



Kowanyama Aboriginal Shire Council Request for Tender (RFT)

Title: Kowanyama-based Mechanical Services

RFT Reference: KASC-2026-048

Date of Issue: Wednesday 4 March 2026

Closing Date: Thursday 26 March 2026

Expression of Interest

The Expression of Interest (RFT) comprises of:

- Part A: Tender Information
- Part B: Conditions of Tendering
- Part C: General Conditions of Contract
- Part D: Contract
- Part E: Response Schedules

Council:	Kowanyama Aboriginal Shire Council (KASC)
Council Address:	Lot 30 Chapman Road, Kowanyama 4892
Contact (Principal):	Dan Dixon, Executive Manager Road, Infrastructure and Essential Services
Contact number:	40 4083 7100
Expression of Interest (RFT):	Council is seeking a suitably qualified and experienced supplier of Kowanyama-based Mechanical Services for a period of two (2) years, with an additional year possible at the Principal's discretion (option).
RFT Number:	KASC-2026-048
Closing date and time:	4:00PM - Thursday 26 March 2026

Instructions for completing this RFT:

- Tenderers should ensure they read all parts of this RFT fully to ascertain the services to be performed and the terms on which the services are to be performed.
- Tenderers must respond to all sections of the Tender and must sign and date the form where indicated.
- Tenderers may provide supplementary material to support their offer. All supplementary material must be cross referenced to the relevant section of this RFT.
- The Council will confirm in writing to suppliers, to advise if their quotation has been accepted or unsuccessful.
- Notification by letter to the successful Tenderer will create a contract between the parties. The contract will consist of the Tenderers Quotation (Response Form) and this document.
- Responses are to be submitted via email to **tenders@kowanyama.qld.gov.au** and must include the RFT number in the subject line (i.e., KASC-2026-048). Council reserves the right to not consider submissions sent to any other email address.

1. Overview

1.1. Council Services

The Kowanyama Aboriginal Shire Council is responsible for local government services such as road construction and maintenance, water infrastructure, sewerage infrastructure and maintenance, environmental health, and parks & gardens.

In addition to these primary functions, Council also provides the following services and facilities:

- Enterprises:
 - Blue Cafe
 - Vehicle Workshop
 - Post Office
 - Batching Plant
 - Residential and Commercial Rentals
 - Training Centre Offices
 - Airport
 - Centrelink Agency
- Housing
- Local radio station
- Operation and management of the Purchasing Store
- Management of leasehold cattle properties (Oriners and Sefton), including Carbon Farming
- Operation and management of the Aged Care Centre
- Operation and management of the Child Care Centre and Play Group
- Operation and management of the Land & Natural Resources Office (Rangers)
- Aboriginal Community Police Officers, in collaboration with Queensland Police Service
- Sport & Recreation programs and services, including those for young people
- Swimming Pool
- Women's Shelter
- Women's and Men's Groups
- Night Patrol

Part A: Tender Information



2. Tender Information

Principal:	Kowanyama Aboriginal Shire Council				
Project Name:	Kowanyama-based Mechanical Services				
Scope:	Provision of Kowanyama-based Mechanical services, comprising small plant, light vehicle, and heavy diesel – see Specification.				
Site:	Mechanic's Workshop comprising part of lots 76 and 77 on SP272069 (see Map 1 below)				
Proposed timetable:	Action		Proposed Date		
	Issue of Tender Documents		Wednesday 4 March 2026		
	Tender Close Date		Thursday 26 March 2026, 5pm		
	Tender Assessment Completed		Friday 27 March 2026		
	Adopted by Council		Friday 3 April 2026		
	Issue Letter of Confirmation		Monday 6 April 2026		
Tender briefing or site inspection:	Description Time / Date	Place	Maximum Attendees	Mandatory or optional	RSVP
	N/A	N/A	N/A	N/A	N/A
Communication method:	<input type="checkbox"/> via tenders@kowanyama.qld.gov.au				
Evaluation criteria:	Criteria		Weighting (%)		
	Mandatory Details			Mandatory	
	Price			40%	
	Service commitments			30%	
	Technical expertise and previous experience			20%	
	Health, safety and environmental requirements			10%	
Tender lodgement:	Tenders must be lodged via email to: tenders@kowanyama.qld.gov.au				
Tender format:	Tenders must consist of: <ul style="list-style-type: none"> • 1x complete copy of the tenderer's tender in a single PDF document; • 1x set of the Response Schedules in the format provided by the Principal File names must include the contract number and a brief description of the document				
Page limit:	No limit				
Tender validity period:	90 calendar days from the Tender Closing Time				
Procurement administrator:	Danae Maltby tenders@kowanyama.qld.gov.au				
Principal complaints Manager:	Chris McLaughling Email: governance@kowanyama.qld.gov.au				

2.1. Licence agreement

The successful candidate shall enter into a standard terms licence agreement (draft **attached Annexure A**) with Council over the Mechanic's Workshop for use of part of lots 76 (Workshop) and 77 (Heavy Plant Workshop) on SP272069 as highlighted in **Map 1**.



Map 1 – Mechanic's Workshop – Part of Lots 76 (Workshop)/ 77 (Heavy Plant Workshop) on SP272069 (licence area as highlighted)

To avoid doubt, the licence agreement shall be contingent upon the successful tenderer being engaged under Kowanyama-Based Mechanical Services KASC-2026-048. Upon the conclusion/ termination of contract KASC-2026-048, the licence agreement shall immediately cease.

A peppercorn annual licence fee of \$1 shall be invoiced. It is a requirement that the successful tenderer bring to site all tools and equipment required to perform the work, however Council shall provide complementary use of its equipment on site, provided the tenderer maintain at its cost.

This Licence Agreement does not include staff accommodation. Council accommodation is available on a fee for service basis and should be factored into your pricing.

Councils Fees and Charges can be located on Council website.

3. Specifications

3.1. Contract requirements in brief

The tender is for the provision of mechanical services on an hourly basis within Kowanyama Aboriginal Shire Council for a term of two (2) years. The requirements of the contract include workshop plant and equipment, suitably qualified mechanic, and mobilisation to site.

The work may include:

- Routine logbook servicing,
- Breakdown repairs,
- Parts and consumables, and
- Other service works as require.

3.2. Introduction

Kowanyama requires a suitably qualified mechanic to conduct routine and breakdown servicing of the Kowanyama heavy plant and machinery, small vehicle, and light vehicle mechanical services.

3.3. Background

Kowanyama has:

- a. a fleet of heavy plant and machinery for road construction and maintenance that requires regular servicing to ensure the smooth operations of the local government operations.
- b. Small Plant and Mechanical services
- c. Light Vehicle Mechanical services

3.4. Scope of work

The scope of work on an hourly basis include:

- a. servicing of Kowanyama Council's fleet of heavy plant and equipment such as trucks, trailers, loaders, graders, excavators, and rollers
- b. Small plant and mechanical services including supply of parts
- c. Light vehicle mechanical services including supply of parts
- d. Community vehicles are subject to a maximum turnaround time of fourteen (14) days. Only vehicles located within the Council fleet compound are to be serviced. Vehicles are not to remain unattended for extended periods pending payment. The compound is strictly for Council's fleet vehicles only.

The contractor will be responsible for all materials and equipment required to service the required machinery including:

- Mechanic,
- Workshop
- Registration and licensing

Servicing in addition to the amounts specified in the below table may be required.

Quantity	Item	Estimated services required
3	Graders subject to warranty	4 services per 12 months
3	6-wheeler trucks	2 services per 12 months
5	Single axle trucks	3 services per 12 months
1	Large loaders	3 services per 12 months
1	Small loaders	2 services per 12 months
4	Heavy rollers	2 services per 12 months
1	5.5 tonne excavator	3 services per 12 months
1	3.5 tonne skid steer	3 services per 12 months
2	Tractors/ Mowers/ Slashers	2 services per 12 months
5	Side tipper	2 services per 12 months
1	Tri axle float	1 service per 12 months
1	3 tonne forklift	1 service per 12 months
	Various small plant	2 services per 12 months
	Various light vehicle	2 services per 12 months
	Kubota Side-by-sides	2 services per 12 months
	Generators	If/ When required

Note: Services required as per manufacturers recommendations

3.5. Specific requirements of the contract

The Fleet & Facilities Coordinator will issue a work order detailing the specific requirements for heavy vehicle servicing of Kowanyama fleet. Work will be paid on claims for the number of hours taken to complete the work plus parts and materials. Claims for payment are to be submitted upon completion of work done and the Fleet & Facilities Coordinator will check the work to ensure it has been completed as agreed prior to approving payment. If work is not completed satisfactorily the contractor may be ordered to undertake additional remedial work at full cost to Mechanic.

The following notes are provided as guidelines for the Contractor:

- a. **Routine log-book service** – scheduled service based on logbook service hours. Hours in addition to standard logbook hours only to be completed with prior permission of Fleet & Facilities Coordinator. Breakdown service – price to include hourly rate to complete urgent work.
- b. **Breakdown repairs** – required to be assessed within 24 hours following notification by Fleet & Facilities Coordinator. Travel to site and/ or call out fee to be specified if applicable. No travel fee within Kowanyama Township. All travel is to be included in schedule of rates.
- c. **Reporting** – the Contractor is to provide feedback and reports to the Fleet & Facilities Coordinator such as any addition repairs identified during routine servicing, deficiencies in daily maintenance by Kowanyama employees and any future corrective action that is required.
- d. **Genuine Parts**– Genuine parts are generally to be used. Non genuine parts only to be used if authorised by Fleet & Facilities Coordinator. Only parts used on Kowanyama plant and equipment at the time of servicing will be paid for on service invoice.

- e. **Work Order Process** – Fleet & Facilities Coordinator to supply Contractor with an approved Work Order, and the Contractor to supply KASC with a quote. Only upon raised Purchase Order will works begin on plant and equipment. This is outside the scope of scheduled rates.

3.6. Plant and equipment

Contractor will be required to supply own workshop plant and equipment in good working order and will be fitted with the operational safety devices. Any Council supplied equipment (e.g. Hydraulic Lifts x 3) the Contractor is to regularly services and maintain the equipment. Any defaults or replacement will be determined by the Fleet & Facilities Coordinator providing the Contractor can provide a full maintenance report.

3.7. Mechanical service provider

An experienced and qualified mechanic will be required to have a working knowledge of heavy plant and machinery including trucks, trailers, graders, loaders, and rollers.

3.8. Implementation timetable

Work is to be completed in line with tender if extended by mutual agreement, with specific timing to be arranged in consultation with Executive Manager, Roads, Infrastructure and Essential Services.

3.9. Period of contract and termination

The Contract will be in force for the period of two years with an option for a further year by mutual agreement.

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.

3.10. Workshop Assets

The contractor acknowledges that a full inventory and condition report of the site and associated assets will be undertaken at the time of site possession. Any inventory lists, photographs or other asset information provided prior to possession are supplied for information purposes only and may be subject to review and update.

Council makes no representation or warranty, whether express or implied, as to the accuracy, completeness, or current condition of any assets, equipment or facilities referenced or depicted.

4. Special conditions of contract

4.1. Description of the works

The works comprise heavy vehicle mechanical servicing, small plant and mechanical servicing and light vehicle and mechanical servicing and such other work as included in the Specification.

4.2. Works not included

The following work is not included in the contract and will be carried out by Council:

- Daily maintenance and greasing
- Washing of vehicles prior to servicing.

4.3. Operational timetable

The Contractor shall be available to deliver the schedule of works during:

Workshop: Monday to Friday 7:00am – 5:00pm (10 hours) (at minimum)

4.4. 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.

4.5. Environment and protection

4.5.1. Site control

The Contractor shall, always:

- a) Comply with the regulations and restrictions imposed by the Superintendent is Superintendent meant to be Fleet & Facilities Coordinator? relating to the storage of materials;
- b) Comply with all statutes, regulations and bylaws relating to the protection of the environment including disposal of consumables and waste;
- c) Store flammable or explosive products in accordance with the relevant statutes and to the approval of the Superintendent.

4.5.2. 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.

4.5.3. Refuse disposal

All debris, spoil, rubbish, or materials shall be suitably contained and disposed to prevent spillage or contamination of adjoining and other areas or property. All Site refuse (including foodstuffs) shall be handled and disposed of in accordance with the requirements of relevant statutes.

4.6. Contractors' representative

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

4.7. Materials and work

4.7.1. Regulations

The Contractor shall comply with the Work Health and Safety Act 2011 (the Act) and the Work Health and Safety Regulations 2011 (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 their 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 on request with another copy kept on Site by the Contractor.

