any direction from the Principal to modify or stop any activity that the Principal considers breaches this Clause 35.

35.2 If the Principal observes or becomes aware of a condition that breaches this Clause 35, the Principal or the Principal's Representative may direct the Contractor to remove or, to the extent reasonably possible, mitigate the effect of that condition, and the Contractor must (at its cost) comply with that direction and modify the Contractor's method of work in order to avoid that condition arising.

35.3 The Contractor acknowledges and agrees that any direction given by the Principal or the Principal's Representative under Clause 35.1 or Clause 35.2 does not relieve the Contractor from complying with its obligations under this Clause 35.

36 CONSEQUENTIAL LOSS

In relation to Consequential Loss:

- (a) subject to Clauses 11 and 36(b) but notwithstanding any other Clause, neither Party will be liable to the other Party in any circumstances for any Consequential Loss, to the extent permitted by any Law; and
- (b) Clause 36(a) does not exclude liability of the Contractor for Consequential Loss, if, but for Clause 36(a) the Contractor would have insurance cover for that Consequential Loss under an Insurance.

37 LIMITS ON LIABILITY

- 37.1 The Contractor's liability to the Principal in respect of Loss under this Contract in the aggregate for all claims is limited to the Contractor Maximum Liability Amount.
- 37.2 To the extent that the Principal is liable to the Contractor under any Legal Requirement or under this Contract, the Principal's liability to the Contractor in respect of Loss under the Contract in the aggregate for all claims is limited to the Principal Maximum Liability Amount.
- 37.3 The limitation of liability in Clause 37.1 does not apply in respect of any fraud, deliberate default, gross negligence, Wilful Misconduct or any act or omission done or not done with a reckless disregard for the consequences by the Contractor, the Contractor's Personnel or for any loss arising from any claim by a third party against the Principal arising out of any act or omission of the Contractor or the Contractor's Personnel.

38 FORCE MAJEURE EVENT

- 38.1 A Party must give timely notice to the other Party of any Force Majeure Event that precludes the Party (whether partially or wholly) from complying with its obligations under this Contract ('**Affected Obligations**') and must either:
 - (a) to the extent practicable, specify in the notice the length of delay to the Date for Completion that will result from the Force Majeure Event; or
 - (b) where it is impracticable to specify the length of delay at the time the notice is delivered, provide the Principal with periodic supplemental notices during the period over which the Force Majeure Event continues.
- 38.2 The Party's obligation to supply the Affected Obligations is suspended for the duration of the actual delay arising out of the Force Majeure Event.
- 38.3 The Parties must use their reasonable endeavours to remove or relieve the Force Majeure Event and to minimise the delay caused by any Force Majeure Event.
- 38.4 If a Force Majeure Event continues to affect the performance of the Works for a continuous period of 180 days, the Principal may terminate this Contract by serving written notice on the Contractor and neither Party has liability to the other except in respect of any event arising prior to the date of this Contract being terminated.

39 SETTLEMENT OF DISPUTES

- 39.1 In the event of a Dispute either Party may deliver a written notice to the other Party that identifies the Dispute ('**Notice of Dispute**').
- 39.2 The Party that delivers the Notice of Dispute should also provide enough information about the Dispute for the other Party to reasonably understand the:
 - (a) alleged facts on which the claim is based;
 - (b) legal basis on which the claim is made; and
 - (c) relief that is claimed.
- 39.3 Within 10 Business Days of a Notice of Dispute being delivered, the receiving Party must deliver a written response to the other Party stating:

- (a) its position in relation to the Dispute; and
 - (b) the basis for its position.
- 39.4 Within 10 Business Days of receipt of the response referred to in Clause 39.3, the Parties agree to attempt in good faith to resolve through negotiation any Dispute arising under or in relation to this Contract.
- 39.5 If the Parties are unable to resolve the Dispute within the 10 Business Days of attempting in good faith negotiations in accordance with Clause 39.4, either Party may initiate proceedings in a court of competent jurisdiction.
- 39.6 Either Party may, with the agreement of the other Party, at any time, refer the Works (or any part thereof) to an appropriate independent expert, agreed to by the Parties, for examination and report as to their compliance with this Contract. The decision of the expert shall be final and binding upon both Parties, and the expense of such reference shall be paid by the unsuccessful Party.