4.8. 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 experienced 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 Kowanyama Safety Management Plan.

4.9. Pre-job planning

Where legislation or codes of practice identify particularly hazardous activities including but not limited to 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 at the workshop.

4.10. 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
- b. GST Act. "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 Queensland.
- c. "Supply" and "taxable supply" have the same meanings as in the GST Act.

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 consider the effect of the GST upon each Tender.

Part B: Conditions of Tendering



5. Conditions of tendering

1. BACKGROUND

- 1.1 **(Invitation to tender)** The Principal invites tenders from suitably qualified contractors for the provision of the work, services and/or goods detailed in the Scope.
- 1.2 **(Proposed Timetable)** The Principal proposes to adopt the process and timing identified in the Proposed Timetable but may change these in accordance with paragraph 5.1(b).
- 1.3 **(Acceptance of terms)** By submitting a tender, the tenderer will be taken to have accepted and be bound by these conditions of tendering.
- 1.4 **(Interpretation)** Unless otherwise separately defined in these conditions of tendering, capitalised terms used in these conditions of tendering have the meanings given in the Tender Information. References to time are to local time in Queensland.

2. COMMUNICATIONS

- 2.1 **(Communication Method)** Subject to clause 2.5, all communications by the Procurement Administrator to the tenderer or by the tenderer to the Procurement Administrator regarding this tender shall be conducted at first instance using the Communication Method. Where the Communication Method is email, the Procurement Administrator shall direct communications to the email address notified by the tenderer to the Procurement Administrator.
- 2.2 **(Tenderer's responsibility)** The tenderer must ensure that it is capable of receiving and does receive all communications to the tenderer in connection with the request for tender process.
- 2.3 **(Communication Closing Time)** The Principal will not respond to any communication received after the Communication Closing Time. In the event of technical difficulties only, the tenderer may contact the Procurement Administrator directly.
- 2.4 **(No reliance)** The tenderer must not rely on any information which is communicated by a means other than that described in paragraph 2.1 unless and until it is communicated in writing in accordance with paragraph 2.1.
- 2.5 **(Complaints)** Complaints in relation to this process should be directed to the Principal's Complaints Manager.

3. TENDER BRIEFING AND SITE INSPECTION

- 3.1 **(Tender briefing and site inspection)** The tenderer must attend any tender briefings and site inspection that is identified in the Tender Information as mandatory. The tenderer must confirm that it intends to attend a tender briefing or site inspection to the email address and by the time and date stated in the Tender Information.
- 3.2 **(No reliance)** The tenderer must not rely on any verbal statements made during a tender briefing or site inspection unless those statements are confirmed in writing by the Procurement Administrator.

4. **LOGGEMENT OF TENDER**

4.1 **(Method of lodgement)** A tender must be lodged:

- (a) if the Tender Box is a website, by uploading it to the Tender Box;
- (b) if the Tender Box is an email address, by sending it as an attachment to an email to the Tender Box;
- (c) if the Tender Box is a physical address, by delivering it to the Tender Box.

The Procurement Administrator may, on request by the tenderer, allow a tender to be lodged by an alternative method.

4.2 **(Time of Lodgement)** A document forming part of a tender shall be deemed to have been lodged:

- (a) where the Tender Box is a website, at the time that the document is successfully uploaded to the Tender Box, as indicated on the electronic receipt issued to the tenderer;
- (b) where the Tender Box is an email address, at the time that an email attaching the document is successfully delivered to the Tender Box, as indicated on the email system on which the Tender Box is hosted;
- (c) where the Tender Box is a physical address, at the time that the document is physically received at the Tender Box; or
- (d) where the tender is lodged by an alternative method allowed by the Procurement Administrator, when it is received by the Procurement Administrator by that method.

4.3 **(Tender opening)** Tenders will not be opened publicly and the tenderer will not be permitted to attend the opening of tenders.

4.4 **(Tender format)** A tender must be lodged in the Tender Format.

4.5 **(Tender Validity Period)** A tender must remain valid and open for acceptance for the Tender Validity Period.

4.6 **(Conforming tender)** A tender is a conforming tender if, in the opinion of the Principal, it:

- (a) is substantially in the form of and contains substantially all information and documentation required by, the response schedules included in Part 6 – Response Schedule;
- (b) is substantially in accordance with the Tender Format;
- (c) does not substantially exceed the Page Limit (if any); and
- (d) contains no significant alternatives, qualifications or amendments to or departures from the Scope or the form of contract contained or referenced in Part 4 – Contract ('the Contract').

4.7 **(Non-conforming tender)** A tender which does not comply with the requirements of paragraph 4.6 is a non-conforming tender ('Non-conforming Tender').

4.8 **(Alternative tender)** A tender which, in the opinion of the Principal contains significant alternatives, qualifications or amendments to or departures from the requirements of the Scope or the Contract but otherwise complies with paragraph 4.6 is an alternative tender ('Alternative Tender').

4.9 **(Late tender)** A tender which is not received in the Tender Box by the Tender Closing Time is a late tender ('Late Tender').

5. CONDUCT OF PROCESS

5.1 **(General)** The Principal:

- (a) **(conduct of process)** may conduct the request for tender process in any manner which it sees fit, but will endeavour to do so in a manner which is consistent with this request for tender and the sound contracting principles in section 104 of the *Local Government Act 2009* (Qld) ('sound contracting principles'); and
- (b) **(no representation or undertaking)** makes no representations and provides no undertakings other than to invite the submission of tenders.

5.2 **(Specific rights)** Without limiting clause 5.1, the Principal may do anything which it considers to be prudent or necessary for the proper conduct of the request for tender process at its absolute discretion, without reference to the tenderer and without providing reasons, including, without limitation:

- (a) **(alteration of request for tender documents)** amend, add to or delete any part of this request for tender including:
 - (i) the procedures and timeframes provided in the request for tender;
 - (ii) the evaluation criteria (including weightings); and/or
 - (iii) any document issued by or on behalf of the Principal in connection with the request for tender, including the scope and the Contract;
- (b) **(suspension or termination)** suspend or terminate the request for tender process;
- (c) **(attendances)** request any one or more tenderers to attend a tender briefing, site inspection or other meeting or to make a presentation of their tender in person at the Principal's office at no cost to the Principal;
- (d) **(change or error in request for tender documents)** request any one or more tenderers to change their tender to take account of a change in the scope or other document issued in connection with this request for tender or any error in such documents;
- (e) **(clarification or alteration)** request any one or more tenderers to clarify or alter any aspect of the tenderer's tender;
- (f) **(additional information)** request additional information from one or more tenderers relating to a tender, the request for tender process, the tenderer's compliance with the conditions of tendering or any other matter which the Principal considers relevant to its assessment (including information that should have been, but was not, included in the tenderer's tender);
- (g) **(investigations)** undertake its own investigations, or engage third parties to do so on its behalf, in relation to any aspect of a tender or any other matter which it considers relevant to the conduct of the request for tender process;
- (h) **(negotiation)** negotiate amendments to any aspect of a tender with any one or more tenderers and suspend or terminate such negotiations at any time.

6. PRINCIPAL'S LIABILITY

- 6.1 Neither the Principal nor any of its officers, employees, agents, contractors, consultants, agents, representatives (including elected representatives) or other persons for whom it is vicariously liable shall under any circumstances, whether in tort (including for negligence), contract (including for breach of an express or implied term), statute, equity or otherwise at law be liable to the tenderer for any special, indirect or consequential loss, damage, cost or expense in connection with this request for tender process (including, without limitation, loss of or loss of anticipated profit, income, opportunity or contract).

7. TENDERER'S WARRANTIES AND REPRESENTATIONS

- 7.1 By submitting a tender, the tenderer warrants and represents that:

- (a) **(reliance)** the tenderer:
- (i) has received or obtained copies of all of the documents referred to in this request for tender;
 - (ii) has not relied on the accuracy, adequacy or completeness of any documents or information provided by or on behalf of the Principal in connection with this request for tender in preparing its tender and has notified the Principal of any ambiguity, inconsistency, uncertainty, error or omission which it has discovered in or from any document supplied by or on behalf of the Principal in connection with the request for tender on which the tenderer intends to rely;
 - (iii) has undertaken its own enquiries and investigations to satisfy itself of:
 - A. the nature and extent of the Scope, its contractual obligations and all other risks, contingencies and other circumstances which could have an impact on its ability to carry out and complete the obligations which it will have under the Contract if its tender is accepted for its tendered price; and
 - B. the suitability, appropriateness and adequacy of the Scope (including, in respect of contracts under which the successful tenderer is required to design works, any preliminary design included in the Scope) for the purposes stated in or to be reasonably inferred from the Scope;
- (b) **(accuracy of tender)** all information provided in or with the tender is accurate;
- (c) **(ability)** the tenderer and to the extent relevant to them, the tenderer's officers, employees, agents, subcontractors, consultants, representatives, and other persons who will carry out an obligation of the tenderer under the Contract in the event that the tenderer's tender is accepted:
- (i) hold (and are compliant with all requirements of) all necessary competencies, licences, accreditations, certifications, permits, clearances and other authorisations which will be required; and
 - (ii) have and will maintain the necessary experience, expertise, and skill,
- to perform the obligations that the Tenderer will have under the Contract if the tenderer's tender is accepted, in accordance with the requirements of the Contract;
- (d) **(price)** the tendered price (along with any rates, sums and prices included in the tender) allows for:

- (i) all of the risks, contingencies and other circumstances which could have an effect on the tenderer's ability to carry out and complete the obligations which it will have under the Contract if its tender is accepted, except to the extent that the Contract expressly allows an adjustment;
 - (ii) the provision of all materials, plant, labour and other services necessary for the proper completion of the obligations it will have under the Contract if its tender is accepted, whether or not those items are expressly mentioned in the Contract; and
 - (iii) unless the Contract expressly allows an adjustment, rise and fall in costs;
- (e) **(conduct of tenderer)** neither the tenderer nor any of its officers, employees, agents, subcontractors, consultants, representatives or other persons for whom it is vicariously liable has:
- (i) engaged in misleading or deceptive conduct in connection with the request for tender process;
 - (ii) engaged in any collusive tendering, anticompetitive conduct, or any other unlawful or unethical conduct with any other tenderer, or any other person in connection with the request for tender process;
 - (iii) attempted to improperly influence any of the Principal's officers, employees, agents, contractors, consultants or representatives (including elected representatives) or violated any applicable law regarding the offering of inducements in connection with the request for tender process;
 - (iv) accepted or invited improper assistance of any current or former officer, employee, agent, contractor, consultant or representative (including an elected representative) of the Principal, in preparing the tenderer's tender;
 - (v) used any information improperly obtained, or obtained in breach of any obligation of confidentiality in preparing the tender;
 - (vi) breached any law in connection with the request for tender process;
 - (vii) engaged in any aggressive, threatening, abusive, offensive, or other inappropriate behavior in connection with the request for tender process; or
 - (viii) engaged in conduct contrary to sections 199 and 200 of the *Local Government Act 2009* (Qld).
- (f) **(Intellectual Property Rights)** the exercise by the Principal of any right provided in these conditions of tendering will not infringe the Intellectual Property Rights of a third party in connection with the Tenderer's Tender;
- (g) **(conflicts of interest)** the tenderer has disclosed in its tender any conflict of interest (whether actual, potential or perceived) arising or which is likely to arise as a result of this request for tender process or the performance of the obligations which it will have under the Contract if its tender is accepted; and
- (h) **(competitive neutrality)** if the tenderer is required by law to comply with principles of competitive neutrality, the tenderer has properly considered, assessed and complied with the applicable competitive neutrality principles in relation to the Request for tender process and the acceptance by the Principal of the tenderer's tender will not breach those principles.

8. ASSESSMENT OF TENDER

- 8.1 **(Criteria)** The Evaluation Criteria will be considered but not necessarily exclusively in assessing tenders.
- 8.2 **(Considerations)** In assessing tenders, the Principal may consider any information which the Principal reasonably considers to be relevant to its assessment (however obtained), including:
- (a) information contained in the tender, any amendment to or clarification of a tender or provided at a meeting with or presentation by the tenderer;
 - (b) information obtained from the tenderer's referees (if any);
 - (c) information obtained pursuant to clause 5.2(g);
 - (d) the tenderer's past performance under other contracts with the Principal or third parties; and
 - (e) the reasonably held subjective opinions of the persons appointed by the Principal to evaluate tenders or any advisor to such persons.
- 8.3 **(Uncertainties)** The Principal may ignore any part of a tender which is ambiguous, uncertain, unclear or illegible without seeking clarification from the tenderer and may assess the balance of the tender.
- 8.4 **(Right to exclude)** The Principal may, but shall not be obliged to, reject or exclude from assessment any tender including:
- (a) a Non-conforming Tender, an Alternative Tender or a Late Tender;
 - (b) a tender, in respect of which the Principal reasonably believes that:
 - (i) the tenderer has failed to comply with these conditions of tendering or any request made by or on behalf of the Principal pursuant to them within the time required;
 - (ii) the tenderer has breached a warranty given or representation made pursuant to these conditions of tendering or that a warranty or declaration given or representation made in the tenderer's tender was false or misleading in any material respect;
 - (iii) the tenderer cannot comply with the obligations which it will have under the Contract if its tender is successful for the tendered price;
 - (c) a tender which fails to achieve a satisfactory score against any of the Evaluation Criteria, even if the overall score of the tender is satisfactory.
- 8.5 **(Local preference)** The Principal may accept a tender lodged by a Local Supplier in preference to comparable tenders from Non-Local Suppliers even if the tenders from the Non-Local Suppliers have been assessed as more favourable in terms of one or more criteria, so long as the overall differences are not substantial, and so long as it is clear that the Local Supplier can meet the Principal's requirements at an acceptably high standard which is generally comparable to that of the Non-Local Suppliers. In this clause:
- (a) Local Supplier has the same meaning as in the Principal's published procurement policy or where the Principal does not publish such a policy, or the policy does not contain a definition of 'local supplier', means a supplier that:

- (i) is beneficially owned and operated by persons who are residents or ratepayers of the local government area of the Principal has determined under the *Local Government Regulation 2012* (Qld); or
 - (ii) has its principal place of business within that local government area; or
 - (iii) otherwise has a place of business within that local government area that solely or primarily employs persons who are residents or ratepayers of that local government area; and
- (b) Non – Local Supplier means a supplier that is not a Local Supplier.

9. ACCEPTANCE OF TENDER

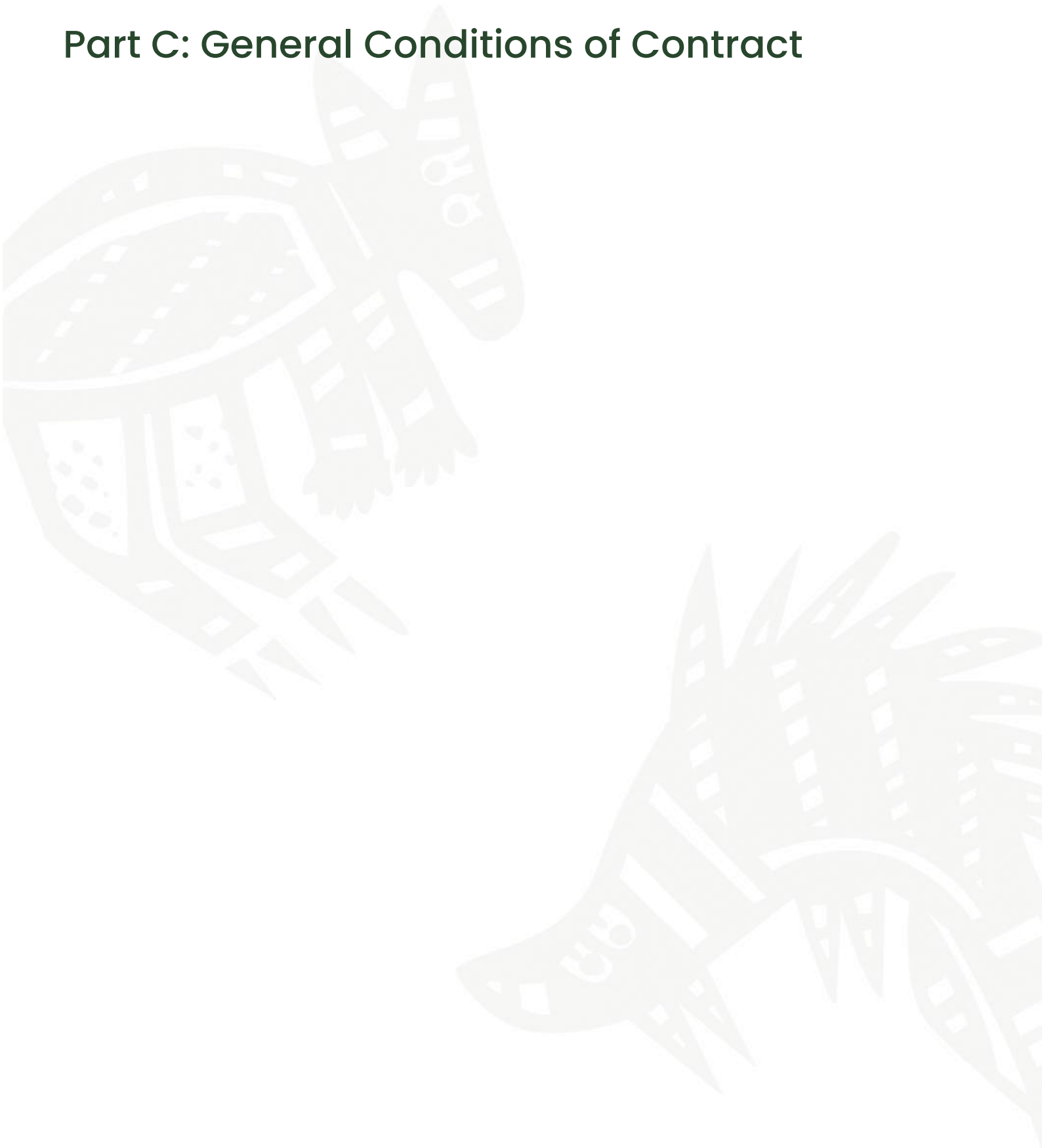
- 9.1 **(No obligation)** The Principal is not bound to accept the tender with the lowest price, or the tender with the highest score against the Evaluation Criteria, or any tender but will, if it accepts a tender, accept the tender which is most advantageous to the Principal having regard to the sound contracting principles, to the extent that they are applicable and relevant to the request for tender process.
- 9.2 **(Form of acceptance)** A tender will not be taken to be accepted, and no contract for the provision of any work, services and/or goods will exist, unless and until the successful tenderer receives written confirmation of the acceptance from the Principal.
- 9.3 **(Form of Contract)** If a tender is accepted, the tenderer will be required to enter into a contract with the Principal in the form contained in Part 4 – Contract as amended, if at all, by agreement between the parties. The contract will not include any alternative terms, conditions or qualifications which the tenderer submits with a tender unless specifically and expressly accepted in writing by the Principal.
- 9.4 **(Unsuccessful tenderers)** Unsuccessful tenderers will be notified after a tender has been accepted. The Principal may provide feedback to unsuccessful tenderers if requested to do so, but such feedback, if given, may be general in nature and limited to the tenderer's tender only.

10. DOCUMENTS AND INFORMATION

- 10.1 **(Ownership of tender)** The tender will become the property of the Principal upon submission.
- 10.2 **(Intellectual Property Rights)** All rights of intellectual property, including copyright, in documents and information provided on behalf of a party in connection with this request for tender remain, as between the parties, with the party on whose behalf they were provided. The tenderer grants to the Principal irrevocable, perpetual, non-exclusive, royalty free licence to exercise the rights provided to it in clause 10.5 and the Principal grants the tenderer a revocable, non-exclusive, royalty free licence to exercise the rights provided to it in clause 10.5.
- 10.3 **(Information Privacy Act)** If the tenderer collects or has access to 'Personal Information' as that term is defined in the *Information Privacy Act 2009* (Qld) in connection with the request for tender process, the tenderer must comply with Parts 1 and 3 of Chapter 2 of that Act in as if the tenderer was the Principal.
- 10.4 **(Confidentiality)** Subject to clause 10.5, each party shall keep confidential the documents and information provided by the other party in connection with this request for tender which are of their nature confidential.
- 10.5 **(Use of documents and information)** Documents and information provided on behalf of a party to the other party in connection with this request for tender (including, if the tenderer's tender is accepted, information relating to the tenderer's price) may be used, copied, modified or disclosed as required by any law and otherwise:

- (a) by the Principal, as the Principal considers to be reasonably necessary to properly conduct the request for tender process and/or to properly carry out its functions as a local government authority;
 - (b) by the tenderer, as is reasonably necessary to enable the tenderer to:
 - (i) prepare the tender;
 - (ii) obtain legal, accounting, or other professional advice; or
 - (iii) comply with the tenderer's corporate governance requirements.
- 11.6. **(Media)** The tenderer must not, either on its own account or in conjunction with other parties, issue any publication, advertisement, document, article, or information whether verbal or written, in connection with the request for tender process in any media without the prior approval of the Principal

Part C: General Conditions of Contract



1. General

- a) The entire agreement between the parties is comprised of the Conditions of Tendering, Tender, Purchase Order, these General Conditions of Contract, and any other documents expressly referred to in the Purchase Order (**Agreement**). If there are inconsistencies or ambiguities between documents comprising the Agreement, Council will direct the Supplier as to the interpretation and the Supplier must comply with the direction and will not be entitled to Claim as a result of the direction. For the avoidance of doubt, if the Supplier has been engaged by Council under a standing offer arrangement or a panel agreement (as applicable), the terms of that standing offer arrangement or panel agreement will apply to the extent of any inconsistency.
- b) The Supplier is deemed to have accepted the terms of this Agreement (and the Agreement shall be binding) when both of the following have occurred:
- i. the Supplier has received Council's written or verbal confirmation to perform the Supply; and
 - ii. the Supplier has received a Purchase Order from Council,
 - iii. and the Supplier irrevocably accepts that only the documents set out in clause 1(a) shall form part of the Agreement (unless there are any Variations making alterations to those documents).
- c) The parties agree that the terms and conditions of the Agreement supersedes any previous negotiations and apply notwithstanding and to the exclusion of any subsequent terms and conditions issued by the Supplier (including without limitation on any order confirmation or similar document).

2. Warranties

- a) The Supplier represents and warrants to Council that it has:
- i. carefully examined and acquired actual knowledge of the contents of information made available by Council.
 - ii. made investigations and assessments of the work, risks, contingencies, and circumstances involved in performing the Supply and it has reviewed all information Council has made available and is otherwise obtainable by reasonable enquiries, in relation to the Supply.
 - iii. satisfied itself that the Price covers the cost of complying with all obligations under the Agreement; and
 - iv. the necessary authority and power to enter into the Agreement and to perform the obligations under it.
- b) The Supplier warrants to Council that the Supply will:
- i. match the description of the Supply ordered by Council and comply with any scoping documentation or specifications supplied by Council.
 - ii. comply with any applicable laws, regulations, licences, permits, approvals, and Australian Standards; and
 - iii. be fit for the purpose(s) described in the Agreement or which Council has otherwise made known to the Supplier, or in the absence of such expressed purpose, be fit for the purposes for which goods or services of the same kind as the Goods or Services are commonly procured.
- c) Any review, comment, approval, or non-approval by Council of the Supply, including without limitation any documents provided by the Supplier, does not relieve the Supplier of its obligations or liabilities under the Agreement.

3. Goods

- a) The Supplier warrants that any Goods supplied will:
- i. correspond with any sample the Supplier provided to, or showed to, Council prior to or after a Purchase Order is issued by Council;
 - ii. unless agreed otherwise, be new, of merchantable quality and free from defects in materials and workmanship; and
 - iii. be free from liens, charges, and encumbrances of any kind and that the Supplier is able to pass good title to the Goods.
- b) Delivery of the Goods will have occurred only when the Supplier has:
- i. delivered the Goods to the Site in accordance with the Agreement and (unless otherwise agreed) unloaded the Goods at the part of the Site designated by Council;
 - ii. received a delivery receipt or other written acknowledgment email from Council's Personnel for the Goods delivered; and
 - iii. provided all installation instructions, maintenance and operating manuals, engineering data, spare parts lists, and other information as reasonably required for the installation, operation, and maintenance of the Goods, as applicable.
- c) The Supplier must properly pack and protect any Goods to ensure they are not damaged during delivery, unloading and storage.
- d) Risk in the Goods only passes to Council upon delivery of the Goods in accordance with clause 3(b) subject to risk passing back to the Supplier for any period when the Goods are made available by Council for the purposes of clauses 5(b)(iii) and 5(b)(v).
- e) Unencumbered title to the Goods passes to Council on payment or delivery (whichever occurs first).
- f) Neither the Sale of Goods Act 1986 (Qld) (or similar legislation in any other jurisdictions) nor any international conventions or recognised customs in relation to similar rules that may otherwise apply in respect to the international sale of goods, have any application to any matter in connection with the Agreement.