40 TERMINATION OF CONTRACT

- 40.1 If a Party breaches or repudiates this Contract, nothing in this Contract prejudices the right of the other Party to recover damages (including loss of bargain damages) or exercise any other right under this Contract or under any applicable Legal Requirement.
- 40.2 The Principal may, in its absolute discretion, and without being obliged to give any reasons, terminate this Contract at any time by giving not less than 5 Business Days written notice to the Contractor. The Principal shall pay to the Contractor:
- (a) the amount due to the Contractor evidenced by all unpaid Invoices and approved Progress Claims; and
 - (b) the cost of materials and equipment reasonably ordered by the Contractor for the Works and which the Contractor is liable to accept, but only if they will become the Principal's property on payment,
- and shall have no further liability to the Contractor.
- 40.3 If the Contractor:
- (a) subject to Clause 39, fails to duly and punctually observe, perform and comply with any term, condition or stipulation contained or implied in this Contract and such failure continues for a period of 14 days (or such other period as having regard to the circumstances the Principal may reasonably allow) after service on the Contractor of a written notice requiring the Contractor to observe, perform and comply with such term, condition or stipulation or otherwise to remedy the breach;
 - (b) (being a corporation) goes into liquidation (except for the purpose of reconstruction or amalgamation of which the Contractor has given the Principal 5 Business Days prior written notice of such reconstruction or amalgamation) or is otherwise dissolved or if a receiver or receiver/manager of the whole or any part of the assets and undertaking of the Contractor is appointed or if the Contractor enters into any composition or scheme of arrangement with its creditors or if an inspector or like official is appointed to examine the affairs of the Contractor or the Contractor enters into voluntary or other external administration;
 - (c) (being a natural person) commits an act of bankruptcy or if an order is made for the sequestration in bankruptcy of the estate of the Contractor, or if the Contractor assigns its estate or enters into a scheme of arrangement or composition for the benefit of its creditors;
 - (d) assigns or subcontracts this Contract or any part thereof without the prior written consent of the Principal;
 - (e) or any Contractor's Personnel, are found guilty of any criminal act related to the Works that may bring the Principal into disrepute;

- (f) includes in its Tender any statement, representation, fact, matter, information or thing which is false, untrue, incorrect or inaccurate, whether known to the Contractor or not; or
- (g) or the Contractor's Personnel:
 - (i) cause a safety issue, condition or any risk to health in breach of this Contract; and
 - (ii) the Contractor, within 5 Business Days of a notice from the Principal advising the Contractor that it has caused a safety issue, condition or any risk to health in breach of this Contract, does not show cause to the Principal's satisfaction why the Principal should not end this Contract,

then the Principal may by notice in writing to the Contractor immediately terminate this Contract whether any Orders remain outstanding or not and thereafter the Principal may engage or contract with any person or corporation other than the Contractor to perform and complete this Contract.

- 40.4 The Principal shall ascertain the amount of all damages and expenses suffered or incurred by the Principal in consequence of any of the matters referred to in Clause 40.3 and all such amounts may be deducted from amounts then owing to the Contractor or may be recovered in court by the Principal.
- 40.5 When this Contract is terminated, the Contractor must promptly return to the Principal any of the Principal's property or documents which the Principal owns or in which the Principal has an interest.
- 40.6 The termination of this Contract does not affect:
 - (a) any rights of the Parties accrued prior to termination; and
 - (b) the rights and obligations of the Parties under this Contract which, expressly or by implication from its nature, are intended to continue after termination.

41 WAIVERS AND AMENDMENTS

- 41.1 This Contract may only be amended, or its provisions waived, in writing by the Parties.
- 41.2 No forbearance, delay or indulgence by the Principal in enforcing the provisions of this Contract shall prejudice, restrict or limit the rights of that Party, nor shall any waiver of those rights operate as a waiver of any subsequent breach.

42 ENTIRE AGREEMENT

To the extent permitted by Law, this Contract embodies the entire agreement between the Parties and supersedes all prior conduct, arrangement, agreements, quotation requests, understandings, representations, warranties, promises, statements, or negotiations, express or implied, in respect of the subject matter of this Contract.

43 RIGHTS AND REMEDIES

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

44 GOVERNING LAW

This Contract and any dispute arising out of or in connection with it or its subject matter or formation (including non-contractual disputes) shall be governed by, construed and take effect in accordance with the Laws of the State of Western Australia and the Parties hereby irrevocably agree that the courts of the State of Western Australia will have exclusive jurisdiction to settle any dispute that arises out of or in connection with this Contract or its subject matter or formation (including non-contractual disputes).