4. Service

The Supplier warrants that any Services provided will be performed:

- a) with skill, due care, and diligence and by appropriately qualified, licenced, skilled and trained Personnel;
- b) in an efficient, professional, and cost-effective manner; and
- c) using materials and equipment which (unless expressly stated otherwise) comply with the requirements of this Agreement and are new, of merchantable quality and fit for the purpose for which they are used.

5. Defects

- a) The Supplier must, at its cost, rectify any Defect while carrying out the Supply and during any applicable Defects Liability Period.
- b) Without limiting clause 5(a), Council may direct the Supplier to, at the Supplier's cost and risk, do any one or more of the following as determined by Council in its absolute discretion:
 - i. take such steps as are necessary to ensure that the Goods or Services comply with the Agreement;
 - ii. refund to Council any payments made by Council in respect of the Defective Goods or Defective Services;
 - iii. re-take possession of any Defective Goods and refund the Price for the Defective Goods to Council;
 - iv. collect and deliver replacements of any Defective Goods, or repair any Defective Goods; or
 - v. re-perform any Defective Services.
- c) If any Defect is not rectified within 5 Business Days of a direction by Council, Council may itself or by others, rectify the Defect and the cost of remedying the Defect will become a debt due and payable to Council from the Supplier.
- d) Any repaired or replaced Goods provided by the Supplier or any re-performed Services are subject to the same warranties as the original Goods or Services, from the date of repair, replacement or re-performance and the Defects Liability Period will recommence from such date.
- e) Any loss or damage that Council has incurred as a result of any Defect will be a debt due and payable to Council.

6. Completion

- a) The Supplier must:
 - i. deliver the Goods by the Completion Date; and/or
 - ii. complete the Services by the Completion Date and carry out the Supply expeditiously and without delay.
- b) If the Supplier believes that anything may delay the progress of the Supply, the Supplier must notify Council with details of the estimated extent of the delay and the cause.
- c) Subject to clauses 6(d) and 6(e), the Supplier will only be entitled to an extension of time to the Completion Date where:
 - i. the Supply is delayed by an act, default or omission of Council or its Personnel in Council's capacity as a party to the Agreement which prevents the Supplier completing the Supply by the Completion Date (**Qualifying Cause**);
 - ii. the Supply is not concurrently delayed (in whole or to the extent of any part) by a cause other than a Qualifying Cause; and
 - iii. within 5 Business Days after commencement of the Qualifying Cause, the Supplier gives notice to Council setting out the Qualifying Cause, the delayed activities, and the extension of time to the Completion Date claimed.
- d) Provided the requirements of clause 6(c) are satisfied, Council will determine the period of delay caused by the Qualifying Cause and extend the Completion Date by that period. If the Supplier does not make a Claim for an extension of time within the time or in the form specified in clause 6(c), the Supplier is not entitled to an extension of time for any delay and shall have no Claim.
- e) Council may (at any time in its sole and unfettered discretion (without obligation)) for any reason it thinks fit, extend the Completion Date. This right is solely for Council's benefit and may be exercised in its absolute discretion including if the Supplier has not requested an extension of time.

7. Site matters

- a) Entry to the Site by the Supplier and its Personnel is at their own risk. To the extent permitted by law, Council will not be responsible for any loss of or damage to property or for any personal injury or death to persons while on the Site.
- b) When accessing the Site, the Supplier must comply with all policies and procedures relating to the Site.
- c) If the Supply constitutes 'building work' for the purposes of the Queensland Building and Construction Commission Act 1991 (Qld) (**QBCC Act**), the Supplier must supervise and manage the performance of the Supply (including any building work performed by subcontractors) personally or by a competent representative and must otherwise comply with the requirements in sections 43 and 43A of the QBCC Act.
- d) Council may direct the Supplier to have removed from the Site or any activity in respect to the Supply, any of the Supplier's Personnel engaged in the Supply who, in Council's opinion, is incompetent, guilty of misconduct or for any other reason notified to the Supplier.
- e) The Supplier must coordinate the Supply on the Site with activities of Council, Council's Personnel and any other contractors or consultants and has no entitlement to any Claim for doing so or for any impact or interference caused to the Supplier.
- f) The Supplier must avoid disruptions or inconvenience to the usual and safe operations of the Site and the users of the Site, except to the extent expressly permitted by the Agreement.

- g) The Supplier must take all necessary steps to prevent damage to property on or near the Site, avoid unnecessary interference with the passage of people and vehicles on or near the Site and prevent nuisance, unreasonable noise, and disturbance on or near the Site. If any damage is caused by the Supplier or its Personnel, the Supplier must, at its own cost, remedy the damage to Council's satisfaction.

8. Work Health and Safety

- a) Without limiting any other clause, the Supplier must:
- i. carry out the Supply in a safe manner;
 - ii. comply with, and do all things necessary to enable Council to comply with, all laws relating to workplace health and safety (WHS);
 - iii. comply with lawful directions issued by persons with control of the Site pursuant to any laws relating to WHS;
 - iv. have documented safe work practices and procedures for the Supply;
 - v. provide its Personnel with personal protective equipment, inductions, information, instruction, training and supervision to ensure their health and safety;
 - vi. provide, when requested by Council, evidence of its compliance with any laws relating to WHS; and
 - vii. immediately notify Council of accidents involving its Personnel.
- b) If urgent action is necessary to protect the Supply, property or people, and the Supplier fails to take the action, Council may take such action and the costs incurred in performing those actions will be a debt due and payable to Council from the Supplier.

9. Statutory declaration

The Supplier agrees that:

- a) any time, Council may request the Supplier to provide a signed statutory declaration (in a form and containing such detail as reasonably required by Council) from a current director of the Supplier confirming that the Supplier is solvent and not subject to any event set out in clause 15(b)(i); and
- b) the Supplier must provide Council with such completed and signed statutory declaration within 3 Business Days of such a request.

10. Variation

- a) Council may direct the Supplier at any time to vary, amend, increase, decrease, omit, change the timing of (including to accelerate), or change the quality, character, or extent of the Supply (Variation). No Variation will invalidate the Agreement and the Supplier must comply with the Variation.
- b) Council will determine the Price of each Variation by applying:
- i. rate or prices agreed between the parties;
 - ii. rates or prices (if applicable) in the Agreement; or
 - iii. reasonable rates or prices.
- c) Council will not be in breach of the Agreement if it reduces the quantity or scope of the Supply and engages a third party for that Supply or undertakes the Supply itself.
- d) Within 3 Business Days of any request for a Variation, the Supplier must obtain written confirmation from Council before complying with the Variation. Compliance with this clause 10(d) is a condition precedent to any Claim and Council shall have no liability for any Claim in connection with the requested Variation to the extent the Supplier has failed to comply with this clause 10(d) (including without limitation any costs incurred prior to having obtained the written confirmation of Council).

11. Invoicing and payment

- a) Council will, subject to the terms of the Agreement, pay the Supplier an amount not exceeding the Price. The Price is:
- i. fixed and not subject to any adjustment whatsoever except to the extent expressly set out in the Agreement; and
 - ii. inclusive of all costs relating to the Supply, including labour, packaging, insurance, transport, delivery charges and taxes (other than GST).
- b) Council is not required to make payment for a Supply unless supplied by the Supplier pursuant to a Purchase Order.
- c) The Supplier may only invoice Council after the delivery of the Goods in accordance with clause 3(b) and/or the completion

of the Services. Invoices must include the Purchase Order number, a detailed description of the Supply performed, the Price payable and any other information reasonably required by Council.

- d) Subject to clauses 11(f) and 11(g), Council will pay the amount of the invoices issued by the Supplier under clause 11(c) within 30 days from the end of month in which the invoice is received, except where Council disputes the invoice, in which case:
 - i. Council will pay any undisputed part of the invoice; and
 - ii. if the resolution of the dispute determines that Council is to pay an amount to the Supplier, Council will pay that amount upon resolution of that dispute.
- e) Council will respond to any 'payment claim' for the purposes of the SOPA (if applicable), within the maximum time permitted for issuing a 'payment schedule' under SOPA.
- f) Council may reduce any payment due to the Supplier under the Agreement by any amount due to or claimed by Council from the Supplier. This does not limit Council's right to recover those amounts in other ways.
- g) The Supplier must ensure all Claims for payment arising out of or in connection with the Agreement are issued to Council within 3 months after the date upon which the Supply is completed (**3 Month Period**). Compliance with this clause 11(g) is a condition precedent to any Claim, and Council shall have, no liability for any Claim to the extent it is made after the 3 Month Period.

12. GST

- a) Unless otherwise defined in this Agreement, capitalised terms in this clause have the meanings given to them in A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- b) Unless stated otherwise, the consideration for a Supply made under or in connection with the Agreement does not include GST. If a Supply made under or in connection with the Agreement is a Taxable Supply, then at or before the time the consideration for the Supply is payable the Recipient must pay the Supplier an amount equal to the total GST for the Supply, in addition to and in the same manner as the consideration otherwise payable under the Agreement for that Supply and the Supplier must give the Recipient a Tax Invoice for the Supply.
- c) If either party has a right under the Agreement to be reimbursed or indemnified by another party for a cost incurred in connection with the Agreement, that reimbursement or indemnity excludes any GST component of that cost for which an Input Tax Credit may be claimed by the party being reimbursed or indemnified.

13. Indemnity

The Supplier indemnifies Council from any Claims, actions, proceedings, costs, expenses, losses, and damages (including legal fees on an indemnity basis) incurred in connection with:

- a) any loss of or damage to real or personal property caused by the Supplier or its Personnel;
- b) personal injury or death caused by the Supplier or its Personnel;
- c) a breach of any third party Intellectual Property Rights by the Supplier or its Personnel;
- d) a breach of any laws in connection with the Agreement by the Supplier or its Personnel; and
- e) a breach of the Agreement by the Supplier or its Personnel.

14. Insurance

- a) The Supplier must effect and maintain at its own cost:
 - i. public liability insurance for an amount no less than \$20 million (except where a lesser amount is agreed with Council);
 - ii. workers' compensation insurance as required by law;
 - iii. third party comprehensive motor vehicle insurance;
 - iv. transit insurance;
 - v. insurance of the Goods forming part of the Supply (for their full value) until delivery of the Goods in accordance with clause 3(b); and
 - vi. if the Services ordered by Council include elements of professional services such as design work, hydrology assessments, environmental assessments, engineering services and other similar categories, the Supplier must obtain professional indemnity insurance with a limit of liability of not less than \$10 million (except where a lesser amount is agreed with Council) covering the extent of the Services that is to be maintained until seven years after the Completion Date.
- b) The Supplier must provide Council with evidence of such insurances whenever requested by Council.

15. Termination

- a) Council may terminate the Agreement for any reason in Council's absolute discretion on 7 days' written notice to the Supplier.
- b) Council may terminate the Agreement immediately or take out of the hands of the Supplier the whole or any part of the Services remaining to be completed if:
 - i. the Supplier becomes insolvent, commits an act of bankruptcy, enters into administration, appoints a liquidator, receiver, manager or controller, makes a statement or conducts itself in a manner from which it may reasonably be deduced that it is insolvent or is seeking to take advantage of the safe harbour against insolvent trading available under Division 3, Part 5.7B of the Corporations Act 2001 (Cth), stops or suspends (or threatens to stop or suspend) payment of all or a class of its debts, or anything analogous to these events;
 - ii. the Supplier commits a default or breach of the Agreement that Council considers, in its sole and unfettered discretion:
 - A. has placed a person at an unacceptable risk of harm;
 - B. property is at risk of damage;
 - C. constitutes a major non-compliance with its safety or environmental management systems;
 - D. has placed Council at an unacceptable risk of reputational damage;
 - III. the Supplier commits a default or breach of the Agreement and fails to remedy the default or breach within 5 Business Days of being directed in writing to do so by Council; or
 - IV. the Supplier commits a breach incapable of being remedied.
- c) If Council exercises its rights under clause 15(a), the Supplier will only be entitled to its reasonable direct costs incurred up to the date of termination (capped at the Price) provided that Council receives unencumbered title to any Goods that are paid for in accordance with this clause 15(c). The Supplier will not be entitled to any loss of profit or other compensation.
- d) If Council exercises its rights under clause 15(b), the Supplier will not be entitled to any Claim.
- e) If Council terminates, or purports to terminate, the Agreement under clause 15(b) and it is subsequently held to be invalid, void or otherwise unenforceable then Council will be deemed to have terminated for convenience under clause 15(a) as at the same date and time as the original notice of termination. The Supplier's sole entitlement will be a payment (if any) under clause 15(c) and the Supplier waives any Claim it has, or would have had, but for this clause, arising out of or in connection with any termination, or purported termination, by Council under the Agreement or otherwise at law being subsequently held to be invalid, void or otherwise unenforceable.

16. Suspension

- a) Council may at any time and for any reason direct the Supplier in writing to suspend the performance of all or any part of the Supply and the Supplier must immediately comply. The Supplier's only Claim arising out of a suspension under this clause will be for an extension of time under clause 6, except that the Supplier will have no entitlement to Claim if the suspension was caused or contributed to by the Supplier or its Personnel.
- b) Council may at any time direct the Supplier to resume the performance of the Supply and the Supplier must promptly comply with such a direction at its cost.

17. Informality and intellectual property

- a) The Supplier must not disclose to any person, or use for any purpose other than carrying out the Supply, the contents of the Agreement and any other document or information obtained by the Supplier in the course of or in connection with carrying out the Supply (Confidential Information):
 - i. without the prior written consent of Council; or
 - ii. unless required by law.
- b) The Supplier must immediately notify Council if the Supplier becomes aware of any unauthorised disclosure or use of the Confidential Information and return any Confidential Information (including copies) on the written request of Council.
- c) The Supplier agrees, unless Council expressly agrees otherwise, any information (whether documented or otherwise) supplied or made available to the Supplier by or on behalf of Council:
 - i. is provided only for the Supplier's convenience;
 - ii. has not been and will not be relied upon by the Supplier for any purpose (including entering into or performing its obligations under the Agreement); and
 - iii. Council does not warrant, guarantee, or assume responsibility for such information (including its accuracy, completeness, or adequacy).
- d) Council will not be liable to the Supplier in contract, tort, equity, under statute or otherwise arising from or in connection with the supplied information (including its inaccuracy or adequacy), the provision of the supplied information or the non-provision of any other information by Council.

- e) The Supplier grants Council a transferable, irrevocable, royalty free licence, including the right to sub-licence, to use any material provided to Council in connection with the Agreement for use and enjoyment of the Supply, including (without limitation) any modification, repair or alteration of any Goods or Services.
- f) The Supplier warrants that the Supply will not infringe any Intellectual Property Rights in Australia or any other country.

18. Personal Property Securities Act

- a) If Council determines a 'security interest' as defined in the PPSA (Security Interest) arises under this Agreement, then the Supplier must do anything requested by Council (at the Supplier's cost) including executing documents, to ensure the Security Interest is registered, perfected and enforceable, including that through registration Council obtains the highest ranking priority possible for the Security Interest and the Supplier must assist Council to exercise any right in connection with a Security Interest.
- b) To the extent permitted by law:
 - i. the Supplier waives any right it may have under the PPSA to receive anything from Council, including a notification that the Security Interest has been registered; and
 - ii. until title passes to Council in accordance with this Agreement, the Supplier agrees it will not do anything to prejudice any Security Interest in favour of Council, including that it will not permit a third party to register any Security Interest or obtain an interest in the Supply nor allow or permit anything to be installed in or affixed to Goods which are part of the Supply.

19. Quality assurance

- a) Without limiting its other obligations under the Agreement, the Supplier must carry out the Supply in accordance with a quality assurance system which establishes the qualities and performance of the Supply including quality manuals, plans, management structures and other critical issues.
- b) The Supplier must allow Council access to the Supplier's quality assurance system at all reasonable times for the purposes of quality monitoring and auditing.
- c) The Supplier's implementation of, or compliance with, a quality assurance system does not relieve the Supplier of its obligations under this Agreement.

20. Dispute

- a) If a dispute between the parties arises from or in connection with the Agreement, neither party may commence court proceedings concerning the dispute unless it has complied with this clause or seeks urgent injunctive or declaratory relief.
- b) A party claiming a dispute must notify the other party of the dispute and specify the claim (**Dispute Notice**). A party served with a Dispute Notice may give a written response within 14 days of the receipt of the Dispute Notice (**Response**).
- c) Within 28 days of service of a Dispute Notice, or within 14 days of the receipt of a Response, whichever is the earlier, the parties must confer to attempt to resolve the dispute. Each party must be represented by a person having authority to agree to a resolution of the dispute. If the dispute is not resolved under this clause 20(c) within 30 days, either party may commence litigation.
- d) Each party must continue to perform its obligations under the Agreement despite the existence of a dispute.

21. No fetter

- a) Despite anything in this Agreement to the contrary:
 - i. Council is not obliged to exercise any executive or statutory right or duty, or to influence, over-ride, interfere with or direct any other government agency in the proper exercise and performance of any of its executive or statutory rights or duties; and
 - ii. nothing in this Agreement has the effect of constraining Council or placing any fetter on Council's discretion to exercise or not to exercise any of its executive or statutory rights or duties.
- b) Subject to clause 21(c), the Supplier will not be entitled to make any Claim against Council relating to any exercise or failure of Council to exercise its executive or statutory rights or duties.
- c) Clauses 21(a)(i) and 21(b) do not limit any liability which Council would have had to the Supplier under this Agreement as a result of a breach by Council of this Agreement but for these clauses.

22. General

- a) The Agreement may only be amended by written agreement between all parties.
- b) Reference to Council and the Supplier shall extend to their respective successors, administrators and permitted assigns.
- c) The parties' relationship is one of principal and independent contractor, not employer and employee, principal and agent or partnership.
- d) A right under the Agreement may only be waived in writing signed by the party granting the waiver and is effective only to the extent specifically set out in that waiver. The failure of a party to require full or partial performance of a provision of the Agreement does not affect the right of that party to require performance subsequently.
- e) The law of the State of Queensland will apply. Each party irrevocably submits to the non-exclusive jurisdiction of the Queensland courts and courts competent to hear appeals from those courts.
- f) A clause or part of a clause of the Agreement that is illegal or unenforceable may be severed and the remaining clauses or parts of the clause of the Agreement continue in force.
- g) The Supplier must at its own expense obtain all requisite permits, approvals and licences and comply with all laws and regulations in connection with the Agreement.
- h) The Supplier must keep Council fully informed in respect to the Supplier's performance of the Agreement.
- i) The Supplier must at its own cost supply all labour, tools, equipment, and materials necessary for the Supply.
- j) The Supplier must comply with all directions of Council.
- k) Where the Supplier comprises more than one entity, each will be jointly, severally, and vicariously liable for the full performance of the Supplier's obligations under the Agreement.
- l) Wherever the words 'include', 'included' or 'including' are used in this Agreement, those words will be interpreted in all cases as if they were preceded by the further words 'but not limited to' or the appropriate grammatical derivative.
- m) The Supplier must not assign or subcontract its rights or obligations under the Agreement without Council's prior written consent (and will be vicariously liable for the acts or omission of such subcontractors).
- n) No provision of the Agreement is to be constructed against Council's interests because Council prepared the Agreement.

23. Definitions

In the Agreement:

Business Day means a day that is not:

- a) a public holiday, special holiday or bank holiday in Gatton, Queensland.
- b) Saturday or Sunday;
- c) 24 December; or
- d) 27 to 31 December (inclusive).

Claim means any claim, notice, demand, debt, account, lien, liability, action, proceedings or suit under, arising out of, or in any way in connection with the Agreement, the Supply or either party's conduct under the Agreement before or after it came into force, whether at law (including breach of contract) or in equity, by statute, in tort (including negligence), or otherwise including any claim, notice, demand, debt, account, lien, liability, action, proceeding or suit:

- a) for the payment of money (including for loss or damages);
- b) for an adjustment to the Price; or
- c) for delay or disruption or other time based claim.

Completion Date means the completion date specified in the Purchase Order as indicated in the 'Date Required' field, or if no date is specified, the completion date advised by Council.

Council means Kowanyama Aboriginal Shire Council).

Defects Liability Period means the period stated in the Purchase Order which commences on the date the Supplier completes the Supply (as determined by Council acting reasonably) or, if there is no period stated, 12 months.

Defect or Defective means any part of the Goods and/or Services which does not comply strictly with the requirements of the Agreement or is otherwise unsatisfactory to Council.

Goods means goods ordered by Council as part of the Supply.

Industry Practice means:

- a) that degree of care, skill, judgment, and foresight that would be expected of a skilled and experienced supplier regularly engaged in the business of supplying the goods and/or performing the services of the kind required by this Agreement; and;
- b) compliance with all relevant industry standards and any standards of Standards Australia Ltd applicable to the Supply (except to the extent that the Agreement prescribes a contrary standard) and the best practices, methods, and procedures applicable in the industry to which the Supply relates.

Intellectual Property Rights means any patent, design (whether registered or not), trademark or name, copyright or other protected right.

Personnel means the employees, agents, contractors, suppliers and consultants of a party, but Council's Personnel does not include the Supplier or the Supplier's Personnel and the Supplier's Personnel does not include Council or Council's Personnel.

PPSA means (as applicable to the Agreement) the Personal Property Securities Act 2009 (Cth).

Price means the price or prices agreed between Council and the Supplier for the Supply as set out in the Purchase Order.

Purchase Order means the purchase order attached or otherwise provided by Council to the Supplier for the Supply.

Services means services specified in the Purchase Order or any Variation (if any).

Site means any site, location or place which is made available to the Supplier, by or on behalf of Council, in connection with the Supply (including any place for delivery of the Goods or performance of the Services).

SOPA means the Building Industry Fairness (Security of Payment) Act 2017 (Qld) and its regulations.

Supplier means the party stated in the Purchase Order who is responsible for carrying out and completing the Supply.

Supply means the supply of Goods and/or Services.

12. Tenderer’s Offer

The Chief Executive Officer
Kowanyama Aboriginal Shire Council
PO Box 30 Kowanyama QLD 4892

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

of: _____
(REGISTERED STREET ADDRESS)

ABN: _____ ACN: _____

Contact Number: _____

Email: _____

In response to Tender – **KASC-2026-048 Kowanyama Based Mechanical Services**, I/We agree that I am/We are bound by and will comply with this RFT and its associated schedules, attachments, all in accordance with the Conditions of Tendering contained in this RFT 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 Tenderer: _____

Name of authorised signatory: _____
(INSERT BLOCK LETTERS)

Position: _____

Contact Number: _____

Authorised signatory postal address: _____

13. Selection criteria

13.1. Compliance criteria

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

Compliance	Yes / No	
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
Compliance with the Specification contained in the Request.	Yes	No
Risk Assessment Tenderers must address the following information in an attachment and label it "Risk Assessment" :	Yes	No
<ul style="list-style-type: none"> • An outline of your organisational structure inclusive of any branches and number of personnel. 	Yes	No
<ul style="list-style-type: none"> • If companies are involved, attach their current ASC company extracts search including latest annual return. 	Yes	No
<ul style="list-style-type: none"> • Provide the organisation's directors/company owners and any other positions held with other organisations. 	Yes	No
<ul style="list-style-type: none"> • Provide a summary of the number of years your organisation has been in business. 	Yes	No
<ul style="list-style-type: none"> • Attach details of your referees. You should give examples of work provided for your referees where possible. 	Yes	No
<ul style="list-style-type: none"> • Are you acting as an agent for another party? If Yes, attach details (including name and address) of your principal. 	Yes	No
<ul style="list-style-type: none"> • 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. 	Yes	No
<ul style="list-style-type: none"> • Do you intend to subcontract any of the Requirements? 	Yes	No
<ul style="list-style-type: none"> • provide details of the subcontractor(s) including the name, address and the number of people employed; and the Requirements that will be subcontracted 	Yes	No
<ul style="list-style-type: none"> • 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 detail of any actual or potential conflict of interest and the way in which any conflict will be dealt with 	Yes	No
<ul style="list-style-type: none"> • Are you presently able to pay all your debts in full as and when they fall due 	Yes	No
Are you currently engaged in litigation because of which you may be liable for \$50,000 or more? If Yes please provide details.	Yes	No

<p>Tenderers are to supply evidence of their insurance coverage including, insurer, expiry date, value, and type of insurance.</p> <ul style="list-style-type: none"> • WorkerCover • Public Liability • Professional Indemnity • Plant and Equipment • Motor Vehicles <p>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>	<p>Yes No</p>
--	------------------