45 PROPORTIONATE LIABILITY

Each Party agrees that Part 1F of the *Civil Liability Act 2002 (WA)*, to the extent that the same may be lawfully excluded, is excluded from operation with respect to any Dispute, claim or action brought by one Party against the other Party arising out of or in connection with:

- (a) this Contract; and
- (b) any of the Contractor's Subcontractors or the Subcontractor's personnel.

46 CONSTRUCTION CONTRACTS ACT NOT USED

47 PERSONAL PROPERTY SECURITIES ACT

47.1 For the purposes of this Clause 47:

- (a) the '**Principal's Personal Property**' means all personal property the subject of a security interest granted under this Contract; and
- (b) words and phrases used in this Clause 47 that have defined meanings in the PPS Law have the same meaning as in the PPS Law unless the context otherwise indicates.

47.2 If the Principal determines that this Contract (or a transaction in connection with it) is or contains a security interest for the purposes of the PPS Law, the Contractor agrees to do anything (including obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which the Principal asks and considers necessary for the purposes of:

- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
- (b) enabling the Principal to apply for any registration, complete any financing statement or give any notification, in connection with the security interest; and/or
- (c) enabling the Principal to exercise rights in connection with the security interest.

47.3 The Principal need not give any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA to be given.

47.4 The Contractor must notify the Principal as soon as the Contractor becomes aware of any of the following:

- (a) if any personal property which does not form part of the Principal's Personal Property becomes an accession to the Principal's Personal Property and is subject to a security interest in favour of a third party, that has attached at the time it becomes an accession; or
- (b) if any of the Principal's Personal Property is located or situated outside Australia or, upon request by the Principal, of the present location or situation of any of the Principal's Personal Property.

47.5 The Contractor must not:

- (a) create any security interest or lien over any of the Principal's Personal Property whatsoever (other than security interests granted in favour of the Principal);
- (b) sell, lease or dispose of its interest in the Principal's Personal Property;
- (c) give possession of the Principal's Personal Property to another person except where the Principal expressly authorises it to do so;
- (d) permit any of the Principal's Personal Property to become an accession to or commingled with any asset that is not part of the Works; or

- (e) change its name without first giving the Principal 15 Business Days' notice of the new name or relocate its principal place of business outside Australia or change its place of registration or incorporation.

47.6 Everything the Contractor is required to do under this Clause 47 is at the Contractor's expense.

47.7 Neither the Principal nor the Contractor will disclose information of the kind mentioned in section 275(1) of the PPSA and the Contractor will not authorise, and will ensure that no other Party authorises, the disclosure of such information. This Clause 47 does not prevent disclosure where such disclosure is required under section 275 of the PPSA because of the operation of section 275(7) of the PPSA.

48 APPLICATION OF THIS CONTRACT

This Contract applies to the performance of the Contractor's obligations under this Contract whether performed before, on or after the Start Date.

49 RESTRUCTURE OF THE PRINCIPAL

If the Principal is restructured by Law, then the rights and obligations of the Principal under the Contract are assigned to and assumed by the appropriate legal entity as determined by the Principal or the successors of the Principal under the restructure.

50 DEDUCTION OF CHARGES OR DEBTS

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

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

Schedule 1 - Contract Specifics

| | |
|---|--|
| Contract Price | Schedule of Rates – A maximum aggregate amount of \$[insert], calculated at the rates specified in the Schedule of Rates (including in accordance with any key performance indicators). |
| Principal's Representative | Manager of Works – Greg Tomlinson Address: PO Box 221 CORRIGIN WA 6375 Telephone: 0429 632 203 Email: works@corrigin.wa.gov.au |
| Contractor's Representative | Insert Contractor, Owner Address: insert address Telephone: insert phone Email: insert email |
| Details required in Progress Claims | Monthly claims outlining work completed, hours and quantities. |
| Start Date | From 1 February 2019. Actual start date to be determined in consultation with Manager of Works. |
| Works to be performed | The tender is for the provision of soil stabilisation work on schedule of rates basis within the Shire of Corrigin for the 2019/20 financial year. The requirements of the contract include mobilisation, plant and equipment and suitably qualified operator. The work may include: <ul style="list-style-type: none"> • Spreading of additional gravel, • Lime Stabilisation • Cement Stabilisation • Wet Mixing |
| Date for Completion | 30 June 2020 |
| Site | Bulyee Road in Shire of Corrigin in consultation with Manager of Works. |
| Contractor Maximum Liability Amount | \$10,000,000 |
| Principal Maximum Liability Amount | \$10,000,000 |
| Defect Liability Period | 3 months |
| Minimum level of Public Liability Insurance Cover required | \$10,000,000 for one claim; and \$10,000,000 in the aggregate. |
| Minimum Contractor's Vehicles Insurance Cover Required | Sufficient insurance to cover the full replacement cost of vehicles plant and equipment. |