13.2. 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 A: Relevant Experience	Weighting
<p>Tenderers must address the following information in a separate attachment and label it "Relevant Company Experience".</p> <ul style="list-style-type: none"> • Provide details of similar work undertaken. • Provide scope of the Tenderer's involvement including details of outcomes. • Provide details of issues that arose during the project and how these were managed. • Demonstrate competency and proven track record of achieving outcomes. • Project reference sheet. 	<p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;">Tick if attached</p>
Part B: Community Commitments	Weighting
<p>Tenderers must address the following information in a separate attachment and label it "Community Commitment".</p> <ul style="list-style-type: none"> • Knowledge and understanding of Aboriginal and Torres Strait Islander cultures and demonstrated ability to communicate effectively and sensitively with Indigenous people. • Experience working and living in remote areas and/or Indigenous communities would be highly regarded. • Describe your or your organisation's ability to communicate, consult, work in and collaborate with Indigenous communities and organisations. The tenderer should identify how they will contribute to the local economy and community members including utilising local suppliers and providing training, mentoring and employment opportunities. 	<p style="text-align: center;"><input type="checkbox"/></p> <p style="text-align: center;">Tick if attached</p>

<ul style="list-style-type: none"> From time to time, Council undertakes projects that include State and Federal funding with conditions relating to training and indigenous employment. Please describe how you would allow for inclusion of secondment of Council apprentices or staff or use of community members into your project and how such training and development will benefit the community. 	
Part C: Mechanical Skills	Weighting
Tenderers must address the following information in a separate attachment and label it "Mechanical Skills and Experience" :	<input type="checkbox"/>
<ul style="list-style-type: none"> The Tenderer's role in the performance of the Contract. Curriculum vitae of key staff inclusive of membership to any professional or business association, qualifications / certificates etc. Relevant licences Any other relevant details relating to personnel skills and experience 	Tick if attached
Part D: Tenderers resources	Weighting
Tenderers must address the following information in a separate attachment and label it "Tenderer's Resources" :	<input type="checkbox"/>
<ul style="list-style-type: none"> Plant, equipment, and materials. Any contingency measures or backup of resources including personnel (where applicable). Safety Record. Other current commitments. 	Tick if attached

13.3. Price information

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

13.3.1. Schedule of Rates

Tenderers must complete the entire following price schedule. The rates shall be inclusive of all overheads including licensing, GST and profit and based on the Contractors standard working week or workshop opening hours.

Complete Schedule E below.

14. Contracts Work health and Safety Management

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.

WHS Policy	Yes / No
Is there a written company Health and Safety Policy? If Yes, provide a copy of the policy	Yes No
Does the company have an WHS Management System? If Yes, provide details:	Yes No
Is the OSH Management System audited or reviewed on a regular basis? If Yes, provide details of last audit and outcomes.	Yes No
Safe Workplace Practices and Procedures	Yes / No
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	Yes No
Are safe operating procedures or specific safety instructions issued to employees? If Yes, provide how this is done.	Yes No
Does the company have any Permit to Work systems? If Yes, provide a copy of a standard Incident Report form.	Yes No

15. Reference sheet

The Tenderer must provide details of two written referees (with contact numbers) for whom the Tenderer has successfully performed the provision of similar Services as those to which this Tender Response relates.

The Principal may contact these referees. These referees cannot be employees or owners of the contractor's company.

16. Resource schedule

Please provide details of Tenderers current commitment schedule for (if applicable).

Details are to include:

- Project and description
- Timeframe (dates required).

Part E: Response Schedules



Schedule A: Tenderers Information

Business Name:	
CAN:	
ABN:	
Type of business (partnership, public company, private company, etc):	
Address:	
Telephone:	
Facsimile:	
Date incorporated:	
Names of Directors or Partners:	
Authorised signatory:	
Name / Position:	
Accountant:	
Name:	
Contact Phone No:	
Bank Details:	

Please attach additional information if space is insufficient space.

Schedule D: Safety and insurance information

The Tenderer shall provide details of Workplace Health and Safety Act Requirements.

Number of Full time and Part time employees:	
Worker's Compensation Policy No:	
Details of previous accident / incidents: (Attach details if insufficient room).	
Public Liability Insurer:	
Amount of Public Liability Insurance: (Minimum \$20,000,000).	
Motor vehicle and third-party liability insurer:	
Amount of motor vehicle third party; liability insurance (including statutory cover): (minimum \$20,000,000).	

Please attach additional information if space is insufficient space.

NOTE: Attach certificates of currency for each category above. Kowanyama Aboriginal Shire Council be named as "Principal"

Schedule E: Dayworks charges

Tenderers must complete the entire following price schedule. The rates shall be inclusive of all overheads including licensing, GST and profit and based on the Contractors standard working week or workshop opening hours

Work week for these rates means: Monday to Friday 7:00am – 5:00pm, 10 hours per day (at minimum).

Item	Rate per Hour (ex GST)	GST	Rate per hour (inc GST)
Routine Servicing	\$	\$	\$
Breakdown Servicing	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Other:	\$	\$	\$
Item	Method of pricing - E.g., cost, cost plus margin, set fee etc		
Machinery and Plant Parts			
Lubricants and oils			
Call out fee if applicable			
Call out			
Stand down rate			
Freight:			
Other:			

Please attach additional information if space is insufficient space.

Schedule F: Management systems**Schedule F1 – Work Health and Safety**

This Schedule forms part of the tender evaluation and is to be completed by the Tenderer. Upon contract award, the successful Tenderer may be required to verify their responses noted in this Schedule, by providing copies of relevant policies, procedures, certificates etc. that provides evidence of their ability and capacity to effectively manage their WHS responsibilities for the contract.

Item	Tick Yes or No
1. Does your business or organisation have third party certification for Work Health and Safety, e.g. to AS/NZS 4801 or other?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, by whom: Certificate Number: (Attach a copy of your Accreditation Certificate)	
2. Does your business or organisation have a Random Drug and Alcohol Policy? (Attach a copy of your Policy)	Yes <input type="checkbox"/> No <input type="checkbox"/>
IF TENDERER HAS ANSWERED 'YES' TO QUESTIONS 1 AND 2, TENDERER IS NOT REQUIRED TO COMPLETE QUESTIONS 3 TO 9.	
3. Does the Tenderer have an internal Work Health and Safety Management System or Plan (not third party certified)? (If yes, attach evidence such as a copy of the manual)	Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Does your business or organisation have documented Safe Work Methods Statements (SWMS) and other procedures for all identified high-risk work?	Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Does your business or organisation have appropriate systems and/or documented procedures for reporting of incidents and hazards?	Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Is there a person appointed to look after Health and Safety in the workplace?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, state person's name and position: Name: Position:	
7. Are all employees aware of their obligations for Personal Protective Equipment (PPE)?	Yes <input type="checkbox"/> No <input type="checkbox"/>
8. Does your business or organisation have current and appropriate qualifications, licences to undertake each task?	Yes <input type="checkbox"/> No <input type="checkbox"/>
9. Does your business or organisation undertake appropriate on-site induction and training relevant to each task?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Schedule F2 – Environmental Management

The Tenderer is to complete and attach this Schedule to its Tender. The purpose of this Schedule is to provide an overview of the status of the Tenderer's construction environmental management plan (EMP) documents and procedures.

The successful Tenderer, upon contract award, will be required to verify their responses noted in this Schedule by providing copies of the project site specific environmental management plan, site-specific cultural heritage protection searches and any other documented evidence on request by the Principal.

Tenderers must provide details of Environmental Management Systems, or processes and procedures. Please answer (YES or NO). Supporting evidence and copies of relevant documentation must be attached with Tender response.

Item	Tick Yes or No
1. Has your business or organisation been third party certified for Environmental Management Systems e.g. ISO 14000 series or other?	<input type="checkbox"/> Yes <input type="checkbox"/> No
If Yes, by whom: Certificate Number: <i>(Attach a copy of Accreditation Certificate)</i>	
2. Does the Tenderer have an internal Environmental Management System? <i>(If yes, attach evidence such as a copy of the manual)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The Tenderer is aware of the relevant provisions within the Principal's environmental policy and will commit to the requirements of the environmental policy?	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. Is the Tenderer aware of the Environmental & Cultural Heritage Protection Requirements relevant to this project?	<input type="checkbox"/> Yes <input type="checkbox"/> No

Schedule F3 – Quality Assurance

The Tenderer is to complete and attach this Schedule to its Tender. Upon contract award, the successful Tenderer may be required to verify their responses noted in this Schedule, by providing copies of relevant quality policies, procedures, certificates etc. that provides evidence of their quality requirements for the contract.

Item	Tick Yes or No
1. Does your business or organisation have third party certification for Quality, e.g. to ISO 9001 series or other?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If Yes, by whom: Certificate Number: (Attach a copy of your Accreditation Certificate)	
IF TENDERER HAS ANSWERED 'YES' TO QUESTIONS 1, TENDERER IS NOT REQUIRED TO COMPLETE QUESTIONS 2 TO 6.	
2. Does the Tenderer have an internal Quality System or Plan (not third party certified)? (If yes, attach evidence such as a copy of the manual)	Yes <input type="checkbox"/> No <input type="checkbox"/>
3. Does the Tenderer have a Quality Policy? (If yes, attach evidence of the Policy)	Yes <input type="checkbox"/> No <input type="checkbox"/>
4. Does the Tenderer have documented Quality procedures? (If yes, attach evidence or copy of the procedures)	Yes <input type="checkbox"/> No <input type="checkbox"/>
5. Are records of Inspection, Test and other Quality Assurance or Quality Control activities maintained and quality records kept for each specific project?	Yes <input type="checkbox"/> No <input type="checkbox"/>
6. Does the Tenderer undertake internal Quality Audits on a project or contract specific basis?	Yes <input type="checkbox"/> No <input type="checkbox"/>

Annexure A: Draft Licence Agreement





LICENCE AGREEMENT

PARTIES**Kowanyama Aboriginal Shire Council ABN 86 255 216 480****("Council")****INSERT (ABN: insert)****("Licensee")****RECITALS**

- A. Council is the trustee owner of the Licensed Area.
- B. Council agrees to grant a Licence to the Licensee to occupy the Licensed Area for the Permitted Use for the Term pursuant to the terms and conditions contained in this Licence.
- C. The Licensee agrees to enter this Licence in accordance with the terms and conditions contained in this Licence.

OPERATIVE PROVISIONS**1. REFERENCE SCHEDULE**

Item	Reference	Details
Item 1	Council Address for Notices: Phone No.: Facsimile No.: Email address: Contact:	Kowanyama Aboriginal Shire Council Lot 30 Chapman Road, Kowanyama, Qld 4892 07 4083 7100 07 4060 5124 admin@kowanyama.qld.gov.au Chief Executive Officer
Item 2	Licensee Address for Notices: Contact:	INSERT
Item 3	Licensed Area	Part of Lots 76 (Workshop)) on SP 272 069 (as shown in Schedule 1).
Item 4	Licence Fee	\$1 (GST Excl) per annum. Payable upon demand.
Item 5	Licence Fee Review	NA
Item 6	Term Commencement Date: Expiry Date: Options	INSERT 1 year at Council's sole discretion (3 years total)
Item 7	Insurance	Pursuant to clause 9
Item 8	Permitted use	Mechanical Services Workshop

2. DEFINITIONS AND INTERPRETATIONS

2.1. In this Licence unless inconsistent with the context or subject matter:

- (a) **Commencement Date** means the commencement date stated in Item 6.
- (b) **Current CPI** means the Consumer Price Index number for Brisbane – All Groups (or the index officially substituted for it) for the quarter last published immediately before the relevant Review Date.
- (c) **Event of Default** means the occurrence of any one or more of the following events:
 - i. the Licensee fails to make a payment due under this Licence; or
 - ii. the Licensee fails to perform, keep, or fulfil any other covenant, undertaking, obligation, or condition in this Licence; or
 - iii. the Licensee attempts to assign, transfer or sublicense this Licence without Council's prior written consent pursuant to clause 12.1.
- (d) **Expiry Date** means the date specified in the Reference Schedule, and if an Option is exercised, includes the date the Option is scheduled to end.
- (e) **Fixtures** means all installations, plant, equipment, fixtures, fittings, furniture, furnishings, signs, and other property contained in the Licensed Area which are the property of Council, whether included in Schedule 2 or not. The Fixtures are and shall remain the property of Council.
- (f) **Land** means the land specified in the Reference Schedule, being the land on which the Licensed Area is located.
- (g) **Licence** means this Licence Agreement as varied or amended from time to time.
- (h) **Licensed Area** has the meaning given to that term in Item 3 and includes the Fixtures.
- (i) **Licence Fee** means the sum stated in Item 4 as reviewed in accordance with the terms of this Licence.
- (j) **Licensee** means Tandaly Pty Ltd and its successors and assigns.
- (k) **Options** means any options to renew this Licence, which are specified in the Reference Schedule, and which may be exercised in accordance with this Licence.
- (l) **Party** means the Council and the Licensee individually and Parties means the Council and the Licensee collectively.
- (m) **Permitted Use** means the use of the Licensed Area for the Permitted Use specified in the Reference Schedule, and for no other purposes whatsoever.
- (n) **Reference Schedule** means the Reference Schedule contained in clause 1 of this Licence.
- (o) **Security Interest** has the meaning given to that term in the Personal Property Securities Act 2009 (Cth).
- (p) **Schedule** means the schedule or schedules to this Licence.
- (q) **Term** means the period commencing on the Commencement Date and ending on the Expiry Date and includes any Options.