| | |
|--|---|
| Minimum Employee Insurance Cover required | Sufficient employee insurance to fully cover all employees of the contractor. |
| Public Liability Insurance End Date | Three months from the Date of Completion or Three months from the termination date, whichever is earlier. |
| Contractor's Vehicles Insurance End Date | Three months from the Date of Completion or Three months from the termination date, whichever is earlier. |
| Employee Insurance End Date | Three months from the Date of Completion or Three months from the termination date, whichever is earlier. |

Schedule 2 - Schedule of Rates

Tenderers shall complete the following schedule of rates. Quantities are referenced from *Appendix 2 – Treatment Details*. The rates shall include allowance for an experienced operator, fuel, consumable, overheads and profit. Rates are to be shown exclusive of GST. GST is to be calculated and included in the schedule at the appropriate location.

| Description | Unit | Quantity | Rate (Exclusive of GST) | Amount |
|---|----------------|-----------|-------------------------------|--------|
| Mobilisation to Site for all equipment | Item | 2 | \$ | \$ |
| Demobilisation from Site for all equipment | Item | 2 | \$ | \$ |
| <u>Treatment Type 1</u> | | | | |
| Pulverise Existing Pavement | m ² | 3148 | \$ | \$ |
| Stabilise SB with 4% Hydrated Lime to 250mm depth | m ² | 3148 | \$ | \$ |
| Stabilise BC with 1.5% cement to 200mm depth | m ² | 3148 | \$ | \$ |
| <u>Treatment Type 2</u> | | | | |
| Cement Stabilise new overlay to 200mm depth with 1.5% cement (tender purposes) | m ² | 2700 | \$ | \$ |
| <u>Treatment Type 3</u> | | | | |
| Cement Stabilise existing pavement 250mm with 2% cement. | m ² | 4860 | \$ | \$ |
| Cement Stabilise new overlay to 200mm depth with 1.2% cement (tender purposes) | m ² | 4860 | \$ | \$ |
| Supply and spread road base aggregate – spread rate 32 kg/m ² . (Provisional quantity) | Tonne | 175 | \$ | \$ |
| <u>Treatment Type 4</u> | | | | |
| Lime Stabilise existing pavement 350mm with 2% hydrated lime. | m ² | 31860 | \$ | \$ |
| Cement Stabilise 200mm depth with 1.2% cement (tender purposes). | m ² | 31860 | \$ | \$ |
| Supply and spread road base aggregate – spread rate 32 kg/m ² . | Tonne | 1020 | \$ | \$ |
| <u>Treatment Type 4 – Priority 2 sections</u> | | | | |
| Lime Stabilise existing pavement 350mm with 2% hydrated lime. | m ² | 10250 | \$ | \$ |
| Cement Stabilise 200mm depth with 1.2% cement (tender purposes). | m ² | 10250 | \$ | \$ |
| Supply and spread road base aggregate – spread rate 32 kg/m ² . | Tonne | 328 | \$ | \$ |
| <u>Change of Application Rates for Additive</u> | | | | |
| Cement – Rate for Adjustment | Tonne | Rate Only | \$ | |
| Hydrate Lime – Rate for Adjustment | Tonne | Rate Only | \$ | |
| Sub-total | | | | \$ |
| GST | | | | \$ |
| Total Including GST | | | | \$ |

Executed as an agreement

Principal

The common seal of
Shire of Corrigin
was hereunto affixed pursuant to a
resolution of the Shire of Corrigin Council in the presence of:

sign here



Shire President

print name

sign here



Chief Executive Officer

print name

Contractor

Signed by

Insert contractor

in accordance with section 127 of the *Corporations Act 2001* (Cth) by

sign here



Company Secretary/Director

print name

sign here



Director

print name