2.2. Interpretation

In this Licence unless inconsistent with the context or subject matter:

- (a) a reference to a person includes any other legal entity;
- (b) a reference to a legal entity includes a person;
- (c) words importing the singular number include the plural number;
- (d) words importing the plural number include the singular number;
- (e) the masculine gender must be read as also importing the feminine or neuter gender;
- (f) a reference to a Party includes the Party's heirs, executors, successors and permitted assigns;
- (g) headings are for reference purposes only and must not be used in interpretation;
- (h) where any word or phrase is given a defined meaning any other part of speech or other grammatical form concerning the word or phrase has a corresponding meaning;
- (i) a reference to a statute includes all regulations and subordinate legislation and amendments;
- (j) references to writing include any mode of representing or reproducing words in tangible and permanently visible form, and includes e-mail and fax;
- (k) a reference to a monetary amount is a reference to an Australian currency amount;
- (l) an obligation of two or more Parties binds them jointly and each of them severally;
- (m) an obligation incurred in favour of two or more Parties is enforceable by them severally;
- (n) references to time are to local time in Queensland;
- (o) where time is to be reckoned from a day or event, the day or the day of the event must be excluded;
- (p) a reference to a business day means any day on which trading banks are open for business in Brisbane;
- (q) if any time period specified in this Licence expires on a day which is not a business day, the period shall expire at the end of the next business day;
- (r) a reference to a month means a calendar month.

3. AGREEMENT AND TERM

- (a) Council hereby grants the Licensee an exclusive licence to undertake the Permitted Use in the Licensed Area for the Term, and the Licensee accepts such engagement upon and subject to the terms and conditions of this Licence. For the avoidance of doubt, it is acknowledged that Council must not permit any other person or entity to use the Licensed Area.
- (b) The Term of this Licence begins on the Commencement Date and ends on the Expiry Date.

4. FEES PAYABLE TO COUNCIL

4.1. Licence Fee

The Licensee shall pay the Licence Fee to Council as directed, weekly in advance or at such other intervals as Council directs from time to time.

- 4.2.** If this Licence ends at a time other than the Expiry Date, the Licensee must pay to Council prior to the end of this Licence the proportion of the Licence Fee due at that time together with any other monies due under this Licence.

5. REVIEW OF LICENCE FEE

- 5.1.** The Licence Fee from and including each Review Date is the Licence Fee payable immediately before the relevant Review Date multiplied by the Current CPI and divided by the Previous CPI.
- 5.2.** Pending determination of the Licence Fee for any year of the Term, the Licence Fee shall be paid at the rate payable at the end of the previous year of the Term and an adjustment (if necessary) is to be made following determination of the reviewed Licence Fee.
- 5.3.** If the Licence Fee is not reviewed in accordance with this clause, then Council may, at any time, recover (as a liquidated debt) the difference between the fee levied and paid, and the fee that ought to have been levied and paid had the Licence Fee been reviewed in accordance with this clause. This subclause survives the expiry of this Licence.
- 5.4.** Regardless of any other provision in this Licence the Licence Fee in any year of the Term must not be less than the Licence Fee in the year immediately prior to that year

6. NO SET OFF

- 6.1.** The Licensee must make payments under this Licence to Council by the method which the Licensor reasonably requires without set-off, counterclaim, withholding or deduction.

7. MANAGEMENT AND OPERATION

7.1. Permitted Use

- (a) The Licensee will occupy the Licensed Area and use it for the Permitted Use only, and for no other purposes whatsoever.
- (b) If the Licensee wishes to use the Licensed Area for a purpose other than the Permitted Use, then the Licensee must seek Council's written consent, which may be given or withheld by Council in its absolute discretion.

7.2. Maintenance of Licensed Area

- (a) The Licensee is required to maintain the Licensed Area, including the Fixtures, in good and tenable condition at its own cost always throughout the Term, fair wear and tear excepted.
- (b) If Council, acting reasonably, considers that the Licensed Area, including the Fixtures, is not being maintained in a good and tenable condition, Council may enter the Licensed Area and effect any repairs or maintenance required to ensure that the Licensed Area is in good and tenable condition, with all costs of such repairs or maintenance to be wholly recoverable from the Licensee;
- (c) In the event of damage beyond fair wear and tear of Council's Fixture(s), the Licensee shall repair and/or replace the Fixture(s) with one of equal quality at the time prior to the damage.
- (d) The Licensee is required to maintain (annual and/or regular maintenance, repair, and replacement of parts) all Fire and Safety equipment at its own cost always throughout the term.
- (e) The licensee shall, at their own expense, be responsible for the routine maintenance and servicing of all air conditioning units within the Licensed Area, with such servicing to be undertaken no less than twice annually by a suitably qualified contractor. If an air conditioning unit requires replacement, the Licensee must provide Council with a current maintenance report prepared by the servicing contractor confirming the condition of the unit and the necessity for replacement. Where the Licensee fails to

provide the required maintenance report, or where the need for replacement arises or maintenance, the full cost of the replacement shall be borne solely by the Licensee.

- (f) The Licensee shall be solely responsible for, at their own expense, the ongoing maintenance of the Licensed Area, including mowing, whipper snipping, and general yard upkeep. Such maintenance must be carried out on a regular basis to ensure the Licensed Area is kept in a clean, tidy, and safe condition, and remains free from rubbish, overgrowth, and debris always.
- (g) The Licensee shall be solely responsible for, at their own expense, the collection, storage, removal and lawful disposal of all used engine oil generated within the Licensed Area. Used engine oil must be stored in suitable sealed containers and removed by an authorised waste contractor in accordance with all applicable environmental legislations and local government requirements. Under no circumstances shall engine oil be discharged to stormwater, sewer systems, waste facilities or onto the ground within or surrounding the Licensed Area.
- (h) The Licensee shall be solely responsible, at their own cost, the collection, storage, removal, and lawful disposal of all used or discarded Valmai generated within the Licensed Area. All Valmai must be stored in a safe and orderly manner that does not create a fire risk, health hazard, or environmental nuisance, and must be removed from the Licensed Area by an authorised waste contractor in accordance with applicable environmental and local government requirements. Tyres identified as Council property must not be sold, reused, transferred, or otherwise disposed of for commercial gain by the Licensee and must be managed strictly in accordance with the Licensors' directions.
- (i) Subject to clause 7.2(a) if Council, acting reasonably, considers that the Licensed Area, including all plant and equipment, fixtures, and fittings, is not being maintained in a good and tenable condition, Council must notify the Licensee to carry out specific repairs or maintenance at the Licensee's cost to ensure that the Licences Area is in good and tenable condition unless the Licensee disputes the Council's notice.
- (j) If Council reasonably considers the Lessee has not satisfactorily carried out repairs or maintenance specified in the notice given under clause 7.2(i) within a reasonable timeframe after provision of the Council's notice in clause 7.2(i) (which must not be less than 21 days from the date of service of Council's notice) and subject to the Licensee not disputing the Council's notice, Council may enter the Licensed Area with five (5) business days' notice to effect the specified repairs and maintenance to ensure that the Licensed Area is in good and tenable condition, with all reasonable costs of such repairs or maintenance to be wholly recoverable from the Licensee.
- (k) The Licensee must not obstruct or interfere with the free movement of users and other persons entitled to occupy the Licensed Area or adjoining areas;
- (l) The Licensee must not keep or allow animals in the Licensed Area without Council's prior written consent which consent may be granted or refused or granted subject to conditions, and withdrawn at any time, in Council's sole discretion;
- (m) The Licensee must not do anything in the Licensed Area that may be offensive, dangerous, illegal or which may cause nuisance to users and other persons entitled to occupy the Licensed Area or adjoining areas;
- (n) The Licensee must not paint, erect, or affix or permit to be painted, erected, or affixed any signs, notices or advertisements to any part of the Licensed Area without the prior consent in writing of Council which consent may be granted or refused or granted subject to conditions in the discretion of Council.

7.3. Access

- (a) Prior to or on the Commencement Date, Council will provide to the Licensee all keys and security devices required to access the Licensed Area and the Common Area as necessary to gain access to and from the Licensed Area.
- (b) The Licensee will have access to the Licensed Area 24 Hours a day during the Term of this Licence.

7.4. Operating Expenses and outgoings

- (a) All operating expenses and outgoings incurred by or levied separately to the Licensed Area shall be borne wholly by the Licensee and shall be paid promptly as requested either by Council or the provider.

7.5. Compliance

The Licensee, at its cost and expense, must:

- a) comply with all standards, laws and regulations in relation to the Permitted Use including but not limited to AS/NZAI569:2014 - The storage and handling of LP Gas; AS 4332-2014- The storage and handling of gases in cylinders and any applicable Workplace Health and Safety Electrical Safety Office Workers' Compensation Regulator standards;
- b) comply at all times with all applicable laws, including any local laws and all relevant environmental protection laws and orders, and the requirements of authorities in connection with the Licensed Area, the Licensee's property and the use or occupation of the Licensed Area (including obtaining all permits);
- c) observe any applicable requirements of insurers and all relevant authorities relating to storage for categories of goods;
- d) comply with all fire safety laws and directions in respect of the Licensed Area and pay any associated levies or charges;
- e) remove trade waste and rubbish from the Licensed Area regularly and dispose of it in accordance with the requirements of Council and keep the Licensed Area clean and tidy at all times;
- f) know, understand and adhere to all workplace health and safety requirements and all environmental laws, including any particular requirements notified by Council to the Licensee from time to time;

7.6. Council's rights of entry etc

- (a) Without limiting any other provisions of this Licence, Council may at any time:
 - i. enter the Licensed Area without notice to the Licensee if Council wishes to use the Licensed Area for access;
 - ii. access any existing water or sewerage infrastructure located on the Licensed Area.
- (b) When accessing the Licensed Area pursuant to sub-clause (a) of this clause, Council shall take all reasonable steps to minimise interference with the Licensee's use of the Licensed Area for the Permitted Use.

7.7. Alterations, Additions, or Improvements

- (a) Council may after giving reasonable notice to the Licensee (except in an emergency, if it is impracticable to do so) enter the Licensed Area to make alterations, additions or improvements to any existing infrastructure contained on the Licensed Area, at its cost (unless otherwise agreed) that are required by law or necessary to ensure that the Building or the Licensed Area are safe or the services to the Building or Licensed Area continue to operate.
- (b) In carrying out any alterations, additions or improvements, Council shall take all reasonable steps to minimise interference with the Licensee's use of the Licensed Area for the Permitted Use.
- (c) The Licensee may not make any alterations, additions, or improvements (including the erection of signage) to the Licensed Area unless the Licensee has first obtained Council's prior written consent to the proposed alteration, addition or improvement, which consent may not be unreasonably withheld but may be subject to reasonable conditions (including but not limited to work plans and drawings).

7.8. Common Areas

- (a) Council permits the Licensee in common with others having the like rights to use the Common Areas for their intended purpose.
- (b) Council is responsible for maintaining and cleaning the Common Area, at its cost in a good, clean, and safe condition and state of repair.
- (c) The Licensee will use reasonable endeavours to prohibit its employees and others over whom it has control, from parking vehicles or otherwise obstructing the entrances, exits and driveways in and to the Common Areas.
- (d) The Licensee and any person under its control must not interfere with the air-conditioning equipment, appurtenances, or services within or about the Common Areas.
- (e) Any directory boards, provided by Council, are under the sole control of Council, who may allot space for the names and descriptions of the Licensees of the Building.
- (f) Council may, by giving written notice to the Licensee and others with access to the Common Areas, formulate and enforce rules and regulations relating to the Common Areas not inconsistent with the rights of the Licensee.

8. LICENSEE TO ACT ON OWN BEHALF

- (a) Nothing in this Licence shall constitute or be construed to create a partnership or joint venture between Council and the Licensee. All debts and liabilities to third persons incurred by the Licensee during the Licensee's use of the Licensed Area shall be the debts and liabilities solely of the Licensee and Council shall not be liable for any such debts and liabilities by reason of this Licence unless such debt or liability arises because of Council's negligent act, omission or default or breach of this Licence.
- (b) Each employee engaged by the Licensee shall be an employee of the Licensee and every person performing services in connection with this Licence, including any agent or employee of the Licensee or any agent or employee of Council hired by the Licensee, shall be acting as the agent of the Licensee.

9. INSURANCE

- (a) The Licensee shall, at its cost, from the date of this Licence provide and maintain:
 - i. public liability insurance having a minimum limit of twenty million dollars (\$20,000,000.00) for each and every occurrence against all claims which may be brought anywhere in the world (including extra-territorial actions), and arising out of the Licensee's use of the Licensed Area, for bodily injury death or damage to property of third parties which shall include coverage against liability arising out of the ownership or operation of motor vehicles and coverage in the same amount against all claims brought anywhere in the world arising out of alleged assault and battery, false arrest, detention, libel, slander, defamation or other violation or wrongful entry or eviction; and
 - ii. workers' compensation insurance effected in accordance with laws for the time being requiring such insurances, arising out of the Licensee's use of the Licensed Area (if applicable); and
 - iii. any other insurance required by law or which Council reasonably requires.

- (b) All insurances shall be in such form and for such amounts and with such companies as approved by Council, which approval shall not be unreasonably withheld.
- (c) The Licensee assumes all risks in connection with the adequacy of any insurance and waives any claim against Council (in the absence of negligence of Council) for any liability, cost or expense arising out of any uninsured claims, in part or in full, of any nature whatsoever.
- (d) Prior to the Commencement Date, and on further occasions upon request of Council, the Licensee must provide evidence satisfactory to the Council of the terms and currency of each of the insurance policies referred to in this clause.

10. RISK AND INDEMNITY

- (a) Council (including its employees, representatives, contractors or any associated entity who performs services on behalf of Council hereunder) is not liable to the Licensee in contract, tort or otherwise whatsoever for any loss or damage (including consequential loss) to any person or property arising from the occupation and use of the Licensed Area by the Licensee or others, save to the extent the loss or damage is a consequence of the negligent acts or omissions of Council (or Council's employees, representatives, contractors or associated entities).
- (b) The Licensee:
 - I. uses and occupies the Licensed Area at its sole risk;
 - II. shall be liable for claims of third parties for personal injury and property damage not covered by the insurance required under Clause 7 which result from the negligence of the Licensee having due regard to the standards set out in this Licence provided that the Licensee shall not assert any claims against Council and Council shall not be liable to the Licensee for any losses, damages, liabilities or expenses (including legal costs) incurred or sustained by the Licensee to the extent that the same are covered by insurance and the applicable insurer pays such amounts;
 - III. indemnifies Council from and against any claim, damage, loss, or expense suffered by Council or others arising out of or in connection with the use of the Licensed Area by the Licensee or the Licensee's employees and agents or because of or arising out of the grant of, or the exercise of, this Licence, save to the extent the loss or damage is a consequence of the negligent acts or omissions of Council.

11. EVENTS OF DEFAULT AND TERMINATION

11.1. Termination on end of services contract

Should the mechanical services contract be terminated (for whatever reason by whichever party), this License Agreement giving effect to that mechanical services contract, will immediately concurrently terminate.

11.2. Termination on notice

Council may at any time and without cause, terminate this Licence upon the provision of no less than three (3) calendar months' written notice to the Licensee.

11.3. Termination for default

- (a) If an Event of Default occurs, Council shall give the Licensee a notice in writing requesting that the Event of Default be remedied.

- (b) If the Event of Default is not remedied within fourteen (14) days of the date of the notice provided pursuant to paragraph (a) of this clause, Council may give to the Licensee notice of its intention to terminate its obligations under this Licence after the expiration of fourteen (14) days from the date such notice is served.
- (c) Upon the expiration of such period referred to in sub-clause (b) of this clause, Council shall (without prejudice to any rights arising prior to such date) have no further obligations to the Licensee and this Licence shall be deemed to be terminated.
- (d) Subject to subclause (e), if upon receipt of such notice the Licensee cures the default within the said fourteen (14) day period then such notice shall be of no force and effect.
- (e) Subclause (d) does not apply, and the notice shall remain effective even if the default is cured, if the notice relates to a default that has occurred more than once in the six (6) months preceding the date of the notice.

11.4. Rights in Addition to Other Remedies

The rights contained in this clause shall be in addition to all rights and remedies for breach of contract or otherwise available to Council.

12. END OF LICENCE

12.1. The Licensee to yield up Licensed Area

When this Licence ends, either at the end of the Term or upon termination pursuant to this Licence, the Licensee must peacefully yield up the Licensed Area in good condition, fair wear and tear excepted, and return to Council all keys and security devices relating to the Licensed Area.

12.2. Removal of improvements etc.

- (a) The Licensee must during the last fourteen (14) days of the Term remove any chattels, fixtures, fittings, additions, signage, and other branding it has stored on, erected, or affixed to the Licensed Area during the Term, and the Licensee must make good any damage caused by the removal.
- (b) Any items not removed from the Licensed Area under sub-clause (a) of this clause shall be deemed abandoned and will become the property of Council.
- (c) the Licensee's property becomes the property of Council in accordance with subclause (b) of this clause, then Council may, in its absolute discretion:
 - i. retain the property;
 - ii. dispose of the property, with the costs of such disposal to be wholly recoverable from the Licensee as a debt immediately due and owing.

13. HOLDING OVER

- (a) If the Licensee remains in occupation of the Licensed Area after the expiration of the Term with the consent of Council, the Licensee becomes a monthly tenant. The Licensee shall continue to pay the same amount of License Fee and other money under this Licence in accordance with this Licence.
- (b) The monthly tenancy created under sub-clause (a) will continue via the same terms of this Licence (so far as the terms can be applied to a monthly tenancy) until either party gives the other party one month's written notice terminating the tenancy. However, if the Licensee is in default, Council may give 72 hours written notice to the Licensee terminating the tenancy.

14. GENERAL

14.1. Assignment and other dealings

(a) Subletting and encumbering

The Licensee must not without Council's prior written consent (which may be withheld or given on such conditions required by Council in its absolute discretion):

- i. sublet or in any manner part with possession of the Licensed Area; or
- ii. mortgage or otherwise encumber the Licensee's interest in this Licence.

(b) Assignment

The Licensee must not assign this Licence without the prior written consent of Council provided that such consent will not be unreasonably withheld if:

- iii. the Licensee has, at least thirty (30) days before the proposed assignee intends to take possession of the Licensed Area pursuant to an assignment, makes a written request for Council's consent together with:
 - A. in relation to each proposed assignee:
 - I. their full names and addresses;
 - II. an up-to-date summary of assets and liabilities prepared by and signed by an accountant;
 - III. any other information reasonably required by Council to establish the proposed assignee's financial position; and
- iv. the Licensee proves to Council's reasonable satisfaction that:
 - A. the proposed assignee is respectable, suitably qualified, and capable of carrying on the Permitted Use and performing the obligations on the part of the Licensee under this Licence; and
 - B. the proposed assignee is of sufficiently substantial financial standing, having regard to both its net assets and revenue, that a reasonable person would consider that the proposed assignee is able to meet the Licensee's payment obligations under this Licence for the entire duration of the unexpired Term.

(c) Council's consent

Any consent by Council to a proposed assignment given under this clause is conditional upon each of the following occurring before the proposed assignee takes possession of the Licensed Area:

- v. the Licensee and the proposed assignee entering a deed of consent with Council in the form reasonably required by Council;
- vi. the proposed assignee providing Council with a guarantee and indemnity signed by the proposed guarantor in favour of Council in the form required by Council;

- vii. the Licensee and the proposed assignee complying with Council's reasonable requirements in relation to the documentation of the intended assignment;
- viii. any default by the Licensee under this Licence arising up to the date of completion of the proposed assignment being remedied; and
- ix. the Licensee paying to Council the Council's reasonable legal costs of the giving of its consent.

(d) Change of Control

If the Licensee is a corporation (which is neither listed nor wholly owned by a corporation whose shares are listed on the official list of the Australian Stock Exchange Limited), a change in the effective control of the corporation is deemed to be an assignment of this Licence and the Licensee may not make that change unless it obtains Council's prior written consent and complies with subclauses (b) and (c) (except for subclause (c)(i)) of this clause.

14.2. Native Title

The parties acknowledge and agree that nothing contained in this Licence constitutes a future act for the purposes of the Native Title Act 1993 (Cth).

14.3. Goods and Services Tax

(a) In this clause:

"GST" means the same as in the GST Law; and

"GST Law" means the same as "GST law" means in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

(b) A recipient of a taxable supply made under this Licence must pay to the supplier, in addition to the consideration for the taxable supply, any GST paid or payable by the supplier in respect of the taxable supply.

(c) The recipient must pay the GST to the supplier:

- A. if there is a due date for the consideration for the taxable supply, either on that date or within fourteen (14) days of receiving a tax invoice for the taxable supply whichever is the later; or
- B. if there is no due date, within fourteen (14) days of receiving a tax invoice for the taxable supply.

(d) A party's obligation to reimburse another party for an amount paid or payable to a third party (for example a party's obligation to pay another party's legal costs) includes GST on the amount paid or payable to the third party except to the extent that the party being reimbursed is entitled to claim an input tax credit for that GST.

(e) Each party making a taxable supply under this document must issue a tax invoice to the other party for each taxable supply within fourteen (14) days after the due date for payment of the consideration of the supply under this Licence.

(f) Each party must issue an adjustment note to the other party as soon as it becomes aware of an adjustment event relating to a taxable supply by it under this document.

14.4. Notices

(a) Any notice, statement or demand required or permitted under this Licence shall be in writing and may be served in any manner recognised by law or by email, hand delivery or mail to the address of the recipient specified in this Licence or most recently notified by the recipient to the sender.

(b) If notice is sent by:

- I. email, it shall be deemed to have been served on the business day following transmission (unless evidence of a failed transmission is immediately received by the party transmitting the email).
- II. hand delivery, it shall be deemed to have been served on the day the document is left at the address for hand delivery (or if the document is served on a day that is not a business day or after 5.00pm on a business day, on the next business day).
- III. mail, it shall be sent by pre-paid post and shall be deemed to have been served seven (7) days after date of posting.

14.5. Governing Law

The laws of Queensland (and so far, as applicable of the Commonwealth of Australia) shall govern this Licence and each party hereby expressly accepts and acknowledges the jurisdiction of the Courts of Queensland and of Australia and all Courts to which appeals from those Courts may be taken.

14.6. Further instruments

Council and the Licensee shall execute and deliver all such further agreements and other instruments, do all things, and take any other action necessary to make this Licence fully effective, binding, and enforceable as between them and as against third parties.

14.7. Headings

Headings are inserted for convenience only and are not intended to govern the meaning of any of the provisions of this Licence.

14.8. Waiver

The waiver of any term or condition on any occasion shall not be deemed a waiver of such term or condition on any other occasion.

14.9. Severance

If a provision of this Licence is void or unenforceable it must be severed from this Licence and the provisions that are not void or unenforceable are unaffected by the severance.

14.10. Whole agreement

This Licence constitutes the whole of the agreement between the Parties relating to the subject matter hereof.

14.11. Amendment

This Licence can only be amended, supplemented, replaced, or novated by another document signed by the Parties.

14.12. Liability for cost

- (a) Each party must pay its own costs in relation to this document unless this document provides otherwise.
- (b) The Licensee shall pay to Council on demand Council's reasonable costs and expenses (including legal fees and disbursements on a solicitor and own client basis) in connection with:
 - I. considering, approving, and supervising anything needing Council's consent,
 - II. any dealing arising out of this Licence initiated by the Licensee;
 - III. any default by the Licensee, any termination of this Licence due to the Licensee's default, and the enforcement of any term or condition or the exercise of any

- IV. power and any litigation commenced by or against the Licensee concerning the Licensee's occupation and use of the Licensed Area; and
- V. responding to a request by the Licensee for any amendment or variation to this Licence.

14.13. Counterparts, Fax, and Email

This Licence may be executed in any number of counterparts and when executed communication of the fact of execution to the other parties may be made by sending evidence of execution by fax or email.

DRAFT

Executed as an Agreement

EXECUTED by **KOWANYAMA ABORIGINAL SHIRE**)

COUNCIL in accordance with the *Local*)
Government Act 2009 in the presence of:)

) Mayor

Witness: _____)

Dated: _____)

) Chief Executive Officer

EXECUTED by **INSERT (ABN:)**)
pursuant to its Constitution in the presence of:)

) Signature of Authorised Representative

Dated: _____)

) Name of Authorised Representative

SCHEDULE 1: Licenced Area



DRAFT